

STATE GOVERNMENT,
 MAJORITY CHAIRMAN
 CAPITOL PRESERVATION, CHAIRMAN
 EDUCATION

House of Representatives

COMMONWEALTH OF PENNSYLVANIA
 HARRISBURG

August 24, 2005

RECEIVED

AUG 26 2005

Thomas Decker, Chairman
 Pennsylvania Gaming Control Board
 P.O. Box 69060
 Harrisburg, PA 17106-9060

Dear Chairman Decker:

Following up on your comments asking for public comments on regulations by Tuesday, September 6, 2005, I submit the enclosed recommendations. The recommendations I am about to present deal with another aspect of background checks.

Recently, I notified you and the other six members of the Gaming Control Board of my objection to the Board assuming the "emergency powers" and/or "urgency of need" provisions to contract three investigative/background businesses for the purpose of doing background checks on casino-related personnel.

My objection lies in the fact that the Board is bypassing the Commonwealth's Procurement Code, which requires strict adherence to the bidding process in awarding such contracts, even though your recent letter advises otherwise.

The purpose of this letter is to express another objection and make a recommendation. I call to your attention the Gaming Control Board's apparent breach of the State's Gaming Law, which indicates that the Pennsylvania State Police shall provide the criminal history background investigations on those having an involvement in casino gambling.

Section 1801

Their investigations may:

"include but not be limited to, officers, directors and stockholders of licensed corporations, key employees,

Thomas Decker, Chairman

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August 24, 2005

gaming employees, horse owners, trainers, jockeys, drivers and other persons participating in thoroughbred or harness horse meetings and other persons and vendors who exercise their occupation or employment at such meetings, licensed facilities or licensed racetrack.”

Without question, the General Assembly has already given the Pennsylvania State Police, then, the duty to carry out the critical investigations and background checks. In a letter dated February 9, 2005, Representative Daryl Metcalfe and Representative Scott Boyd had assumed the Board would be using the State Police to do the primary investigations. (Please see the enclosed copy.)

Clearly, only the Pennsylvania State Police with their criminal justice expertise and sophisticated technology and international law enforcement connections can adequately address the critical components of security, surveillance, background investigations, criminal investigations and enforcement, regulatory enforcement and staffing.

Therefore, I make the following observations regarding the temporary regulations relating to the Bureau of Investigations and Enforcement, and recommend that you consider revising provisions of these regulations accordingly.

I believe that the proposed 58 Pa. Code, Section 405.1(6) improperly grants the Bureau of Investigations and Enforcement the authority to refer possible criminal violations to law enforcement entities other than the Pennsylvania State Police. This provision is in direct violation of the 4 PACS, Section 1517(a)(10), which requires the Bureau to refer all possible criminal violations to the State Police.

Also, I believe that the authority given to the Bureau, under 58 Pa. Code, Section 450.2(b), to compel local and state law enforcement to produce all information, data and documents requested by the Bureau relating to an applicant, licensee, permittee or registrant conflicts with 4 PACS, Section 1517(c)(4). This statutory provision specifically requires the State Police to “provide the board with all information necessary for all actions under this part for all proceedings involving enforcement of this part...” I do not believe that Section 1517(c)(4) gives the Bureau the power to compel production of irrelevant or protected information from the State Police or other law enforcement agencies.

Thomas Decker, Chairman
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Another issue of contention is that, under 58 Pa. Code, Section 405.2(c), the Bureau may, upon request, provide pertinent information to law enforcement agencies. This attempt to allow the Bureau to decide what information it will share with the State Police is misplaced. Since State Police investigations into criminal violations of the Race Horse Development and Gaming Act are required, it is my understanding that the Bureau's cooperation with such investigations is mandatory and not discretionary.

I also believe that 58 Pa. Code, Section 405.1(1), which gives the Bureau both the power and the duty to investigate and review all permit applicants is duplicative of 4 PACS, Section 1318(b)(3), which requires all permit applicants to consent to a State Police background investigation. These conflicting provisions of law would result in an unnecessary duplication of efforts, in my view.

I do acknowledge that forensic background checks would involve some outside investigators. This is understandable, and I am certain the State Police would welcome assistance from outside sources to assist in its investigation of the finances of those licensees being investigated.

Let me reiterate, it was always the intent of the Legislature that the Pennsylvania State Police have the primary role in conducting these background investigations.

It is not an option for the Board to remove the Pennsylvania State Police from its assigned role as primary background investigators.

In my last letter, I requested that the Board rescind its actions regarding contracts with the three agencies to do investigative background checks. Now, with this larger issue at hand, I request that the Board confirm and verify that it is, indeed, the Pennsylvania State Police that will be doing all background investigations.

Failure to convey these important investigative responsibilities to the Pennsylvania State Police is putting out the "welcome mat" for crime and corruption.

Thomas Decker, Chairman
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Your thoughtful attention to this very urgent issue would be appreciated.

Sincerely,



PAUL I. CLYMER

Enclosure

cc: Pennsylvania Gaming Control Board Members
All House Members
News Media

DARYL METCALFE, MEMBER
 HOUSE OF REPRESENTATIVES
 HOUSE BOX 202020
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 HARRISBURG, PENNSYLVANIA 17120-2020
 PHONE: (717) 783-1707
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CRANBERRY TOWNSHIP MUNICIPAL BUILDING
 2525 ROCHESTER ROAD, SUITE 201
 CRANBERRY TOWNSHIP, PA 16066
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House of Representatives
 COMMONWEALTH OF PENNSYLVANIA
 HARRISBURG

COMMITTEES

EDUCATION
 FINANCE
 LABOR RELATIONS
 STATE GOVERNMENT
 TOURISM AND RECREATIONAL
 DEVELOPMENT

February 9, 2005

Thomas A. Decker, Chairman
 Pennsylvania Gaming Control Board
 PO Box 9060
 Harrisburg, PA 17106-9060

Dear Chairman Decker:

It appears that the Gaming Control Board conducted a great deal of business during its initial meetings in Harrisburg. We applaud you for your adoption of important ethics and diversity policies, and your decision to authorize the State Police to conduct background checks.

However, we are concerned that the pace at which the Board has conducted business and may conduct business in the future may not permit adequate public access to debate on important Gaming Control Board policies, procedures and regulations. The goal of delivering property tax relief to Pennsylvanians should not be met at the expense of the public's right to know and the Commonwealth's desire to minimize corruption and crime associated with gambling.

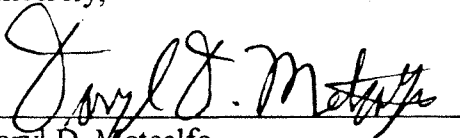
We also share concerns raised in the news media regarding the Gaming Control Board's use of emergency procurement procedures. The Commonwealth's procurement laws, which the General Assembly reformed and modernized in recent years, are grounded in competitive processes so as to ensure that public tax dollars are spent effectively and efficiently. The Procurement Code includes emergency procurement provisions because the General Assembly understands that emergency situations arise in which agencies must rapidly procure goods or service in order to maintain vital public services, particularly those that affect the health, welfare and safety of Pennsylvanians. I believe that the intent of the General Assembly was to reserve emergency procurement procedures for such situations.

As you may know, section 516 of the Procurement Code, relating to emergency procurements, requires a "written determination of the basis for the emergency and for the selection of the particular contractor" to be included in the applicable contract file. We respectfully request that you provide us with a copy of any written determination made by the Gaming Control Board in relation to an emergency procurement.

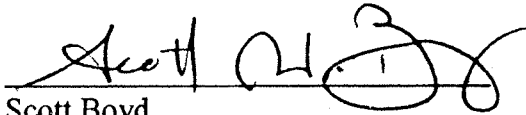
Gaming Control Board
Page 2
February 9, 2005

Gambling is an issue in which many members of the General Assembly have taken a strong interest. We thank you for the opportunity to share our thoughts on this important matter and we look forward to receiving your response to our request.

Sincerely,



Daryl D. Metcalfe
12th Legislative District



Scott Boyd
43rd Legislative District

DDM:ajd



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AUG 29 2005

August 24, 2005

Pennsylvania Gaming Control Board

Office of Communications

P.O. Box 69060

Harrisburg, PA 17106-9060

Re: Draft Temporary Regulations for Slot Machine Licenses – Comments

Dear Chairman Decker and Members of the Board:

In response to the notice, which the Pennsylvania Gaming Control board caused to be published in the August 12, 2005, edition of the Pennsylvania Bulletin, Volume 35 PA Bulletin No. 33, we, Spectrum Gaming Group, would like to submit comments on the Board's draft temporary regulations.

Spectrum is an international gaming consultancy with offices in Princeton, Atlantic City, Las Vegas, Bangkok, Hong Kong and Guam. Spectrum was founded in 1993 and is in its eleventh year of business. We offer a variety of services to the commercial gaming industry, governmental entities including gaming commissions and Indian Nations. Our services include the preparation of economic impact studies, feasibility studies and economic analysis of the financial performance of gaming facilities. Spectrum has a keen interest in the Board's work and the regulations. This interest has led Spectrum to submit comments on the draft temporary regulations dealing with Category II & III Licenses, particularly relating to "local impact reports."





I. § 443.4.(a).(3) Category 2 slot machine licenses

Please note: Category I Commentary

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 437 AND 501]

Response to Public Comment

CHAPTER 441. SLOT MACHINE LICENSES [formerly § 437]

§ 441.1. Definitions [formerly § 437.1]

Comment:

Define "local impact report" in section 437.3(d).6

Response:

The Board has amended the language of section

441.4(a)(21) [formerly section 437.4(a)(21)] to clarify this term.

Spectrum respectfully submits that the above clarification does not address the issue and submits the comments that follow.

Section (3) " A statement detailing and establishing that the proposed location is in a revenue or tourism-enhanced location and is in compliance with the geographical requirements of section 1304(b) of the act (relating to Category 2 slot machine license). The statement shall include the appropriate business and tourism studies, economic impact studies, projected revenue and business plans."





We observe that there is no definition of “tourism studies or economic impact studies.”

A tourism or economic impact study without definition implies that applicants will pick and choose the content of their studies. The Board may run the risk of receiving applications with report contents that do not meet Board expectations. Moreover, the applicant may have chosen metrics that cannot be aligned with those of other applicants. Without study definition, elements may become the proverbial “apples and oranges” comparison.

