

# **LABELRITE**

**TICKETS, CARDS & TAGS**

PGCB VEN-1

RECEIVED

OCT 06 2005

October 5, 2005

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

Dear Board Members,

Label Rite is a small, Pennsylvania certified Woman Business (WBE) Enterprise with 20 employees, located in . We manufacture the tickets that are used in slot machines for redemption, etc.

Our comment is that there is no specific wording in either the Supplier License or Vendor Regulations regarding our product. Our concern is that as a small, Pennsylvania based WBE manufacturer we could somehow be excluded from conducting casino business in our state.

Therefore, we have the following questions: Will we be required to be either a licensed supplier or registered vendor? Or will we be free to conduct business in our state with the casinos in terms of our ticket product?

Thank you very much for this opportunity to make these comments.

Sincerely,



Alice B. Lawler  
President

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OCT 07 2005

# DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	10/04/2005	ADDRESS 1
SECTION # OR SUBJECT	Draft Vendor Regulations	ADDRESS 2
FIRST NAME	Romulo	CITY
LAST NAME	Diaz	STATE
ORGANIZATION NAME	Phladelphia Gaming Advisory Task Force	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE
COMMENTS	See attached submission.	

**Comments of the Philadelphia Gaming Advisory Task Force**

**Vendor Regulations**

Submitted October 4, 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 September 8, 2005. The proposed regulations would establish regulations for the licensing, registration, and permitting of gaming vendors and slot machine licensees.

**Section 441.17 – Master Purchasing and Disbursement Report**

The Draft Vendor Regulations at issue govern the vendors that will provide non-gaming goods and services to gaming facility operators in the Commonwealth. The Task Force seeks to comment specifically on section 441.17 of the Draft Regulations, which requires that slot machine licensees submit a monthly "Master Purchasing and Disbursement Report" enumerating nonpayroll transactions by the licensee/applicant; transactions in which the licensee/applicant acted as the vendor of goods and services; and transactions by an affiliate, subsidiary, or other agent of the licensee/applicant in which the licensee/applicant is a beneficiary.

Through the gaming implementation process, the Board has consistently recognized the need for diversity throughout Pennsylvania's gaming industry. To that end, its proposed regulations have imposed requirements upon participants that will ensure the substantive, lasting involvement of minorities and women in the industry. Section 441.17 presents another opportunity to ensure the meaningful diversity the Board has emphasized as a goal. The Task Force recommends that, in addition to the identification of payees and the date and amount of disbursements, the report mandated by §441.17 should indicate whether payees included in the report meet diversity standards because of their ownership by minorities, women, or disabled persons, and the payee's enterprise certification number, if any. Additionally, licensees/applicants should be required to total the amounts disbursed, with itemization of the amounts disbursed to DBE's, and to provide an explanation of the nature of services provided or work performed by the DBE's to which funds have been disbursed. Such requirements would provide an additional mechanism for assessing the breadth of diversity within the gaming industry, consistent with the Board's goals.

Transmittal

These comments are respectfully submitted this 4<sup>th</sup> day of October, 2005.



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



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OCT 11 2005

October 5, 2005

Pennsylvania Gaming Control Board  
Post Office Box 69060  
Harrisburg, Pennsylvania 17106-9060

**Attention: Public Comment**

**RE: CHAPTER 437: PROPOSED VENDOR REGISTRATION AND LICENSING REGULATIONS**

Dear Chairman Decker and Members of the Board:

I am Executive Vice President and General Counsel to Atlantic City Coin & Slot Service Company, Inc. ("A.C. Coin"). I want to thank the Board for affording A.C. Coin the opportunity to submit comments on the proposed Vendor Registration and Licensing Regulations.

It is respectfully submitted that due to the sensitive and confidential nature of the information contained in the entity and the Employee Qualifier and Key Employee Applications, i.e., tax returns, corporate/personal financial information, etc., Section 437.3, Vendor License Requirements, Subsection (d), should be revised to read that a vendor which is required to obtain a vendor license is authorized to submit Vendor License Application Disclosure Forms and Multi-Jurisdictional Personal History Disclosure Form(s) and Pennsylvania Supplements for each key employee qualifier and key employee directly to the Board's Licensing Division. The proposed regulation states that a Slot Machine Licensee or applicant must submit the vendor license applications.

In addition to the above, Section 437.4, Subsection 13, should be revised to delete the requirement that Vendor Disclosure Information forms must be filed for each affiliate, intermediary and subsidiary of the applicant. It is respectfully submitted that such a broad definition will create an administrative burden on the Board and the vendor license applicants while serving little regulatory purpose. Many affiliate, intermediary and subsidiary companies of vendor applicants will have nothing to do with gaming in Pennsylvania. For example, A.C. Coin has a wholly-owned subsidiary

in Nevada that serves as its sales and service company for Nevada and California casinos. A.C. Coin also has a Canadian subsidiary that functions as its slot machine service operation for casinos in Ontario and British Columbia. Neither of these entities will have any involvement in gaming in Pennsylvania. It is respectfully recommended that a vendor license applicant should include a description of any affiliates, intermediaries or subsidiaries in the Vendor's application to the Board. After the Board's review of the Vendor's application, if the Board determines that a license is required for an affiliate, intermediary or subsidiary, the Board can require the vendor to submit an application regarding such entity.

Thank you for the opportunity to submit the comments on the proposed regulations and for your consideration.

If you have any questions, please feel free to contact me.

Very truly yours,



Thomas McCormick, Esquire  
Executive Vice President and General Counsel

TMM:gco

c: Member Mary DiGiacomo Collins  
Member William Conaboy  
Member Jeffrey Coy  
Member Kenneth McCabe  
Member Joseph Marshall III  
Member Sanford Rivers  
Mac Seelig  
Jerald Seelig  
Jeff Seelig  
Jason Seelig  
Bessie Sacco

L/Tom/Pennsylvania/CommentLtr.Regis

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OCT 12 2005

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

DATE	10/11/2005	ADDRESS 1
SECTION # OR SUBJECT	Draft Regulations - Title 58 of the Pennsylvania Code, Chpts. 401 & 437	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 The Downs at Pocono.

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**

**RECEIVED**

**OCT 12 2005**

\_\_\_\_\_  
In re: Promulgation of Temporary :  
Regulations Under Title 58 of the :  
Pennsylvania Code, Chapters 410 and 437 :  
: :  
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**POCONO DOWNS' COMMENTS TO DRAFT VENDOR REGULATIONS**

The Downs at Pocono ("Pocono Downs") respectfully submits these comments to the Pennsylvania Gaming Control Board ("PGCB" or "Board") to its draft regulations published on September 8, 2005, regarding registration and licensing of slot machine applicant and licensee vendors. These regulations are intended to implement the provisions of the Pennsylvania Race Horse Development Act (the "Act"), 4 Pa. C.S. § 1101 et seq., and create procedures and requirements generally applicable to all entities providing "goods or services" to slot machine applicants or licensees, with certain listed exceptions.<sup>1</sup>

**I. BACKGROUND**

Pocono Downs, located in Wilkes Barre, Pennsylvania, has been entertaining citizens and visitors to the Commonwealth for 40 years, since 1965. During that time period, Pocono Downs has operated under the oversight and regulations of the Pennsylvania State Harness Racing Commission. The Harness Racing Commission's jurisdiction under the Pennsylvania Race Horse Industry Reform Act, 4 P.S. § 325.201 *et seq.*, includes ensuring the integrity of harness racing in Pennsylvania and the character and integrity of those engaged and licensed for racetrack ownership and operation. Much

<sup>1</sup> Draft Rule, §437.9



like the provisions of the Act, the laws and regulations administered by the Harness Racing Commission extend beyond the licensee to its corporate organization and shareholders, require financial and operational fitness of those engaged in harness racing, and extend to all aspects of a harness racetrack's operations including employees, finances and accounting, simulcast and off-site wagering, facilities requirements, political influence, etc.

In mid to late 2004, a process was initiated by which the ownership of Pocono Downs changed to a Pennsylvania limited partnership in which the main partner is the Mohegan Tribal Gaming Authority ("MTGA").<sup>2</sup> In this regard, under both its prior and current management, Pocono Downs has utilized a large number and variety of the vendors without any problems pertaining to integrity or crime.

Under MTGA ownership and management, Pocono Downs is taking an aggressive approach to the introduction of slot machines at its racetrack. As reflected in the attached news article, Pocono Downs plans to commence the operation of slot machines shortly after it receives a conditional Category 1 license from the Board (assuming of course, that the Board finds it suitable) and hopefully in the second quarter of 2006. Under this plan, in addition to preparing for construction of a permanent gaming facility, Pocono Downs is in the midst of a \$47 million renovation of its existing grandstand to provide space for a 1,000-machine temporary slot machine facility which could employ as many as 800 people and start the payment of taxes to the Commonwealth on its gross terminal revenue. In order to implement its plan, Pocono

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<sup>2</sup> The MTGA, an entity controlled by the federally recognized Mohegan Tribe of Indians of Connecticut, has owned and operated the 240 acre Mohegan Sun Casino for nearly a decade.

downs is already, at its own risk, utilizing construction contractors and architects, and purchasing associated products and services from non-gaming vendors within the scope of the Board's proposed regulations.

While Pocono Downs and MTGA are fully aware of the Board's worthy objective in the proposed regulations of assuring the integrity and crime free nature of gaming in Pennsylvania, it is critical that the regulations be clarified and be finalized in a manner that does not require or result in a freeze or standstill of Pocono Downs' on going activities with non-gaming vendors.

While certainly Pocono Downs does not oppose the Board's review and licensure of its large vendors, Pocono Downs respectfully requests that the proposed regulations be modified to assure that such review is conducted in an orderly fashion that does not disrupt its ongoing business concerns.

## **II. COMMENTS**

### **A. The Board Should Create a Workable Procedure to Permit a Slot License to Begin to Conduct Business with a Vendor Prior to the Vendor Receiving a Vendor License**

It is critical for Pocono Downs (Pocono), upon issuance of its gaming license, to get up and running as quickly and expeditiously as possible. In order for this goal to be accomplished, it is anticipated that a certain amount of construction will be required to the existing facilities at Pocono Downs to create an ideal gaming area. This will require the engagement of contractors, architects, etc., to perform significant design and construction services – engagement which in many instances will probably exceed \$150,000 per year. The draft regulations provide that a vendor providing significant services (over \$150,000 per year) may not conduct any business with a slot machine

applicant/licensee before the vendor itself has become licensed. Because the regulations are still in draft form and apply to not only slot machine licensees, but also slot machines applicants, the filing of a Category 1 application by Pocono Downs in the near future would trigger the non-gaming vendor licensure requirement. The concern is that even assuming non-gaming vendor license applications are submitted by Pocono Downs with its gaming application, those non-gaming vendor applications will not be reviewed and then (presumably) granted by the Board until some later date. This scenario appears to result in technical non-compliance during the regulatory review period for construction companies and other vendors which are currently engaged and performing services to Pocono Downs. Pocono Downs needs to avoid a situation in which vendors are “shut down” for some period during the license application review.

The draft regulations currently provide that a slot applicant/licensee may not “conduct business” before that vendor has applied for and obtained a vendor license.<sup>3</sup> These are two listed exceptions to this rule: section 437.6 (relating to existing agreements in which the vendor has provided services to the racetrack for the prior two years) and section 437.7 (relating to permission to conduct business prior to licensure).<sup>4</sup> If there is no “existing agreement” between the slot applicant/licensee and vendor<sup>5</sup> (and there is no “emergency” as defined by the draft rules), the vendor may not do any work

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<sup>3</sup> Draft rule section 437.3(a).

