

MODIFICATION TO AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM

in compliance with the provisions of the Federal Clean Water Act as amended (33 U.S.C. §§ 1251 et seq.) (the "CWA"), and the Massachusetts Clean Waters Act, as amended (M.G.L. Chap.21, §§ 26-53),

Sterling Suffolk Racecourse, LLC

is authorized to discharge from the facility located at

**111 Waldemar Avenue
East Boston, MA 02128**

to a receiving water named

Sales Creek and the adjacent wetlands (MA71-12)

in accordance with effluent limitations monitoring requirements and other conditions set forth in the permit issued on September 30th, 2015, as modified by the conditions set forth herein.

This modified permit will become effective on the date of signature.

This permit modification and the authorization to discharge expire at midnight, January 6th, 2021.

This modified permit is issued pursuant to 40 C.F.R. § 124.5, and revises and supersedes the permit that was issued on September 30th, 2015 and appealed on November 4th, 2015.

This permit modification consists of **Part I** (including effluent limitations, monitoring requirements, and related conditions), **Figure 1**, Suffolk Downs Production Area, Track Area and Outfalls; **Figure 2**, Monitoring locations, and **Table 1**, Suffolk Downs Post-Construction Outfall Nomenclature and Locations.

Signed this 14th day of September, 2016

/S/SIGNATURE ON FILE

Ken Moraff, Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

/S/SIGNATURE ON FILE

David Ferris, Director
Massachusetts Wastewater Management Program
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

PART I**A. Effluent Limitations and Monitoring Requirements****1. Production Area Process Wastewater Discharges**

During the period beginning on the effective date of this permit and lasting through its expiration date, the following discharge from the Production Area is authorized:

a. There shall be no discharge of process wastewater pollutants into waters of the United States from the Production Area except when rainfall causes an overflow, provided that each of the following criteria are met:

(1) Suffolk's Production Area is designed, constructed, operated and maintained to contain all process-generated wastewaters plus the runoff from the 25-year, 24-hour rainfall event for the location of the CAFO¹;

(2) The design storage volume of the process wastewater retention structure is adequate to contain all manure, litter, and process wastewater accumulated during the storage period considering, at a minimum, the following:

(A) the volume of manure, litter, process wastewater, and other wastes accumulated during the storage period;

(B) the volume of normal precipitation less evaporation during the storage period;

(C) the volume of runoff from the Production Area's drainage area from normal rainfall events during the storage period;

(D) the volume of direct precipitation from the 25-year, 24-hour rainfall event;

(E) the volume of runoff from the Production Area from the 25-year, 24-hour rainfall event;

(F) the volume of residual solids remaining in the process wastewater retention structure after liquid has been removed;

(G) sediment load in the runoff from the Production Area; and,

(H) all necessary freeboard to maintain structural integrity of the process wastewater retention structure.

¹ This design and implementation standard meets the effluent requirements for best available technology economically achievable (BAT) contained 40 C.F.R. § 412.13; also note that Suffolk's CAFO separately is subject to the effluent requirements for best practicable control technology currently available (BPT) contained in 40 C.F.R. § 412.12, which requires a design and implementation standard consistent with the 10 year, 24 hour rainfall event. Therefore, under the applicable EPA regulations the BPT requirement is subsumed by the BAT requirement.

(3) Suffolk must maintain, on-site, engineering design and construction plans documenting that Suffolk has sufficient storage capacity to ensure compliance with the effluent limitations specified in Part I.A.1.a. (1) and (2) above; and,

(4) The maximum length of time between emptying events for the Production Area process wastewater retention structure is the 60 day storage period used by Suffolk to calculate the required design volume of the collection system in Part I.A.1.a.(2) above.

b. The discharge authorized by Part I.A.1.a. above may be discharged into Sales Creek through **Outfall Serial Numbers 001 and 002**. Such discharge shall be: 1) limited and monitored as specified below; 2) not cause a violation of the Massachusetts Surface Water Quality Standards for the receiving water; and 3) be minimized and controlled by implementation of the nutrient management terms and conditions specified in Part 1.B.1 of this permit.

Production Area Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ¹	
		Average Monthly	Maximum Daily	Measurement Frequency ²	Sample Type
Rainfall/Precipitation ³	Inches	----	Report	Each Discharge Event	Total
Flow	GPD	----	Report	Each Discharge Event	Estimate ⁴
pH ⁵	SU	----	6.5-8.5	Each Discharge Event	Grab
Total Suspended Solids (TSS)	mg/L	----	Report	Each Discharge Event	Grab
BOD ₅	mg/L	----	Report	Each Discharge Event	Grab
Dissolved Oxygen	mg/L	----	Report	Each Discharge Event	Grab
Fecal Coliform ⁶	MPN or CFU per 100 ml	----	Report	Each Discharge Event	Grab
<i>E. coli</i> ⁶	MPN or CFU per 100 ml	----	Report	Each Discharge Event	Grab
Enterococci ⁶	MPN or CFU per	----	Report	Each Discharge Event	Grab
Aluminum, Total Recoverable	mg/L	----	Report	Each Discharge Event	Grab

Footnotes:

¹Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall, as indicated by the monitoring locations in Figure 2, prior to mixing with the receiving water (top of overflow structure(s)). All samples shall be tested in accordance with the procedures in 40 C.F.R. Part 136, unless specified elsewhere in the permit. In the event that both outfalls 001 and 002 are discharging, the permittee may use the sampling results for either outfall 001 or 002 to satisfy the sampling

requirements for the un-sampled outfall. The permittee shall indicate on the DMR which outfall was sampled. Flow must be estimated for both outfalls when discharging. The no discharge code (“C”) shall be entered on the DMR for any outfall not sampled during the reporting period.

²Sampling frequency of each overflow discharge event is defined as sampling during any rainfall event when there is a discharge.

³Report the data from a rain gauge located in the Production Area, concurrent with any overflow discharge. Report the intensity, duration, and amount of precipitation for each rainfall event for which there is an overflow discharge on the discharge monitoring report (“DMR”) cover letter. Intensity shall be reported in units of inches/hour and amount of rainfall shall be reported in units of inches.

⁴Flow shall be estimated at the time of sampling for each overflow discharge at the discharge point as indicated by the monitoring locations in Figure 2.

⁵See Part I.A.6 of this permit for additional pH requirements.

⁶The maximum daily monitoring result for fecal coliform, *E. coli* and enterococci shall be expressed as a geometric mean. The units may be expressed as MPN for samples tested using the Most Probable Number method, or CFU when using the Membrane Filter method.

PART I. A. Effluent Limitations and Monitoring Requirements (continued)

2. a. Stormwater associated with industrial activity and subsurface infiltration – Production Area and former Production Area Outfalls (Production Area Roof Runoff and Non-Production Area Runoff)

- During the period beginning on the effective date of this permit and lasting through its expiration date, the permittee is authorized to discharge subsurface infiltration to Sales Creek and adjacent vegetated wetlands through **Outfall Serial Numbers 003 and 006** and stormwater associated with an industrial activity to the unnamed tributary stream and vegetated wetlands adjacent to Sales Creek through **Outfall Serial Numbers 003, 006, and 006A**. Suffolk’s discharges shall: 1) be limited and monitored by Suffolk, as specified below; 2) not cause a violation of the Massachusetts Surface Water Quality Standards for the receiving water; and 3) be controlled by the best management practices (“BMPs”) described in Part I.C. of this permit, Stormwater Pollution Prevention Plan Requirements

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1, 2}	
		Average Monthly	Maximum Daily	Measurement Frequency ^{3,4}	Sample Type
Rainfall/Precipitation ⁵	Inches	----	Report	Quarterly	Total
Flow	GPD	----	Report	Quarterly	Estimate ⁶
Total Suspended Solids (TSS)	mg/L	----	Report	Quarterly	Grab
pH ⁷	SU	----	6.5-8.5	Quarterly	Grab

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1,2,3,4,5,6}	
		Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
Fecal Coliform ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab
<i>E. coli</i> ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab
Enterococci ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab

Footnotes:

¹. Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall as indicated by the monitoring locations in **Figure 2**. All samples shall be tested in accordance with the procedures in 40 CFR Part 136, unless specified elsewhere in this permit.

². Samples shall be taken during wet weather conditions. Wet weather conditions are defined as a rainfall event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (i.e., greater than 0.1 inch) rainfall or snow melt event. Grab sample(s) shall be taken during the first thirty minutes of the discharge. If collection of grab sample(s) during the first thirty minutes is impracticable, grab sample(s) may be taken as soon after that as possible, and the permittee shall submit with the DMR a description of why the collection of the grab sample(s) during the first thirty minutes was impracticable. When the permittee is unable to collect grab sample(s) due to adverse climatic conditions, the permittee must submit, in lieu of sampling data, a description of why the grab sample(s) could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of sample(s) include weather conditions that pose a danger to personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of sample(s) impracticable (extended frozen conditions, specified storm event did not occur during sampling period, etc.). A “no discharge” code shall be entered on the DMR for those sampling periods during which there is no discharge.

³. The Permittee shall conduct quarterly monitoring of Outfalls 003, 006 and 006A. Following three years from the effective date of the permit, EPA will consider any written requests to reduce the monitoring frequency.

⁴. Quarterly sampling frequency is defined as the taking of one sample during wet weather conditions (as defined above in Footnote ²) each calendar quarter. If there are no wet weather conditions in a calendar quarter, the permittee shall record “no discharge” on its DMR.

⁵. Report the data from a rain gauge located in the Production Area, concurrent with each rainfall event. Report the intensity, duration, and amount of rainfall for the rainfall event on the DMR cover letter. Intensity shall be reported in units of inches/hour and amount of rainfall shall be reported in units of inches. Measurement of the duration of a rainfall event shall begin at the start of a rain event greater than 0.1 inches in magnitude and end when the rain event ends.

⁶. Flow shall be estimated for each rainfall event at the discharge point as indicated by the monitoring locations in **Figure 2**.

⁷. See Part I.A.6 of this permit for additional pH requirements

⁸. The maximum daily monitoring result for fecal coliform, *E. coli* and enterococci shall be expressed as a geometric mean. The units may be expressed as MPN for samples tested using the Most Probable Number method, or CFU when using the Membrane Filter method.

PART I.A.2.a. (Continued)

2. During the period beginning on the effective date of this permit and lasting through its expiration date, the permittee is authorized to discharge subsurface infiltration to Sales Creek through **Outfall Serial Numbers 004 and 005** and stormwater associated with an industrial activity to Sales Creek through **Outfall Serial Numbers 004, 005, and 007**. Such discharges shall: 1) be limited and monitored by the permittee as specified below; 2) not cause a violation of the Massachusetts Surface Water Quality Standards for the receiving water; and 3) be controlled by the best management practices (“BMPs”) described in Part I.C. of this permit, Stormwater Pollution Prevention Plan Requirements

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1, 2}	
		Average Monthly	Maximum Daily	Measurement Frequency ^{3,4}	Sample Type
Rainfall/Precipitation ⁵	Inches	----	Report	Quarterly	Total
Flow	GPD	----	Report	Quarterly	Estimate ⁶
Total Suspended Solids (TSS)	mg/L	----	Report	Quarterly	Grab
pH ⁷	SU	----	6.5-8.5	Quarterly	Grab
Fecal Coliform ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab
<i>E. coli</i> ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab
Enterococci ⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab

Footnotes:

¹. Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall as indicated by the monitoring locations in **Figure 2**. All samples shall be tested in accordance with the procedures in 40 CFR Part 136, unless specified elsewhere in this permit.

². Samples shall be taken during wet weather conditions. Wet weather conditions are defined as a rainfall event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (i.e., greater than 0.1 inch) rainfall or snow melt event. Grab sample(s) shall be taken during the first thirty minutes of the discharge. If collection of grab

sample(s) during the first thirty minutes is impracticable, grab sample(s) may be taken as soon after that as possible, and the permittee shall submit with the DMR a description of why the collection of the grab sample(s) during the first thirty minutes was impracticable. When the permittee is unable to collect grab sample(s) due to adverse climatic conditions, the permittee must submit, in lieu of sampling data, a description of why the grab sample(s) could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of sample(s) include weather conditions that pose a danger to personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of sample(s) impracticable (extended frozen conditions, specified storm event did not occur during sampling period, etc.). A “no discharge” code shall be entered on the DMR for those sampling periods during which there is no discharge.

³. Following three years from the effective date of the permit, EPA will consider any written requests to reduce the monitoring frequency.

⁴. Quarterly-sampling frequency is defined as the taking of one sample during wet weather conditions (as defined above in Footnote ².) each calendar quarter. If there are no wet weather conditions in a calendar quarter, the permittee shall record “no discharge” on its DMR.