Gaming creates unrealistic expectations. Local businesses often assume they can reap riches simply due to proximity to a gaming location. Local government expectation can also be unrealistic. Public policy cannot be built on the expectations of enjoying a regional monopoly. Gaming works best when it is fully integrated into a region’s tourism and hospitality industries. This integration creates an atmosphere of cooperation among businesses with all seeking to share in tourism dollars.

We respectfully suggest the Board consider two steps:

1. Development of an impact analysis template for standardization of data and content to be presented with the license application. For example:

- Applicants could be required to address certain issues and answer certain questions:
 - i. What are the specific plans to integrate the project into the tourism economy?
 - ii. What non-gaming attractions, if any, are planned and how will they be marketed?
 - iii. Are such attractions designed to compete with or complement existing attractions in the region?
 - iv. What are the local training needs to ensure the local workforce is ready to fill openings?

These are only a few suggestions, but are directed to allow the Board to have evaluation criteria for determining if the developer is taking sufficient affirmative and pro-active steps to ensure the best possible economic outcome for the local community and the state. Gaming can be a powerful force for positive economic change. These economic impact analyses provide the Board the opportunity to leverage its authority to





ensure that leadership takes the necessary steps to maximize the benefits of gaming. The economic impacts will be different in every region, the methodology to deal with the analysis need not be.

2. Just as the Board is pursuing selected and qualified firms to provide the licensing and background analysis, we suggest the Board consider adopting and publishing a list of pre-screened subject matter experts to provide these economic impact analyses reports to potential licensees. In this manner, qualifications can be leveraged to ensure quality reports.

Thank you for your time, attention and serious consideration to these comments and suggestions of Spectrum Gaming Group. Should you have any questions, we can be reached by phone: We stand
ready to work with the Board and staff in these areas of mutual concern.

Respectfully,

A handwritten signature in black ink, appearing to read 'Michael Pollock', written in a cursive style.

Michael Pollock

Spectrum Gaming Group LLC





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE

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SEP 06 2005

OFFICE OF DEPUTY COMMISSIONER

September 1, 2005

Pennsylvania Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, Pennsylvania 17106-9060
ATTN: Public Comment

Re: Draft Temporary Regulations, 58 Pa. Code, Chapter 405

Dear Members of the Board:

After reviewing the Board's draft temporary regulations, the Pennsylvania State Police is concerned about your proposal for 58 Pa. Code §§ 405.1 and 405.2. Portions of the draft regulations need to be revised because they contradict the Gaming Act.

We are particularly troubled by the fact that 58 Pa. Code § 405.1(6) purportedly allows the Bureau of Investigations and Enforcement the authority to refer possible criminal violations to law enforcement agencies other than the Pennsylvania State Police. Pursuant to the Gaming Act, the Bureau must refer all possible criminal violations to the Pennsylvania State Police. See 4 Pa. C.S. § 1517(a)(10). In this regard, I note that 58 Pa. Code § 405.1(3) requires the Bureau to monitor, among other things, underage drinking and gaming and reiterate that potential violations must be referred to the State Police.

We are also concerned that § 405.2(c) of the draft regulations appears to give the Bureau the discretion to refuse to share pertinent information with the State Police. At least with respect to State Police investigations into criminal violations of the Gaming Act, the Bureau's full cooperation is mandatory. See 4 Pa. Code § 1517(b)(10).

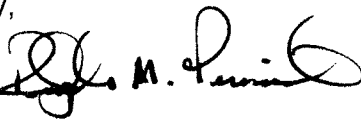
In addition, 58 Pa Code § 405.2(b) indicates that state and local law enforcement, including the Pennsylvania State Police will provide all information, data, and documents requested by the Bureau relating to an applicant, licensee, permittee, or registrant. Although § 1517(c)(4) of the Gaming Act allows the State Police to provide the Board with information necessary to enforce the Gaming Act or the Board's regulations, the Board does not have the power to compel the production of protected information.

Letter to the Pennsylvania Gaming Control Board
September 1, 2005
Page 2

Finally, 58 Pa. Code § 405.1(1) gives the Bureau both the power and the duty to investigate and review all permit applicants even though the Gaming Act requires all permit applicants to consent to a State Police background investigation. See 4 Pa. Code § 1318(b)(3). We recognize that § 1517(a)(1) allows the Bureau to investigate permit applicants as directed by the Board, but duplicating each other's efforts seems neither wise nor necessary.

In closing, I want to thank you for the opportunity to comment on this draft of the Board's temporary regulations. We look forward to working with you in a cooperative effort to implement and enforce the Gaming Act.

Sincerely,

Lt. Col.  M. Periandi

Lt. Colonel Ralph M. Periandi
Deputy Commissioner of Operations
Pennsylvania State Police

RECEIVED

SEP 06 2005

DRAFT REGULATIONS COMMENT FORM**Please complete all of the fields below before printing:**

DATE	<input type="text" value="08/29/2005"/>	ADDRESS 1	<input type="text"/>
SECTION # OR SUBJECT	<input type="text" value="Category 2 & 3 gaming facilities"/>	ADDRESS 2	<input type="text"/>
FIRST NAME	<input type="text" value="Steven"/>	CITY	<input type="text"/>
LAST NAME	<input type="text" value="Nickol"/>	STATE	<input type="text"/>
ORGANIZATION NAME	<input type="text" value="Pennsylvania House of Representatives"/>	ZIP CODE	<input type="text"/>
EMAIL ADDRESS	<input type="text"/>	COUNTY	<input type="text"/>
		TELEPHONE	<input type="text"/>

COMMENTS

I would like to comment on the PA Gaming Commission's Draft Regulations governing Category 2 and Category 3 gaming facilities.

The Draft Regulations for Category 1 facilities grant the political subdivision, within which a licensed gaming facility would be located, a 60-day comment period prior to the Board taking final action on an application. In addition, the regulations provided that at least one public hearing will be held in a municipality where a gaming facility would be located, if there is public interest.

I feel the input of a political subdivision and a chance for the public to have their views heard is critical for the Board to fully consider all aspects of a proposed gaming facility, including the potential impact on a community. It is not clear to me that these same opportunities will be provided to Category 2 and Category 3 gaming facilities.

Please make certain that the political subdivisions, and the public, are given the same opportunity for input in all three categories of gaming licenses.

Thank you for the consideration of my comments.



Steven R. Nickol
Representative

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

Vacation Charters, Ltd.

September 1, 2005

PENNSYLVANIA GAMING CONTROL BOARD

P.O. Box 69060

Harrisburg, PA 17106-9060

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SEP 06 2005

Re: Public Comment Subpart C, Chapter 441, Slot Machine Licenses

Dear Sir/Madam:

In accordance with the public comment period, please accept the attached Draft Regulations Comment form from the PGCB internet website. Our opinion is that the information contained in the document was brief and straightforward; and we do not recommend any changes, additions or deletions to the document.

We will be filing for a Category 3 slot machine license, and would locate the machines at one of our two resorts. This is a brief summary of who we are:

Vacation Charters Ltd was incorporated in 1978, under the laws of the Commonwealth of Pennsylvania; and, since 1981 have owned and operated The Resort at Split Rock; and since 1999, Mountain Laurel Resort and Spa, both in Lake Harmony and the Pocono Mountains of Pennsylvania. Together, we offer tourist, group and timeshare accommodations featuring over 750 rooms between the two resorts. Our on site amenities include golf, indoor and outdoor tennis & pools, bowling, movie theater, basketball, miniature golf, boating & lakeside beach, activity programs, restaurants, lounges, entertainment and banquet or meeting capacity to service up to 2,000 persons in one room; exceeding the requirements set forth in the PGCB regulations.

The Company is already approved for and building an additional 264 two bedroom suites over the next 8 years; in addition to a 48,000 square foot, \$16M indoor waterpark that is scheduled to open in the winter of 2006-07. Our Mountain Laurel Resort is strategically located at the Lake Harmony exits of both Interstates 80 & 476 (PA Turnpike's NE Extension); with Split Rock Resort located just 4 miles from the same intersection. Both are an ideal location for travelers from the Philadelphia, New York and Baltimore/Washington areas.

We look forward to being considered for one of the two Category 3 licenses.

Sincerely,



Charles J. Dickinson
Project Manager



DRAFT REGULATIONS COMMENT FORM

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SEP 06 2005

Please complete all of the fields below before printing:

DATE	09/01/2005	ADDRESS 1
SECTION # OR SUBJECT		ADDRESS 2
FIRST NAME	Charles	CITY
LAST NAME	Dickinson	STATE
ORGANIZATION NAME	Vacation Charters Ltd.	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE

COMMENTS

We have reviewed Annex A, Title 58, Part VII, Subpart A, Chapter 405; and Subpart C, Chapter 441 & Chapter 443; and in particular Chapter 443.5 regarding the Category 3 slot machine license, for which we will be submitting an application. We found the information brief and straightforward, and do not recommend any changes, additions or deletions to the document.

SEP 06 2005

September 2, 2005

Thomas Decker, Chairman
Pennsylvania Gaming Control Board
Harrisburg, Pennsylvania 17106-9060

Dear Mr. Decker and Members of the Board:

Thank you for this opportunity to comment on the draft regulations for operators of gaming facilities in the State of Pennsylvania. I believe the Board should adopt specific consumer regulations that will guarantee that the patrons of the new casinos will be treated fairly by the operators of the casinos. Unfortunately, House Bill 2330, passed by the Pennsylvania Legislature on July 1, 2004, does not contain many protections for casino customers. However, the legislative intent stated in Section 1102 states that an objective of the legislation is to "...*protect the public through the regulation and policing of all activities involving gaming...*" Other than stating that customer security is to be protected and that there will be minimum gross payouts of 85%, few specifics of how patrons are to be treated by the casino operators are contained in the legislation.

Since the Gaming Control Board is given broad authority to establish and regulate casinos in the state, I believe that the Board should go further and take an affirmative role in establishing consumer protections. Allow me to explain the areas that I believe should be covered in regulations that should be enacted by the Board. I would suggest that the Board enact regulations that I would call the **Pennsylvania Casino Player's Bill of Rights**. I have attached a draft of these proposals.

I believe that regulations codifying consumer protections should be required of all applicants as a term and condition of receiving a slot machine license. Operators should be required to treat their customers fairly. Enacting regulations to protect Pennsylvania consumers will insure that our new casinos will provide consumers with a full opportunity to enjoy our new gaming facilities.

