

MAR 26 2012

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Scioto Downs, Inc.
P.O. Box 07823
6000 South High Street
Columbus, Ohio 43207

Respondent

Director's Final Findings
and Orders

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By: Denise Cassiter Date: 3/26/12

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Scioto Downs, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in the composition of Respondent shall in any way alter Respondent's obligation under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of the existing horse race track located at 6000 South High Street, Columbus, Franklin County, Ohio ("the Facility").
2. Respondent's facility houses race horses resulting in the discharge of horse washwater to a tributary of Big Walnut Creek. The tributary of Big Walnut Creek constitutes "waters of the state" as defined by ORC 6111.01. Respondent has

not obtained a National Pollutant Elimination System Discharge ("NPDES") permit for this discharge.

3. Respondent submitted a complete NPDES permit application to Ohio EPA on April 14, 2003.
4. Pursuant to ORC 6111.04, no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in any location where they cause pollution of any waters of the state, except in compliance with a valid, unexpired NPDES permit.
5. By discharging horse washwater to Big Walnut Creek without an NPDES permit covering the discharge, Respondent is in violation of ORC 6111.04.
6. In September 2006, Respondent submitted a permit to install ("PTI") application for a sewer connection for the Facility to the City of Columbus sewer system. However, Respondent withdrew the application because they planned to connect into an existing sewer lateral, and therefore a PTI was not required.
7. Since that time, Respondent has failed to connect to the existing sewer lateral and continues to discharge its wastewater to Big Walnut Creek.
8. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
9. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

V. ORDERS

1. As soon as possible, but not later than six (6) months from the effective date of these Orders, Respondent shall eliminate the horse washwater discharge by connecting the horse washing operations at the Facility to the City of Columbus sanitary sewer system. Within thirty (30) days after Ohio EPA receives confirmation that the Facility is connected to the City of Columbus sanitary sewer system, Respondent shall either withdraw the pending CAFO NPDES permit application or submit a complete manure management plan to complete the pending CAFO NPDES permit application.
2. Respondent shall pay a total amount of fifty thousand and 00/100 dollars (\$50,000.00), in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within three (3) months after the

effective date of these Orders, payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$15,000.00 of the total amount. Thereafter, within nine (9) months from the initial payment, Respondent shall pay \$25,000.00 of the civil penalty by an official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to the Ohio EPA, Division of Surface Water, Central Office, in accordance with Section X of these Orders.

3. In lieu of paying the remaining ten thousand dollars (\$10,000.00) of the civil penalty, Respondent shall within three (3) months of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$10,000.00 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 3, Respondent shall immediately pay to Ohio EPA the remaining \$10,000.00 of the civil penalty in accordance with the procedures in Order No. 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division

of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

Unless otherwise specified herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water
Central Office
P.O. Box 1049
Columbus, OH 43216-1049
(ATTN: Enforcement Supervisor)

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve the disputed claims alleged by Ohio EPA, without an admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the alleged violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's alleged liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

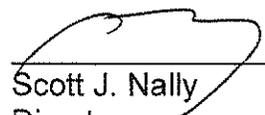
XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Scott J. Nally
Director

3/23/12

Date

IT IS SO AGREED:
Scioto Downs, Inc.



Signature

13 MARCH 2012
Date

Joseph Billhimer
Printed or Typed Name

Executive Vice President & COO
Title