⁵. Report the data from a rain gauge located in the Production Area, concurrent with each rainfall event. Report the intensity, duration, and amount of rainfall for the rainfall event on the DMR cover letter. Intensity shall be reported in units of inches/hour and amount of rainfall shall be reported in units of inches. Measurement of the duration of a rainfall event shall begin at the start of a rain event greater than 0.1 inches in magnitude and end when the rain event ends.

⁶. Flow shall be estimated at the time of sampling for each rainfall event at the discharge point, as indicated by the monitoring locations in **Figure 2**.

⁷. See Part I.A.6 of this permit for additional pH requirements

⁸. The maximum daily monitoring result for fecal coliform, *E. coli* and enterococci shall be expressed as a geometric mean. The units may be expressed as MPN for samples tested using the Most Probable Number method, or CFU when using the Membrane Filter method.

PART I. A. Effluent Limitations and Monitoring Requirements (continued)**2.b. Stormwater associated with industrial activity and subsurface infiltration– Racetrack Area Outfalls**

During the period beginning on the effective date of this permit and lasting through its expiration date, the permittee is authorized to discharge stormwater associated with an industrial activity and subsurface infiltration to Sales Creek through **Outfall Serial Numbers 008, 009, 010, and 011**. Such discharge shall: 1) be limited and monitored by the permittee as specified in the table below; 2) not cause a violation of the Massachusetts Surface Water Quality Standards for the receiving water; and 3) be controlled by the best management practices (“BMPs”) described in Part I.C. of this permit, Stormwater Pollution Prevention Plan Requirements.

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1, 2, 3}	
		Average Monthly	Maximum Daily	Measurement Frequency ^{4, 5}	Sample Type
Rainfall/Precipitation ⁶	Inches	----	Report	Quarterly	Total
Flow	GPD	----	Report	Quarterly	Estimate ⁷
pH ⁸	SU	----	6.5-8.5	Quarterly	Grab
Total Suspended Solids (TSS)	mg/L	----	Report mg/L	Quarterly	Grab

Footnotes:

¹ Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall as indicated by the monitoring locations in **Figure 2**. All samples shall be tested in accordance with the procedures in 40 CFR Part 136, unless specified elsewhere in this permit.

² The sampling results for outfall 011 may be used to satisfy the monitoring requirements for outfalls 008, 009 and 010. The permittee shall indicate on the DMR which outfall was sampled. The no discharge code (“C”) shall be entered on the DMR for any outfall not sampled during the reporting period.

³ Stormwater samples shall be taken during wet weather conditions. Wet weather conditions are defined as a rainfall event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (i.e., greater than 0.1 inch) rainfall or snow melt event. Grab sample(s) shall be taken during the first thirty minutes of the discharge. If collection of grab sample(s) during the first thirty minutes is impracticable, grab sample(s) can be taken as soon after that as possible, and the permittee shall submit with its DMR a description of why the collection of the grab sample(s) during the first thirty minutes was impracticable. When the permittee is unable to collect grab sample(s) due to adverse climatic conditions, the permittee must submit, in lieu of sampling data, a description of why the grab sample(s) could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of sample(s) include weather conditions that pose a danger to personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or

otherwise make the collection of sample(s) impracticable (extended frozen conditions, specified storm event did not occur during sampling period, etc.). A “no discharge” code shall be entered on its DMR for those sampling periods during which there is no discharge.

⁴. The quarterly sampling frequency is defined as taking one sample during wet weather conditions (as defined above in Footnote ².) each calendar quarter. If there are no wet weather conditions in a particular calendar quarter, the permittee shall record “no discharge” on its DMR.

⁵. Following three years from the effective date of the permit, EPA will consider any written requests to reduce the monitoring frequency.

⁶. Report the data from a rain gauge located in the Production Area, concurrent with each rainfall event. Report the intensity, duration, and amount of precipitation for the rainfall event on the DMR cover letter. Intensity shall be reported in units of inches/hour and amount of rainfall shall be reported in units of inches. Measurement of the duration of a rainfall event shall begin at the start of a rainfall event greater than 0.1 inches in magnitude and end when the rainfall event ends.

⁷. Flow shall be estimated at the time of sampling for each rainfall event at the discharge point, as indicated by the monitoring locations in **Figure 2**.

⁸. See Part I.A.6 of this permit for additional pH requirements.

PART I. A. Effluent Limitations and Monitoring Requirements (continued)**3. Dry Weather Monitoring Program**

During the period beginning on the effective date of this permit and lasting through its expiration date, the permittee is required to conduct weekly visual inspections of (**Outfall Serial Numbers 004, 005, and 011**) during dry weather, and if a discharge is observed during the weekly visual inspection or at any other time, the discharge is required to be monitored as specified below:

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1,2,3,4,5,6}	
		Average Monthly	Maximum Daily	Measurement Frequency ³	Sample Type
Flow	GPD	----	Report		Estimate ³
Total Suspended Solids (TSS)	mg/L	----	Report	Quarterly	Grab
pH	SU	----	6.5-8.5	Quarterly	Grab
Aluminum, Total Recoverable	mg/L	----	Report	Quarterly	Grab
Fecal Coliform ⁷⁸	MPN or CFU/ per 100 ml	----	Report	Quarterly	Grab
<i>E. coli</i> ⁷⁸	MPN or CFU/100ml	----	Report	Quarterly	Grab
Enterococci ⁷⁸	MPN or CFU per 100 ml	----	Report	Quarterly	Grab
Total Phosphorous	mg/L	----	Report	Quarterly	Grab
Nitrogen-Ammonia	mg/L	----	Report	Quarterly	Grab
Nitrate/Nitrite	mg/l	----	Report	Quarterly	Grab
Total Polychlorinated Biphenols (PCBs) ⁵	µg/l	----	Report	Quarterly	Grab
Total Petroleum Hydrocarbons (TPH) ⁵	µg/l	----	Report	Quarterly	Grab
A. Inorganics⁵					
1. Cyanide (Total CN)	µg/l	----	Report	Quarterly	Grab

Effluent Characteristic	Units	Discharge Limitation		Monitoring Requirements ^{1,2,3,4,5,6}	
		Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
2. Antimony	µg/l	----	Report	Quarterly	Grab
3. Arsenic	µg/l	----	Report	Quarterly	Grab
4. Cadmium	µg/l	----	Report	Quarterly	Grab
5. Chromium	µg/l	----	Report	Quarterly	Grab
6. Copper	µg/l	----	Report	Quarterly	Grab
7. Lead	µg/l	----	Report	Quarterly	Grab
8. Mercury	µg/l	----	Report	Quarterly	Grab
9. Nickel	µg/l	----	Report	Quarterly	Grab
10. Selenium	µg/l	----	Report	Quarterly	Grab
11. Silver	µg/l	----	Report	Quarterly	Grab
12. Zinc	µg/l	----	Report	Quarterly	Grab
13. Iron	µg/l	----	Report	Quarterly	Grab
B. Volatiles⁵:					
1. Total BTEX ⁸	µg/l	----	Report	Quarterly	Grab
2. Total Group I PAHs	µg/l	----	Report	Quarterly	Grab
3. Total Group II PAHs	µg/l	----	Report	Quarterly	Grab
C. Residuals⁵					
1. Ethylene Dibromide (EDB)	µg/l	----	Report	Quarterly	Grab
2. DDD, DDE, DDT	µg/l	----	Report	Quarterly	Grab
3. Total Phenol	µg/l	----	Report	Quarterly	Grab
4. Total Phthalates	µg/l	----	Report	Quarterly	Grab

Footnotes:

¹. Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall as indicated by the monitoring locations in Figure 2. All samples shall be tested in accordance with the procedures in 40 CFR Part 136, unless specified elsewhere in this permit.

². Dry weather discharge samples shall be taken during dry weather conditions. Dry weather conditions are defined as any period of time that meets both of the following two conditions: 1) there is no precipitation and no snow melt; and 2) the period of time is at least 72 hours after the end of a rainfall event that was greater than 0.1 inches in magnitude.

The permittee shall conduct weekly visual inspections of outfalls 004, 005, and 011 during dry weather, and if a discharge is observed during the visual inspection or at any other time, the discharge shall be sampled for the parameters in the above table at least once per quarter.

If there is no dry weather flow in a particular quarter, based on the routine visual inspections, report no discharge on the DMR.

³. Dry-weather flow shall be estimated at the time of sampling on a quarterly basis at the discharge point located at the end of the pipe, prior to discharging into the receiving water.

⁴. Each outfall shall be sampled quarterly. If the sampling results for any parameter are at or below non-detect for 4 consecutive quarters, the permittee may reduce analyses for that parameter to a minimum of twice per year (spring and fall). Should the sampling results for any parameter be at or below non-detect for two years thereafter, the permittee may discontinue sampling for that parameter. The permittee will notify EPA and MassDEP of any proposed reduction or discontinuance of sampling, and submit with the notice sampling results demonstrating why sampling may be reduced or discontinued

⁵. The Permittee shall attach a copy of the laboratory case narrative to each DMR submitted to EPA and MassDEP for each reporting period. The laboratory case narrative shall include a copy of the laboratory data sheets for each analysis (identifying the test method, the analytical results, and the detection limits for each analyte) and provide a brief discussion of whether all appropriate QA/QC procedures were met and were within acceptable limits.

⁶. Following three years from the effective date of the permit, EPA will consider any written requests to reduce the monitoring frequency.

⁷. The maximum daily monitoring result for fecal coliform, *E. coli* and enterococci shall be expressed as a geometric mean. The units may be expressed as MPN for samples tested using the Most Probable Number method, or CFU when using the Membrane Filter method.

⁸. Total BTEX = the sum of benzene, toluene, ethyl benzene and total xylenes

PART I. A. Other Effluent Limitations and Monitoring Requirements

4. Notwithstanding all other conditions contained in Part I.A. of this permit, any discharge of floating solids or foam (other than in trace amounts), or visible oil sheen is prohibited.
5. For any permitted discharge, the discharge shall not cause an objectionable discoloration, odor, or turbidity to the receiving waters.
6. For any permitted discharge, the pH of the effluent shall not be less than 6.5 Standard Units (SU), nor greater than 8.5 SU at any time, and not more than 0.2 units outside the natural background range.
7. For any permitted discharge, the effluent shall not contain materials in concentrations or in combinations which are hazardous or toxic to aquatic life or which would impair the uses designated by the classification of the receiving water.
8. If the permit is modified or reissued, it shall be revised to reflect all currently applicable requirements of the CWA and in accordance with 40 CFR §§122.62 and 122.63.
9. Suffolk must notify EPA as soon as it knows or has reason to believe:
 - a. That any activity has occurred or will occur which would result in the discharge, on a routine basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2, 4-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. §122.21(g)(7); or
 - (4) Any other notification level established by EPA in accordance with 40 CFR §122.44(f).
 - b. That any activity has occurred or will occur which would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - (1) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. §122.21(g)(7).

(4) Any other notification level established by EPA in accordance with 40 C.F.R. §122.44(f).

c. That it has begun or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

10. Toxics Control

a. The permittee shall not discharge any pollutant or combination of pollutants in toxic amounts.

b. Any toxic components of the effluent shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated. Upon promulgation of any such standard, this permit may be revised or amended in accordance with such standards.

11. Prohibitions

a. Horses and any other animals confined at Suffolk Downs shall not be allowed to come into direct contact with waters of the United States.

b. There shall be no discharge of rainfall runoff from manure or litter or feed storage piles, dumpsters, or other storage devices (other than as allowed at Part I.A. 1.a.) into waters of the United States.

c. The discharge of process wastewater not otherwise authorized by this permit is prohibited.

d. The land application of manure, litter or process wastewater at Suffolk Downs is prohibited under this permit.

e. Suffolk shall not expand its CAFO operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

f. No manure, litter, or process wastewater storage and handling structure shall be abandoned at Suffolk Downs. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. Closure of a manure, litter, or process wastewater storage and handling structure shall be in compliance with the requirements found at Part 1.A.13. of this permit.

g. In the event that Suffolk closes Suffolk Downs, or any part of its Production Area, in accordance with Part I.A.13. of this permit, any discharge to waters of the United States from the facility's former Production Area containing concentrations of bacteria in excess of water quality standards is prohibited.

h. This permit does not authorize discharges of process wastewater to surface waters during dry weather conditions and such dry weather discharges are prohibited.

i. All contributing flows to Suffolk's process wastewater retention structure shall be composed only of (1) manure, litter, or process wastewater from the proper operation and maintenance of the CAFO; and (2) stormwater from the Production Area. The disposal of other materials into the process wastewater retention structure at Suffolk's CAFO facility is prohibited.