Sincerely,



Jeffrey Small
Attorney

Pennsylvania Casino Players Bill of Rights

Jeffrey Small, Esq.,

1. No Gaming Devices Shall Intentionally Mislead a Player

Certain slot machines are intentionally designed to deceive novice gamblers. For example, the “Wheel of Fortune” machine contains a bonus feature. If the player reaches the bonus round, he may spin a wheel that consists of 22 equal spaces. However, the player does not have an equal chance of winning the posted prizes. The greater bonuses are extremely rarely paid out, even though it appears visually that there is an equal probability of winning each prize. If a machine has equal spaces on a wheel, the probability of receiving the prize represented by each space should be equal. No intentionally deceptive machines should be permitted on the casino floor.

2. Deceptive Jackpots Shall Not be Allowed

A recent trend in some casinos is to advertise that a player can win millions of dollars on a “penny” slot machine. However, to qualify for the largest jackpots, the player must insert 300 “pennies” or the same \$3.00 that would be played on a dollar machine to qualify for the jackpot. Such misleading practices should not be allowed.

3. Players Shall Not be Pressured To Play Above Their Means by the Casinos Only Making High Denomination Machines Available

Initially, when the new casinos will be very crowded, operators may take advantage of the situation by disproportionately making high denomination machines available—and failing to devote floor space to 5 and 25 cent machines. A reasonable proportion of the machines must be set-aside for five-cent players. It is fundamentally unfair for the casino to encourage a player to exceed their budget by only making high denomination machines available.

4. Players Shall Not be Pressured To Play Above Their Means by Being Required to Play Multiple Coins to Win A Posted Jackpot

If a player has to insert five coins to have a chance to win the jackpot a five-cent machine really is a twenty-five cent machine. Many machines have pay schedules that force a player to insert multiple coins to achieve the maximum jackpot. (For example, a player who receives 3 Red 7 symbols will win 100 coins if one coin was played. However, if he plays the maximum of 5 coins the payout is not proportionate at 500 coins—the player would win 2,500 coins. Thus, to achieve the posted jackpot the player must insert maximum coins in the machine.) Proportionate jackpots on individual machines should be winnable at any level of play. On linked (progressive) machines, if the casino has jackpots that require more than one coin to qualify for the progressive prize, players must be clearly informed that the machine requires a specific number of total coins to win the posted prize.

- 5. All Pay Schedules Must be Clearly Posted and All Posted Winning Combinations Must be Achievable.**
Some types of machines, such as video poker machines, have significantly different pay schedules for the same hands (a flush payout may vary by 33% or more). Customers must be able to see the pay schedules before they play the game. Machines that have substandard payouts should be easy for a player to spot and avoid. In addition, when a payout is listed, such a bonus feature that pays a certain number of coins, there must be verification that such a payout will (eventually) occur.
- 6. Rebates/“Comps” Must be Available to the Average Player.**
“Slot Clubs” have proliferated in the industry. However, if a casino has a regional monopoly, management may not feel that it is necessary to institute significant payback systems to their customers. All operators should pledge to return a proportion of coin-in to their players in the form of “comps”. Most slot clubs offer on premises food, some offer accommodations or merchandise. The value of these comps that will be returned to the players should be considered when an application is evaluated. The player should also be able to quickly determine his balance, and the amount of play needed for a particular award. In addition, points should not expire quickly; a player should only have to visit occasionally to keep an account active.
- 7. Security Must be an Operator’s Highest Priority**
The legislation states that detailed site plans must be submitted including proposed security and surveillance measures. A customer who is lucky enough to win should not be concerned about leaving the premises. The operator’s security plans must include surveillance of all parking areas and adequate lighting in all accessible locations. There must also be security available to escort patrons to their cars if requested.
- 8. Adequate, Reasonably Priced Parking (and Public Transportation) Must be Available**
Casino Windsor charged \$50.00 per car for valet parking. The reason that patrons were willing to pay this outrageous charge was that they avoided having to wait in line to get into the casino. Operators should not be allowed to take advantage of the public in this manner. Urban casinos should be placed where there is easily accessible public transportation as well as garage facilities that are accessible and inexpensive.
- 9. The Operator Must Pledge to Appropriately Serve the Needs of the Public**
All casino operators in Pennsylvania should pledge to respect the special needs of all of their customers. No smoking areas, easy handicapped access, adequate dining facilities, and accessible rest room facilities throughout the

casino should be among the factors carefully evaluated when an application is considered.

10. Dispute Resolution Should be Prompt and Inexpensive

The Board must make sure that all operators treat the public fairly, even when there is a disagreement. Patrons should have access to an accelerated dispute resolution procedure. Rather than being forced to file a lawsuit if there is a disagreement, a customer should have the right to refer any unresolved dispute to binding arbitration before a recognized impartial third party. Each casino operator should submit a detailed dispute resolution procedure to the Board for approval.



House of Representatives
COMMONWEALTH OF PENNSYLVANIA

PGCB CAT2-3-BIE-7

COMMITTEES

Aging & Older Adult Services
Agriculture & Rural Affairs
Health & Human Services
Judiciary
Policy

CAUCUSES

Firefighter & Emergency Service
Tax Reform
Historical Preservation

APPOINTMENTS

PA Historical & Museum Commission
Advisory Committee on Probation
Board of Probation and Parole
Interstate Commission on the
Potomac River Basin

September 2, 2005

PA Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, PA 17106-9060

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SEP 06 2005

Dear Commissioners:

I am writing to you today to submit proposed amendments to your Category 2 and 3 licensing regulations. Please consider these amendments as you move your regulations down the path to final form.

Reference: CHAPTER 405.5 BUREAU OF INVESTIGATIONS AND ENFORCEMENT, Conduct

COMMENT ON 405.5: This section describes well the establishment and operation of the Investigative Bureau within the board, but fails to cover how this operation will interact with the existing State law enforcement organizations. There is a risk that this bureau as subsidiary to the board could be subject to a conflict of interest with respect to the investigation and enforcement of the States gaming laws. Such an appearance could negatively impact the public trust in the operation of Pennsylvania's gaming operations, and thus negatively impact potential revenues.

PROPOSED CHANGE: Add 405.5 (d) *The Bureau of Investigations will cooperate fully with the established State and local law enforcement organizations in the enforcement of the laws of the State of Pennsylvania including those covered under the various gaming acts of the State of Pennsylvania.*

**Reference CHAPTER 441.14 SLOT MACHINE LICENSES
Notification of new financial sources**

CAT2-3-BIE-7.1

COMMENT: Although the draft regulations state that the Board must be notified of any changes in Key Employees or of changes in Financial Ownership, they fail to state what happens if the licensee fails to conform to these requirements. It is clearly the intent of the legislation to ensure that key employees and owners are above reproach.

PROPOSED CHANGE: Add: *Failure to notify and gain approval of the Board for any changes in key employees or ownership will result in the revocation of the gaming license.*

Reference: 443.4 (a)(2) Category 2 slot machine licenses
(I am offering 3 Comments on this one section)

443.4(a)(2) reads "A statement detailing and establishing that the proposed location is in a revenue or tourism-enhanced location...the statement shall include the appropriate business and tourism studies, economic impact studies, projected revenue..."

COMMENT 1 ON 443.4 (A) (2): There is a great difference between different categories of tourists. What appeals to tourists in one category may repel those in another category. In areas near historical sites, especially National Parks administered by the U.S. National Park Service, the effect of gambling on tourists visiting these parks must be assessed. For example, a July 2005 survey of heritage tourists in Gettysburg found that 96% opposed the building of a casino in the area, and 53% said they would not return if one were built. Such a decline in heritage tourism would be a severe blow to the community. One of the reasons that heritage tourists would not return is a belief that Casinos are inappropriate environments for families. Our society and the legislation recognize that Casinos are inappropriate for children and bans them from entering them. In addition to the negative impact on tourism, the board should consider the wide spread public perception that Casinos are not appropriate operations to place near children and should ensure that they be placed a significant distance away from our historical centers.

PROPOSED CHANGE ON 443.4 (A) (2): Follow "revenue or tourism-enhanced location" with "not adjacent to a National Battlefield, National Historic Park, or National Military Park, as administered by the National Park Service."

COMMENT 2 ON 443.4 (A) (2): Too often static business plans are prepared which do not adequately consider costs, market share, or probable competitive reaction. Decisions made on such plans are normally followed by disappointment as reality sets in.

For instance, when a Casino is proposed for a given area, how will that Casino fit with or compete against the existing tourist trade? If the area already has a large tourist trade, this trade may see a decline in business as the current tourists fail to return to an area where a casino is established, as has been indicated in surveys of Gettysburg tourists, or the tourists may return but stop going to their prior tourist destinations going instead to the Casino. In either event, the existing local tourist businesses may see a decline in business that may or may not be offset by the casino business, but in any event will cause economic dislocations.

In addition, how well is an area suited to provide labor for a large proposed casino? For example, Adams County, with has a low unemployment rate of about 3.7% or 2000 workers out of 98,000 total people, can be compared with Lehigh County with a 5.7% unemployment rate and 9600 unemployed people out of 326,000 total people, or Monroe County with a 5.7% unemployment rate and 7700 unemployed people out of 157,000 total people. Clearly it is easier for Lehigh and Monroe to provide a workforce for a casino than Adams. In providing this workforce they would most likely reduce their unemployment thus reducing state and local social costs. For Adams to provide the workers, relative to Lehigh and Monroe, would most likely require growth in the workforce and expansion in housing, roads, schools, and public services to handle this growth. Relative to Lehigh and Monroe counties state and local social costs would most likely rise in Adams, thus offsetting any potential benefits from proposed licensees.

In addition to explaining how a proposed casino would fit with the existing tourism trade and how it would impact employment and local social costs, the potential licensee should provide detailed market studies from whence they will draw their customers. Pennsylvania has decided to establish twelve racinos and casinos and two resort casinos, and the Board needs to fully understand specifically what markets the potential licensees are pursuing and how these markets may

overlap. Philadelphia is well situated to capture potential gamblers from Baltimore and as far south as Washington due to its rail access and the attraction of its nightlife and other entertainments. Heritage tourists to Gettysburg have indicated that they have little interest in a Casino, and in fact may not return at all to the town. Experience from Vicksburg shows there is almost no cross over between heritage tourists and riverboat casino patrons. The board needs to critically evaluate all the proposals to ensure it maximizes the State's revenue and avoids counting the same gambling dollar two or three times as different potential licensees explain their prospective patrons.

