

Appendix J

**EPA Letter
July 18, 2005**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

July 18, 2005

OFFICE OF THE
REGIONAL ADMINISTRATOR

Ms. Sherilyn Burnett Young
Rath, Young and Pignatelli
One Capital Plaza, P.O. Box 1500
Concord, NH 03302-1500

RE: Motorsports Holdings, LLC - Request for Individual National Pollutant Discharge Elimination System (NPDES) Permit

Dear Ms. Young:

Thank you for your letter of May 24, 2005, petitioning EPA to issue an individual NPDES storm water permit for the operation of a proposed racetrack in Tamworth, New Hampshire.

The EPA Storm Water Program requires NPDES permits for discharges from construction projects which disturb one or more acres of land, discharges associated with defined industrial activities, and discharges from municipal separate storm sewer systems. Given that this project will disturb greater than one acre of land, this project does require an NPDES permit for its construction activities. As of the date of this letter, the project is not listed in EPA's storm water database. EPA will be contacting the operators of this project to alert them of their need to obtain a construction permit.

The industrial portion of the storm water program regulates industrial activities based on Standard Industrial Classification (SIC) codes and narrative descriptions. Industrial activities that are regulated by the storm water program are listed in 40 CFR 122.26(b)(14). Your letter refers to language in Part 6P of EPA's Multi-Sector General Permit (MSGP) for storm water discharges associated with industrial activity as being applicable to this proposed facility. Part 6P of the MSGP applies to transportation facilities described in 40 CFR 122.26(b)(14)(viii). Facilities described in this part of the regulation have the following SIC codes: 40, 41, 42, (except 4221 - 4225), 43, 44, 45 and 5171. A racetrack has a standard industrial classification (SIC) of 7948 which is not an SIC code regulated by the storm water program. Furthermore, facilities with SIC codes included in the transportation category are subject to regulation only if the facility has vehicle and equipment maintenance occurring on site. Although an activity at a racetrack may include vehicle maintenance, similar to those activities described in the MSGP, a storm water discharge from operations at a racetrack is not, by definition, a "storm water discharge associated with industrial activity" and, therefore, not automatically subject to the storm water regulations.

Help us serve you better. If you need to call us regarding this correspondence in the future, please reference R1-05-000-8354.


EPA does, however, have the authority to require facilities which discharge sources of storm water, other than those sources already required to obtain NPDES permits, to apply for coverage under an NPDES permit. This authority is found in 40 CFR 122.26 (a)(9)(i)(C) and (D). These regulations allow EPA to designate additional sources of storm water based on the waste load allocation of an approved total maximum daily load (TMDL) or the determination by EPA that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. In addition to EPA's ability to designate a storm water discharge as needing a permit, the regulations at 40 CF 122.26(f)(2) allow any person to petition EPA to require an NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

In order for EPA to require an NPDES permit for non-regulated storm water discharge, EPA must evaluate the storm water discharge and determine the likelihood of exposure of pollutant sources, whether this source is adequately addressed by other environmental programs and whether sufficient data exists on the quality of the discharge to make a determination of impacts to water quality or contributions of pollutants. Since the project is not complete, there is no discharge of storm water from the racetrack. At this time, EPA does not have sufficient information to determine whether permit coverage is necessary.

Due to a lack of representative data on the actual quality of the storm water discharge from the facility, EPA is denying your petition for an individual storm water permit for the above referenced facility at this time. EPA may reconsider the discharge and the need for permit coverage if additional information becomes available.

If you have any questions concerning this matter, please contact Thelma Murphy at (617) 918-1615.

Sincerely,



Robert W. Varney
Regional Administrator

cc: *✓* Craig Lizotte, Project Manager