12. Other Legal Requirements

a. No condition of this permit shall release the permittee from any responsibility or requirements under federal, state or local statutes or regulations.

b. Stormwater discharges that are not addressed under the effluent limitations in Part I.A. above remain subject to applicable industrial or construction storm water discharge requirements.

13. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures:

a. Closure of Lagoons and Other Surface Impoundments

(1) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.

(2) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve (12) consecutive months must be properly closed unless the CAFO is financially viable, intends to resume use of the structure at a later date, and either:

i. Maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or

ii. Removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA, in writing, of the action taken, and shall conduct routine inspections, maintenance, and recordkeeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA, in writing, and provide the opportunity for inspection. The permittee shall properly handle and dispose of the water used to preserve the integrity synthetic or earthen liner during periods of non-use

(3) All closure of lagoons and other earthen or synthetic lined basins shall be consistent with the Massachusetts Natural Resources Conservation Service (NRCS) Technical Standard Number 360. Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with all applicable requirements of this permit and other applicable law.

(4) Completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased

operations, twelve (12) months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

b. Closure Procedures for Other Manure, Litter, or Process Wastewater Storage and Handling Structures

(1) No other manure, litter, or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within twelve (12) months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with applicable laws.

14. Transfer of manure, litter or process wastewater to other persons

Requirements for the transfer of manure, litter or process wastewater to other persons are as follows. In cases where CAFO-generated manure, litter, or process wastewater is sold or transferred in any way to another person or other legal entity, Suffolk must comply with the following conditions:

- i. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted CAFO;
- ii. Record the name and address of the recipient;
- iii. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and,
- iv. Retain records on-site for a period of five (5) years and submit to the permitting authority upon request.

15. In the event that any discharge from the CAFO causes or contributes to an exceedance of applicable water quality standards, Suffolk must take corrective action.

16. If a change in the ownership of Suffolk's Production Area occurs, Suffolk must submit to EPA the written notification required in Part II. D.1.c. of the permit. The notice must be submitted to EPA at the address specified in Part I.E.3. EPA will notify the current and new permittee(s) if the transfer of permit coverage is granted.

PART I.B.**1. Permit Terms and Conditions for Nutrient Management**

a. Suffolk has developed a Nutrient and Stormwater Management Plan (NMP) that is designed to prevent the discharge of pollutants from the Production Area at Suffolk Downs to Sales Creek. The NMP is a written document that is required to be consistent with the federal CAFO requirements found at 40 CFR §§122.42(e)(1) and (2) and the applicable 40 CFR Part 412 effluent limitations and standards.

(1) Suffolk shall modify its NMP, if and as necessary, to reflect the best management practices, operation and maintenance procedures and infrastructure improvements implemented at Suffolk Downs to fulfill the requirements of this permit. Changes to Suffolk's NMP are subject to the procedural requirements of 40 C.F.R. §122.42(e)(6).

(2) If Suffolk makes changes to an NMP previously submitted to EPA, Suffolk must submit to EPA, within ten days of the date the NMP is revised, the revised NMP along with an identification of the NMP revisions.

(3) The NMP shall be signed by the owner/operator or other signatory authority in accordance with the requirements identified in 40 CFR §§122.22.

b. The following permit terms and conditions were derived from Suffolk's NMP and from 40 C.F.R. §§122.42(e)(1) and (2) and the applicable 40 CFR Part 412 effluent limitations and standards. These terms and conditions are enforceable requirements of this permit.

(1) Manure/Bedding Management Practices

The following best management practices (BMPs) shall be implemented for the management of manure and bedding within the Production Area. Suffolk shall implement these BMPs at all times that any horses are stabled at the CAFO until the end of the annual racing season occurs and the post season cleanup procedures under Part 1.B.1.b. (5) of this permit have been fully and adequately completed.

i. Horses shall be stabled only within the Stable Area².

ii. Manure dumpsters shall be located in the vicinity of both the stables and the grain/bedding distribution area.

iii. All manure dumpsters shall include weighted flip-top covers.

²The stable area includes 32 stable buildings, approximately 1200 horse stalls, feed and bedding storage areas, approximately 115 satellite manure storage dumpsters located throughout the stables, a grain/bedding storage area, a consolidated manure tractor trailer storage area, an animal mortality storage area, animal walkways, horse exercising equipment and approximately 70 crushed stone pad horse washing stations.

- iv. All manure storage dumpsters shall be covered or closed except when adding or removing contents, so that precipitation does not come into contact with manure or bedding materials stored in storage dumpsters.
- v. All 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 immediately upon observation of such manure by stable workers or track personnel.
- vi. All manure and bedding materials removed from any area within the Stable Area, and all feed/bedding material removed for disposal from the grain/bedding distribution area shall be placed immediately upon such removal into the manure dumpsters.
- vii. At all times during transport, the containers used during transport of manure/bedding materials to the dumpsters shall be covered with an impervious material.
- viii. Manure dumpsters shall be inspected daily for punctures and leaks. If punctures or leaks are observed, the dumpster shall be immediately removed from service for repair, and a serviceable dumpster shall be provided.
- ix. An adequate number of manure dumpsters shall be provided to prevent uncontained stockpiling of manure/waste feed and bedding materials. Stockpiling of manure/waste feed and bedding materials, other than in a dumpster, is prohibited.
- x. Manure dumpsters shall be emptied into manure trailers as required, ensuring that dumpsters are not overfilled.
- xi. A manure trailer shall at all times be available and contain sufficient space to receive material from the manure dumpsters.
- xii. All manure trailers shall be covered at all times while on site, including times when the trailers are not actively being filled as well as during transport.
- xiii. All manure trailers shall be transported to a composting facility at a frequency that ensures that trailer capacity is not exceeded.
- xiv. Adequate solid waste dumpsters shall be provided throughout the Production Area for the disposal of general solid waste.
- xv. Manure, bedding and feed materials shall not be disposed of in the solid waste dumpsters.
- xvi. No waste of any kind other than manure, bedding or feed materials shall be disposed of in the manure dumpsters or in the manure trailers.
- xvii. Manure, bedding materials and process wastewater shall be sampled and tested at least annually for nutrients. Manure sampling and testing shall be conducted in accordance with protocols set forth in guidance developed by the University of Massachusetts, Cornell

University, or other guidance recognized and considered applicable by the University of Massachusetts. Suffolk shall take steps to ensure that all samples collected are representative samples. The samples shall be sent for analysis as soon after collection as practicable and, where necessary, specific preservation procedures shall be utilized to prevent the degradation of the sample. If manure is transferred off-site, Suffolk shall provide the results of the sampling to the recipient.

(2) Wash Water Management Practices and Hoses

- i. Horse washing shall be conducted only in the Production Area's designated washing areas located within the Production Area.
- ii. Wash water (e.g., buckets of soapy water) shall be disposed of only in the designated washing areas.
- iii. Leaking hoses may not be used and shall be replaced immediately.
- iv. Hoses may only be used for the following purposes: filling drinking water buckets for horses; washing horses in the designated washing areas; cooling horses in the designated washing areas; and sprinkling shed-rows or walking machine areas for purposes of controlling dust.
- v. Hoses may be used outside of the designated washing areas only for the purpose of controlling dust in shed rows or walking machine areas and shall be disconnected immediately after use.
- vi. Suffolk shall conduct daily visual inspections for leaks or other malfunctions of all water lines, including drinking water and cooling water lines, at all times that horses are stabled in the Production Area until the completion of Suffolk's annual post-season cleanup identified in Part I.B.1.b.(5) of this permit.

(3) Mortality Handling Management Practices

- i. Suffolk's mortality shed shall be maintained to prevent any stormwater contact with mortalities.
- ii. All mortalities must be placed immediately within the mortality shed.
- iii. Suffolk shall ensure that mortalities are removed within 48 hours by a contractor who possesses all required permits and/or licenses applicable to the proper disposition of animal mortalities.
- iv. Mortalities shall not be disposed of in any liquid manure or process wastewater system that is not specifically designed to treat animal mortalities. Dead animals shall be disposed of in a manner to prevent contamination of waters of the United States or creation of a public health hazard.

(4) Other Management Practices

i. Year-round Practices

(a) Chemical, hazardous, toxic or veterinary medical materials shall be used and disposed in accordance with manufacturer's directions and applicable regulations. Suffolk shall ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless the system is specifically designed to treat such chemicals or contaminants. All potentially hazardous or toxic chemicals shall be handled and disposed of in a manner sufficient to prevent pollutants from entering the manure, litter, or process wastewater retention structures in the Production Area or waters of the United States, Suffolk shall implement spill prevention and response procedures to ensure effective response to spills and leaks if they were to occur.

(b) Horses shall not be allowed to enter the waters of the United States, including but not limited to Sales Creek or the adjacent wetlands.

(c) Except for vehicles associated with veterinary services or track operations, or for vehicles operated by disabled persons, vehicles may not be parked in the Production Area except during short-term deliveries. Suffolk shall ensure that unauthorized vehicles parked within the Production Area are towed as expeditiously as practicable. Vehicles may not be washed or undergo maintenance within the Production Area.

(d) Suffolk shall correct in a timely manner all deficiencies in relation to the requirements of this permit that are identified during required daily and weekly inspections required by this permit.

ii. Other In-season Practices

The following practices shall be followed during any period when horses are stabled in the Production Area until the end of the annual racing season occurs and the post season cleanup procedures under Part 1.B.1.b.(5) of this permit have been fully and adequately completed.

(a) Each horse owner's stall-allotment contract shall contain a notice setting forth Suffolk's anti-pollution policies and requirements.

(b) On a daily basis during the first 30 days of the racing season, and weekly thereafter, Suffolk shall announce over its public address system that Suffolk has established and implemented anti-pollution policies and requirements, and Suffolk shall direct all horse owners to review and adhere to them.

(c) Suffolk shall publish and enforce pollution prevention rules, including specific daily instructions, for horse owners, stable workers, and track personnel. Those rules shall at a minimum include all best management practices and other requirements contained in Part I.B. of this permit, Permit Terms and Conditions for Nutrient Management.

(d) Suffolk's pollution prevention rules shall be in English and Spanish.

(e) Suffolk's pollution prevention rules shall be presented at mandatory training sessions for new track personnel, owners, and stable personnel.

(5) Post Season Cleanup Procedures

Suffolk shall follow the following procedures at the end of the annual racing season, when horses are no longer stabled in the Production Area, and such procedures shall constitute the requirements for post-season cleanup of the Production Area:

i. Stables shall be cleaned of manure and bedding materials. All manure and bedding materials shall be placed in temporary dumpsters until disposed of in manure trailers. Manure and/or bedding materials located on pervious surfaces shall be raked and placed in temporary manure dumpsters until disposed of in manure trailers. Paved areas shall be swept. Areas that cannot be swept using a street sweeper shall be swept by hand.

ii. All manure dumpsters shall be emptied by disposing of the contents into manure trailers. Once emptied, the dumpsters' covers shall be closed.

iii. Stables and stall doors shall be closed.

(6) Production Area Process Wastewater Retention Structure and Collection System Operation and Maintenance

i. Wastewater Retention Structure

(a) Suffolk shall operate and maintain the process wastewater retention structure and collection system identified in Part I.A.1.a. of this permit in accordance and consistent with all structural, operational and maintenance requirements for that system contained in this permit.

(b) Suffolk shall install a depth marker in the wastewater retention structure. The depth marker must clearly indicate the minimum capacity necessary to contain all process wastewater generated at the CAFO and the direct precipitation and the runoff from the 25-year, 24 hour rainfall event.

(c) Suffolk shall conduct and document weekly inspections of the wastewater retention structure 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. Inspections shall include documentation of the retention structure's elevation including sediment and liquid, as indicated by the depth marker within the pond.

(d) Suffolk shall remove upon observation any accumulated trash and debris in the retention structure. Sediment within the retention structure shall be removed prior to the depth of sediment reaching the "maximum sediment depth" indicator on the depth marker. Sediment shall be disposed of in compliance with federal, state and local requirements.

(e) After sediment removal or after an inspection indicates maintenance is required, any necessary maintenance shall be initiated as expeditiously as practicable and before the next anticipated rain event of 0.25 inches or greater to ensure the continued effectiveness of the wastewater retention structure. If maintenance is delayed due to adverse climatic conditions that pose a danger to personnel (i.e. flooding, high winds, hurricane, tornado, etc.) or otherwise make maintenance impracticable, maintenance shall occur as expeditiously as practicable after the adverse climatic conditions cease.