Further, prospective licensees need to explain what the potential impact on their business will be from further gambling legalization in adjoining states. In the last session both the House and Senate of Maryland's legislature passed bills authorizing casinos. Only the end of the session saved these two bills from being reconciled. The introduction of gambling to Maryland would severely limit visitors to Philadelphia's casinos and racinos from south of Pennsylvania. In describing its potential patrons each potential licensee should explain what would limit the probability of that potential patron from visiting its operation.

PROPOSED CHANGE ON 443.4 (A) (2): Add after "The statement shall include the appropriate business and tourism studies, economic impact studies, projected revenue, and business plans."

The economic impact studies shall include: a) an assessment of the economic impact of the proposed licensed facility on existing tourism, including heritage tourism, and businesses servicing tourists; b) an assessment of the impact of the proposed licensed facility on current unemployment and community growth, which includes an estimate of how many employees will be employed by the proposed licensed facility and what geographic areas the employees will be drawn from; c) a detailed analysis of the anticipated customer base of the proposed licensed facility, which includes an assessment of what geographic areas the customers will be drawn from; d) an assessment of the economic impact that the proposed licensed facility will have on Category 1 slot machine licensees and the other Category 2 slot machine licensees; and e) an assessment of the impact of anticipated and potential competitive responses of existing and proposed gaming operations in Ohio, West Virginia, Maryland, Delaware,

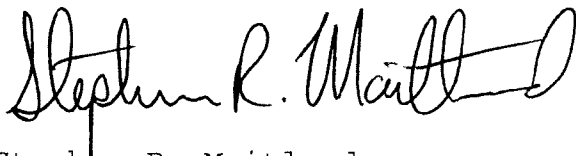
New Jersey and New York on the operation of the licensed facility.

COMMENT 3 ON 443.4 (A) (2): Consistent with the recommendation above that licensees not establish their operations near national parks the below language provides guidance on an acceptable buffer zone from such facilities. Again it is important to protect areas of unique national historical importance. The U.S. Congress recognizing the importance of such unique areas has designated the most important of these as National Battlefields, National Historical Parks and National Military Parks to be administered by the National Park Service of the U.S. Interior Department. The purpose of Congress of preserving these areas would be significantly impaired if development was permitted of businesses, facilities, buildings or other entities which would adversely change the character of the area surrounding a National Park. The regulations should be amended to support Congress' goal of fully preserving what have long been national treasures and an important part of our country's heritage.

PROPOSED CHANGE ON 443.4 (A) (2): Add a new sub section (c) to read *"Notwithstanding the foregoing, the Board may not issue a Category 2 slot machine license within a city of the First or Second Class, for a facility to be located within two miles of the boundary of a National Battlefield, National Historic Site, or National Military Park, as administered by the National Park Service, and for any other location within fifteen miles of the boundary of a National Battlefield, National Historic Site, or National Military Park, as administered by the National Park Service."*

Thank you for your kind consideration of these changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen R. Maitland". The signature is fluid and cursive, with a large initial "S" and "M".

Stephen R. Maitland
State Representative

RECEIVED

SEP 07 2005

No Casino Gettysburg

9/6/05

To: Attention: Public Comment
Office of Communications
Pa. Gaming Control Board
PO BOX 69060
Harrisburg, PA. 17106-9060

From: Rules and Regulations Sub-Committee,
No Casino Gettysburg

Members: James E. Paddock, RLA , Committee Chair
Susan Star Paddock, MSW
Ed Puhl, J.D.
Keith Miller,
Marty Qually
Graham Weaver

We gratefully acknowledge the assistance of Rep. Steve Maitland and Rep. Paul Clymer in reviewing these comments prior to submission.

No Casino Gettysburg is a non-profit volunteer citizen advocacy group formed with the single goal of preserving the historic tourism and historic integrity of Gettysburg and Adams County, PA. More information may be found at www.nocasinogettysburg.com

Re: Draft Rules and Regulations Governing Application and Licensing Requirements for Operators of Category 2 and 3 Gaming Facilities across the Commonwealth.

Re: Public Comments on Draft Rules and Regulations

Title 58. Recreation re. Category 2 and 3

[58 PA. Code CHS 405.5, 441.14 and 443.4] as pertains to ACT 71.

Pennsylvania Gaming Control Board

CAT2-3-BIE-8.1

Reference: CHAPTER 405.5 BUREAU OF INVESTIGATIONS AND ENFORCEMENT, Conduct

COMMENT ON 405.5: This section describes well the establishment and operation of the Investigative Bureau within the board, but fails to cover how this operation will interact with the existing State law enforcement organizations. There is a risk that this bureau as subsidiary to the board could be subject to a conflict of interest with respect to the investigation and enforcement of the States gaming laws. Such an appearance could negatively impact the public trust in the operation of Pennsylvania's gaming operations, and thus negatively impact potential revenues.

PROPOSED CHANGE: Add 405.5 (d) *The Bureau of Investigations will cooperate fully with the established State and local law enforcement organizations in the enforcement of the laws of the State of Pennsylvania including those covered under the various gaming acts of the State of Pennsylvania.*

**Reference CHAPTER 441.14 SLOT MACHINE LICENSES
Notification of new financial sources**

COMMENT: Although the draft regulations state that the Board must be notified of any changes in Key Employees or of changes in Financial Ownership, they fail to state what happens if the licensee fails to conform to these requirements. It is clearly the intent of the legislation to ensure that key employees and owners are above reproach.

PROPOSED CHANGE: Add: *Failure to notify and gain approval of the Board for any changes in key employees or ownership will result in the revocation of the gaming license.*

**Reference: CHAPTER 443.4 (a) (2) Category 2 slot machine licenses
(We are offering 3 Comments on this one section)**

443.4(a)(2) reads "A statement detailing and establishing that the proposed location is in a revenue or tourism-enhanced location...the statement shall include the appropriate business and tourism studies, economic impact studies, projected revenue..."

COMMENT 1 ON 443.4 (A) (2): --There is a great difference between different categories of tourists. What appeals to tourists in one category may repel those in another category. In areas near historical sites, especially National Parks administered by the U.S. National Park Service, the effect of gambling on tourists visiting these parks must be assessed. For example, a July 2005 survey of heritage tourists in Gettysburg found that 96% opposed the building of a casino in the area,

and 53% said they would not return if one were built. Such a decline in heritage tourism would be a severe blow to the community. One of the reasons that heritage tourists would not return is a belief that Casinos are inappropriate environments for families. Our society and the legislation recognize that Casinos are inappropriate for children and bans them from entering them. In addition to the negative impact on tourism, the board should consider the wide spread public perception that Casinos are not appropriate operations to place near children and should ensure that they be placed a significant distance away from our historical centers. Surely it is outrageous for busloads of schoolchildren to ride past a casino on their way to Independence Hall or Gettysburg National Military Park.

If the Board accepts the inappropriateness of locating casinos next to such national parks it should inform potential licensees now, before they expend significant funds in developing proposals for sites that will be rejected due to proximity to national parks. Further, by providing clear direction on this now, potential licensees can develop their plans to take account of such provisions thus ensuring that the Board receives better proposals.

The suggestion below states this case while the last suggested change provides guidance on what is an acceptable buffer between national parks and any proposed casino.

PROPOSED CHANGE ON 443.4 (A) (2): *follow "revenue or tourism-enhanced location" with "not adjacent to a National Battlefield, National Historic Park, or National Military Park, as administered by the National Park Service."*

COMMENT 2 ON 443.4 (A) (2): Too often static business plans are prepared which do not adequately consider costs, market share, or probable competitive reaction. Decisions made on such plans are normally followed by disappointment as reality sets in.

For instance, when a Casino is proposed for a given area, how will that Casino fit with or compete against the existing tourist trade? If the area already has a large tourist trade, this trade may see a decline in business as the current tourists fail to return to an area where a casino is established, as has been indicated in surveys of Gettysburg tourists, or the tourists may return but stop going to their prior tourist destinations going instead to the Casino. In either event, the existing local tourist businesses may see a decline in business that may or may not be offset by the casino business, but in any event will cause economic dislocations.

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Further, prospective licensees need to explain what the potential impact on their business will be from further gambling legalization in adjoining states. In the last session both the House and Senate of Maryland's legislature passed bills authorizing casinos. The session ended before a final vote could take place but it appears likely to pass. The introduction of gambling to Maryland would severely limit visitors to Pennsylvania's casinos and racinos from south of Pennsylvania. In describing its potential patrons each potential licensee should explain what would limit the probability of that potential patron from visiting its operation.

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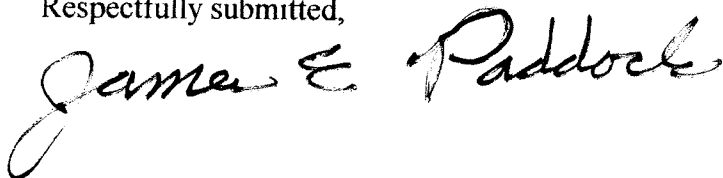
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slot machine licensees; and e) an assessment of the impact of anticipated and potential competitive responses of existing and proposed gaming operations in Ohio, West Virginia, Maryland, Delaware, New Jersey and New York on the operation of the licensed facility.

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Respectfully submitted,



James E. Paddock, Committee Chair
Rules and Regulations Subcommittee,
No Casino Gettysburg.



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SEP 08 2005

September 6, 2005

Thomas Decker, Chairman
Pennsylvania Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, PA 17106-9060

Attn: Public Comment

Dear Chairman Decker:

My name is Judith A. Eschberger, Esq. and I am a member of the firm, Novak Strategic Advisors which is retained by Seven Springs Mountain Resort, Inc. to provide them with Government Relations services with regard to legislative, executive and regulatory proceedings in Pennsylvania. I am specifically contacting you and the Pennsylvania Gaming Control Board on behalf of Seven Springs Mountain Resort, Inc. in order to provide the following comments to the Draft Regulations published in the August 13, 2005 edition of the Pennsylvania Bulletin.