<sup>4</sup> The draft rules also provide that a slot machine licensee may utilize an unregistered or unlicensed vendor in “emergencies”. However, this only applies when there is a threat to public health, welfare or safety. Draft rule §437.10.

<sup>5</sup> None of the construction/architectural vendors currently being utilized by Pocono Downs qualify for the “existing agreement” exception because they will not have been under engagement or had an “existing relationship” for the two years immediately preceding the date of Pocono Downs conditional Category 1 application.

prior to licensure unless the slot applicant/licensee files a petition seeking such relief under section 437.7. To be eligible for relief under section 437.7, a completed vendor license application must be filed by the slot applicant/licensee and good cause for granting the petition must be shown. Permission to work under this section is limited for a period of six months (subject to extension for additional six (6) month periods upon a good cause showing.)

Although the intent of section 437.7 is laudable, it fails to provide a workable solution to Pocono Downs' problem for several reasons. First and foremost, the Board must review and consider the arguments and facts set forth in the petition before any relief is granted. This process will likely take some time and could result in considerable delay. Under the proposed regulations it appears that the vendor will not be permitted to be utilized until the petition is approved and therefore, the slot applicant/licensee is again forced to wait. As stated above, this delay will impede the ability of Pocono Downs to commence its gaming operations and will seriously disrupt its current operations.

A second concern with section 437.7 is the requirement that "good cause" must be shown before a petition will be granted and the vendor permitted to work. Unfortunately, "good cause" is not defined in the regulations and provides an additional layer of uncertainty to the process.

Pocono Downs respectfully suggests two workable procedures to permit a slot licensee to begin to conduct business with a new vendor prior to the vendor receiving a vendor license. First, a workable procedure can be established by simply modifying section 437.7 (relating to permission to conduct business prior to licensure). Section 437.7 should explicitly provide that upon the filing of the petition, the petition will be

deemed approved, making clear that the slot applicant/licensee will be permitted to do business with the vendor unless and until the Board issues an order denying the petition and/or disqualifying the vendor. To properly implement this suggested modification, the six month limitation set forth in section 437.7(b) should be omitted.

The second alternative involves the adoption of the New Jersey regulatory scheme on which Pennsylvania regulatory scheme apparently was modeled. Specifically, NJAC 19:43-10.4 requires casino licensee to file with the Casino Control Commission, no later than 20 days following a formal offer and acceptance of an agreement with an entity, a completed Notice of Intent to Conduct Business for any enterprise which does not appear on the active vendor's record list submitted to the Commission. The Notice of Intent to Conduct Business as prescribed in regulation NJAC 19:41-5.11(A) requires a Casino to notify the Commission of the official trade name of the entity, its business address, telephone number, federal employee ID number and date of the formal offer and acceptance of an agreement to conduct business with the Casino.

Additionally, in New Jersey, the Casino is required to file with the Commission a Vendor Registration Form ("VRF") for any enterprise with which it is conducting certain types of business, including bus operations or more significantly any agreement for goods or services expected to total \$10,000.00 or more. The VRF is to be filed within twenty (20) calendar days from the date of a formal offer and acceptance by the vendor and the Casino. The New Jersey rules also require licensing for vendors who do business with a casino on a "regular and continuous basis."<sup>6</sup> Whether subject to registration or a licensing

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<sup>6</sup> The NJ Commission's rules require persons and enterprises that conduct non-gaming related business with a casino or slot machine licensee or applicant on a "regular or continuing" basis to either be licensed or be exempted from licensure. A person or

requirement, the NJ process allows the casino to enter into a business agreement, contract or business transaction with a vendor prior to the vendor filing any form with the Commission by way of formal application or otherwise. As a matter of business practice, all Casinos licensees prior to entering into any transactions require its prospective vendors to provide the information which will be required to be set forth on the VRF. That information is similar to the information requested by the draft PA regulations.

If the PA slot licensee vendor rules are to be workable, it is important that the Board modify its requirements to allow for a similar ability to conduct business prior to having to make any extensive filings with the Board and without having to wait for the Board to approve a license application or grant a petition. It can do so by:

1. Adding a section that permits a slot licensee to file, no later than 20 days after signing an agreement or contract (or otherwise agreeing) with a vendor to provide a product or service or, if the vendor did business with the slot applicant/licensee prior to the submission of the slot applicant/license application and the slot applicant/licensee wants that vendor to continue conducting that business, no later than 20 days after the filing of the slot license application, a “Notice of Intent to Conduct Business” which lists the name, address, official trade name of the entity, its business address, telephone number, federal employee ID number and date of the formal offer and acceptance of an agreement to conduct business with the slot applicant/licensee;

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enterprise may be determined to be conducting regular or continuing business upon Commission consideration of the enumerated criteria set forth in the regulations. These criteria include the number and frequency of transactions conducted the duration of agreements, and the nature of the goods and services provided. Alternatively, the NJ Commission’s rules also set forth various monetary thresholds of business conducted with individual casino licensees or the industry as a whole which, when reached by a person or enterprise, create a rebuttable presumption that the person or enterprise is conducting regular or continuing business for purposes of the NJ Act and rules.

2. Within ninety (90) days after signing an agreement, or, if the vendor did business with the slot applicant/licensee prior to submission of the slot license application and the slot applicant/licensee wants that vendor to continue conducting that business, within 90 days after the submission of the slot license application, and for entities that will do more than \$25,000 of business with the slot licensee (and who are not otherwise exempted), file a registration or application for vendor license (depending on the extent of the business activity that the vendor will provide to the slot applicant/licensee's slot operation) and

3. Making clear that the slot applicant/licensee will be permitted to continue to do business with the vendor unless or until Board issues an order disqualifying the vendor.<sup>7</sup>

B. The Threshold Levels Required for the filing of Registrations and Vendor Licenses should be increased and the Information Required of Registrants Should be Streamlined

The nature and extent of the regulatory requirements for vendors appears to be so burdensome that it may well act as a disincentive for firms to want to provide products and services to potential slot applicants. The current regulations would appear to impose a registration obligation upon the slot license applicant to file a registrations application for each and every one of the slot parlor vendors prior to the slot operation "conducting business" with the vendor. The registration form, as contemplated in the regulation, is not insubstantial, requiring a host of data about the vendor.<sup>8</sup> For those vendors who will

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<sup>7</sup> A redlines version of the relevant sections of the draft regulations which implement this proposed second alternative is attached hereto as Appendix A.

<sup>8</sup> The Registration Application requires the vendor to supply the following information (in addition to any other information that the Board may require, either for an individual vendor or for vendors in general): 1) a description of the

do \$150,000 or more of annual business (or who will do \$500,000 or more of business with all slot machine applicants/licensees in a 12 month period<sup>9</sup>), an even more extensive license application is required, and according to the current draft, the Board must issue the license *before* a slot license may conduct business with the vendor<sup>10</sup>.

The scope of the Board's registration/license requirements will impose a difficult, expensive and time consuming burden upon each slot licensee who will be required to obtain completed registration/license forms from vendors, or compile the information themselves. After the application is filed, there undoubtedly will be some interaction

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vendor's business, whether the vendor is minority owned; 2) a certificate of incorporation, charter, bylaws, partnership agreement or other basic documentation; 3) the names and addresses of all subsidiaries, a copy of the agreement between the slot machine licensee and the vendor; 4) information about whether the vendor has ever had any license or registration revoked by a government entity; 5) the names and addresses of the vendor/employees who will deal directly with the slot machine licensee; 6) a list of every officer, partner, or director who will be involved in the conduct of the business, each beneficial owner of more than 5% of the vendor and the percentage of that ownership; 7) a vendor application disclosure information form must be filed for the applicant and for each affiliate, intermediary, subsidiary and holding company of the applicant; 8) a multi-jurisdictional personal history disclosure form and Pennsylvania supplement for each employee qualifier and key employee; 9) the applicant's Federal tax returns for the last three years and state tax returns for the prior year; 10) information about any judgments or petitions for bankruptcy and related information; 11) information about any civil, criminal, administrative and investigatory proceeding related to the applicant and any key employee; 12) diversity plan consistent with the requirements of the Board and the Act; and 13) the name and signature of the person who supplied all the information as well as consents to permit "inspections, searches and seizures, waivers of liability for disclosure of information," and "consents to examination of accounts and records."

<sup>9</sup> Draft Rules, § 401.4.

<sup>10</sup> In the previous section of these comments, Pocono Downs addresses the problem created by requiring the slot applicant/licensee to either file a registration or file for and obtain a license before a vendor can even start working at a gaming facility.



with the Board's investigative staff which, again, will cause the slot applicant/licensee to incur costs and expend time and energy coordinating and supervising the process.

While the burden on slot applicants/licensees will be great, the burden on the vendors themselves will be even greater<sup>11</sup>. For small businesses, or for those with little experience with regulatory compliance, the compilation process will likely be especially difficult. Given the nature and type of information proposed to be required even for a registration, it would appear likely that many businesses, and particularly small businesses, could decide to forgo providing products and services to slot licensees. This may well have a negative effect on the ability of slot applicants/licensees to attract minority and women-owned businesses, who generally will tend to be smaller and with

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<sup>11</sup> The License Application requires the vendor to supply the following information (in addition to any other information that the Board may require, either for an individual vendor or for vendors in general): 1) a description of the vendor's business, whether the vendor is minority owned; 2) a certificate of incorporation, charter, bylaws, partnership agreement or other basic documentation; 3) the names and addresses of all subsidiaries, a copy of the agreement between the slot machine licensee and the vendor; 4) information about whether the vendor has ever had any license or registration revoked by a government entity; 5) the names and addresses of the vendor/employees who will deal directly with the slot machine licensee; 6) a list of every officer, partner, or director who will be involved in the conduct of the business, each beneficial owner of more than 5% of the vendor and the percentage of that ownership; 7) a vendor application disclosure information form must be filed for the applicant and for each affiliate, intermediary, subsidiary and holding company of the applicant; 8) a multi-jurisdictional personal history disclosure form and Pennsylvania supplement for each employee qualifier and key employee; 9) the applicant's Federal tax returns for the last three years and state tax returns for the prior year; 10) information about any judgments or petitions for bankruptcy and related information; 11) information about any civil, criminal, administrative and investigatory proceeding related to the applicant and any key employee; 12) diversity plan consistent with the requirements of the Board and the Act; and 13) the name and signature of the person who supplied all the information as well as consents to permit "inspections, searches and seizures, waivers of liability for disclosure of information," and "consents to examination of accounts and records."

less resources available for record maintenance, regulatory compliance and legal representation<sup>12</sup>. As the Board is well aware, encouraging minority participation in the vendors providing goods or services is a primary goal of the Act<sup>13</sup>. The Board has championed this cause, but overly burdensome vendor registration requirements threaten to undermine its efforts.

Moreover, the extensive nature of the information required in the registration application appears to be broader than necessary to accomplish the legitimate goal of the Board to supervise the business dealings of slot licensees and have readily available basic information that would permit further investigation when deemed to be necessary. The proposed registration form now requires such data as the names and addresses of all subsidiaries and any person or entity owning more than 5% of the vendor or its business,

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<sup>12</sup> Significantly, most minority and women owned business are small businesses. See, for example, US Small Business Administration, Office of Advocacy, *Minorities in Business, 2001*, Pg. 15 (Nov. 2001), [www.sba.gov/advo/stats/min01.pdf](http://www.sba.gov/advo/stats/min01.pdf) (“Measured by receipts size, Black owned businesses in particular were much more likely to be small: Black owned firms constituted more than 30 percent of the minority-owned firms earning less than \$25,000 in receipts, but just 10 percent of those earning \$500,000 or more”); US Small Business Administration, Office of Advocacy, *Women in Business, 2001*, Pg. 15 (Oct. 2001), [www.sba.gov/advo/stats/wib01.pdf](http://www.sba.gov/advo/stats/wib01.pdf) (“As measured by receipts, women owned businesses were also mostly very small ventures. About 1.6 million women owned businesses – 30% of the women owned businesses had less than \$5,000 in revenues and contributed less than 1 percent of total women owned business receipts.