(f) At least twice during the annual growing season (at least once during spring and once during fall) Suffolk shall mow the vegetation on the side slopes of the wastewater retention structure to a height no greater than six inches and no less than three inches.

(g) Suffolk shall keep on site and properly maintain a rain gauge. Suffolk shall keep a log of each measurable rain event.

ii. Pump Station

(a) Suffolk shall inspect the following on a monthly basis: wet wells for build-up of solids and grease; suction port for blockage; valves to ensure proper closure of valves; and floats for proper operation. A monthly inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

(b) On a monthly basis, Suffolk shall inspect and exercise the electrical control panel, including the light and alarm systems. A monthly inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

(c) On a monthly basis, Suffolk shall note and record hours from the hour meters on each motor. A monthly inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

(d) Suffolk shall perform all maintenance as recommended by the relevant manufacturer.

(7) Clean Water Diversion System

i. The Production Area and associated wastes shall be isolated from run-on from surface drainage flows originating from outside the Production Area by means of ditches, dikes, berms, terraces, or other such structures or practices that are designed to carry peak flows expected for rainfall events up to and including when a 25-year, 24-hour rainfall event occurs. Clean water and flood waters must be diverted from contact with feedlots, stables, horse washing stations, and manure and/or process wastewater storage systems or be managed as contaminated process wastewater. Clean water includes, among other things, rain falling on the roofs of structures in the Production Area runoff from adjacent lands, or other sources.

ii. The clean water diversion swale associated with the Production Area's process wastewater retention structure shall be inspected weekly. A weekly visual inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

iii. The perimeter of the Production Area shall be inspected weekly during dry weather and during all rainfall events (anticipated to be greater than 0.25 inches) occurring during normal business hours in order to verify that process wastewater is not exiting the Production Area and stormwater originating from outside the Production Area is not entering the Production Area. A weekly visual inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

iv. Gutters and downspouts on structures in the Production Area shall be inspected weekly during dry weather and during all rainfall events (anticipated to be greater than 0.25 inches) occurring during normal business hours 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. A weekly inspection form shall be completed and maintained for each inspection. Any necessary repairs or adjustments shall be made as expeditiously as practicable and shall be documented in the inspection report.

v. Suffolk shall conduct weekly visual inspections of all above ground Production Area stormwater diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the wastewater and manure storage and containment structures. A weekly inspection form shall be completed and maintained for each inspection. Disposal of accumulated sediments and debris from these devices, structures, catch basins and stone trench drains shall be disposed of in accordance with all applicable local, state and federal regulations.

(8) Emergency Planning

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

i. If there is a discharge of process wastewater, Suffolk shall undertake all reasonable efforts to minimize, reduce, eliminate and prevent the discharge and to prevent the discharge from reaching waters of the United States.

ii. If necessary, Suffolk shall contact local emergency agencies.

iii. Suffolk shall comply with the discharge notification requirements at Part I.E.1 of the permit.

(9) Compliance Officer Duties and Employee Compliance Training

Suffolk shall designate at least one environmental compliance officer. The officer shall be responsible for, at a minimum, the following:

- i. Monitor compliance with all environmental requirements and policies applicable to the CAFO, including but not limited to the Production Area, including but not limited to inspections of stables, grain/bedding storage facilities, trailer parking areas, and the mortality shed.
- ii. Monitor compliance with Suffolk'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 by Suffolk's applicable environmental policies.
- iii. Monitor stormwater outfalls as required and record results on Outfall Visual Monitoring Logs.
- iv. Issue fines and/or penalties (as required by Suffolk's internal policy) for non-compliance with horse washing rules.
- v. Take dry- and wet-weather samples from designated outfalls. Coordinate and control chain of custody and testing of samples with the lab used by Suffolk to analyze the samples.
- vi. Periodically review Suffolk's environmental compliance policies and rules. Recommend improvements as warranted.
- vii. Provide training for Suffolk's track employees, stable workers and horse owners in relation to Suffolk's environmental compliance policies and rules.
- viii. Review Suffolk's written mortality records weekly and ensure that such records are accurate and complete. Should any record show that a mortality has not been removed from the CAFO within 48 hours, investigate the cause of non-compliance and take all appropriate remedial measures.

(10) Employee Compliance Training

Employees responsible for compliance with this permit must be regularly trained and informed of any information pertinent to the proper operation and maintenance of the CAFO and waste disposal. Training shall include topics such as procedures for the off-site transfer of manure, proper operation and maintenance of the CAFO, good housekeeping practices and material management practices, necessary record-keeping requirements, and spill response and clean up. Suffolk is responsible for determining the appropriate training frequency for different levels of personnel. Suffolk shall create and maintain documentation of all instances of employee training.

(11) Record Keeping Requirements

Suffolk shall create and maintain, at a minimum, the following records for five (5) years and shall make them available for inspection and copying upon request by EPA and/or MassDEP:

- i. A copy of Suffolk's most current NMP.
- ii. Results of all weekly and monthly visual monitoring and inspections required by this permit.

- iii. Laboratory analysis of any dry and wet weather sampling or monitoring required by this permit.
- iv. A log of all measurable rain events.
- v. Documentation indicating the dates and amounts of manure or process wastewater removed or transferred to another party from the Production Area and the name and address of the entity receiving the manure or process wastewater.
- vi. Results of any manure nutrient testing.
- vii. Documentation indicating when the results of manure nutrient testing were provided to the composting facility to which Suffolk sends its manure.
- viii. As applicable, the date and number of dumpsters repaired.
- ix. The dates and results of all inspections and maintenance or corrective activities performed in relation to any and all requirements of this permit. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing more immediate correction.
- x. The date and number of mortalities placed in the mortalities shed, and invoices indicating the number, date, and entity receiving mortalities for proper disposal.
- xi. Dates when mandatory training sessions on Suffolk's environmental requirements and policies were performed, and the names and number of attendees.
- xii. A record of internal enforcement actions initiated for violations of Suffolk's environmental requirements and policies.
- xiii. Records of process wastewater analyses.
- xiv. Records of the date, time, and estimated volume of any overflow of process wastewater from the Production Area's wastewater retention structure and/or collection system.
- xv. Weekly records of the depth of the manure, sediment and process wastewater in the process wastewater retention structure as indicated by the system's depth marker.
- xvi. Engineering design and construction plans documenting that Suffolk has sufficient storage capacity to ensure compliance with the effluent limitations specified in Part I.A.1.a. (1) and (2) of this permit.
- xvii. Any other records necessary to document any of the requirements of this permit.

PART I.C. Stormwater Pollution Prevention Plan (SWPPP) Requirements

1. Suffolk shall develop, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in stormwater to Sales

Creek and the adjacent wetlands. The SWPPP shall be a written document that is consistent with the terms of this permit. Additionally, the SWPPP shall serve as a tool to document the permittee's compliance with the terms of this permit. Development guidance and a recommended format for the SWPPP are available on the EPA website for the Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities (<http://cfpub.epa.gov/npdes/stormwater/msgp.cfm>).

2. The SWPPP shall be completed or updated and certified by Suffolk within 90 days after the effective date of this permit. Suffolk shall certify that the SWPPP has been completed or updated and that it meets the requirements of this permit. The certification shall be signed in accordance with the requirements identified in 40 CFR §122.22. A copy of this initial certification shall be sent to EPA and MassDEP within one hundred and twenty (120) days of the effective date of this permit.

3. The SWPPP shall be prepared in accordance with good engineering practices and shall be consistent with the general provisions for SWPPPs included in the most current version of the MSGP. In the current MSGP (effective June 4, 2015), the general SWPPP provisions are included in Part 5. Specifically, the SWPPP shall document the selection, design, and installation of control measures and contain the elements listed below:

a. A pollution prevention team with collective and individual responsibilities for developing, implementing, maintaining, revising and ensuring compliance with the SWPPP.

b. A site description which includes the activities at the facility; a general location map showing the facility, receiving waters, and outfall locations; and a site map showing the extent of significant structures and impervious surfaces, directions of stormwater flows, and locations of all existing structural control measures, stormwater conveyances, pollutant sources (identified in Part I.C.3.c. below), stormwater monitoring points, stormwater inlets and outlets, and industrial activities exposed to precipitation such as, storage, disposal, material handling.

c. A summary of all pollutant sources which includes a list of activities exposed to stormwater, the pollutants associated with these activities, a description of where spills have occurred or could occur, a description of non-stormwater discharges, and a summary of any existing stormwater discharge sampling data.

d. A description of all stormwater controls, both structural and non-structural.

e. A schedule and procedure for implementation and maintenance of the control measures described above and for the quarterly inspections and best management practices (BMPs) described below.

4. The SWPPP shall document the appropriate best management practices (BMPs) implemented or to be implemented at the facility to minimize the discharge of pollutants in stormwater to waters of the United States and to satisfy the non-numeric effluent limitations included in this permit. At a minimum, these BMPs shall be consistent with the control measures described in the most current version of the MSGP. In the current MSGP (effective June 4, 2015), these control measures, which are non-numeric technology based effluent limitations, are described in Part 2.

and Part 8.J.8. Specifically, BMPs must include the following elements.

a. Minimizing exposure of manufacturing, processing, and material storage areas to stormwater discharges.

b. Good housekeeping measures designed to maintain areas that are potential sources of pollutants.

c. Preventative maintenance programs to avoid leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters.

d. Spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur.

e. Erosion and sediment controls designed to stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.

f. Runoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.

g. Proper handling procedures for salt or materials containing chlorides that are used for snow and ice control.

5. All areas with industrial materials or activities exposed to stormwater and all structural controls used to comply with effluent limits in the permit shall be inspected, at least once per quarter, by qualified personnel with one or more members of the stormwater pollution prevention team. Inspections shall begin during the 1st full quarter after the effective date of the permit. EPA considers quarters as follows: January to March; April to June; July to September; and October to December. For each inspection required herein, the facility must complete an inspection report. At a minimum, the inspection report must include:

a. The date and time of the inspection and at which location any samples were collected;

b. If samples were collected, the name(s) and signature(s) of the inspector(s)/sample collector(s);

c. If applicable, why it was not possible to take sample within the first 30 minutes of discharge;

d. Weather information and a description of any discharges occurring at the time of the inspection;

e. Results of observations of stormwater discharges, including any observed discharges of pollutants and the probable sources of those pollutants;

f. Any control measures needing maintenance, repairs or replacement; and,

g. Any additional control measures needed to comply with the permit requirements.

6. Suffolk shall amend and update the SWPPP within fourteen (14) days of any changes at the facility that result in a significant effect on the potential for the discharge of pollutants to the waters of the United States. Such changes may include, but are not limited to: a change in design, construction, operation, or maintenance, materials storage, or activities at the facility; a release of a reportable quantity of pollutants as described in 40 CFR Part 302; or a determination by Suffolk or EPA that the SWPPP appears to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity. Any amended or new versions of the SWPPP shall be re-certified and signed by Suffolk in accordance with the requirements identified in 40 CFR §122.22.

7. Suffolk shall certify at least annually that the previous year's inspections and maintenance activities were conducted, results were recorded, records were maintained, and that the facility is in compliance with the SWPPP. If the facility is not in compliance with any aspect of the SWPPP, the annual certification shall state the non-compliance and the remedies which are being or will be undertaken. Such annual certifications also shall be signed in accordance with the requirements identified in 40 CFR §122.22. Suffolk shall keep a copy of the current SWPPP and all SWPPP certifications (the initial certification, re-certifications, and annual certifications) signed during the effective period of this permit at the facility and shall make it available for inspection by EPA and MassDEP. In addition, the permittee shall document in the SWPPP any violation of numerical or non-numerical stormwater effluent limits with a description of the corrective actions taken.

PART I.D. REOPENER CLAUSES

1. This permit shall be modified, or alternately, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

- a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- b. Controls any pollutants not limited in the permit.

PART I.E. DISCHARGE MONITORING AND NOTIFICATION REQUIREMENTS

1. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling and On-site Transport

If, for any reason, there is a discharge of pollutants to a water of the United States that is not authorized under this permit, including discharges associated with process wastewater storage, handling and/or on-site transportation, Suffolk is required to (1) make immediate oral notification within 24-hours to EPA Region 1, Office of Environmental Stewardship, Water Enforcement Branch at 671-918-1850 or 888-372-7341; and (2) notify EPA and MassDEP in

writing within 5 working days of the discharge from the facility at the addresses listed in Part I.E.2. of the permit. In addition, Suffolk shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- a. A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged.
- b. The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge.