In our review of the Rules and Regulations [58 PA CODE CHS 405, 441 and 443], Section 443.5 (a)(2) requires a "statement detailing the proposed plans and locations of the licensed facility," but gives no specifics as to what is to be included. The Regulation lacks detailed information regarding whether a simple description will be sufficient or whether architects drawings or blueprints will be necessary to satisfy this requirement. Also, there are no additional definitions to provide guidance regarding what the Board will consider a "well-established resort hotel" or "substantial year-round recreational guest amenities." There is no indication as to whether the Board will consider qualities such as the number of years that the resort has been in business within the Commonwealth, the number of individuals currently employed by the resort, the revenues generated by the resort or the number of patrons at the resort each year. In fact the Regulations regarding Category 3 licenses do little more than restate the initial language found in Section 1305(a) of Act 71 of 2004.

Additionally, Section 1305 (e) of Act 71 states, in the definition of "Amenities" that the Board define what is meant by "non-de minimis consideration," however, there is no definition included in the Draft Regulations. We would suggest for purposes of determining whether a

member of the transient public has paid a “non-de minimis consideration,” that when a member of the transient public has paid 20 dollars toward use of the resort amenities, h/she is a patron of the amenities and paid a “non-de minimus consideration.”

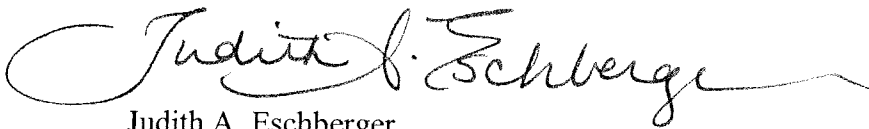
Section 443.5 (a)(3) requires “Documentation satisfactory to the Board” and suggests several items for corporations, partnerships and limited liability companies, but gives no indication as to what documents would be insufficient. Additionally, there is a suggestion by the inclusion of the language “Documentation may include but not be limited to copies of the following documents” that other items may be required by the Board, but again there is no indication of what other types of information or combination of information may be necessary to satisfy the Board’s requirements.

Section 443.5 (a)(4) requires a “plan detailing how the applicant, as part of its operational plan, will monitor the gaming area...” but does not specify whether the plan for purposes of obtaining the license will amount to no more than a statement describing general plans or whether the proposed licensee must retain a consultant to design a specific plan, nor do the regulations specify what constitutes a suitable plan in order to satisfy the requirement.

Section 443.5 (a)(5) indicates that the applicant must provide “any and all information deemed necessary by the Board to determine the operational viability, financial fitness or character of the applicant,” but does not specify what type of information or combination will satisfy the requirement or what type of information will be deemed insufficient.

Thank you for the opportunity to provide you with comments regarding the Category 3 slot machine license.

Very truly yours,

A handwritten signature in cursive script that reads "Judith A. Eschberger". The signature is written in black ink and is positioned above the printed name.

Judith A. Eschberger

cc: Scott Bender, President
Seven Springs Mountain Resort, Inc.

RECEIVED

SEP 08 2005

Mark S. Stewart

September 6, 2005

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
ATTN: Public Comment

Re: Proposed Chapters 405, 441 and 443

Dear Sir/Madam:

On behalf of Nemaocolin Woodland Resorts, we are filing the enclosed comments to draft regulations .

Please direct any questions or comments to me.

Sincerely,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls
Enclosures

HAR:60939.1/NEW252-221315

CAT2-3-BIE-10.1

Boston, MA ■ Cherry Hill, NJ ■ Harrisburg, PA ■ New York, NY ■ Norristown, PA ■ Philadelphia, PA ■ Roseland, NJ ■ Wilmington, DE

WolfBlock Government Relations - Harrisburg, PA ■ WolfBlock Public Strategies - Boston, MA and Washington, DC

Wolf, Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

DRAFT REGULATION COMMENT FORM

Please complete all of the fields below before printing:

DATE	09/06/2005	ADDRESS 1
SECTION # OR SUBJECT	Draft Regulations - Title 58 of the Pennsylvania Code, Chpts. 405, 441 & 443	ADDRESS 2
FIRST NAME	Alan	CITY
LAST NAME	Kohler	STATE
ORGANIZATION NAME	Wolf, Block, Schorr and Solis- Cohen LLP	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE

COMMENTS

See attached comments submitted on behalf of Nemaquin Woodland Resorts.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

In re: Promulgation of Temporary
Regulations Under Title 58 of the
Pennsylvania Code, Chapters 405, 441 and
443

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**NEMACOLIN WOODLAND RESORT’S
COMMENTS TO DRAFT REGULATIONS**

I. INTRODUCTION

Nemacolin Woodland Resorts, Inc. (“Nemacolin”) respectfully submits these comments to the Pennsylvania Gaming Control Board (“PGCB” or “Board”) in regard to its publication of draft regulations on August 4, 2005. The regulations are intended to implement the provisions of the Pennsylvania Race Horse Development and Gaming Act (the “Act”), 4 Pa. C.S. § 1101 *et seq.*, and address licensure of Category 2 and 3 licensees, requirements applicable to all slot machine licensees, and provisions pertinent to the Board’s Bureau of Investigations and Enforcement.

Nemacolin greatly appreciates and is honored to have this opportunity to submit comments to the PGCB and participate in the process of bringing gaming and all of its associated benefits to the Commonwealth of Pennsylvania in a dignified and appropriate manner. As an initial point, Nemacolin recognizes that the Board faces a tremendous challenge in literally creating an entirely new state agency while simultaneously establishing and regulating an entirely new gaming industry in Pennsylvania. The Board has been meeting this challenge with thoughtfulness, integrity and concern for the public interest, despite the many pressures to do so as quickly as possible. Nemacolin stands ready to assist in that endeavor, and hopes that these

comments evidence that desire along with the quality and care that Nemaocolin lends to all of its initiatives.

As explained herein, Nemaocolin commends the PGCB on its draft regulations as they concern Category 3 licensees. Nonetheless, Nemaocolin respectfully submits that the proposed regulations can be improved, and urges the Board to recognize and incorporate into the regulations the unique status of Category 3 licensees that is plainly reflected within the Act. The uniqueness of Category 3 licensees stems primarily from two key facts: (1) Category 3 licensees are to be well established entities with substantial amenities that have a history as a successful enterprise and an established record as a business in Pennsylvania; and (2) the gaming authorized at Category 3 licensees' facilities is significantly limited both by the number of slot machines a licensee may have and the persons eligible to play those machines (*i.e.*, guests and/or patrons).

Given this unique status, the Board should ensure that its Category 3 regulations strike the appropriate balance. Such a balance entails both ensuring that the generally applicable requirements on all slot machine licensees are not overbroad when imposed on a Category 3 applicant or licensee, and ensuring that the Category 3-specific requirements are sufficiently rigorous to yield the quality of licensee that the Act envisions and that will be required to provide the anticipated level of tax revenues and associated benefits to the Commonwealth. In other words, while strict regulation of Category 3 licensees is appropriate, it would be inappropriate to impose the same level of regulation, including licensing application requirements, on a business that seeks to operate 500 slot machines as on a business that seeks to operate 5,000 slot machines. Assuming that the final Category 3 regulations promulgated achieve this important balance and are reasonable, Nemaocolin is seriously considering applying for such a license.

II. BACKGROUND

Nemacolin Woodland Resort and Spa, located in the scenic Laurel Highlands of Pennsylvania, has been hosting, entertaining and offering relaxation and enjoyment to citizens of and visitors to the Commonwealth for nearly 20 years. Nemacolin's 335 room resort and substantial amenities consist of some 2,800 acres of nature, entertainment and recreation. Nemacolin employs approximately 900 Pennsylvanians on a year round basis, with its peak season employment exceeding 1,200 employees, and an annual payroll of approximately \$23 million. These employment opportunities offer competitive wages and salaries, as well as attractive benefits, including affordable educational and training courses at its on-site branch of the American Hotel and Motel Association's Educational Institute, scholarships and reimbursement programs for such courses, and an on-site, state-licensed daycare facility for employees.

Moreover, Nemacolin is a business leader in Fayette County and western Pennsylvania. Nemacolin supports businesses throughout the region and Pennsylvania through the purchase of some \$22 million in goods and services each year. The region experiences additional, positive economic impact as a result of Nemacolin's hosting of the PGA Tour's 84 Lumber Classic. Nemacolin also works closely with Penn State University, Westmoreland County Community College, the Pennsylvania Culinary Institute and other area schools to assist them in offering a positive educational experience to their students that leads to job placement opportunities.

The nearly 300,000 guests, families and patrons that visit Nemacolin each year from the mid-Atlantic region, the United States and literally around the world offer convincing testimony to Nemacolin's experience and success in creating a destination for entertainment and recreation. Nemacolin's expansive year-round offerings include: 36 holes of golf on two courses, including Mystic Rock, the home of the PGA Tour 84 Lumber Classic; the John Daly Learning Center and

David Leadbetter Golf Academy; a 32,000 square foot, full-service spa; the Mystic Mountain ski area, comprised of 10 downhill slopes, cross-country skiing, snowboarding and snow tubing courses; family recreational activities, lighted tennis courts and an Adventure Center, featuring climbing walls, ropes courses, zipping which involves a thrilling ride down a 250 foot cable, paintball, mountain biking, miniature golf; and the Off-Road Driving Academy where guests can drive H1 and H2 Hummers over rugged terrains; the \$2 million Paradise Pool swimming complex; a world-class Equestrian Center with a 270,000 square foot, regulation polo field; a 147 acre Sporting Clay Shooting Academy, with its own lodge and the Peter J. Magerko Gun Museum; boating and fishing opportunities on a series of lakes; an aquarium; and special entertainment events.

In addition to these impressive amenities, Nemaocolin has been a leader in providing first rate conference and banquet facilities. Businesspeople, banquet guests and conferees have access to 31,000 square feet of flexible meeting and banquet space, including four ballrooms, a 200 seat lecture hall, 25 meeting rooms and a business center. Travel to Nemaocolin is also eased by its private, 3,900 foot airstrip.

Whether enjoying a vacation or attending a conference, guests at Nemaocolin can choose from a diverse collection of 14 restaurants and lounges, including three award-winning, fine dining experiences. Additionally, Nemaocolin's 55,000 square foot shopping arcade and 14 specialty shops provide guests with a first rate shopping experience.