<sup>13</sup> See, 4 Pa. C.S. § 1212(a).

Intent. – It is the intent and goal of the General Assembly that the board promote and ensure diversity in all aspects of the gaming activities authorized under this part. The board shall work to enhance the representation of diverse groups in the ownership, participation and operation of licensed entities and licensed facilities in this Commonwealth and through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities and licensed facilities and through the provision of goods and services utilized by slot machine licensees under this part.

the names and addresses of all individuals who will deal directly with the licensee, all officers, partners or directors who are significantly involved in the conduct of the business, and each owner of more than 5% of the business (and the percentage ownership of the business). It also requires a “description” of the contract terms. For many businesses, compiling and supplying such information may be difficult and time consuming – or a formal list may not exist at all.

In order to reduce the administrative burden on slot applicants/licensees and their vendors, Pocono Downs respectfully proposes the following modifications to the proposed rules:

1. Create a minimum threshold floor before a vendor is required to file a registration. Since the ultimate purpose of the vendor rules is to permit the Board to assure that criminal influences do not infiltrate Pennsylvania gaming operations, it is logical to exclude from the vendor registration process any vendor that only engages in a small amount of business with the slot applicant/licensee – where the contact with the gaming operation will not be substantial. Pocono Downs suggests a threshold level of \$25,000 annually for any one vendor providing goods or services to any one slot applicant/licensee.

2. Revise the information required for a vendor registration to that which is necessary to permit the Board’s Bureau of Investigation and Enforcement to conduct further investigation when warranted. A revised requirement should include general data about the business (i.e. name and address, telephone number, official trade name, nature of the business to be provided to the licensee, form of business, Federal ID number), whether the vendor is minority or women owned, and date of agreement with

licensee. The registrant would also be required to consent to permitting additional investigations or submit additional information when deemed warranted by the Board. All the remaining information that the Board now proposes to be included in the registration should be made available upon request of the BIE.

3. Increase the threshold level of business required before the more extensive information required by a license application is necessary to \$300,000 annually for any one slot licensee and \$750,000 for all slot licensees, annually<sup>14</sup>.

WHEREFORE, The Downs at Pocono respectfully requests that the Pennsylvania Gaming Control Board include the modifications discussed above in its final Chapter 401 and 437 regulations.

Respectfully submitted:

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Alan C. Kohler, Esquire  
 Dino A. Ross, Esquire  
 Wolf, Block, Schorr and Solis-Cohen LLP

Counsel for The Downs at Pocono

Date: October 11, 2005

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<sup>14</sup> A redlines version of the relevant sections of the draft regulations which implement these proposed revisions is attached hereto as Appendix A.



07/22/2005

## 800 will be employed at Plains casino

By Tim Gulla , Staff Writer

**A shopping complex, a food court, a children's entertainment area - and nearly 2,000 slot machines - will be part of an elaborate expansion planned for Pocono Downs in Plains Township by its new owner, the Mohegan Tribal Gaming Authority.**

In a detailed announcement Thursday, the track unveiled its plans for a 400,000-square-foot casino and entertainment complex. The facility, coming as the state prepares for slot machine gambling at sites across Pennsylvania, will cost \$140 million to \$160 million, track officials said.

Everything has been designed with flexibility in mind, said Robert Soper, president and chief executive of the Mohegan Sun at Pocono Downs, the new name announced for the facility Thursday. Should table games or expanded gambling be legalized in Pennsylvania, the authority plans to provide space for it. Groundbreaking on the project, estimated to take 14 months to complete, will occur as soon as the tribal authority receives a conditional slots license from the state. That's expected by early next year. Advertisement

Plans show a circular area holding about 1,900 slot machines. That's surrounded by retail stores, three restaurants, a 300-seat buffet cafeteria, a 15,000-square-foot food court, an 8,500-square-foot children's entertainment area, and an 18,000-square-foot nightclub.

Surrounding all of that is parking for roughly 5,000 cars.

"Clearly, our plans will be to construct a first-class facility that Northeastern Pennsylvania will be proud of," Soper said.

Work will start in September on a \$47 million renovation of the existing grandstand, including space for a 1,000-machine temporary slots parlor. That should be completed by March 2006, allowing the track to start operating slots almost as soon as an expected conditional slots license comes its way in early 2006.

The renovation will result in an enclosed grandstand.

Beyond the cash investment, the authority could employ as many as 800 people, from food service workers to accountants, by the time the full operation is up and running.

The track, which is in the middle of live racing season, currently employs about 200 people. Soper said employment could grow to about 400 once the grandstand work is complete and the temporary slots facility is running. An additional 400 employees could be needed once the casino complex is built.

Details of the construction plans impressed onlookers like Steve Barrouk, president of the Greater Wilkes-Barre Chamber of Business and Industry and state Rep. Kevin Blaum, D-Wilkes-Barre.

Both believe the Mohegan's investment will have far-reaching effects on local economic development.

"I think we're seeing just the tip of the iceberg and this is a pretty big tip," Barrouk said.

Plains Township resident Tom Kovalick, who lives just a few blocks away from the track, envisions major development nearby in the next few years and thinks Plains will handle it well.

"We have the room," he said.

The massive casino complex on the drawing board has room for 2,000 slot machines, including 300 in a smoke-free room and 100 in a high-rollers room.

It's unclear whether the 1,000 machines that will be temporarily placed in the soon-to-be-remodeled grandstands would stay there once the full casino complex is running. Current plans are to remove them once that happens, Soper said.

Philadelphia-based Keating Building Corp. will serve as construction manager. Long-lead time items like elevators are already on order. And talks already have started with local construction and labor officials, said Harry Coldreck, vice president of construction management for the tribal authority.

The Mohegan Sun at Pocono Downs plans to hire mostly full-time workers. It also plans to provide health care and 401(k) retirement benefits, Soper said. Wages will be competitive, he said.

The track did not initially plan on operating a temporary facility, but Soper said it "carefully weighed its options and decided to begin sooner, rather than later."

Artist renderings of the planned interior of the casino show bright colors and modern conveniences, but little tribal influence at this time.

Tribal members played a key role in decorating the interior of the Mohegan Sun Casino in Connecticut and the same is likely here.

"As the interior design progresses, they'll get more involved," said Bill Velardo, chief executive of the tribal authority. The unit is owned by the Mohegan Indian Tribe, which is based in Uncasville, Conn.

The authority bought the track in January for \$280 million from Wyoming-based Penn National Gaming Inc.

Regardless of how the interior ultimately looks, Plains Township Commissioner Brigid O'Connor was impressed with what she saw.

"It definitely is a new sun rising in Plains Township," she said.

**APPENDIX A****§ 401.4. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Notice of Intent to Conduct Business--A form submitted by a slot machine licensee or applicant for any vendor with which it has agreed to conduct business and for which a VRF or VLA has not been submitted.

\* \* \* \*

*Regular or continuing basis*--A vendor will be deemed to conduct business on a regular or continuing basis if:

(i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than [\$150,000] \$300,000 within any consecutive 12 month period.

(ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than [\$500,000] \$750,000 within any consecutive 12 month period.

\* \* \* \*

**Subpart B. LICENSING, REGISTERING AND PERMITTING****§ 437.1. Vendor registration requirements.**

(a) Each slot machine licensee shall file a VRF with the Board to conduct business with a vendor, except as provided in §§ 437.3, 437.7-1 (relating to conducting business prior to filing a registration) and 437.7 (relating to vendor license requirements; and permission to conduct business prior to licensure).

\* \* \* \*

**§ 437.2. VRF.**

A VRF shall be in a format prescribed by the Board requesting the following information:

- (1) Any official or trade name used.
- (2) Business address.
- (3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any, as required by § 481.3 (relating to diversity participation).

~~(7) Form of business, state and date of incorporation or formation, if applicable.~~

~~(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a description thereof including the expected duration and compensation.~~

~~(9) The names and addresses of all subsidiaries.~~

~~(10) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.~~

~~(11) The names and addresses of each of the following:~~

~~(i) An individual who entered into an agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and the persons responsible for the office out of which the supervisors work.~~

~~(ii) Any officer, partner or director who will be significantly involved in the conduct of the vendor business with the slot machine licensee or applicant.~~

~~(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.~~

~~(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.~~

(12) The name, position or title and signature of the individual who supplied the information in the VRF.

(13) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

~~(14) Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.~~

(15) Other information requested by the Board.

### § 437.3. Vendor license requirements.



(a) If a vendor will conduct business with a slot machine licensee on a regular or continuing basis, the vendor must be licensed by the Board prior to conducting business, except as provided in §§ 437.6 and 437.7 (relating to existing agreements; and permission to conduct business prior to licensure) and 437.7-1 (relating to conducting business prior to filing a registration).

\* \* \* \*

**§ 437.7-1. Authorization to Conduct Business Pending Filing and Approval of Registration or License.**

(a) Notwithstanding §§ 437.1 and 437.3 (relating to vendor registration; and vendor license requirements), a slot machine licensee or applicant may begin to conduct business with any vendor prior to the submission of a VRF or a VLA so long as the following criteria are met:

(1) A completed Notice of Intent to Conduct Business is filed by the slot machine licensee or applicant within twenty (20) days of the formal offer and acceptance of an agreement with the vendor or, if the vendor did business with the slot applicant/licensee prior to the submission of the slot license application and the slot applicant/licensee wants that vendor to continue conducting that business, no later than twenty (20) days after the filing of the slot license application;

(2) A completed VRF or VLA has been filed by the slot machine licensee or applicant in accordance with § 437.1 or 437.3 within ninety (90) days of the formal offer and acceptance of an agreement with the vendor or, if the vendor did business with the slot applicant/licensee prior to the submission of the slot license application and the slot applicant/licensee wants that vendor to continue conducting that business, within ninety (90) days after submission of the slot license application.

(b) A Notice of Intent to Conduct Business shall contain the following information:

(1) the official trade name of the vendor;

(2) its business address, and telephone number;

(3) the vendor's federal employee ID number; and

(4) the date of the formal offer and acceptance of an agreement to conduct business with the slot machine licensee or applicant.

(c) A vendor for which a Notice of Intent to Conduct Business has been filed in accordance with section (a) above is authorized to conduct business with a slot licensee or applicant unless the Board issues an order disqualifying the vendor or denying an application for a vendor license.

\* \* \* \*

**§ 437.9. Exemption from vendor registration or license requirements.**

(a) The following persons are exempt from the vendor registration requirements of § 437.1 (relating to vendor registration requirements) and the vendor license requirements of § 437.3 (relating to vendor license requirements):

(1) Entities for which the total dollar amount of transactions with a single slot machine licensee or applicant are not or will not be greater than \$25,000 within any consecutive 12 month period.

(1) (2) Entities which provide only one or more of the following services to slot machine licensee which are the sole source provider of the services:

\* \* \* \*

Daniel Clearfield

RECEIVED

OCT 12 2005

October 11, 2005

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

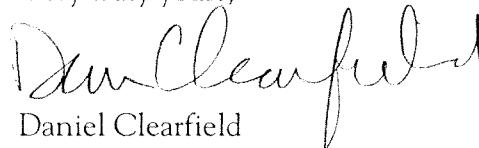
Re: Proposed Chapters 401, 435, 437 and 441

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.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww  
Enclosure

cc: Cheri B. Bomar, Esq.  
Alan Kohler, Esq.  
Richard Gmerek, Esq.