2. Monitoring Requirements for All Discharges

For a period of one year from the effective date of the permit, the permittee may either submit monitoring data and other reports to EPA in hard copy form or report electronically using NetDMR, a web-based tool that allows permittees to electronically submit discharge monitoring reports (DMRs) and other required reports via a secure internet connection. Specific requirements regarding submittal of data and reports in hard copy form and for submittal using NetDMR are described below:

a. Submittal of Reports Using NetDMR

NetDMR is accessed from: <http://www.epa.gov/netdmr>. **Beginning no later than one year after the effective date of this permit**, the permittee shall begin submitting DMRs and reports required under this permit electronically to EPA using NetDMR, unless the facility is able to demonstrate a reasonable basis, such as technical or administrative infeasibility, that precludes the use of NetDMR for submitting DMRs and reports (“opt out request”).

DMRs shall be submitted electronically to EPA no later than the 15th day of the month following the completed reporting period. All reports required under the permit shall be submitted to EPA, including the MassDEP Monthly Operations and Maintenance Report, as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it will no longer be required to submit hard copies of DMRs or other reports to EPA and will no longer be required to submit hard copies of DMRs to MassDEP. However, permittees shall continue to send hard copies of reports other than DMRs (including Monthly Operation and Maintenance Reports) to MassDEP until further notice from MassDEP.

b. Submittal of NetDMR Opt Out Requests

Opt out requests must be submitted in writing to EPA for written approval at least sixty (60) days prior to the date a facility would be required under this permit to begin using NetDMR. This demonstration shall be valid for twelve (12) months from the date of EPA approval and shall thereupon expire. At such time, DMRs and reports shall be submitted electronically to EPA unless the permittee submits a renewed opt out request and such request is approved by EPA. All opt out requests should be sent to the following addresses:

Attn: NetDMR Coordinator

**U.S. Environmental Protection Agency, Water Technical Unit
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912**

And

**Massachusetts Department of Environmental Protection
Bureau of Resource Protection
Wastewater Management Program
One Winter Street, 5th Floor
Boston, MA 02108**

c. Submittal of Reports in Hard Copy Form

Monitoring results shall be summarized for each calendar month and reported on separate hard copy Discharge Monitoring Report Form(s) (DMRs) postmarked no later than the 15th day of the month following the completed reporting period. MassDEP Monthly Operation and Maintenance Reports shall be submitted as an attachment to the DMRs. Signed and dated originals of the DMRs, and all other reports or notifications required herein or in Part II shall be submitted to the Director at the following address:

**U.S. Environmental Protection Agency
Water Technical Unit (OES04-01)
5 Post Office Square - Suite 100
Boston, MA 02109-3912**

Duplicate signed copies of all reports or notifications required above shall be submitted to the State at the following address:

**Massachusetts Department of Environmental Protection – NERO
Bureau of Water Resources
205B Lowell St.
Wilmington, MA 01887**

Any verbal reports, if required in Parts I.A.E. of this permit, shall be made to both EPA-New England and to MassDEP.

3. Annual Report Requirements

a. Suffolk shall prepare and submit an annual report, not later than January 31 of each calendar year, covering the previous 12 calendar months (January 1 to December 31). The annual report shall be submitted to EPA and MassDEP at the addresses listed below:

**US EPA- New England
5 Post Office Square, Suite 100
Boston, MA 02109-912
ATTN: NPDES CAFO Coordinator OEP-06-4**

and

**Massachusetts Department of Environmental Protection – NERO
Bureau of Water Resources
205B Lowell St.
Wilmington, MA 01887**

- b. The annual report must include, at a minimum, the following information, *as applicable*:
- i. The maximum number of horses at the Production Area during the year, whether in open confinement or housed under roof;
 - ii. An estimate of the amount of total manure, litter and process wastewater generated by the Production Area in the previous 12 months (tons and/or gallons);
 - iii. An estimate of the amount of total manure, litter and process wastewater transferred off-site to other parties by Suffolk during the previous 12 months (tons and/or gallons);
 - iv. The total number of acres for land application covered by the NMP;
 - v. The total number of acres under Suffolk's control that were used for land application of manure, litter and process wastewater during the previous twelve (12) months;
 - vi. a summary of all manure, litter and process wastewater discharges from the Production Area that have occurred during the previous twelve (12) months, including date, time, and approximate volume;
 - vii. A statement indicating whether the current version of Suffolk's NMP was developed or approved by a certified nutrient management planner;
 - viii. Actual crops planted and actual yields for each field for the preceding twelve (12) months;
 - ix. Based on sampling results, the actual nitrogen and phosphorous content for all manure, litter and process wastewater that was land applied;
 - x. Results of calculations conducted in accordance with 40 CFR § 122.42(e)(5)(i)(B) (for the Linear Approach) and 40 CFR § 122.42(e)(5)(ii)(D) (for the Narrative Rate Approach) for manure, litter and process wastewater that was land applied; and,
 - xi. Amount of manure, litter, and process wastewater applied to each field during the preceding twelve (12) months.

c. If Suffolk uses the Narrative Rate Approach to address rates of land application of manure, litter or process wastewater, the annual report shall also contain:

i. The results of any soil testing for nitrogen and phosphorus conducted during the preceding twelve (12) months;

ii. The data used in calculations conducted in accordance with 40 CFR § 122.42(e)(5)(ii)(D); and,

iii. The amount of any supplemental fertilizer applied during the preceding twelve (12) months.

PART I. F. STATE PERMIT CONDITIONS

1. This authorization to discharge includes two separate and independent permit authorizations. The two permit authorizations are (i) a federal National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to the federal Clean Water Act, 33 U.S.C. §§1251 et seq.; and (ii) an identical state surface water discharge permit issued by the Commissioner of the Massachusetts Department of Environmental Protection pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and 314 C.M.R. 3.00. All of the requirements contained in this authorization, as well as the standard conditions contained in 314 CMR 3.19, are hereby incorporated by reference into this state surface water discharge permit.

2. This authorization also incorporates the state water quality certification issued by MassDEP under Section 401(a) of the federal Clean Water Act, 40 C.F.R. 124.53, M.G.L. c. 21, § 27 and 314 CMR 3.07. All of the requirements (if any) contained in MassDEP's water quality certification for the permit are hereby incorporated by reference into this state surface water discharge permit as special conditions pursuant to 314 CMR 3.11.

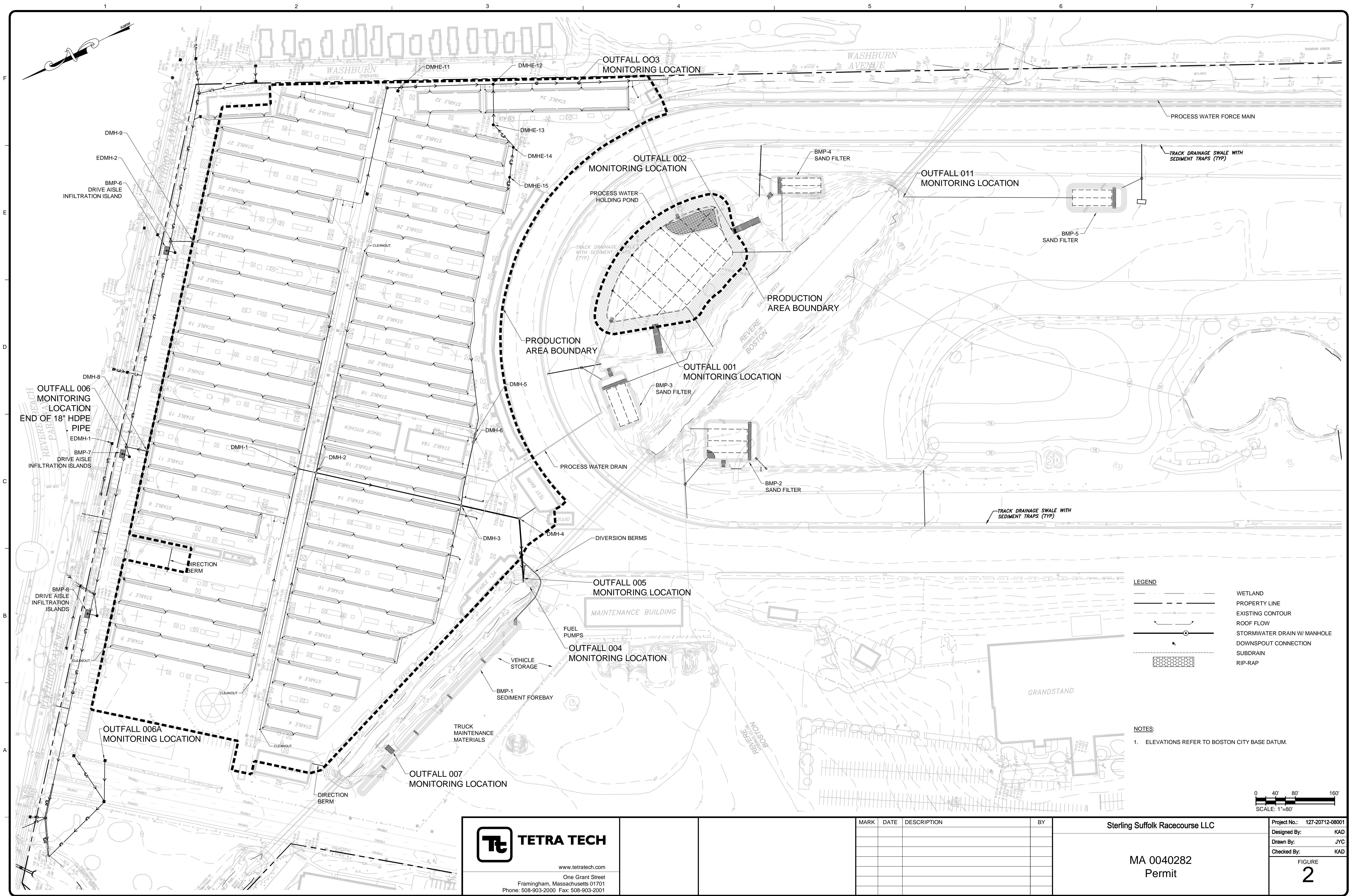
3. Each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of state law such permit shall remain in full force and effect under federal law as a NPDES Permit issued by the EPA. In the event this permit is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts.

[illegible]

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Permit

FIGURE 1

3/8/2016 11:30:09 AM - P:\20712127-08001\CAD\SHEET\FIGURE 2.DWG - CHEN, JIA YAO



www.tetrattech.com
One Grant Street
Framingham, Massachusetts 01701
Phone: 508-903-2000 Fax: 508-903-2001

MARK	DATE	DESCRIPTION	BY

Sterling Suffolk Racecourse LLC

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Permit

Project No.: 127-20712-08001
Designed By: KAD
Drawn By: JYC
Checked By: KAD

FIGURE
2

Bar Measures 1 inch

Table 1 - Suffolk Downs Post-Construction Outfall Nomenclature and Locations

NPDES PERMIT NOMENCLATURE	SUFFOLK OUTFALL NOMENCLATURE	Outfall Location and Description
001		Riprap slide that discharges to a vegetated swale which, in turn, discharges where Sales Creek flows above ground in the Track Area in-field. Discharge: overflow from Production Area wastewater storage pond.
002		Riprap slide that discharges to a vegetated swale to Sales Creek (downstream of outfall 001), where Sales Creek flows above ground in the Track Area in-field. Discharge: Overflow from Production Area wastewater storage pond.
003	SD-3	Outfall (flow-through pit) located in the wetlands adjacent to Sales Creek, to the east of the racetrack and to the southeast of the mortality holding area. Discharge: Production Area (roof runoff) stormwater and subsurface infiltration.
004	SD-4	Outfall located on the southern bank of Sales Creek just prior to where Sales Creek first flows beneath the north-western portion of the racetrack. Outfall located directly across from outfall SD-5. Discharge: Non-Production Area stormwater from the grandstand, paved track maintenance area, paved parking area and subsurface infiltration
005	SD-5	Outfall pipe located on the northern bank of Sales Creek, just prior to where Sales Creek first flows beneath the north-western portion of the racetrack. Discharge: Production Area (roof runoff) stormwater and subsurface infiltration
	SD-6: Outfall eliminated 3/30/12	Drainage swale located on northern bank of Sales Creek that drains the southeastern portion of the Production Area.
006	SD-10 – 24” pipe	The 24” outfall pipe that discharges to an unnamed tributary stream that passes through vegetated wetlands adjacent to the eastern bank of Sales Creek. Permittee’s Discharge: Production Area (roof runoff) and Non-Production Area (northern aisle parking and roadway) stormwater runoff and subsurface infiltration

Table 1 - Suffolk Downs Post-Construction Outfall Nomenclature and Locations

NPDES PERMIT NOMENCLATURE	SUFFOLK OUTFALL NOMENCLATURE	OUTFALL LOCATION & DESCRIPTION
006A		8-inch pipe that discharges to an unnamed tributary stream and vegetated wetlands adjacent to Sales Creek. Discharge: Production Area stormwater runoff and off-site roadway stormwater runoff.
007	SD-7/BMP1 Sediment Forebay Discharge	Sediment forebay located west of Sales Creek within the Track Maintenance Area. Discharge: Non-Production Area runoff from the racetrack entrance, track maintenance area, and racetrack material stockpile area.
008	BMP-2 sand filter	Sediment basin drainage swale located on the southwest bank of Sales Creek where Sales Creek flows above ground in the Track Area in-field. Discharge: Track Area industrial stormwater and subsurface infiltration
009	BMP-3 sand filter	Sediment basin drainage swale located on the northwest bank of Sales Creek where Sales Creek flows above ground in the Track Area in-field. Discharge: Track Area industrial stormwater and subsurface infiltration
010	BMP-4 sand filter	Sediment basin drainage swale located on the northeast bank of Sales Creek where Sales Creek flows above ground in the Track Area in-field. Discharge: Track Area industrial stormwater and subsurface infiltration
011	BMP-5/SD 13 sand filter	Outfall pipe from sand filter to southwest side of Sales Creek where Sales Creek flows above ground in the Track Area in-field, near Washburn Street. Discharge: Track Area, industrial stormwater and subsurface infiltration.