Statistics are not the only indicia of its success, though, as Nemaocolin has been recognized by numerous travel, culinary and spirits, business and sporting publications. Nemaocolin's resort has been highly rated by AAA (four diamonds), the *Mobile Travel Guide* (four stars), the *Zagat Survey*, *Conde Nast Traveler*, and the Pennsylvania Tourism & Lodging

Association. Very importantly to Nemaquin, it was selected as one of five “perfect family getaways” by *Harper’s Bazaar* and was featured as one of twelve “kid-friendly” resorts by the *Wall Street Journal*. The Woodlands Spa was ranked 8th on the top 20 resort spas in the United States and Canada by *Travel + Leisure* magazine, was highly ranked by *Elle* and *Harper’s Bazaar* magazines, and was rated the number one kid-friendly spa for the holidays by *Spa Finder*. Nemaquin’s conference and banquet facilities have received awards from *Meetings and Conventions*, *Successful Meetings*, and *Meetings News* magazines. Finally, Nemaquin’s golf courses have earned prestigious recognition, including being ranked as the 13th best golf resort in the United States by *Conde Nast Traveler’s* Reader’s Choice Awards, the 20th best golf resort in North America by *Golf Digest* magazine; in the top 100 courses for women for the last eight years by *Golf for Women* magazine; and one of the top 50 golf resorts in the world for three straight years by *Conde Nast Traveler*.

The purpose of this background is not to boast. Rather, Nemaquin only seeks to assure the Board of its experience in creating points of destination, in terms of entertainment, recreation and business/conference functions, and its understanding of the factors and amenities needed to attract such guests as well as the impact that creating such destination points have on surrounding communities. These comments stem from and rely on that experience, and they are designed to assist the Board in promulgating regulations that will foster the type of Category 3 licensees envisioned by the Act, help ensure that Pennsylvania gaming reaches its full potential, and make certain that the Commonwealth and its citizens and property owners realize the benefits expected from the Act.

III. COMMENTS

A. General Comments

As discussed above, the Pennsylvania Race Horse Development and Gaming Act clearly recognizes Category 3 licensees as being unique from the other categories of slot machine licensees and as warranting special regulatory consideration. Under the Act, the Board may issue only two Category 3 licenses, and only sizeable, well established resort hotels with qualifying amenities are eligible for licensure. 4 Pa. C.S. §§ 1305(a) and 1307. Additionally, only limited gaming is authorized at such facilities, as Category 3 licensees will be permitted to operate no more than 500 slot machines and only registered overnight guests of the resort and patrons of its amenities are permitted to play the slot machines. 4 Pa. C.S. § 1305(a) and (c). Finally, many of the financial requirements under the Act and the Board's regulations to date are less onerous as to Category 3 licensees, including the reduced license fee of \$5 million and bonding requirements. 4 Pa. C.S. § 1305(d); 58 Pa. Code § 441.10.

Like the Act, this special status of Category 3 licensees should be reflected in the Board's regulations. The Board can accomplish this goal in at least two ways. First, rather than a blanket incorporation by reference of "all requirements in Chapter 441" of the Board's regulations (*See* § 443.5(a)), a careful review of each general requirement should be conducted and, where a particular requirement is determined to be overbroad or otherwise not applicable to a Category 3 licensee, an exception should be built into the Category 3-specific regulations in Chapter 443. Alternatively, if an exception is not desirable, a phased-in implementation of the requirement may be appropriate whereby the obligation is imposed after the licenses are awarded, as opposed to during the application phase. A review of the specific Chapter 441 requirements that may qualify for such treatment is included below.

Second, to the extent general requirements may be eased, the Category 3-specific requirements should be enhanced to ensure that the intent of the Act in creating this unique

category of licensure is implemented. Section 1305(a) of the Act dictates that a Category 3 facility may only be located in a “well established resort hotel with no fewer than 275 guest rooms under common ownership and having substantial year-round recreational guest amenities.” 4 Pa. C.S. § 1305(a) (emphasis added). Clearly, the type of establishment envisioned by this statutory language is not any old hotel with a pool, a ballroom and a bar or lounge. Instead, the Act’s language connotes a large facility, that has all the hallmarks of a full scale, high quality resort that is a destination for both tourism and business/conference travelers, and has a significant history of serving guests in Pennsylvania along with a well-established record as a corporate citizen, compliant with regulatory requirements and industry norms. This notion is further bolstered by the general policy in the Act that entities awarded a license be “revenue or tourism enhanced locations” that will “maximize net revenue to the Commonwealth or enhance year-round recreational tourism.” 4 Pa. C.S. §§ 1102(3), (5)-(6), 1103.¹

Additionally, Section 1305(a) plainly calls for Category 3 licensees and applicants to not simply have a few amenities, but rather to have “substantial” year-round amenities. Accordingly, the Category 3-specific regulations should embody the level of quality demanded of Category 3 licensees and applicants in the Act, and should establish more rigorous eligibility and amenity requirements. Doing so will not only track the language and intent of the Act, but will also eliminate inefficiency and unnecessary costs in the Act’s implementation and result in the type of Category 3 licensees that can generate the public benefits contemplated by the General Assembly.

B. Specific Comments

¹ While being a “revenue or tourism enhanced location” is a statutory requirement for Category 2 licensees, the cited statements of legislative intent in Section 1102 make clear that, as a matter of policy, all successful license applicants should constitute such locations.

1. Section 441.4(a)(21).

This provision requires that all slot machine applicants supply the PGCB with an extensive local impact report, which must include, at a minimum: engineering reports and traffic studies, including details of any adverse impact on transportation, transit access, housing, water and sewer systems, local police and emergency service capabilities, existing tourism, including historical and cultural resources or other municipal service or resource. Plainly, this requirement envisions applications for the establishment of new or dramatically improved gaming facilities, fully open to the public, housing 5,000 slot machines, and creating a major attraction in localities where one previously did not exist, or at least not to this degree.

However, pursuant to Section 443.5(a) of the proposed regulations, this requirement will also apply to Category 3 applicants. As noted, Category 3 applicants must be well-established resort hotels with substantial year-round recreational amenities. These establishments should already be significant public destination points. The introduction of gaming at these facilities will simply be an additional amenity (albeit an important one) to the “substantial” amenities already being offered to guests, and the local impact from the addition of gaming at the resort should be only minimally affected, if at all. This fact is confirmed by the limited nature of gaming permitted at the proposed Category 3 facility, both in terms of the number of slot machines allowed and their exclusive use by guests/patrons.

Accordingly, the far ranging local impact study required of applicants for other categories of licensure is unnecessary in the Category 3 context. Nemaclin respectfully submits that a provision waiving or limiting this requirement should be added to Section 443.5 of the proposed regulations. Alternatively, the proposed regulations could clarify that requirement could be fulfilled through the submission of a statement by an officer of a Category 3 applicant generally addressing the subject matter.

2. Section 441.4(a)(31).

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This provision requires a slot machine license application to explain: “The degree to which potential adverse effects related to the proposed facility, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.” As per Section 443.5(a) of the proposed regulation, this general requirement will apply to all Category 3 applicants.

For the same reasons stated above in Paragraph 1, the requirement that an applicant provide this information should be deemed non-applicable in the Category 3 license context. Indeed, given the unique characteristics of a Category 3 licensee, no basis exists for the assumption inherent in the general requirement that a Category 3 facility will have any adverse effect on the demand for public health care, child care, public transportation, affordable housing or social services. Therefore, Nemaocolin respectfully urges that a waiver of this provision be included in Section 443.5 or a clarification that a statement by an officer of a Category 3 applicant will suffice for compliance.

3. Section 441.5(c)(2).

This provision dictates that applicants for a slot machine license provide the organizational structure, financial structure and nature of all businesses owned or operated by the applicant and its affiliates, intermediaries, subsidiaries and holding companies, including the name and employment and criminal histories of each key employee qualifier and key employee of such businesses. Pursuant to proposed Section 443.5(a), this requirement will be extended to Category 3 applicants.

Here again, this requirement seems overbroad when applied to Category 3 applicants given the level of gaming authorized at such facilities. A Category 3 applicant will already provide similar information for itself, its key employee qualifiers and key employees pursuant to

Section 441.4(a)(2). The additional data and expansion of the demand to affiliates, intermediaries and subsidiaries, plus all of the businesses that those entities own or operate, is a substantial burden on the Category 3 applicant.

For these reasons, adding a waiver of Section 441.5(c)(2) to Section 443.5 appears reasonable and prudent. Ultimately, if deemed necessary, the successful Category 3 licensees could be required to supply such information within 30 or 60 days of the award of the license, with the license being conditioned on a successful review of the data (particularly the criminal history data).

4. Section 441.6(c)(2).

Under this general requirement, slot machine license applications must include a “history of insurance claims for the past seven years or that exceed \$50,000 relating to the business activities of the applicant or its affiliate, intermediary, subsidiary or holding company.” Again, this general requirement is applicable to Category 3 applicants as per proposed Section 443.5(a).

Similar to the previously addressed requirement, this provision appears overbroad when applied to Category 3 applicants, particularly in regard to its expanded scope, which captures affiliates, intermediaries, subsidiaries and holding companies. Moreover, Category 3 applicants, by statutory definition, should all be well-established and successful Pennsylvania businesses, with a history of customer satisfaction, a sound business reputation, and a considerable regulatory track record. As such, Nemaquin respectfully urges the Board to include in Section 443.5 a waiver of this general requirement.

5. Section 443.5(b).

Turning to the proposed Category 3-specific regulations, this provision attempts to give teeth to the eligibility requirement that applicants’ proposed facilities be located at a well-

established resort hotel with substantial year-round amenities. Specifically, the section states that applicants must have three or more of the following amenities: sports and recreational activities and facilities such as a golf course or golf driving range; tennis courts or swimming pool; health spa; convention center; meeting and banquet facilities; entertainment facilities; and restaurant facilities. However, the provision is deficient in several ways and, in order to more closely track the requirements of the Act, should be modified so as to codify the more rigorous eligibility requirements contemplated in Section 1305(a) of the Act.

First, proposed Section 443.5(b) is focused solely on the issue of the amenities at an applicant's proposed facility. The proposed regulation does not address or attempt to provide any definition for the statutory "well-established" resort hotel requirement. Accordingly, a provision should be added to Section 443.5(b) providing some definitional standard for the "well-established" requirement, as is attempted to do with the amenities. Such a provision would also facilitate implementation of the Act's "revenue or tourism enhanced location" policy.