## DRAFT REGULATION COMMENT FORM

**Please complete all of the fields below before printing:**

DATE	10/11/2005	ADDRESS 1
SECTION # OR SUBJECT	Draft Regulations - Title 58 of the Pennsylvania Code, Chpts. 401, 435, 437 & 441	ADDRESS 2
FIRST NAME	Daniel	CITY
LAST NAME	Clearfield	STATE
ORGANIZATION NAME	Wolf, Block, Schorr and Solis- Cohen LLP	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE

### COMMENTS

See attached comments submitted on behalf of Nemaocolin 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**

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In re: Promulgation of Temporary  
Regulations Under Title 58 of the  
Pennsylvania Code, Chapters 401, 435, 437  
and 441

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**NEMACOLIN WOODLAND RESORT'S  
COMMENTS TO DRAFT VENDOR REGULATIONS**

**I. INTRODUCTION**

Nemacolin Woodland Resorts, Inc. ("Nemacolin") respectfully submits these comments to the Pennsylvania Gaming Control Board ("PGCB" or "Board") to its draft regulations published on September 8, 2005, regarding registration and licensing of slot machine applicant and licensee vendors. The regulations, which generally appear to be modeled after similar requirements in New Jersey, 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 create procedures and filing requirements generally applicable to all entities providing "goods or services" to slot applicants or licensees, with certain listed exceptions.<sup>1</sup> Slot machine applicants and licensees are not only obligated to file the registrations or license applications for their non-exempt vendors,<sup>2</sup> they are also required to maintain a file of all agreements and maintain and file a monthly report listing information concerning all transactions with vendors during the month.<sup>3</sup>

Nemacolin understands and appreciates the Board's responsibility to insure the integrity of the Pennsylvania gaming industry and recognizes that to do so, it will be necessary for the

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<sup>1</sup> Draft Rule, § 437.9.

<sup>2</sup> Draft Rules, §§ 437.1(a); 437.3(d).

<sup>3</sup> Draft Rules, §§ 441.15, 441.17.

Board to obtain data about slot applicant and licensee vendors. But this legitimate goal must be achieved in a way that is not so burdensome and costly that it will exclude or place tremendous burdens on smaller slot licensees, such as Nemaocolin – a prospective Category 3 applicant – or smaller vendors who may serve such licensees. Rules which are extremely burdensome and costly to comply with will also make it less likely that small businesses, including minority or women-owned businesses, will be able to serve as licensee vendors. As the Board is well aware, the Act has a strong policy goal of promoting diversity in all aspects of the gaming industry,<sup>4</sup> and the promotion of small business enterprises has been a traditional goal of the Commonwealth. Accordingly, Nemaocolin proposes herein a series of modifications and clarifications to the draft regulations that it believes will make the process of compliance for it, should it decide to file an application, and its vendors more commercially reasonable, while still permitting the Board to exercise its legitimate oversight and review function. Nemaocolin proposes that: 1) the Board clarify that the vendor registration/licensing requirement applies only to the applicant/licensee's slot operation, and not to any ancillary or affiliated businesses; 2) a \$25,000 threshold be set before a vendor is required to register, and the thresholds for the licensing requirement be increased to \$300,000 for one vendor and \$750,000 for all slot licenses; 3) the information required to be filed for a registration be streamlined; and 4) consistent with the New Jersey regulatory scheme, vendors should be permitted to begin to conduct business with a slot applicant/licensee prior to filing a registration, or filing and having the Board grant a license application, by filing a "Notice of Intent to Conduct Business."<sup>5</sup>

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<sup>4</sup> 4 Pa. C.S. § 1212.

<sup>5</sup> Appendix A shows the modifications to the Board's draft regulations proposed by Nemaocolin.

## II. BACKGROUND

Nemacolin Woodland Resort and Spa is located in the scenic Laurel Highlands of Pennsylvania, and has been in operation 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.<sup>6</sup> Nemacolin is a full service resort with extensive recreational facilities including a PGA tour named golf course. Nemacolin is seriously considering an application for a Category 3 slot machine license.

## III. COMMENTS

### A. The Legitimate Goals of the Board in Monitoring Slot Licensee Vendors Must Be Achieved In a Manner That Does Not Create Insurmountable Burdens For the Slot Licensees or the Entities With Which They Do Business

As indicated above, Nemacolin understands and appreciates the Board's desire to obtain sufficient information about the vendors that will supply products and services to slot machine applicants and licensees, but the regulatory scheme that is adopted must be cognizant of the effect that extensive regulatory burdens will have on both the slot applicant/licensee as well as its hundreds of vendors of products and services, many of which are small businesses with little or no experience complying with complicated regulatory reporting requirements.

Some background on Nemacolin's existing affiliated operations and potential casino plans will serve to illustrate the problem.

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<sup>6</sup> A more extensive description of Nemacolin, its facilities and amenities are set out in Nemacolin's Comments regarding the Board's promulgation of proposed temporary regulations for the Category 2 and 3 slot license application, dated September 6, 2005.

As explained above, Nemaocolin is an existing, full service luxury resort employing over 1,000 people during several months of the year and expending tens of millions of dollars in products and services for the various resort facilities. Nemaocolin currently utilizes over **2,500** different vendors to provide products and services to the resort, its sports and recreation facilities, restaurants, etc. All of those vendors are currently providing products or services to Nemaocolin or are under contract to do so upon request. While some of these contractual relationships are substantial, the overwhelming majority have a relatively low annual dollar value:

Total Vendors	Over 2500
Spend >\$150K	63 (2.5%)
Spend >\$200K	52
Spend >\$250K	42
Spend >\$300K	36
Spend >\$350K	33
Spend >\$400K	31
Spend >\$450K	28
Spend >\$500K	26 (1%)

Nemaocolin estimates that of the over 2,500 existing Resort vendors some 70-80% are small businesses.<sup>7</sup>

While Nemaocolin's existing vendor relationships are extensive, many of these existing vendors will have no contact with the potential slots parlor. For example, the numerous vendors who presently supply equipment and clothing to the golf pro shop will have no contact with the

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<sup>7</sup> The Pennsylvania Legislature has defined "small business" generally to mean a business with fewer than 100 employees. See 12 Pa.C.S. § 502, relating to the Small Business Council ("A person that employs fewer than 100 employees."); 12 Pa.C.S. § 2302, relating to the Small Business First Program ("A person that is engaged in a for-profit enterprise and that employs 100 or fewer individuals. "); 62 Pa.C.S. § 2102, relating to the Commonwealth Procurement Code ("A business in the United States which is independently owned, is not dominant in its field of operation and employs 100 or fewer employees.").



slot operations. Likewise, many of the vendors that provide the fois gras for the gourmet restaurant or the Egyptian cotton sheets for the luxury hotel will not provide any products to the casino.

In general, Nemaocolin estimates that, if it applies for and is granted a Category 3 slot machine license, it will have approximately 300 vendors regularly providing goods and services to its slot operation on an ongoing basis, with about 20-25 billing Nemaocolin in excess of \$150,000 for goods and services. About 80-90% of these vendors will also have an existing relationship with the Resort. It is important that the Board craft its vendor regulations in light of these likely realities.

B. Any Vendor Registration/Licensing Requirements Should Only Apply to Vendors Providing Products or Services to the Casino

From Nemaocolin's perspective, the most important clarification required to make the vendor registration/licensing regulations minimally workable for slot machine licensees, and especially for Category 3 licensees, is to establish that the vendor registration/licensing requirement applies only to vendors who provide "products or services" to the slot operation itself, and not to any ancillary or associated businesses.<sup>8</sup> We understand that the Board staff has confirmed this interpretation for Category 1 applicants; it should provide the same clarification for Category 3 applicants, such as Nemaocolin. This clarification is minimally necessary and appropriate and fully consistent with the legitimate goals of the Board. Clearly, the Board has a legitimate interest in seeking to assure that slot machine licensees will not be influenced by organized crime or other criminal influences. But that goal can and should be achieved by keeping track of the vendors that serve the slot machine facility and not any ancillary or affiliated

<sup>8</sup> This requires a modification to the definition of "Vendor" and clarifications to the definition of vendor license and vendor registration in § 401.4. See, App. "A", hereto.

operations. There should not be a similar interest or concern about a vendor supplying golf equipment to Nemaocolin's pro shop or quail eggs to its Hotel's restaurant. On the other hand, if Nemaocolin were required at the time that it filed its Category 3 slot licensee application, to file registrations or license applications for over 2500 different vendors it would create an almost insurmountable barrier to its ability to successfully complete its license application.<sup>9</sup>

Accordingly, the Board should modify the definition of "vendor" to clarify that the registration/license application applies only to vendors providing products or services directly to the applicant or licensee's slot parlor operation.

C. The Threshold Levels Required For the Filing of Registrations And Vendor Licenses Should Be Increased and the Information Required of Registrants Should Be Streamlined

Even if the regulations are modified to clarify that they apply only to vendors for the licensee's slot parlor operations, the nature and extent of the regulatory requirements even for this more limited group appears to be so burdensome that it may well act as a disincentive for firms to want to provide products and services to potential slot applicants. As indicated above, even focusing only on the anticipated slots operation, Nemaocolin estimates that it will have ongoing relationships with 300 different vendors, with some 20-25 likely meeting the existing \$150 thousand/year standard. Moreover, it is estimated that a certain number of the vendors -- approximately 20 -- will likely bill Nemaocolin under \$10,000 on an annual basis. Many of these vendors, Nemaocolin estimates about 60-70%, will be small businesses (as defined above).

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<sup>9</sup> Even worse, if the rules are not modified to permit existing vendors to continue to provide goods or services pending the filing of registrations or the receipt of a license, (as recommended in section D of these Comments, below), Nemaocolin could actually find itself barred from using any of its over 63 large vendors who currently provide goods and services to various aspects of the Resort until it is able to secure a vendor license for them.

The current regulations would appear to impose a registration obligation upon the slot license applicant to file a registration application for each and every one of Nemaocolin's estimated 300 slot parlor non-exempt vendors prior to the slot operation "conducting business" with the vendor.<sup>10</sup> The registration form, as contemplated in the regulation, is not insubstantial, requiring a host of data about the vendor.<sup>11</sup> For those vendors who will do \$150,000 or more of annual business (or who will do \$500,000 or more of business with all Pennsylvania slot machine applicants/licensees in a 12 month period), an even more extensive license application is required,<sup>12</sup> and according to the current draft, the Board must issue the license *before* a slot licensee may conduct business with the vendor<sup>13</sup>.

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<sup>10</sup> While the regulations exempt certain industries (§ 437.9), Nemaocolin believes that only a small number of its slot operation vendors will fall into the exempt categories.

<sup>11</sup> The Registration Application requires the vendor to supply the following information (in addition to any other information that the Board may require, either for an individual vendor or for vendors in general): 1) the official trade name used, the business address, telephone number and Federal ID Number of the vendor; 2) a description of the vendor's business and the types of goods or services to be provided; 3) whether the vendor is minority owned; 4) the form of business and date of incorporation; 5) the names and addresses of all subsidiaries; ~~5~~) the names and addresses and percentage ownership of each entity directly owning more than 5% of the vendor or its business; ~~6~~) an individual who entered into an agreement with or will deal directly with the slot licenses or applicant, the immediate supervisor of such person and the person responsible for the office out of which the supervisor works; ~~7~~) any officer, partner or director who will be significantly involved in conduct of the business with the slot operation; ~~8~~) the name of the sole proprietor, if applicable; ~~9~~) each beneficial owner of more than 5% and the percentage of ownership; and ~~10~~) the name and signature of the person who supplied all the information as well as consents to permit "inspections, searches and seizures, waivers of liability for disclosure of information," and "consents to examination of accounts and records."