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PART II STANDARD NPDES CAFO CONDITIONS

A. GENERAL CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act (CWA) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirements.

b. The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Section 402 (a)(3) or 402 (b)(8) of the CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who negligently violates such requirements is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates such requirements is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

Note: See 40 CFR §122.41(a)(2) for complete “Duty to Comply” regulations.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or notifications of planned changes or anticipated noncompliance does not stay any permit condition.

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3. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

For any permit issued to a treatment works treating domestic sewage (including “sludge-only facilities”), the Regional Administrator or Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405 (d) of the CWA. The Regional Administrator or Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or contains a pollutant or practice not limited in the permit.

Federal regulations pertaining to permit modification, revocation and reissuance, and termination are found at 40 CFR §§122.62, 122.63, 122.64, and 124.5.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities or penalties to which the permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the

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information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or permittee
- (2) Permit applications, permits, and effluent data as defined in 40 CFR §2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under 40 CFR §122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in Part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, or local laws and regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

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2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

(1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can be reasonably expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of Paragraphs B.4.c. and 4.d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (twenty-four hour reporting).

d. Prohibition of bypass

Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been

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installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

- (3) i) The permittee submitted notices as required under Paragraph 4.c. of this section.
- ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d. of this section.

e. Any bypass allowed by Part V.A.10 of this permit must, where practicable, be released to vegetated fields for filtering, or captured in secondary containment to minimize discharges to waters of the United States.

5. Upset

a. Definition. *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in paragraphs D.1.a. and 1.e. (twenty-four hour notice); and
- (4) The permittee complied with any remedial measures required under B.3. above.

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

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b. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 5 years from the date of the sample, measurement, report or application except for the information concerning storm water discharges which must be retained for a total of 6 years. This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

- (1) The date, exact place, and time of sampling or measurements;
- (2) The individual(s) who performed the sampling or measurements;
- (3) The date(s) analyses were performed;
- (4) The individual(s) who performed the analyses;
- (5) The analytical techniques or methods used; and
- (6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit.

e. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

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D. REPORTING REQUIREMENTS

1. Reporting Requirements

a. **Planned Changes.** The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is only required when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR§122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantities of the pollutants discharged. This notification applies to pollutants which are subject neither to the effluent limitations in the permit, nor to the notification requirements at 40 CFR§122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's manure use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved nutrient management plan.

b. **Anticipated noncompliance.** The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. **Transfers.** This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA. (See 40 CFR Part 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. **Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of the monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

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e. Twenty-four hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR §122.41(g).)

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See 40 CFR §122.44(g).)

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under Paragraph D.1.e. if the oral report has been received within 24 hours.

f. Compliance Schedules. Reports of compliance or noncompliance with, any progress reports on interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraphs D.1.d., D.1.e., and D.1.f. of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e. of this section.

h. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See 40 CFR §122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

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3. Availability of Reports

Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. Definitions for Individual NPDES Permits including CAFO and Storm Water Requirements

Administrator means the Administrator of the United States Environmental Protection Agency, or authorized representative.

Applicable standards and limitations means all, State, interstate, and Federal standards and limitations to which a “discharge”, a “sewage sludge use or disposal practice”, or a related activity is subject to, including “effluent limitations”, water quality standards, standards of performance, toxic effluent standards or prohibitions, “best management practices”, pretreatment standards, and “standards for sewage sludge use and disposal” under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in “approved States”, including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms and Escherichia coli, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of “daily discharges” over a calendar month calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Average weekly discharge limitation means the highest allowable average of “daily discharges” measured during the calendar week divided by the number of “daily discharges” measured during the week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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Best Professional Judgment (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT), or other appropriate technology-based standard based on an evaluation of the available technology to achieve a particular pollutant reduction and other factors set forth in 40 CFR §125.3 (d).

Composite Sample means a sample consisting of a minimum of eight grab samples of equal volume collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample consisting of the same number of grab samples, or greater, collected proportionally to flow over that same time period.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a “discharge” which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117; 33 USC §§1251 et seq.

Daily Discharge means the discharge of a pollutant measured during the calendar day or any other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by “approved States” as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA’s.

Director normally means the person authorized to sign NPDES permits by EPA or the State or an authorized representative. Conversely, it also could mean the Regional Administrator or the State Director as the context requires

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source”, or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation (See “Point Source” definition).

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This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Regional Administrator on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States”, the waters of the “contiguous zone”, or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise “effluent limitations”.

EPA means the United States “Environmental Protection Agency”.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots where the volume of each aliquot is proportional to the flow rate of the discharge.

Facility or activity means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Grab Sample – An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.

Indirect Discharger means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Maximum daily discharge limitation means the highest allowable “daily discharge” concentration that occurs only during a normal day (24-hour duration).

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under Section 208 of the CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program”.

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New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants”;
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source”; and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site”.

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore rig or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR §§125.122 (a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants”, the construction of which commenced:

- (a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means “National Pollutant Discharge Elimination System”.

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved” State.

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

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Point Source means any discernible, confined, and discrete conveyance, including but not limited to any pipe ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 CFR §122.2).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D. D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operation is not the operator of the treatment works or (b) not a “POTW”.

Publicly Owned Treatment Works (POTW) means any facility or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a “State” or “municipality”. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary Industry Category means any industry which is not a “primary industry category”.

Section 313 water priority chemical means a chemical or chemical category which:

(1) is listed at 40 CFR §372.65 pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986);

(2) is present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and

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(3) satisfies at least one of the following criteria:

- (i) are listed in Appendix D of 40 CFR Part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);
- (ii) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the CWA at 40 CFR §116.4; or
- (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III Marine Sanitation Device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets, raw materials used in food processing or production, hazardous substance designated under section 101(14) of CERCLA, any chemical the facility is required to report pursuant to EPCRA Section 313, fertilizers, pesticides, and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 CFR §110.10 and §117.21) or Section 102 of CERCLA (see 40 CFR § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to Section 405(d) of the CWA, and is required to obtain a permit under 40 CFR §122.1(b)(3).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Toxic pollutants means any pollutant listed as toxic under Section 307 (a)(1) or, in the case of “sludge use or disposal practices” any pollutant identified in regulations implementing Section 405(d) of the CWA.

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Treatment works treating domestic sewage means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR Part 503 as a “treatment works treating domestic sewage”, where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR Part 503.

Waste Pile means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide;
- (b) All interstate waters, including interstate “wetlands”;
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;or,
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in Paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in Paragraphs (a) through (f) of this definition.

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Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Definitions for NPDES CAFO Permits

Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period, and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Agricultural land is land on which a food crop, feed crop, or fiber crop is grown. This includes range land and land used as pasture.

Agronomic rate is the whole sludge application rate (dry weight basis) designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation grown on the land; and (2) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to ground water

Concentrated animal feeding operation (CAFO) means an AFO which is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23(b)(4) and (6), or that is designated as a CAFO.

Cover crop is a small grain crop, such as oat, wheat, or barley, not grown for harvest.

E. coli means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

Fecal coliform means the bacterial count (Parameter 1 at 40 CFR Part 136.3 in Table 1A), which also cites the approved methods of analysis.

Feed crops are crops produced primarily for consumption by animals.

Fiber crops are crops such as flax and cotton.

Food crops are crops consumed by humans. These include, but are not limited to, fruits, vegetables and tobacco.

Land application means the application of manure, litter, or process wastewater onto or incorporated into the soil.

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Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. 40 CFR §412.2(e).

Large CAFO means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cattle, whether milked or dry; (ii) 1,000 veal calves; (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, litter, bedding, compost and raw materials or other materials commingled with manure or set aside for land application or other use.

MA NRCS Conservation Practice Standard 590 means Massachusetts Natural Resource Conservation Service, Conservation Practice Standard for Nutrient Management Code 590.

Medium CAFO means any AFO that stables or confines as many or more than the numbers of animals specified in any of the following categories: (i) 200 to 699 mature dairy cattle, whether milked or dry cows; (ii) 300 to 999 veal calves; (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 750 to 2,499 swine each weighing 55 pounds or more; (v) 3,000 to 9,999 swine each weighing less than 55 pounds; (vi) 150 to 499 horses, (vii) 3,000 to 9,999 sheep or lambs, (viii) 16,500 to 54,999 turkeys, (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system) **and** either one of the following conditions are met (a) pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (b) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Overflow means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure. 40 CFR §412.2(g).

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Pasture is land on which animals feed directly on feed crops such as legumes, grasses, grain stubble or stover.

Process wastewater means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. 40 CFR § 412.2(d).

Production area means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal containment area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. 40 CFR § 412.2(h).

Runoff is rainwater, leachate or other liquid that drains overland on any part of a land surface and runs off the land surface.

Small CAFO means an AFO that is designated as a CAFO and is not a Medium CAFO.

Setback means a specified distance from waters of the United States or potential conduits to waters of the United States where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event, 50-year, 24 hour and 100-year, 24-hour rainfall event mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or fifty years, one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source. 40 CFR § 412.2(j).

Total solids are the materials in sewage sludge that remains as residue when the sewage sludge is dried at 103 to 105 degrees Celsius.

Vegetated buffer means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes

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of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching waters of the United States.

3. Commonly Used Abbreviations

BOD ₅	Five-day biochemical oxygen demand unless otherwise specified
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
cfu	colony forming units
DO	Dissolved oxygen
lbs/day	Pounds per day
mg/l	Milligram(s) per liter
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -O ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
NMP	Nutrient Management Plan
Oil & Grease	Freon extractable material
pH	A measure of the hydrogen ion concentration. A measure of the acidity or alkalinity of a liquid or material
Surfactant	Surface-active agent
Temp. °F	Temperature in degrees Fahrenheit
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

STATEMENT OF BASIS FOR:

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MODIFICATION TO DISCHARGE TO WATERS OF THE UNITED STATES**

NPDES PERMIT NO.: MA0040282

PUBLIC NOTICE START AND END DATES: July 13, 2016 – August 11, 2016

NAME AND ADDRESS OF APPLICANT:

**STERLING SUFFOLK RACECOURSE, LLC
111 WALDEMAR AVENUE
EAST BOSTON, MA 02128**

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

**STERLING SUFFOLK RACECOURSE, LLC
111 WALDEMAR AVENUE
EAST BOSTON, MA 02128**

RECEIVING WATERS: Sales Creek and adjacent wetlands; State Basin Code MA-71-12

CLASSIFICATION: SA

I. PROPOSED ACTION

A. Background and Procedural History

On September 30, 2015, Region 1 of the U.S. Environmental Protection Agency (“Region”) issued an NPDES permit (“Final Permit”) to Sterling Suffolk Racecourse, LLC (“Suffolk” or “Permittee”) for discharges from Suffolk Downs, a horseracing facility located in Revere and East Boston, MA, into a receiving water named Sales Creek and adjacent wetlands.