Nemacolin respectfully suggests that the PGCB not attempt to recreate the wheel on this point, but rather look to respected and established travel and tourism rating services for guidance as to the substantive meaning of the well-established eligibility requirement. Two examples of such existing services are AAA and the Mobile Travel Guide. Certainly, based on the requirements of the Act, a three diamond (AAA) or three star (Mobile Travel Guide) rating would be an appropriate minimum eligibility requirement for Category 3 applicants in order to qualify as a "well-established" resort hotel and a "revenue or tourism enhanced location." A Mobile three star rating is described as follows: "A Mobil Three-Star Lodging Establishment is a Hotel/Resort which is well-appointed, with a full-service restaurant and expanded amenities, such as, but not limited to: fitness center, golf course, tennis court, 24-hour room service, and

optional turndown service.”² By comparison, two star hotel/resorts are minimally “considered a clean, comfortable and reliable establishment, but also [with] expanded amenities, such as a full-service restaurant on the property.”³ Such hotel/resort would appear to clearly fall short of the well-established resort hotel described in Section 1305(a) of the Act, as well as the revenue and tourism enhanced location policy outlined in Sections 1102 and 1103, and should not be eligible to be an applicant for licensure.⁴ A copy of the Mobil Travel Guide’s star rating definitions, criteria and expectations are attached hereto as Appendix A for the Board’s convenience.

Second, proposed Section 443.5(b) needs to be clarified in an important respect. Currently, the provision states that applicants must “have” three or more of the referenced amenities. Nemaocolin submits that Section 1305(a) contemplates an eligible resort hotel *owning* the substantial year-round amenities offered in conjunction with its resort. Thus, Nemaocolin respectfully suggests that the proposed regulation be modified to clarify that ownership requirement by replacing the word “have” with the word “own.”

Finally, proposed Section 443.5(b)’s requirement that an applicant have three or more of the cited amenities should be bolstered to more accurately capture the intent of Section 1305(a)’s eligibility requirements. Acknowledging that the proposed provision mirrors the definition of the term “amenities” in Section 1305(e) of the Act and that said definition is broad and generally inclusive, the regulation must still account for the requirement in Section 1305(a) that such amenities be “substantial” and year-round. Accounting for the substantiality requirement could

² See Mobil Stars: Lodging Star Definitions, www.mobiltravelguide.com. These materials are also included in Appendix A hereto.

³ *Id.*

⁴ This requirement could also be built into proposed Section 443.5(a)(2), which requires applicants to submit a statement confirming that the proposed gaming facility will be located at a well-established resort hotel with substantial year-round amenities.

be accomplished by increasing the minimum requirements for both the quality and quantity of amenities.

Accordingly, additional criteria, a tiering approach, or more rigorous standards as to the amenities provided by an applicant may be appropriate. Certainly, requiring that an applicant own more than three amenities (such as five or more) would be consistent with the intent of the Act. While the Board could address this issue in weighing the merits of applications, codifying it as an application requirement would certainly be appropriate, efficient and within the Board's discretion.

6. Section 443.5(a)(4).

This provision requires Category 3 applicants to submit a plan detailing how the applicant will monitor its gaming area to ensure that only registered guests or patrons of its amenities "*over the age of 21*" are permitted to "enter the gaming area." The provision is technically not consistent with the Act in its age reference. While Section 1208(7) of the Act prohibits licensees from allowing persons under age 21 from playing a slot machine, Section 1518(a)(13) only restricts entry into the gaming area to persons under age 18. This discrepancy is not insignificant to Category 3 applicants, given the greater likelihood of guests and/or patrons at Category 3 facilities to include families with young adults between ages 18-20. Indeed, as noted above, Nemaquin has been recognized and honored for its family friendly environment. Thus, Nemaquin respectfully requests that proposed Section 443.5(a)(4) be modified to state the proper age restriction for entry into the gaming area.

C. Miscellaneous Comments

1. Section 441.14.

This proposed addition to Chapter 441 requires that: "Each slot machine licensee or applicant shall immediately notify the Board, in writing, as soon as it becomes aware that it

intends to enter into a transaction which would affect any relation to its licensed facility and may result in any new financial backers. Such notice shall be addressed to the Offices of the Clerk.” Tying this requirement to the licensee or applicant’s intent seems overbroad. Arguably, to comply with this provision, an applicant or licensee may have to inform the Board of its intent to enter into an agreement with new financial backers prior to informing the backers of the same. Such a requirement could also impinge on the confidentiality of negotiations over the potential financing arrangements. Moreover, basing the timing of the reporting obligation on the licensee or applicant’s intent undermines the regulation’s enforceability and creates confusion for those attempting to comply with the requirement. As an alternative, the Board could require reporting of such agreements within a specific number of days after their consummation.

2. Section 441.5(c)(14).

This provision requires the applicant for a slot machine license to identify the “defined gaming market and projected visitation” for the proposed site. This general requirement is imposed on Category 3 applicants via proposed Section 443.5(a).

Clearly, in the Category 3 context, visitation data will be emphasized by the resorts in their applications. However, the “gaming market” concept is less applicable to a Category 3 applicant. Unlike other categories of licensure, a Category 3 applicant’s gaming market is not geographically based due to the restriction of gaming to persons who are guests and/or patrons of the applicant. While Category 3 applicants’ resort markets may draw more heavily from a given geographic region, some resorts, like Nemaquin, literally attract travelers and guests from around the world. Moreover, the decision of a guest or patron to visit or hold a conference at the resort will be based upon a variety of factors, which may or may not include the gaming opportunities available at the facility. This provision, thus, could be waived for Category 3 applicants or fulfilled through a general statement from an applicant’s officer.

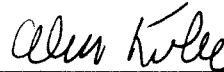
IV. CONCLUSION

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Nemacolin Woodland Resorts commends the PGCB on all of its work in establishing gaming in Pennsylvania, and particularly in its proposed Category 3 regulations. Nemacolin appreciates the opportunity to share these comments with the Board, and hopes that the suggestions offered will help make an already good set of regulations even better for all stakeholders in this process.

WHEREFORE, Nemacolin Woodland Resorts, Inc., respectfully requests that the Pennsylvania Gaming Control Board include the modifications discussed above in its final Chapter 405, 441 (§§ 441.13 and 441.14), and 443 regulations.

Respectfully submitted:



Alan C. Kohler, Esquire
Mark S. Stewart, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP

Counsel for Nemacolin Woodland Resorts,
Inc.

Date: September 6, 2005

DRAFT REGULATIONS COMMENT FORM

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Please complete all of the fields below before printing:

DATE	09/06/2005	ADDRESS 1
SECTION # OR SUBJECT	Sections 405 and 443	ADDRESS 2
FIRST NAME		CITY
LAST NAME		STATE
ORGANIZATION NAME	Philadelphia Gaming Advisory Task Force	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE
COMMENTS	Please see attached comments	

Comments of the Philadelphia Gaming Advisory Task Force**Bureau of Investigations and Enforcement
Class 2 and 3 License Applications**

Submitted September 6, 2005

By and through undersigned counsel, the Philadelphia Gaming Advisory Task Force respectfully submits these comments pursuant to the Pennsylvania Gaming Control Board's order of August 4, 2005. The proposed regulations would establish regulations for the Bureau of Investigations and Enforcement and set further criteria for Class 2 and 3 license applications.

Section 405 – Bureau of Investigations and Enforcement

The Task Force is concerned that there is a potential conflict inherent in the Board both adjudicating allegations of impropriety and supervising the enforcement entity that brings forth the same allegations. To ensure successful implementation and operation of gaming in Pennsylvania, the Board must operate here in a manner that narrowly focuses on protecting the integrity of the process. This can only be achieved through rules that clearly delineate the authority, establish appropriate procedural protections and provide specific guidance and limitation on authority to subordinates delegated decision-making power.

Towards that end, the Task Force believes that the Board should now adopt clear parameters for the discretion provided in section 405.3(a)(3)-(4). These parameters should include guidelines for initiation of action, dispute settlements, license conditions and revocations, and other disciplinary outcomes. These regulations and guidelines should be strictly delineated and any circumstances that may give rise to exceptions or deviations should also be explicitly stated. The Task Force urges that such guidelines or criteria either be developed now or that the Board in these regulations set a deadline by which such guidelines will be adopted.

Additionally, the Task Force suggests clarification of section 405.3(a). The Task Force is concerned that the sole discretion language might be read to prevent the Board, for example, from seeking license conditions, revocations, or other penalties where the Office of Enforcement Counsel does not itself initiate such action. Similarly, Pennsylvania residents, officials, government subdivisions, and companies need to be empowered to provide advice or file recommendations and objections on matters covered by section 405. This ambiguity can be corrected by clarifying that the powers delineated in section 405.3(a) are vested in the Office of Enforcement Counsel on a non-exclusive basis.

Section 443 – Class 2 and 3 License Applications

As the Board is aware, the Task Force has performed an extensive analysis of many of the issues generally facing cities that will host Class 2 facilities, and specifically how those issues relate to the City of Philadelphia. The Task Force commends the Board for including many of these issues in the adopted version of section 441 (and many appeared in the initial version proposed by the Board) and for the thoughtful consideration that was clearly applied to the extensive comments submitted on application requirements.

However, there remain a few issues that may not have been priority considerations for applicants seeking non-competitive Class 1 licenses, but which are highly relevant for Class 2 and Class 3 license applicants. Many of these issues apply uniquely to the dense urban settings where several Class 2 facilities will be located. For example, the local impact statements requirements under 441.4(a)(21) do not adequately address the impact of casino development on existing parking supply and demand, or the impact on casinos of yet-to-be-completed nearby developments as well as the impact of casinos on those developments.

Traffic and Transportation

While a traffic circulation plan may not have been necessary for racinos developed on the large plots of land available right off an interstate at probable Class 1 sites, managing traffic around urban casinos is a critical challenge that will be faced at almost every potential site identified in Philadelphia. The Task Force believes that it would be most constructive to consider applications only if they include a full and complete traffic circulation plan, both on and off site, including all proposed roadway improvements with input from local streets (and where applicable state and federal highway) officials.