<sup>12</sup> The License Application requires the vendor to supply the following information (in addition to any other information that the Board may require, either for an individual vendor or for vendors in general): 1) the name, current and former business address, telephone number and official or trade name used as well as its Federal Employee ID Number; 2) a description of the vendor's business; 3) the types of goods and services to be provided; 4) whether the vendor is minority owned; 5) a certificate of incorporation, charter, bylaws, partnership agreement or other basic documentation; 6) the date of

The scope of the Board's registration/license requirements will impose a difficult, expensive and time consuming burden upon each slot licensee who will be required to obtain completed registration/license forms from vendors, or compile the information themselves. After the application is filed, there undoubtedly will be some interaction with the Board's investigative staff which, again, will cause the slot applicant/licensee to incur costs and expend time and energy coordinating and supervising the process.

While the burden on slot applicants/licensees will be great, the burden on the vendors themselves will be even greater. For small businesses, or for those with little experience with

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formal acceptance of an agreement with a slot applicant/licensee, a copy of the agreement or a written description of an oral agreement; 7) the names and addresses of all subsidiaries; 8) information about whether the vendor has ever had any license or registration revoked by a government entity; 9) the names and addresses of the vendor/employees who will deal directly with the slot machine licensee; 10) a list of every officer, partner, or director who will be involved in the conduct of the business; 11) each beneficial owner of more than 5% of the vendor and the percentage of that ownership; 12) a vendor application disclosure information form for the applicant and for each affiliate, intermediary, subsidiary and holding company of the applicant; 13) a multi-jurisdictional personal history disclosure form and Pennsylvania supplement for each employee qualifier and key employee; 14) the applicant's Federal tax returns for the last three years and state tax returns for the prior year; 15) information about any judgments or petitions for bankruptcy and related information; 16) information about any civil, criminal, administrative and investigatory proceeding related to the applicant and any key employee; 17) a diversity plan consistent with the requirements of the Board and the Act; and 18) the name and signature of the person who supplied all the information as well as consents to permit "inspection, searches and seizures, waivers of liability for disclosure of information," and "consents to examination of accounts and records."

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In the next section of these comments, Nemaquin addresses the problem created by requiring the slot applicant/licensee to either file a registration or file for and obtain a license before a vendor can even start working at a casino.

regulatory compliance, the compilation process will likely be especially difficult. Given the nature and type of information proposed to be required even for a registration, it would appear likely that many businesses, and particularly small businesses, could decide to forgo providing products and services to slot licensees. This may well have a negative effect on the ability of slot applicants/licensees to attract minority and women-owned businesses, who generally will tend to be smaller and with less resources available for record maintenance, regulatory compliance and legal representation.<sup>14</sup> As the Board is well aware, encouraging minority participation in the vendors providing goods or services is a primary goal of the Act.<sup>15</sup> The Board has championed this cause, but overly burdensome vendor registration requirements threaten to undermine its efforts.

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<sup>14</sup> Significantly, most minority and woman owned businesses are small businesses. See, for example, U.S. Small Business Administration, Office of Advocacy, *Minorities in Business*, 2001, Pg. 15 (November 2001), <http://www.sba.gov/advo/stats/min01.pdf>. ("Measured by receipts size, Black-owned businesses in particular were much more likely to be small: Black-owned firms constituted more than 30 percent of the minority-owned firms earning less than \$25,000 in receipts, but just 10 percent of those earning \$500,000 or more."); U.S. Small Business Administration, Office of Advocacy, *Women in Business*, 2001, Pg. 17 (October 2001), <http://www.sba.gov/advo/stats/wib01.pdf>. ("As measured by receipts, women-owned businesses were also mostly very small ventures. About 1.6 million women-owned businesses - 30 percent of the women-owned businesses - had less than \$5,000 in revenues and contributed less than 1 percent of total women-owned business receipts.")

<sup>15</sup> See, 4 Pa. C.S. § 1212(a):

Intent. – It is the intent and goal of the General Assembly that the board promote and ensure diversity in all aspects of the gaming activities authorized under this part. The board shall work to enhance the representation of diverse groups in the ownership, participation and operation of licensed entities and licensed facilities in this Commonwealth and through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities and licensed facilities and through the provision of goods and services utilized by slot machine licensees under this part.

Moreover, the extensive nature of the information required in the registration application appears to be broader than that necessary to accomplish the legitimate goal of the Board to supervise the business dealings of slot licensees and have readily available basic information that would permit further investigation when deemed to be necessary. The proposed registration form now requires such data as the names and addresses of all subsidiaries and any person or entity owning more than 5% of the vendor or its business, the names and addresses of all individuals who will deal directly with the licensee, all officers, partners or directors who are significantly involved in the conduct of the business, and each owner of more than 5% of the business (and the percentage ownership of the business). It also requires a "description" of the contract terms. For many businesses, compiling and supplying such information may be difficult and time consuming -- or a formal list may not exist at all.

In order to reduce the administrative burden on slot applicants/licensees and their vendors, Nemaclin respectfully proposes the following modifications to the proposed rules:

1. Create a minimum threshold floor before a vendor is required to file a registration. Since the ultimate purpose of the vendor rules is to permit the Board to assure that criminal influences do not infiltrate Pennsylvania gaming operations, it is logical to exclude from the vendor registration process any vendor that only engages in a small amount of business with the slot applicant/licensee -- where the contact with the gaming operation will not be substantial. Nemaclin suggests a threshold level of \$25,000 annually for any one vendor providing goods or services to any one slot applicant/licensee.

2. Revise the information required for a vendor registration to that which is necessary to permit the Board's Bureau of Investigation and Enforcement ("BIE") to conduct a further investigation when warranted. A revised requirement should include general

data about the business (i.e., name and address, telephone number, official trade name, nature of the business to be provided to the licensee, form of business, Federal Employee ID number), whether the vendor is minority- or women-owned, and date of agreement with the licensee or applicant. The registrant would also be required to consent to permitting additional investigations or submit additional information when deemed warranted by the Board. All the remaining information that the Board now proposes to be included in the registration should be made available upon request of the BIE.

3. Increase the threshold level of business required before the more extensive information required by a license application is necessary to \$300,000 annually for any one slot licensee and \$750,000 for all Pennsylvania slot licensees, annually. As noted above, Nemaocolin resort operations have some 63 vendors who provide \$150,000 or more of goods or services on an annual basis and project that it will use 20-25 for its slot operation, if it applies for and is granted a license. The burden and cost imposed on Nemaocolin to compile the license application information for all of these entities will be very difficult and time consuming to say the least.

Alternatively, and at a minimum, the Board should adopt these changes on a Category 3 licensee-basis. Category 3 licensees are unique and the Act, and the limited gaming they are permitted – both in terms of the number of slot machines and the fact that only guests/patrons may play them – warrants separate treatment in the vendor context.

D. The Board Must Create A Procedure to Permit A Slot Licensee to Begin to Conduct Business with a new Vendor Prior to the Vendor Filing a Registration or Receiving a Vendor License

Whether or not the Board elects to accept Nemaocolin's suggested modifications to the thresholds and filing requirements for registration and licensing, it must make a modification to permit vendors to conduct business with the slot applicant/licensee prior to filing a registration or

receiving a vendor license. This is a crucial change because, without such a modification, the rules seriously threaten the ability of slot applicants/licensees initially to get up and running and subsequently to conduct their business in a timely and efficient manner.

The regulations indicate that a slot applicant/licensee may not "conduct business" with a vendor before it either files a registration or obtains a vendor license. While there is a provision to permit slot applicants or licensees to petition for limited permission to "conduct a business transaction" for a six month period prior to the Board granting a license, this provision is only of limited duration, may not be granted unless "good cause is shown" and a licensee must have already filed a license application to obtain the special permission.<sup>16</sup> More concerning, even this limited exception may only be obtained by filing a petition and having the Board grant the authority pursuant to its provisions.<sup>17</sup> Outside of emergency situations,<sup>18</sup> there does not appear to be any way in which a slot licensee may begin to receive products or services from a vendor before the Board acts. Again, for larger vendors, no business can be conducted until a license is applied for and issued (except for the very limited "emergency" situation).

This scheme is not consistent with the way in which Nemaquin envisions that its potential slot operation will get up and running. In most cases, after a vendor is selected Nemaquin will immediately engage in planning and preparation to permit in order to be ready to go into business as soon as possible after its Category 3 license is granted. After the license is granted, there will be numerous instances in which Nemaquin will need to immediately engage a

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<sup>16</sup> See Draft Rule 437.7.

<sup>17</sup> *Id.*

<sup>18</sup> Draft Rule 437.10. The licensee must show that there is a threat to public health, welfare or safety and that circumstances create an urgency which do not permit a delay. Even then the licensee must file a registration or license application within 72 hours.



new vendor to provide a good or service where waiting to file a registration or obtain a license (or file for temporary authority under section 437.7) will not be practical.<sup>19</sup>

Moreover, to the extent that the Board is interested in consistency with the regulatory schemes of neighboring states, it is important to recognize that this apparent requirement is inconsistent with the New Jersey regulatory scheme on which the Pennsylvania regulatory scheme was apparently modeled. Specifically, N.J.A.C. 19:43-10.4 requires a Casino licensee to file with the Casino Control Commission, no later than 20 days following a formal offer and acceptance of an agreement with an entity, a completed Notice of Intent to Conduct Business for any enterprise which does not appear on the active vendor's record list submitted to the Commission. The Notice of Intent to Conduct Business as prescribed in regulation N.J.A.C. 19:41-5.11(A) requires a Casino to provide the Commission with the official trade name of the entity, its business address, telephone number, federal employee ID number and date of the formal offer and acceptance of an agreement to conduct business with the Casino.

Additionally, in New Jersey the Casino is required to file with the Commission a Vendor Registration Form ("VRF") for any enterprise with which it is conducting certain types of business, including bus operations or more significantly any agreement for goods or services reasonably expected to total \$10,000.00 or more. The VRF is to be filed within twenty (20) calendar days from the date of a formal offer and acceptance by the vendor and the Casino. The

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<sup>19</sup> This assumes that the licensing requirement is made applicable only to vendors for Nemaquin's slot operations. If Nemaquin had to obtain a license for all of its some 63 large vendors serving the Resort prior to continuing to use them it would literally shut down its operation pending the issuance of a vendor license. This highlights the importance of clarifying that the vendor registration/licensing requirement applies only to vendors of the slot machine licensee's slot operation, as proposed in Section A of these Comments.

New Jersey rules also require licensing for vendors who do business with a casino on a "regular and continuous basis."<sup>20</sup>

Importantly, whether subject to registration or a licensing requirement, the New Jersey process allows the Casino to enter into a business agreement, contract or business transaction with a vendor **prior to** the vendor filing any form with the Commission by way of formal application or otherwise, or receiving any Board authorization to conduct business. As a matter of business practice, all Casino licensees prior to entering into any transactions require its prospective vendors to provide the information which will be required to be set forth on the VRF. That information is similar to the information requested by the draft Pennsylvania regulations.