On November 4, 2015, Suffolk filed a Petition for Review (“Petition”) with the Environmental Appeals Board (“Board”) requesting review of certain conditions of the Final Permit (NPDES Permit Appeal No.15-12). Suffolk contested: (1) effluent limitations and monitoring requirements applicable to outfalls 003, 006 and 006A (Part I.A.2.a.1.); (2) the dry weather monitoring program (Part I.A.3.); and (3) a requirement for Suffolk to propose a plan for evaluating the extent of its contributions to outfalls 003 and 006 prior to those flows comingling with offsite and/or unregulated flows (Part I.A.10). These conditions are collectively referred to as the “Contested Conditions.”

On November 12, 2015, Suffolk and the Region filed a joint motion requesting the Board to stay proceedings in the case to allow the parties to pursue settlement discussions. The Board granted the motion, thereby staying the proceedings. See Order Granting Joint Motion to Stay Proceedings (November 16, 2015). On December 4, 2015, the Region filed a Notice of Uncontested and Severable Conditions.¹ EPA notified Suffolk that the Contested Conditions would be stayed pending final agency action. See 40 C.F.R. §§ 124.16(a)(1) and 124.19(l). EPA determined that all other conditions of the Final Permit were uncontested and severable, and accordingly would become fully effective and enforceable thirty (30) days from receipt of the Notice.

The Region and Suffolk initiated settlement discussions in an attempt to negotiate a resolution to the remaining issues in the Petition. The Board, upon joint motions and status updates by the parties, extended the stay of the proceedings to facilitate these negotiations, which occurred over a period of approximately five months.² On March 29, 2016, the parties informed the Board that they had agreed on the terms of a settlement that would resolve the Petition in its entirety and that the settlement would be implemented through a permit modification. Additionally, as part of the settlement, the permit modification addresses several issues raised by Suffolk to EPA that

¹ When a permit appeal is filed, EPA must issue a notification identifying which permit conditions are stayed as a result of the appeal and which permit conditions will go into effect. See 40 C.F.R. §§ 124.16(a)(2)(i) and (ii). While a permit appeal is pending, the contested permit conditions are stayed. See 40 C.F.R. § 124.16(a)(1). Uncontested permit conditions that are “inseverable” from contested conditions are also considered to be contested and are stayed. See 40 C.F.R. §§ 124.60(b)(4), 124.16(a)(2)(i). Uncontested permit conditions that are severable from contested conditions are not stayed and become enforceable conditions of the permit. See 40 C.F.R. §§ 124.16(a)(2)(i) and (ii).

² The parties filed joint status reports and motions to further continue the stay of the proceedings in connection with NPDES Permit Appeal No. 15-12 on December 15, 2015, February 12, 2016 and March 29, 2016. The Board approved the motions to extend the stay of the proceedings.

were either outside the scope of the appeal and/or constitute minor permit modifications. These modifications are discussed in detail below in Part II. *See* Status Report and Third Joint Motion to Stay the Proceedings, March 29, 2016.

This Statement of Basis sets forth the record for the basis for revisions to portions of the Final Permit, as described below in Part II. Comments submitted to EPA, as provided in Part VI, that are outside the scope of these revisions shall not be considered. *See* 40 C.F.R. § 124.5(c).

II. BASIS OF PERMIT MODIFICATION

A. Modification of Figure 1 and Addition of Figure 2

The location of outfall 006A was not depicted in Figure 1 of the Final Permit (Suffolk Downs Production Area, Track and Outfalls). Additionally, a catch basin that contributes flow to outfall 006A at the western edge of Suffolk's property was discovered after the Final Permit was issued. Therefore, Figure 1 has been revised in the Draft Permit Modification to reflect the locations of outfall 006A as well as the catch basin which drains to it.

Suffolk proposed revised monitoring locations from those identified in the Final Permit, which are depicted in Figure 2 of the Draft Permit Modification. The reasons for the revised monitoring locations are discussed below.

B. Part I.A.2.a.1.

In its Petition, Suffolk contested the effluent limitations and monitoring requirements in Part I.A.2.a.1. of the Final Permit that applied to outfalls 003, 006 and 006A, stating that the prescribed monitoring locations for these outfalls (at the end of the discharge pipe) would not yield data that would adequately characterize Suffolk's discharge, as Suffolk's flows comingled with off-site contributions prior to the prescribed monitoring locations. Since filing the Petition, Suffolk determined that outfall 003 does not convey any flows generated off-site. Suffolk notified EPA, however, that the prescribed monitoring location for outfall 003 is inaccessible as it is usually submerged.

To address Suffolk's concerns regarding the suitability of the prescribed monitoring locations for outfalls 003, 006 and 006A, revised monitoring locations are proposed in the Draft Permit Modification that are located upstream from the end of the discharge pipes (i.e., prior to the submerged terminal end of outfall 003, and upstream from the points at which Suffolk's flows comingle with offsite contributions to outfalls 006 and 006A). These locations are shown in Figure 2 of the Draft Permit Modification. Footnotes 1 and 6 to Part I.A.2.a.1. of the Draft Permit Modification have been revised from the Final Permit to reference the monitoring locations indicated in Figure 2.

Part I.A.2.a.1. of the Final Permit authorized the discharge of subsurface infiltration and stormwater associated with industrial activity to Sales Creek and the unnamed tributary stream and vegetated wetlands adjacent to Sales Creek through outfalls 003, 006 and 006A. Since the issuance of the Final Permit, Suffolk has indicated that flows discharged from outfall 006A are

not expected to contain subsurface infiltration, and that the authorization to discharge subsurface infiltration is not applicable to outfall 006A. Therefore, Part I.A.2.a.1. of the Draft Permit Modification has been revised to clarify that the permit authorizes the discharge of subsurface infiltration to Sales Creek through outfalls 003 and 006, and stormwater associated with industrial activity to the unnamed tributary stream and vegetated wetlands adjacent to Sales Creek through outfalls 003, 006 and 006A.

EPA also reviewed a request submitted by Suffolk to reduce the monitoring frequency for outfalls 003, 006 and 006A under Part I.A.2.a.1. of the Final Permit from monthly to quarterly, and determined that quarterly monitoring would be appropriate and would also be consistent with the monitoring frequency specified in the Multi-Sector General Permit (MSGP) issued to facilities with similar discharges (See MSGP, June 4, 2015). This reduction is reflected in the Draft Permit Modification.

C. Part I.A.2.a.2.

Part I.A.2.a.2. of the Final Permit authorized the discharge of subsurface infiltration and stormwater associated with industrial activity to Sales Creek and the unnamed tributary stream and vegetated wetlands adjacent to Sales Creek through outfalls 004, 005 and 007. Since the issuance of the Final Permit, Suffolk has indicated that outfall 007 is associated with an above-ground sediment fore bay which does not receive enough subsurface infiltration to create discharges through outfall 007, and that the authorization to discharge subsurface infiltration is not applicable to outfall 007. Therefore, Part I.A.2.a.2. of the Draft Permit Modification has been revised to clarify that the permit authorizes the discharge of subsurface infiltration to Sales Creek through outfalls 004 and 005, and stormwater associated with industrial activity to Sales Creek through outfalls 004, 005 and 007.

The monitoring frequency for outfalls 004, 005 and 007 under Part I.A.2.a.2. of the Final Permit has been revised in the Draft Permit Modification to clarify that these outfalls shall each be sampled quarterly. Footnote 3 of the Final Permit, which allowed for the sampling of outfalls 004, 005, and 007 on a rotating basis provided that each outfall is sampled four times per year, has been removed from the Draft Permit Modification. This clarification is consistent with the monitoring frequencies specified in Parts I.A.2.a., I.A.2.b. and I.A.3. of the Draft Permit Modification.

D. Part I.A.2.b.

EPA reviewed a request submitted by Suffolk to reduce the monitoring frequency for outfalls 008, 009, 010 and 011 under Part I.A.2.b. of the Final Permit from monthly to quarterly, and determined that quarterly monitoring would be appropriate and would also be consistent with the monitoring frequency specified in the Multi-Sector General Permit (MSGP) issued to facilities with similar discharges (See MSGP, June 4, 2015). This reduction is reflected in the Draft Permit Modification.

E. Part I.A.3.

In its Petition, Suffolk contested the testing locations, parameters and frequency of analyses required in Part I.A.3. of the Final Permit. With the exception of flow, TSS, pH, *E. coli* and enterococci, Suffolk objected to the requirement to monitor its discharges for the parameters listed in Part I.A.3. of the Final Permit, citing the results of a priority pollutant scan submitted earlier in the permit development process as being sufficient for characterizing Suffolk's groundwater. Due to the limited data set, EPA has determined that it would not be appropriate at this time to remove the requirements in Part I.A.3. from the Final Permit in their entirety. EPA has, however, agreed to the following modifications:

(1). Reduction in the number of outfalls that must be sampled from all outfalls to outfalls 004, 005 and 011.

Outfalls 001 and 002 only discharge the overflow from the Production Area wastewater storage ponds (See Part I.A.1.b.). Therefore, by definition, overflow events from these outfalls can occur only during wet weather, and, as such, the dry weather monitoring requirements applicable to outfalls 001 and 002 in Part I.A.3. of the Final Permit have been removed from the Draft Permit Modification.

Current information suggests that discharges from outfall 006A and 007 do not contain any groundwater. As such, the dry weather monitoring requirements applicable to outfalls 006A and 007 have been removed from the Draft Permit Modification.

According to information provided by Suffolk, Outfall 004 has a unique drainage area. As such, the requirements in Part I.A.3. of the Draft Permit Modification apply to Outfall 004.

Outfalls 003, 005 and 006 convey drainage from the Production Area. According to information provided by Suffolk following the issuance of the Final Permit, outfalls 003 and 006 drain runoff from a relatively small portion of the Production Area. Additionally, outfall 003 flows intermittently during dry weather. By contrast, Outfall 005 collects flow from the largest portion of the Production Area, has the largest contributing pipe network and typically flows year-round. Therefore, EPA agrees that outfall 005 best characterizes the groundwater discharges from the Production Area, and as such the dry weather monitoring requirements applicable to outfalls 003 and 006 have been removed from the Draft Permit Modification. The requirement to sample outfall 005 during dry weather periods is maintained in the Draft Permit Modification.

The Final Permit allows for the results of analyses conducted on flows discharged from outfall 011 to be representative of those discharged from outfalls 008, 009 and 010 (see Final Permit and response to comment (RTC) 2.5)). Therefore, requiring dry weather testing at outfall 011 only is in keeping with the other monitoring requirements in the Final Permit.

(2). Footnote 2 has been revised to require, at a minimum, quarterly sampling of any outfall that is observed discharging at any time. Footnote 1 has been revised to reflect the monitoring locations indicated in proposed Figure 2.

(3). Reduction in the monitoring frequency for the parameters listed in Part I.A.3. from monthly to quarterly.

(4). Deletion of “ammonia/ammonium” as a parameter to be included in the analyses conducted in accordance with Part I.A.3. Part I.A.3. already includes a monitoring requirement for nitrogen-ammonia, therefore, the additional requirement to monitor for ammonia/ammonia is unnecessary and was inadvertently included in the Final Permit.

(5). Footnote 4 has been modified to include language that would allow for a reduction in the analysis of parameters for which results have been at or below the detection limit for four consecutive quarters from quarterly to biannually, and for no testing after eight consecutive results at or below the detection limit.

(6) Footnote 5 has been added to require Suffolk to include an attachment to each DMR which includes a copy of the laboratory data sheets for each analysis that identifies the test method used, the analytical results and the detection limits for each analyte. This attachment shall also include a brief discussion of whether all appropriate QA/QC procedures were met and were within acceptable limits.

(7). Footnotes 6 and 7 of the Final Permit have been eliminated from the Draft Permit Modification, as they are no longer applicable.

F. Part I.A.10.

In its Petition, Suffolk contested Part I.A.10. of the Final Permit, which requires Suffolk to propose a monitoring plan for evaluating the extent of its contributions to outfalls 003 and 006 prior to those flows co-mingling with flows generated by off-site sources. Following the filing of the Petition, EPA received information from Suffolk indicating that there are no off-site contributions to outfall 003. In addition, Suffolk has proposed revised monitoring locations for outfalls 006 and 006A, which are located upstream from the point at which Suffolk’s flows comeingle with flows generated from off-site sources, which EPA has determined will yield data that is sufficient for making determinations regarding the extent of Suffolk’s contributions to these outfalls. Therefore, Part I.A.10. of the Final Permit has been removed from the Draft Permit Modification because the need for a monitoring plan has been resolved.

G. Part I.B.**1. Part I.B.1.b.(2).iii.**

Following the issuance of the Final Permit, Suffolk submitted a request to EPA to delete the requirement that only “track-supplied” hoses may be used in the Production Area because of the difficulty in distinguishing track-supplied from owner-supplied hoses; the operation of the process wastewater system, which is sized to accommodate all process water from the Production Area, including that created through the use of hoses; and the determination that owner-supplied hoses are not any more prone to leaks than track-supplied hoses. EPA agrees that this requirement is unnecessary, and has removed the requirement for the use of only track-supplied hoses from the Draft Permit Modification.