Traffic circulation is not the only transportation issue that is magnified in evaluating casino development in densely developed urban settings. The Task Force therefore urges the Board to require from each applicant a transportation demand plan (“TDP”). The Task Force recommends that TDPs should include, among other items, the needs of patrons, employees, and service delivery traffic with regard to:

- (i) Transportation inventory. For Philadelphia casinos, for example, this should include expressways, surface streets, and mass transit, including elevated train lines, commuter rail, Amtrak, and SEPTA and New Jersey Transit buses.
- (ii) Transit capacity, including peak hour ridership and capacity on transit lines serving each site and capacity of such lines to expand to handle additional ridership.

- (iii) Roadway capacity, including analysis of excess and already over-utilized capacity of each road. This analysis should be augmented by an analysis of the additional traffic police officers needed to facilitate area traffic movements and identified funding for those officers.
- (iv) Parking, including the impacts on both existing capacity and existing demand.
- (v) Charter buses, including projections of volume and time-of-day for arrival and departure. This analysis should also include arrival and departure routes, where the buses will be stored, and transportation impacts at the storage site and along the travel routes.
- (vi) Porte-cochere operations on site, including taxi and valet storage operations.
- (vii) Proposed mitigation measures, including any street modifications, traffic signal improvements, reduction in on-site parking demand through off-site employee parking, transit improvements, and off-site parking locations for charter buses. Funding commitments for these improvements should be specified in the application.

The Task Force recommends that the Board pursue aggressive independent review of TDPs and all traffic and transportation information submitted by license applicants. If this review cannot be provided in a timely and thorough manner by the Pennsylvania Department of Transportation, the Task Force urges the Board to quickly commence a public procurement process for traffic engineer/transportation consultants capable of providing the necessary independent review of submitted transportation analyses and plans.

Public Safety

It became clear during the Task Force's research that, other than traffic, the gaming-related impact that was most important to Philadelphians was concern about possible degradation in public safety. In this context, the Task Force believes that 441.4(a)(31) or a new section of 443.4 should require expansion of the applicant's adverse effect analysis to include projected impacts on crime, emergency medical services, and other aspects of public safety. A response to this requirement could potentially include a neighborhood safety and security plan.

Architectural Drawings and Design Criteria

Given the fact that the Philadelphia Class 2 facilities will be placed in an already built urban environment and may be constructed in phases, the Task Force believes that expansion of section 441.4(a)(18) or a new subsection in 443.4 should require applicants to indicate clearly in their submission the impact of the design on neighboring communities and development. Among the factors that should be considered are:

- (i) How the design concept is responsive to the urban setting in which it is located.
- (ii) Building materials that will be used.
- (iii) Any phasing in of development.
- (iv) How the facility will maximize a positive street-frontage to ensure a positive urban design impact, even as it accommodates a high volume of vehicles.
- (v) If the proposed facility is adjacent to amenities such as rivers and parks, how the development will facilitate access to such public amenities.

Tax Clearance

The Task Force appreciates the Board's stated willingness to evaluate any tax delinquencies found by host municipalities. A full and prompt evaluation, however, may not be possible without the cooperation of the applicant. Towards that end, the Board should require each applicant to certify that all necessary tax clearances from host municipalities have been sought and, if such clearances are not included with the application, all necessary information has been provided to the municipality in pursuit of obtaining a tax clearance.

Underage Gambling

Task Force research has confirmed that underage gambling is an issue that will confront the people of the Commonwealth. Because of the importance of this issue, all Pennsylvania operators should be held responsible for enforcing the minimum age prohibitions as central elements of their operational plans.

The Task Force understands that the language proposed in section 443.5(a)(4) for Class 3 facilities is proposed in response to a specific section of the Pennsylvania Race Horse Development and Gaming Act. However, insofar as it applies to underage gambling, the Task Force urges the Board to extend this concept and require from all applicants (either in section 441 or in 443.1-443.4) a "plan detailing how the applicant, as part of its operational plan, will monitor the gaming area to ensure that only patrons over the age of 21 are permitted to enter the gaming area."

Acceptability of "Information Not Available"

The Task Force believes that parts of section 441, as currently worded, will naturally lead applicants to declare that certain required information is not yet available. However, the Board can, and should, instruct applicants that, where such information is not yet available, detailed, good-faith plans and projections should be provided by each applicant.

For example, in 441.4(a)(20), an applicant could state that outside restaurant operators have not yet been identified. However, even in the absence of final contracts, a more thorough review of the project will be possible if the application includes business plans that indicate items such as whether the restaurants will be stand-alone or chains, if they will be locally owned, and if they will be locally themed, information that is essential to assessing some components of local economic impact.

Clarification to Section 441(a)(21)

In connection with the importance of these issues to the people of Philadelphia, the Task Force also seeks guidance on the confidentiality parameters of a local impact report under section 441.4(a)(21). That some or all of the provisions might be kept from the local communities and subdivisions that are being affected is a matter of great concern. Both the City and the Task Force believe that no aspect of the local impact statement should be confidential and, in fact, that only the most limited aspects of the applications (e.g., personal medical and financial histories) should be kept from public review.

Disclosure of Consultants

It has become clear that several potential applicants for Philadelphia licenses have already retained local consultants in an attempt to influence the selection process. The Task Force is concerned about the possibility of individuals presenting themselves or their opinions to the community or to the Board regarding other applications without disclosing that they represent interested parties. Recent local experience has convinced the Task Force of the wisdom of requiring disclosure of paid lobbyists, communication consultants, and other experts in connection with these proposals, even if the representation is limited to grassroots communication efforts in nearby neighborhoods.

Transmittal

These comments are respectfully submitted this 6th day of September, 2005.



Romulo L. Diaz, Jr.
General Counsel
Philadelphia Gaming Advisory Task Force



September 6, 2005



HARRAH'S
ENTERTAINMENT,
INC.

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Attention: Public Comment



Dennis Gallagher
Vice President Legal Affairs

**Re: Comments to Proposed Regulation 443.4 Bureau of Investigations
and Enforcement**

Dear Chairman Decker and Board Members:

The following comments regarding the Regulation 443.4 Bureau of Investigations and Enforcement proposal are offered for your consideration by the operating subsidiaries of Harrah's Entertainment, Inc. (collectively "Harrah's"). Harrah's respectfully submits that the portion of Proposed Regulation 443.4 that would require applicants for Category 2 licenses to swear or affirm "that neither the applicant, nor any of its affiliates, intermediaries, subsidiaries or holding companies is eligible to seek a Category 1 slot machine license" (Proposed Reg. 443.4(a)(1)) is an unduly narrow interpretation of Section 1304 of the Gaming Act. Section 1307 of the Gaming Act permits the Board at its discretion to reissue "any Category 1 license . . . as a Category 2 license if an application for issuance of such license has not been made to the board." If eligibility for a Category 1 license were a categorical bar to holding a Category 2 license the Board could not exercise its discretion to reissue a Category 1 license as a Category 2 license pursuant to Section 1307. Similarly, such an interpretation would reduce to surplusage the portion of Section 1304(a) which states that "[i]t shall not be a condition of eligibility to apply for a Category 2 license to obtain a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct thoroughbred or harness race meetings respectively with pari-mutuel wagering," as such licenses are relevant only to Category 1 licenses in all events. Harrah's respectfully submits that in effectively nullifying Section 1307 and making part of Section 1304(a) surplusage, Proposed Regulation 443.4(a)(1) is not in keeping with the rules of statutory interpretation. See 1 Pa. C.S. § 1921; Keystone Aerial Surveys, Inc. v. Pennsylvania Prop. & Cas. Ins. Guaranty Ass'n, 777 A.2d 84, 90 (Pa. Super. 2001).



Pennsylvania Gaming Control Board
September 6, 2005
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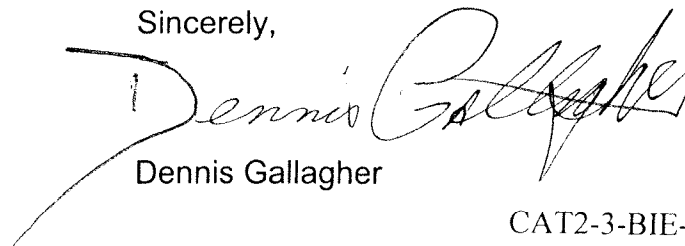
Harrah's further respectfully submits that any limits on the number of licenses that a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies may have are set forth in Section 1330 of the Gaming Act. Section 1330 does not state that anyone who is eligible for a Category 1 license is barred from seeking or obtaining a Category 2 license. Because Section 1330 is the portion of the Gaming Act that specifically addresses the number of licenses that a licensee may have, any restrictions on multiple licenses across Categories would be stated here. This conclusion is further supported by the fact that the portion of the Gaming Act that empowers the Board to issue, approve, renew, revoke, suspend, condition or deny issuance of "additional licenses" makes specific reference only to Sections 1328 and 1330 of the Gaming Act. See 4 Pa. C.S. § 1202(b)(7). In addition, Harrah's notes that according to the legislative history of the Gaming Act, Section 1330 was originally drafted to read that "No slot machine applicant or slot machine licensee . . . may possess an ownership or financial interest that is greater than 33.3% of another slot machine licensee or person eligible to apply for a Category 1 license . . ." See Sen. Legis. J. No. 45, July 1, 2004, at 1937, 1951. This was amended to delete the italicized language. During the debate, Senator Fumo stated that the words "slot machine applicant" had been deleted to "correct[] a Legislative Reference Bureau insert that incorrectly triggered the multiple license prohibition for applicants . . ." See id. at 1951.

Reading the Gaming Act as a whole, Harrah's respectfully submits that the language of Section 1304 that states that "[a] person may be eligible to apply for a Category 2 license if the applicant, its affiliate, intermediary, subsidiary or holding company is not otherwise eligible to apply for a Category 1 license" is properly understood to mean that eligibility for a Category 1 license does not preclude eligibility for a Category 2 license. This interpretation gives effect to Section 1307 and the second half of Section 1304(a). This interpretation is also in keeping with the rule of statutory construction that the word "may" generally indicates that a provision is directory rather than mandatory. CSC Enter., Inc. v. State Police, Bureau of Liquor Control Enforcement, 782 A.2d 57, 63 (Pa. Cmwlth. 2001).

In sum, Harrah's respectfully requests that Proposed Regulation 443.4(a)(1) be clarified to be consistent with Section 1330 of the Gaming Act.

Harrah's appreciates the opportunity to provide these comments to the Board. Thank you for your time and consideration in this matter.

Sincerely,



Dennis Gallagher

DG:pjr

CAT2-3-BIE-12.2