If the Pennsylvania slot licensee vendor rules are to be workable, it is important that the Board modify its requirements to allow for a similar ability to conduct business prior to having to make any extensive filings with the Board. It can do so by:

1. adding a section that permits a slot licensee to file, no later than 20 days after signing a agreement or contract (or otherwise agreeing) with a vendor to provide a product or service, a "Notice of Intent to Conduct Business" which list the name, address, official

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<sup>20</sup> The NJ Commission's rules require persons and enterprises that conduct non-gaming-related business with a casino or slot machine licensee or applicant on a "regular or continuing" basis to either be licensed or be exempted from licensure. A person or enterprise may be determined to be conducting regular or continuing business upon Commission consideration of the enumerated criteria set forth in the regulations. These criteria include the number and frequency of transactions conducted, the duration of agreements, and the nature of the goods and services provided. Alternatively, the NJ Commission's rules also set forth various monetary thresholds of business conducted with individual casino licensees or the industry as a whole which, when reached by a person or enterprise, create a rebuttable presumption that the person or enterprise is conducting regular or continuing business for purposes of the NJ Act and rules.

trade name of the entity, its business address, telephone number, federal employee ID number and date of the formal offer and acceptance of an agreement to conduct with the Casino;

2. within ninety (90) days after signing an agreement, and for entities that will do more than \$25,000 of business with the slot licensee (and who are not otherwise exempted), file a registration or application for vendor license (depending on the extent of the business activity that the vendor will provide to the slot applicant/licensee's slot operation); and

3. making clear that the slot applicant/licensee will be permitted to continue to do business with the vendor unless or until the Board issues an order disqualifying the vendor.

Alternatively, and at the very least, the Board should amend section 437.7 to make clear that a vendor may begin work immediately upon the filing of Petition for Permission to Conduct Business Prior to Licensure and continue to provide products or services pending the Board's decision on the petition.<sup>21</sup>

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<sup>21</sup> This would require an amendment to Draft Rule § 437.3 to indicate that such a petition is deemed granted and to eliminate the initial 6 month duration (with an optional additional 6 months) for such authorizations, as now proposed.

WHEREFORE, Nemaquin Woodland Resorts, Inc., respectfully requests that the Pennsylvania Gaming Control Board include the modifications discussed above in its final Chapter 401, 435, 437, 441 (§§ 441.15-17) regulations.

Respectfully submitted:

A handwritten signature in cursive script that reads "Daniel Clearfield". The signature is written in black ink and is positioned above a horizontal line.

Alan C. Kohler, Esquire  
Daniel Clearfield, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP

Counsel for Nemaquin Woodland Resorts,  
Inc.

Date: October 11, 2005

**APPENDIX A****§ 401.4. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Notice of Intent to Conduct Business --A form submitted by a slot machine licensee or applicant for any vendor with which it has agreed to conduct business and for which a VRF or VLA has not been submitted.

\* \* \* \*

Regular or continuing basis--A vendor will be deemed to conduct business on a regular or continuing basis if:

- (i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than [\$150,000] \$300,000 within any consecutive 12 month period.
- (ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than [\$500,000] \$750,000 within any consecutive 12 month period.

\* \* \* \*

Vendor--A person who provides goods or services directly to a slot machine licensee or applicant's slot machine parlor or operation, but who is not required to be licensed as a manufacturer, supplier or junket enterprise. These persons include:

\* \* \* \*

Vendor license--A license issued by the Board authorizing a vendor to provide goods or services directly to a slot machine licensee or applicant's slot machine parlor or operation.

\* \* \* \*

Vendor registration--A registration issued by the Board authorizing a vendor to provide goods or services directly to a slot machine licensee or applicant's slot machine parlor or operation.

**Subpart B. LICENSING, REGISTERING AND PERMITTING****§ 437.1. Vendor registration requirements.**

(a) Each slot machine licensee shall file a VRF with the Board to conduct business with a vendor, except as provided in §§ 437.3, 437.7 (relating to vendor license requirements; and permission to conduct business prior to licensure) and 437.7-1 (relating to conducting business prior to filing a registration).

\* \* \* \*

**§ 437.2. VRF.**

A VRF shall be in a format prescribed by the Board requesting the following information:

(1) Any official or trade name used.

(2) Business address.

(3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any, as required by § 481.3 (relating to diversity participation).

~~(7) Form of business, state and date of incorporation or formation, if applicable.~~

~~(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a description thereof including the expected duration and compensation.~~

~~(9) The names and addresses of all subsidiaries.~~

~~—(10) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.~~

~~—(11) The names and addresses of each of the following:~~

~~—(i) An individual who entered into an agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and the persons responsible for the office out of which the supervisors work.~~

~~—(ii) Any officer, partner or director who will be significantly involved in the conduct of the vendor business with the slot machine licensee or applicant.~~

~~—(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.~~

~~—(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.~~

(12) The name, position or title and signature of the individual who supplied the information in the VRF.

(13) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

(14) ~~Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.~~

(15) Other information requested by the Board.

### **§ 437.3. Vendor license requirements.**

(a) If a vendor will conduct business with a slot machine licensee on a regular or continuing basis, the vendor must be licensed by the Board prior to conducting business, except as provided in §§ 437.6 and 437.7 (relating to existing agreements; and permission to conduct business prior to licensure) and 437.7-1 (relating to conducting business prior to filing a registration).

\* \* \* \*

### **§ 437.7-1. Authorization to Conduct Business Pending Filing and Approval of Registration or License.**

(a) Notwithstanding §§ 437.1 and 437.3 (relating to vendor registration; and vendor license requirements), a slot machine licensee or applicant may begin to conduct business with any vendor prior to the submission of a VRF or a VLA so long as the he following criteria are met:

(1) A completed Notice of Intent to Conduct Business is filed by the slot machine licensee or applicant within twenty (20) days of the formal offer and acceptance of an agreement with the vendor.

(2) A completed VRF or VLA has been filed by the slot machine licensee or applicant in accordance with § 437.1 or 437.3 within ninety (90) days of the formal offer and acceptance of an agreement with the vendor.

(b) A Notice of Intent to Conduct Business shall contain the following information:

(1) the official trade name of the vendor;

(2) its business address, and telephone number;

(3) the vendor's federal employee ID number; and

(4) the date of the formal offer and acceptance of an agreement to conduct business with the slot machine licensee or applicant.

(c) A vendor for which a Notice of Intent to Conduct Business has been filed and the other conditions set forth in section (a) above have been complied with is authorized to conduct

business with a slot licensee or applicant unless the Board issues or has issued an order disqualifying the vendor or denying an application for a vendor license.

\* \* \* \*

**§ 437.9. Exemption from vendor registration or license requirements.**

(a) The following persons are exempt from the vendor registration requirements of § 437.1 (relating to vendor registration requirements) and the vendor license requirements of § 437.3 (relating to vendor license requirements):

(1) Entities for which the total dollar amount of transactions with a single slot machine licensee or applicant are not or will not be greater than \$25,000 within any consecutive 12 month period.

~~(1)~~ (2) Entities which provide only one or more of the following services to slot machine licensee which are the sole source provider of the services:

\* \* \* \*



The logo for WolfBlock, featuring the company name in a large, bold, serif font. A thick black horizontal bar is positioned above the text, partially overlapping the 'W' and 'B'.

Mark S. Stewart

RECEIVED

OCT 13 2005

October 11, 2005

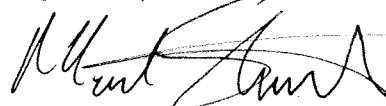
Pennsylvania Gaming Control Board  
P. O. Box 69060  
Harrisburg, PA 17106-9060  
Attn: Public Comment

Dear Sir:

On behalf of Greenwood Racing, Inc., t/d/b/a Philadelphia Park Racetrack the following comments are respectfully submitted.

Please direct any questions or comments to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark S. Stewart', written over a horizontal line.

Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS  
Enclosure

## DRAFT REGULATION COMMENT FORM

Please complete all of the fields below before printing:

DATE	10/11/05	ADDRESS 1
SECTION # OR SUBJECT	Draft Regulations published 9/8/05 re: registration and licensing of slot machine applicant and licensee vendors	ADDRESS 2
FIRST NAME	Mark	CITY
LAST NAME	Stewart	STATE
ORGANIZATION NAME	Wolf, Block, Schorr and Solis- Cohen LLP	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE

### COMMENTS

See attached comments submitted on behalf of Greenwood Racing, Inc., t/d/b/a Philadelphia Park Racetrack.

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**

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In re: Promulgation of Temporary  
Regulations Under Title 58 of the  
Pennsylvania Code, Chapters 401, 435, 437  
and 441

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**GREENWOOD RACING, INC. T/D/B/A PHILADELPHIA PARK RACETRACK'S  
COMMENTS TO DRAFT VENDOR REGULATIONS**

Greenwood Racing, Inc., t/d/b/a Philadelphia Park Racetrack ("Philadelphia Park"), respectfully submits these comments to the Pennsylvania Gaming Control Board's ("PGCB" or "Board") draft regulations published on September 8, 2005, regarding registration and licensing of slot machine applicant and licensee vendors. These 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 create procedures and requirements generally applicable to all entities providing "goods or services" to slot machine applicants or licensees, with certain listed exceptions.<sup>1</sup>

**I. BACKGROUND**

Philadelphia Park previously filed comments to the Board's draft Category 1 licensure regulations, which included background information on Philadelphia Park. Philadelphia Park incorporates that discussion here.

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<sup>1</sup> Draft Rule, §437.9

## II. COMMENTS

Philadelphia Park will be an applicant for a Conditional Category 1 Slot License.

Philadelphia Park has reviewed the proposed regulations regarding vendors, and has a particular comment regarding the regulations as they pertain to non-gaming vendors. While many jurisdictions do not require the licensing of non-gaming vendors, Pennsylvania's regulations seek to require licensure. Philadelphia Park requests that the Board consider removing the requirement that non-gaming vendors must be licensed.

Alternatively, should the Board retain the licensure of non-gaming vendors, Philadelphia Park respectfully submits that the proposed method by which the slot licensee bears responsibility for the filing and content of a Vendor License Application should be modified. Similar to New Jersey, the slot licensee must provide a completed Vendor Registration Form ("VRF") to the Board before doing business. (Sec. 437.1) The proposed Pennsylvania requirements for the content of the VRF are essentially the same as New Jersey's in their scope. (Sec. 437.2 ) The primary difference between the regulatory schemes is the highly burdensome requirement that the slot licensee is responsible for the filing of the Non-Gaming Vendors License Application with the Board.

Under the proposed regulations, the slot licensee is responsible for the Vendor Licensing Application for each of its vendors, once they reach the monetary thresholds (Sec. 437.3(d)). Essentially, the proposed regulation is placing the burden on the slot licensee to engage in substantial due diligence, and be the entity responsible to require the vendors to get their background information completed, in order to do business. This creates an enormous burden on the licensee by way of costs and administrative efforts. Such a burden is not reasonable, as the slot licensee does not have the resources to obtain cooperation, and further, cannot engage in the

kinds of criminal and financial background checks that the Board, and other public law enforcement entities can. Such a process also tends to chill competition, as licensees will only want to deal with companies that are already licensed, to avoid the hassle.

Philadelphia Park respectfully proposes that the slot licensees not be responsible for this burden. Instead, as in New Jersey, a vendor meeting the monetary thresholds should be independently obligated to provide the necessary information and file the forms directly with the Board for registration or licensure.

WHEREFORE, Philadelphia Park respectfully requests that the Pennsylvania Gaming Control Board include the modifications discussed above in its final Chapter 401, 435, 437, 441 (§§ 441.15-17) regulations.