2. Part I.B.1.b.(4).1.(c).

The first sentence has been revised to read as: “Except for vehicles associated with veterinary services or track operations, or for vehicles operated by disabled persons, vehicles may not be parked in the Production Area except during short-term deliveries”, as Federal and state laws pertaining to disabled persons may preclude Suffolk from not allowing them to park in the Production Area.

3. Part I.B.1.b.(7).iii. and iv.

Suffolk requested the inspection requirements in Part I.B.1.b.(7).iii. and iv. of the Final Permit be modified to specify that inspections are to occur during “normal business hours”, since inspection staff are not present after business hours. EPA agrees that this request is reasonable, and has revised the Draft Permit Modification to require weekly inspections in dry weather and during all rainfall events occurring during normal business hours.

4. Part I.B.1.b.(7).v.

The first sentence has been revised in the Draft Permit Modification to read as “Suffolk shall conduct weekly visual inspections of all above ground Production Area stormwater diversion devices.” following a request from Suffolk to modify the language in the Final Permit to reflect the fact that many of the components of the Production Area stormwater system are underground, and are therefore inaccessible for inspection.

5. Part I.B.1.b.(9).

Suffolk requested a change in the language in the first sentence of Part I.B.1.b.(9) from “The officer’s duties shall include, at a minimum...” to “The officer shall be responsible for, at a minimum...” in order to provide flexibility regarding who may perform certain tasks outside of normal business hours. This Draft Permit Modification reflects this revision.

H. Proposed Modifications to Provide Clarification

Pursuant to 40 C.F.R. § 122.63(a) and 314 CMR 3.13(3)(a),³ the following revisions are proposed in the Draft Permit Modification to provide clarification to the pre-existing intent of the Final Permit:

- Part I.A.1.b. - Footnotes 1 and 4 to Part I.A.1.b. of the Final Permit have been revised to reflect the sampling locations/discharge points indicated in Figure 2.
- Part I.A.2.a.1. - “Such discharges” has been replaced by “Suffolk’s discharges”.
- Part I.A.2.a.1. - “the permittee” has been replaced by “Suffolk”
- Part I.A.2.a.1. - Footnotes and 1 and 6 have been revised to reflect the sampling locations/discharge points indicated in Figure 2.
- Part I.A.2.a.2. - Footnotes and 1 and 6 have been revised to reflect the sampling locations/discharge points indicated in Figure 2.
- Part I.A.2.a.2. - Correction of typographical error – “form” changed to “from”.
- Part I.A.2.b. - Footnotes and 1 and 7 have been revised to reflect the sampling locations/discharge points indicated in Figure 2.
- Part I.A.2.b. - Footnote 5 – Correction of typographical error – “form” changed to “from”.
- Part I.A.8. - Correction of typographical error – deletion of the word “of” before “40 CFR...”.
- Part I.A.9. - Deletion of “All existing manufacturing, commercial, mining and silvicultural discharges” from Footnote 9 as it does not apply.
- Part I.A.12.b.(1) - Inserted “applicable” after “law” in the final sentence

³The regulatory agencies cite to the indicated regulations for the authority to make these particular minor permit modifications despite the fact that these regulations refer to modifications to correct “typographical errors.” In this case, the Regulatory Agencies would be making the modification solely to clarify the Final Permit’s pre-existing intent. Thus, as with corrections to typographical errors, the meaning and intent of the Final Permit is not being changed. There is no specific mention of modifications solely to clarify a permit in either 40 C.F.R. § 122.63 (minor modifications) or 40 C.F.R. § 122.62 (non-minor modifications). Therefore, the Regulatory Agencies are citing to the regulations pertaining to the correction of typographical errors because such corrections are analogous to the clarifying modifications at issue here.

- Part I.A.13.a. (re-numbered as Part I.A.11.a. in the Draft Permit Modification) - Correction of typographical error – Deletion of “Animals” before “Horses and...”.
- Part I.A.13.f. – (re-numbered as Part I.A.11.f. in the Draft Permit Modification) - Reference to “Part I.A.14” replaced with “Part I.A.13”.
- Part I.A.15.b.(1).- (re-numbered as Part I.A.12.b.(1). in the Draft Permit Modification) - Inserted “applicable” after “law” in the final sentence.
- Parts I.C.3. and 4. of the Draft Permit Modification has been revised to reference June 4, 2015 as the effective date of the current MSGP.
- Table 1 – Correction of typographical errors in the description provided for Outfalls 001 and 002. Insertion of “Permittee’s” before “discharge” in description of Outfall 006.

III. ENDANGERED SPECIES ACT (ESA)

Section 7(a) of the Endangered Species Act of 1973, as amended (“ESA”), grants authority to, and imposes requirements on, Federal agencies regarding the conservation of endangered and threatened species of fish, wildlife, and plants (“listed species”), and the habitat of such species that has been designated as critical (“critical habitat”). The ESA requires Federal agencies, in consultation with, and with the assistance of, the Secretary of Interior, to insure that any action that they authorize, fund, or carry out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (“USFWS”) typically administers Section 7 consultations for birds and terrestrial and freshwater aquatic species, while the National Marine Fisheries Service (“NMFS”) typically administers Section 7 consultations for marine species and anadromous fish.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, and plants to determine if any such listed species might potentially be impacted by the issuance of this NPDES Permit Modification. See http://ecos.fws.gov/tess_public/reports/species-listed-by-state-report?state=MA&status=listed, US Fish & Wildlife Species Listings and Occurrences for Massachusetts. Coastal areas of Massachusetts provide habitat for a number of federally protected marine species, including: mammals (whales: North Atlantic Right, Humpback, Fin, Sei, Sperm, Blue – all endangered); reptiles (sea turtles: Kemp’s Ridley, Leatherback, Green – all endangered; Loggerhead – Threatened but proposed for listing as endangered). In addition, the shortnose sturgeon is an anadromous fish species listed as endangered that may be found in certain coastal areas of Massachusetts. However, EPA does not consider the area influenced by the authorized discharges to be suitable habitat for the species listed above. Based on the normal distribution of these species, it is extremely unlikely that there would be any NMFS listed species in the vicinity of Sales Creek and Belle Isle Inlet. EPA has determined that there are no listed species expected to be present in the vicinity of the outfalls of this Facility. Therefore,

EPA does not need to consult with NMFS or USFWS under the ESA because EPA's permitting action will not affect listed species.

During the public comment period, EPA has provided a copy of the Draft Permit Modification and Statement of Basis to both NMFS and USFWS.

IV. ESSENTIAL FISH HABITAT (EFH)

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the NMFS if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat" ("EFH"). The Amendments define EFH as "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity," (16 U.S.C. § 1802 (10)). "Adverse impact" means any impact which reduces the quality and/or quantity of EFH (50 CFR § 600.910 (a)). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

EFH is only designated for species for which federal fisheries management plans exist (16 U.S.C. § 1855(b) (1) (A)). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999. The following is a list of the EFH species and applicable life stage(s) for Boston Harbor, to which Sales Creek discharges:

Species	Eggs	Larvae	Juveniles	Adults	Spawning Adults
Atlantic salmon (<i>Salmo salar</i>)					
Atlantic cod (<i>Gadus morhua</i>)	S	S	M,S	M,S	S
haddock (<i>Melanogrammus aeglefinus</i>)	S	S			
pollock (<i>Pollachius virens</i>)	S	S	M,S		
whiting (<i>Merluccius bilinearis</i>)	S	S	M,S	M,S	
offshore hake (<i>Merluccius albidus</i>)					
red hake (<i>Urophycis chuss</i>)		S	S	S	
white hake (<i>Urophycis tenuis</i>)	S	S	S	S	
redfish (<i>Sebastes fasciatus</i>)	n/a				
witch flounder (<i>Glyptocephalus cynoglossus</i>)					

winter flounder (<i>Pleuronectes americanus</i>)	M,S	M,S	M,S	M,S	M,S
yellowtail flounder (<i>Pleuronectes ferruginea</i>)	S	S	S	S	S
windowpane flounder (<i>Scopthalmus aquosus</i>)	M,S	M,S	M,S	M,S	M,S
American plaice (<i>Hippoglossoides platessoides</i>)	S	S	S	S	S
ocean pout (<i>Macrozoarces americanus</i>)			S	S	
Atlantic halibut (<i>Hippoglossus hippoglossus</i>)	S	S	S	S	S
Atlantic sea scallop (<i>Placopecten magellanicus</i>)					
Atlantic sea herring (<i>Clupea harengus</i>)		S	M,S	M,S	
monkfish (<i>Lophius americanus</i>)					
bluefish (<i>Pomatomus saltatrix</i>)			M,S	M,S	
long finned squid (<i>Loligo pealei</i>)	n/a	n/a			
short finned squid (<i>Illex illecebrosus</i>)	n/a	n/a			
Atlantic butterfish (<i>Peprilus triacanthus</i>)	S	S			
Atlantic mackerel (<i>Scomber scombrus</i>)	M,S	M,S	M,S	M,S	
summer flounder (<i>Paralichthys dentatus</i>)					
scup (<i>Stenotomus chrysops</i>)					
black sea bass (<i>Centropristus striata</i>)					
surf clam (<i>Spisula solidissima</i>)	n/a	n/a			
ocean quahog (<i>Artica islandica</i>)	n/a	n/a			
spiny dogfish (<i>Squalus acanthias</i>)	n/a	n/a			
tilefish (<i>Lopholatilus chamaeleonticeps</i>)					

EPA has made the determination that while the discharge of industrial stormwater, and, under extreme weather conditions, Production Area process wastewater from the facility, could potentially cause an adverse impact to essential fish habitat, the Draft Permit Modification has been conditioned in such a way so as to minimize any potential adverse impacts to EFH. These conditions are discussed in detail in the preceding sections as well as in the Fact Sheet that accompanied the Final Permit, and include, but are not limited to: monitoring requirements which are designed to ensure the attainment of Massachusetts Surface Water Quality Standards in the receiving water, prohibitions on the discharge of pollutants or combinations of pollutants in toxic amounts, and the implementation of pollutant controls which will significantly improve effluent quality and decrease effluent quantity.

The conditions and limitations contained in the Draft Permit Modification are designed to result in attainment of the applicable water quality standards in the receiving water and protect all aquatic life, including species with EFH designation. Additionally, the conditions and limitations in the Draft Permit Modification were developed to ensure that any impacts from Suffolk's discharges on EFH species, their habitat and forage, are minimized. Further mitigation is not warranted. Should adverse impacts to EFH be detected as a result of this permit action, or if new information is received that changes the basis for EPA's conclusions, NMFS will be contacted and an EFH consultation will be re-initiated. NMFS has been provided a copy of the Draft Permit Modification and Statement of Basis during the public comment period.

V. STATE CERTIFICATION REQUIREMENT

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving waters certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate State Water Quality Standards. The staff of the Massachusetts Department of Environmental Protection has reviewed the Draft Permit Modification and Statement of Basis and advised EPA that the proposed limitations are adequate to protect water quality. EPA has requested permit certification by the State pursuant to 40 CFR 124.53 and expects that the Draft Permit Modification will be certified.

VI. ADMINISTRATIVE RECORD, PUBLIC COMMENT PERIOD, HEARING REQUESTS, AND PROCEDURES FOR FINAL DECISION

All persons, including applicants, who believe any condition of the Draft Permit Modification is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period to: Meridith Timony, U.S. EPA, Office of Ecosystem Protection, Municipal Permits Section, 5 Post Office Square, Suite 100 (OEP06-1), Boston, Massachusetts 02109-3912; or to: Timony.Meridith@epa.gov.

Any person, prior to such date, may submit a request in writing for a public hearing to consider the Draft Permit Modification to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public meeting may be held if the criteria stated in 40 C.F.R. § 124.12 are satisfied. In reaching a decision on the final permit, EPA will

respond to all significant comments and make these responses available to the public on EPA's website and at EPA's Boston office.

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a decision regarding the proposed permit modification and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice. Within 30 days following the notice of the Final Permit decision, any interested person may submit a petition for review of the permit to EPA's Environmental Appeals Board consistent with 40 C.F.R. § 124.19.

VII. EPA & MASSDEP CONTACTS

Additional information concerning the draft permit modifications may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, from the EPA and MassDEP contacts below:

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7/6/2016
Date

Kenneth Moraff, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency