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December 8, 2008

VIA EMAIL AND FEDERAL EXPRESS

Mickey Kane, Acting Board Secretary
Pennsylvania Gaming Control Board
P. O. Box 69060
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Washington Trotting Association, Inc., License No.: F-1316
Comments to Proposed Rulemaking 125-92

Dear Acting Secretary Kane:

Please be advised that we represent Washington Trotting Association, Inc. ("WTA"), a Category 1 slot operator licensee. On behalf of WTA, we are submitting the following comments to the proposed amendments to regulations 58 Pa. Code §§ 441a.25 and 467a.1 ("Proposed Rulemaking No. 125-92") regarding procedures and requirements slot machine licensees must comply with as a result of the passing of the Clean Indoor Air Act, 35 P.S. §§ 637.3-637.4).

First, WTA submits that Proposed Rulemaking No. 125-92 is vague as to the method for calculating the proportionate increase in the amount of the gaming floor designated for smoking. Specifically, 58 Pa. Code §§ 441a.25(d) provides that

[w]hen a report from the Department [of Revenue] indicates that the average gross terminal revenue per slot machine unit in the designated smoking areas exceeds the average gross terminal revenue per slot machine unit in the designated non-smoking areas, the slot machine licensee may ... increase the square footage of the gaming floor designated for smoking in proportion to the percentage difference in revenue.



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December 8, 2008
Page 2

WTA submits that the regulation lacks precision as to the meaning of "in proportion to the percentage difference" and that the proposed regulation should clarify the method of calculating the proportionate increase. WTA suggests that a slot machine licensee should be permitted to increase the percentage of its gaming floor designated for smoking by the percentage difference in the average gross terminal revenue per slot machine in smoking and non-smoking areas. By way of example, if there is a 10% difference in the average gross terminal revenues per slot machine in smoking versus non-smoking areas, then a slot machine licensee may increase the area designated for smoking to 35% (*i.e.*, adding the existing 25% plus the percentage difference of 10%).

Next, Proposed Rulemaking No. 125-92 states that the Pennsylvania Gaming Control Board (the "Board") "is seeking comments on whether or not smoking or non-smoking labels should be required on each individual slot machine. In particular, the Board is requesting input on the effectiveness of individual labels and the costs and possible logistical problems that would be associated with placing labels on each slot machine." WTA submits that placing placards or labels on individual slot machines to designate a specific slot machine as smoking or non-smoking is unnecessary and unduly burdensome on a slot machine licensee. Individually labeling the slot machines is unnecessary as Proposed Rulemaking No. 125-92 already will require a slot machine licensee to clearly and conspicuously designate smoking areas so that patrons can accurately identify at which slot machines smoking is permitted. By complying with this requirement, slot machine licensees eliminate any confusion regarding the slot machines at which a patron may smoke and, therefore, additional labeling is not necessary. Further, placing labels on each slot machine is overly burdensome and costly to a slot machine licensee. WTA anticipates that designation plaques or labels for the slot machines will cost approximately \$6,000. This anticipated cost far exceeds the \$2,500 total cost that the Board estimates a slot machine licensee will spend to change its gaming floor plan.

Accordingly, WTA requests that the Board clarify the method of calculating the proportionate increase and also that slot machine licensees not be required to individually designate slot machines as smoking or non-smoking.



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December 8, 2008
Page 3

Very truly yours,

Mariel J. Giletto

MJG:bb

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