Respectfully submitted:



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

Stephen D. Schrier  
Obermayer Rebmann Maxwell & Hippel LLP

Counsel for Greenwood Racing, Inc. t/d/b/a  
Philadelphia Park Racetrack

Date: October 11, 2005

OCT 14 2005

**COMMENTS OF THE**

**PENNSYLVANIA MINORITY BUSINESS DEVELOPMENT CENTER,  
MINORITY SUPPLIER DEVELOPMENT COUNCIL OF PA-NJ-DE,  
PITTSBURGH REGIONAL MINORITY PURCHASING COUNCIL,  
GREATER PHILADELPHIA HISPANIC CHAMBER OF COMMERCE and  
AFRICAN AMERICAN CHAMBER OF WESTERN PENNSYLVANIA**

**CONCERNING**

**CHAPTER 437. VENDOR REGISTRATION AND LICENSING  
REGULATIONS OF THE PENNSYLVANIA  
GAMING CONTROL BOARD**

October 10, 2005

## I. INTRODUCTION

The Pennsylvania Minority Business Development Center (PA-MBDC) is operated by The Enterprise Center, which has been an award-winning business incubator for the past decade. Located in Philadelphia, the PA-MBDC is sponsored by the U.S. Department of Commerce through the Minority Business Development Agency. Its mission is to accelerate the growth of minority enterprises by increasing the number of minority firms capable of operating at a higher level of efficiency and profitability. PA-MBDC seeks to have a significant impact on jobs and the creation of taxable wealth in the Commonwealth of Pennsylvania. PA-MBDC provides minority-owned businesses with access to consulting services in everything from strategy development to marketing, accounting, sales training, and human resources management. PA-MBDC focuses on helping minority-owned businesses do business with the Federal government and to find access to capital through strategic partnerships with financial institutions and lenders across the State.

The Minority Supplier Development Council of Pennsylvania-New Jersey-Delaware (MSDC) promotes and expands purchasing opportunities for minority business enterprises (MBEs) among the Council's diverse corporate membership. MSDC accomplishes its mission by directly linking the Council's corporate and institutional purchasing agents with qualified MBEs. The Council and its member corporations serve as a vital business development resource for MBEs expanding their market base into the private sector. Headquartered in Philadelphia, The MSDC of PA-NJ-DE serves a diverse corporate membership base whose operations are located in eastern and central Pennsylvania, southern New Jersey, and Delaware. The MSDC of PA-NJ-DE enables

corporate buyers to tap into the Council's database of qualified minority vendors when procurement opportunities arise.

For more than 30 years, the Pittsburgh Regional Minority Purchasing Council (PRMPC) has been helping minority business enterprises (MBEs) in western Pennsylvania and West Virginia achieve success in the marketplace. PRMPC's has established a strong record of certifying minority businesses and providing business development and expansion for its minority business owners. Pittsburgh's MBEs are also included in a comprehensive database, which is made available to major corporations nationwide. PRMPC's certification process assures its corporate members that they are dealing with only legitimate, qualified minority owned and operated businesses.

The Greater Philadelphia Hispanic Chamber of Commerce (GPHCC) was established in 1990 by a committed group of Hispanic business professionals and individuals in response to the pressing need to create an organization that would respond to the various needs of the growing Hispanic business community. The GPHCC has become a vehicle that serves as a voice for Hispanic businesses before government entities, providing strong advocacy for services and developing policies to stimulate economic growth through business development within the Hispanic communities. Over the years, the GPHCC has addressed many issues that affect our businesses including but not limited to: access to government agencies, public safety matters, providing access to financial resources, improvement of small business corridors, and issues within the federal empowerment zones.

The African American Chamber of Commerce of Western Pennsylvania (AACCWP) is a full service organization, providing access and opportunity to African



American business owners and professionals. Located in Pittsburgh, Pennsylvania, they provide service from Cambia County up to Erie, PA, to the Ohio border and down through West Virginia. The mission of the AACCWP is to continuously improve business and professional opportunities for African American business owners and professionals. Guided by the core values of equity in opportunity, economic advancement, self-sufficiency and entrepreneurial excellence, the AACCWP seeks to advance economic parity for the African American Business community by insuring full participation in the public and private sectors throughout the region.

The PA-MBDC, MSDC, PRMPC, GPHCC and AACCWP (hereinafter the “Joint Commenters”) have joined in this comment to provide the Pennsylvania Gaming Control Board with the benefit of their combined experience and observations. Based upon their own research and experience with minority-owned businesses and major corporations, the Joint Commenters offer several recommendations to improve the proposed vendor registration and licensing regulations of Chapter 437 of the Pennsylvania Gaming Control Board.

Appendix 1 to these Comments provides a survey of various existing vendor regulations and licensing requirements for the 11 commercial casino states in the United States, with a particular emphasis on provisions concerning diversity and minority and women vendor participation. Specifically, Section I of Appendix 1, presents a state-by-state review of Licensing Requirements for gaming and non-gaming vendors of products and services, applicable fees and other relevant requirements. Section II of Appendix 1 provides a state-by-state look at State Regulations governing the procurement of products

and services from minority and women-owned businesses by licensees in the commercial casino industry.

The body of these comments is devoted to an analysis and review of the proposed provisions of Section 437 of the Pennsylvania Gaming Regulations. The Joint Commenters have identified specific provisions and offered specific recommendations in areas which directly impact on minority participation in Pennsylvania's gaming industry.

## **II. STATE GAMING VENDOR LICENSING REQUIREMENTS**

As illustrated in Appendix 1, the Joint Commenters have observed that there are eleven (11) states within the United States with commercial casino regulations.<sup>1</sup> In the 11 commercial casino states, there are a variety of licensing requirements which apply to vendors of licensed casinos. The Joint Commenters recognize that in order to do business with commercial casinos, suppliers and vendors must be free and clear from the influence of organized crime and other criminal operations; however, as illustrated below, state gaming authorities have addressed these concerns in very different ways in their vendor licensing and registration requirements.

As outlined in Appendix 1, and as proposed in the Pennsylvania regulations at Section 437, vendor licensing is an accepted and appropriate method of ensuring that licensees only work with reputable companies and individuals. Additionally, as in Pennsylvania's proposed regulations, other states require that vendors must meet certain gross gaming revenue thresholds before a license is required. Moreover, the regulations of other casino states provide strong guidance on the issue of whether businesses supplying non-gaming related products (e.g., carpet supplies) need to be licensed to sell goods and services to Pennsylvania gaming licensees and applicants.

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<sup>1</sup> See, Appendix 1, Summary of State Gaming Vendor Licenses and Regulations

**III. NON-GAMING VENDORS OF GOODS AND SERVICES SHOULD BE EXEMPT FROM THE LICENSE REQUIREMENT AND REASONABLE REGISTRATION PROCEDURES SHOULD BE ADOPTED**

Sections 437.1 and 437.2 of the proposed Pennsylvania regulations outline the requirements for vendor registration and the associated registration form. The Joint Commenters offer no comments to these provisions.

Section 437.3(a) provides: “If a vendor will conduct business with a slot machine licensee on a regular or continuing basis, the vendor must be licensed by the Board prior to conducting business...” The “regular course of business” is defined in Section 401.4 as where the “total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than \$150,000 within any consecutive 12 month period or where “the total dollar amount of transactions with slot machine licensees or applicants is or will be greater than \$500,000 within any consecutive 12 month period.”

Section 437.9 of the proposed regulations exempts a long list of potential vendors from the licensing requirement, including: public utilities, insurance companies, employee benefits management companies, professional associations, government agencies, banks, shipping services, accountants, attorneys, lobbyist, schools and entertainers.

The Joint Commenters note that a central feature of the long list of exemptions in 437.9 is that they are generally all vendors who are engaged in “non-gaming” activity. Moreover, unlike most minority and women business owners in Pennsylvania, the current list of exempt entities represents professions and organizations with significant influence in Pennsylvania. Consequently, the Joint Commenters offer these comments on behalf of

those minority and women business owners who have not previously been represented in this process. The primary message of this Comment is simple, **treat non-gaming minority and women owned vendor companies the same way as the other exempted professions and organizations are treated.**

As illustrated in Appendix 1, in eight of the eleven casino states, vendors of non-gaming products and services are not required to be licensed (Colorado, Illinois, Indiana, Iowa, Mississippi, Missouri, Nevada & South Dakota).<sup>2</sup> In sharp contrast, notwithstanding the long list of exemptions in 437.9, under the proposed regulations, the Joint Commenters submit that the great majority of minority and women owned vendors will be required to receive a vendor's license. For example, under the current provisions of 437.3, a minority owned business that contracted to provide bottled water to a licensed gaming establishment would be required to receive a license if they receive a one year contract worth more than \$150,000. Similarly, a food vendor with a one year contract worth more than \$150,000 would be required to be licensed by the Board. The Joint Commenters submit that the proposed language of Section 437.3 will have the effect of discouraging – not encouraging – minority vendor participation in Pennsylvania's gaming industry.

In order to correct this problem, the Joint Commenters recommend that the Board amend section 437.3 to limit its application to suppliers and vendors of gaming related products and services. Alternatively, the Joint Petitioners recommend that the Board increase the threshold revenue requirement in section 401.1 definition of "regular course of business" as follows:

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<sup>2</sup> Appendix 1, pages 1 through 8.

- from \$150,000 with a single licensee over a twelve month period to \$500,000 with a single licensee over a twelve month period; and,
- From \$500,000 with multiple licensees over a twelve month period to \$1,000,000 with multiple licensees over a twelve month period.

It is important to note that under Sections 437.1 and 437.2 of the proposed regulations all licensees must currently file a registration form with the Board in order to do business with a vendor. Moreover, the Joint Commenters acknowledge that this registration requirement enables the Board to identify the precise individuals and entities doing business with licensees. The registration requirements of sections 437.1 and 437.2, in effect, permit the Board to strike a balance between the important objectives of keeping the industry free and clear from the influence of organized crime and the promotion and inclusion of diverse businesses as vendors and participants in the Pennsylvania gaming industry.

The Joint Commenters encourage the adoption of reasonable registration requirements for vendors used by licensees. On the other hand, we note that a registration process that is as burdensome as to require vendors to hire attorneys, or hire additional employees, to accomplish registration will also adversely impact, and discourage, many minority vendors from participating in this new industry.

In the casino state of New Jersey, as reflected on Appendix 1, at page 8, a casino purchasing at least \$10,000 in products and services from a company or individual during a 12-month period is required to file a Vendor Registration Form on behalf of that company or individual. Should the Pennsylvania Gaming Board determine that a

contract dollar amount is an appropriate basis for requiring vendor registration, we recommend that the Board adopt a threshold of \$50,000, or more.

The above recommended changes will have the effect of encouraging minority and women business owners to participate in Pennsylvania's gaming industry and ensure that they are not burdened more heavily than the other established professions and organizations exempted from the licensing requirements under 437.9.

The Joint Commenters believe that the majority of the casino states are correct. If this Board is serious about increasing the participation of minority businesses in the developing gaming industry in Pennsylvania, most of whom are likely to provide non-gaming goods and services, then this Board will **limit the licensing requirement to vendors providing gaming related goods and services to Pennsylvania licensees and applicants and focus on developing reasonable registration requirements for vendors.**

#### **IV. THE LICENSING FEE FOR VENDORS MUST BE SET AT A REASONABLE AMOUNT**

Section 437.4 of the proposed regulations provides that the vendor license application "shall consist of an application processing fee" and other detailed information. For most of the reasons outlined above (i.e., minority and woman business primarily provide non-gaming goods and services and under representation of minority and woman businesses in the Pennsylvania gaming industry), the Joint Commenters urge that the vendor application fee be set a reasonable level. While we note that in the eight casino states in which non-gaming vendors are not required to be licensed, no fee would apply.

However, the Joint Petitioners encourage this Board to follow the example of New

Jersey<sup>3</sup>, and recommends that for gaming and non-gaming vendor required to secure a license, the application fee should be no more than two thousand dollars (\$2,000).

V. **PERMISSION TO CONDUCT BUSINESS PRIOR TO LICENSE SHOULD BE DEEMED GRANTED UPON APPLICATION, UNLESS OTHERWISE DENIED BY THE BOARD**

The Joint Commenters recognize that the proposed language of 437.7 permits licensees to conduct business with vendors, for a period of up to 6 months, prior to receiving a license. These provisions seem to acknowledge the possibility that an event or circumstances may arise which requires that a licensee secure goods or services immediately. For example, in the event that a licensed vendor goes out of business and must be replaced on an emergency basis, the licensee is permitted to make such replacement and simultaneously apply to the Board for a license.

While the Joint Commenters generally agree with the provisions of section 437.7, we offer one suggestion for improvement of this section. In section 437.7(b), the Board limits the period of permission to do business without a license to six months and may extend the period for an additional period of six months. This provision seems to acknowledge both the exigency of circumstances which a licensee may face and the possibility that a delay in the issuance of a license by the Board may occur. Accordingly, the Joint Commenters recommend that these provisions be modified to permit, upon the timely filing of an application for vendor license, that a vendor may work indefinitely until such time as their application is approved or rejected by the Board. In other words, permission to conduct business prior to license should be deemed granted unless otherwise denied by the Board.

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<sup>3</sup> Appendix I at page 8.

## **VI. CONCLUSION**

For all of the reasons outlined above, the Joint Commenters urge the Board to modify the provisions of Chapter 437 as follows:

- 1) Declare all vendors of non-gaming goods and services exempt from the licensing requirements of Section 437 of the proposed regulations;
- 2) Amend the definition of “regular course of business” to increase the threshold revenue requirement from \$150,000 with a single licensee over a twelve month period to \$500,000 with a single licensee over a twelve month period; and, from \$500,000 with multiple licensees over a twelve month period to \$1,000,000 with multiple licensees over a twelve month period;
- 3) Set the licensing fee for vendors at a reasonable amount, not to exceed \$2000;
- 4) Should the Pennsylvania Gaming Board determine that a contract dollar amount is an appropriate basis for requiring vendor registration, adopt a threshold of \$50,000, or more; and,
- 5) Declare permission to conduct business prior to licensing be deemed granted unless and until otherwise denied by the Board.

## **VII CONTACT INFORMATION OF THE JOINT COMMENTERS**

Jacqueline Hill  
Director of Business Relationships  
Pennsylvania Minority Business Development Center



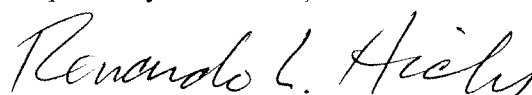
Darlene Jenkins  
President and CEO  
Minority Supplier Development Council of PA-NJ-DE

Alexander J. Nichols, Jr.  
President  
Pittsburgh Regional Minority Purchasing Council

Benjamin Ramos  
Executive Director  
Greater Philadelphia Hispanic Chamber Of Commerce

Doris Carson Williams  
President & CEO  
African American Chamber of Western Pennsylvania

Respectfully Submitted,



Renardo L. Hicks, Esquire  
Anderson, Gulotta & Hicks, PC

DATED: October 10, 2005

# APPENDIX 1

## Summary of State Gaming Vendor Licenses and Regulations

### STATE GAMING VENDOR LICENSING REQUIREMENTS

#### 1. COLORADO - GAMING PRODUCTS AND SERVICES<sup>1</sup>

##### a) License

*Business Gaming License:* This type of license is required for any company or individual that manufactures or distributes approved slot or video machines and component parts.

##### b) Fees

License Type	Application Fee		Licensing Fee	Background Deposit	
	Type 1*	Type 2**		Type 1*	Type 2**
Retailer	\$1,000	\$2,000	\$1,250	\$5,000	\$10,000
Operator	\$500	\$1,000	\$1,000	\$5,000	\$10,000
Manufacturer/ Distributor			\$1,000	\$5,000	\$10,000

\*A group of six or fewer individuals (all Colorado residents) with at least 5 percent interest in the business

\*\*All others not falling within Type 1

Licenses are valid for one year and may be renewed by the Colorado Division of Gaming. Renewal fees are the same as issuance fees minus the background deposit.

##### c) Non-Gaming Products and Services

<sup>1</sup> Source: American Gaming Association  
<http://www.americangaming.org/diversity/vendors/licensing.cfm>

The Colorado Division on Gaming does not require vendors of non-gaming products or services to be licensed by the state.

## 2. ILLINOIS - GAMING PRODUCTS AND SERVICES<sup>2</sup>

### a) License

*Supplier's License:* This type of license is required for any company or individual that provides equipment devices, services or supplies to a licensed riverboat gambling operator.

### b) Fees

*Application Fee:* \$10,000 (If the cost of the applicant's investigation exceeds the applicant's fee, the fee may be increased.)

*Supplier's License Fee:* \$5,000 annually

### c) Non-Gaming Products and Services

The Illinois Gaming Board does not require vendors of non-gaming products or services to be licensed by the state.

## 3. INDIANA - GAMING PRODUCTS AND SERVICES<sup>3</sup>

### a) License

*Supplier's License:* This type of license is required for any company or individual intending to distribute gaming equipment, services and/or supplies, which conform to the commission's standards, to a licensed riverboat gambling operation.

### b) Fees

*Application Fee:* \$10,000 (nonrefundable)

*Supplier's License Fee:* \$5,000 annually

### c) Other Requirements

*Individuals:* Each applicant must submit two sets of fingerprints.

*Companies:* Each officer and director of the applying company must submit two sets of fingerprints.

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<sup>2</sup> Id.

<sup>3</sup> Id.

**d) Non-Gaming Products and Services**

The Indiana Gaming Commission does not require vendors of non-gaming products or services to be licensed by the state.

**4. IOWA - GAMING PRODUCTS AND SERVICES<sup>4</sup>**

**a) Licenses**

*Distributor's License:* This type of license is required for any company or individual that sells, markets or distributes gaming-related devices and/or equipment.

*Manufacturer's License:* This type of license is required for any company or individual that designs, assembles, fabricates, produces, constructs or prepares gambling-related products or components.

**b) Fees**

*Distributor's License Fee:* \$1,000 annually

*Manufacturer's License Fee:* \$250 annually

**c) Non-Gaming Products and Services**

The Iowa Racing and Gaming Commission does not require vendors of non-gaming products or services to be licensed by the state. However, the commission must approve business transactions between a supplier/vendor and a gaming operator that exceed \$100,000 during a 12-month period.

**5. LOUISIANA - GAMING PRODUCTS AND SERVICES<sup>5</sup>**

**a) Licenses**

*Manufacturers of Slots Permit:* This type of license is required for a company or individual that manufacturers an electronic gaming device.

*Gaming Manufacturers Other Than Slots Permit:* This type of license is required for a company or individual that manufactures any casino game other than an electronic gaming device.

*Gaming Supplier Permit:* This type of license is required for a company or individual that supplies, sells, leases or repairs, or contracts to supply, sell, lease, or repair gaming-related devices, equipment, supplies, or services to or for licensed gaming operators.

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<sup>4</sup> Id.

<sup>5</sup> Id.

**b) Fees**

*Manufacturers of Slots Permit Fee:* \$15,000 annually

*Gaming Manufacturers Other Than Slots Permit Fee:* \$7,500 annually

*Gaming Supplier Permit Fee:* \$3,000 annually

**c) Non-Gaming Products and Services**

*Non-gaming Supplier Permit:* This type of license is required for a company or individual whose one-year gaming revenue equals or exceeds \$100,000 per gaming operator.

**d) Fees**

*Non-gaming Supplier Permit Fee:* \$250 annually

**6. MICHIGAN - GAMING PRODUCTS AND SERVICES<sup>6</sup>****a) Licenses**

*Supplier License:* This type of license is required for any company or individual providing gaming-related services.

Supplier licensing requires a background investigation lasting approximately three months. There are cases in which companies can apply for an exemption to the supplier licensing process (outlined in Resolution 2003-07, adopted by the Michigan Gaming Control Board in December 2003).

**b) Fees**

*Application Fee*

<b>Yearly Gaming Revenue</b>	<b>Cost</b>
Less than \$100,000	\$500
\$100,000 - \$500,000	\$1,000
More than \$500,000	\$2,500

*Supplier License Fee:* \$5,000 annually

In addition these fees, applicants also are responsible for any fees incurred by the board during its licensing investigation.

<sup>6</sup> Id.

**c) Non-gaming Products and Services**

*Vendor Registration Number:* This type of license is required for any company or individual with gaming revenues exceeding \$600 during a 12-month period.

*Supplier License:* This type of license is required for any company or individual with gaming revenues during a 12-month period equaling or exceeding \$200,000 with one casino, or \$400,000 with more than one casino.

**d) Fees**

*Application Fee*

<b>Yearly Gaming Revenue</b>	<b>Cost</b>
\$100,000 - \$500,000	\$1,000
More than \$500,000	\$2,500

*Supplier License Fee:* \$5,000 annually

In addition to these fees, applicants also are responsible for any fees incurred by the board during its licensing investigation.

**7. MISSISSIPPI - GAMING PRODUCTS AND SERVICES<sup>7</sup>**

**a) Licenses**

*Distributor's License:* This type of license is required for any company or individual that lends, leases, sells, gives or distributes in any other manner gaming devices and equipment used in Mississippi.

*Manufacturer's License:* This type of license is required for companies or individuals that manufacture, assemble, or modify any gaming device used in Mississippi.

**b) Fees**

*Distributor's License*

- **Application Fee:** \$500
- **Licensing Fee:** \$500 every three years

*Manufacturer's License*

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<sup>7</sup> Id.

- **Application Fee:** \$1,000
- **Licensing Fee:** \$1,000 every three years

**c) Non-Gaming Products and Services**

The Mississippi Gaming Commission does not require vendors of non-gaming products or services to be licensed by the state.

**8. MISSOURI - GAMING PRODUCTS AND SERVICES<sup>8</sup>**

**a) Licenses**

*Supplier's License:* This type of license is required for any company or individual that provides equipment devices, services or supplies to a licensed riverboat gambling operator.

*Affiliate Supplier's License:* This type of license is required for any affiliate of a company or individual that provides equipment devices, services or supplies to a licensed riverboat gambling operator. An affiliate is "a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified."

**b) Fees**

*Supplier's License*

- **Application Fee:** \$10,000 (If the cost of the applicant's investigation exceeds the applicant's fee, the fee may be increased.)
- **Licensing Fee:** \$5,000 annually

*Affiliate Supplier's License*

- **Application Fee:** \$10,000 (If the cost of the applicant's investigation exceeds the applicant's fee, the fee may be increased.)
- **Licensing Fee:** \$5,000 annually

**c) Non-gaming Products and Services**

The Missouri Gaming Commission does not require vendors of non-gaming products or services to be licensed by the state.

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<sup>8</sup> Id.

## 9. NEVADA - GAMING PRODUCTS AND SERVICES<sup>9</sup>

### a) Licenses

*Distributor's License:* This type of license is required for any company or individual intending to sell or distribute any gaming device for use in Nevada.

*Manufacturer's License:* This type of license is required for any company or individual intending to assemble or manufacture any gaming device for use in Nevada.

### b) Fees

*Distributor's License Fee:* \$500 annually

*Manufacturer's License Fee:* \$1,000 annually

### c) Non-gaming Products and Services

The Nevada Gaming Control Board does not require vendors of non-gaming products or services to be licensed by the state.

## 10. NEW JERSEY - GAMING PRODUCTS AND SERVICES<sup>10</sup>

### a) Licenses

*Casino Service License:* This type of license is required for a company or individual that provides any gaming-related goods or services.

### b) Fees

*Application Fee:* \$2,000 (non-refundable)

### c) Other Requirements

*Vendor Registration Form:* A casino purchasing at least \$10,000 in products and services from a company or individual during a 12-month period is required to file a Vendor Registration Form on behalf of that company or individual

### d) Non-gaming Products and Services

*Casino Service License (non-gaming):* This type of license is required for a company or individual with gaming revenues during a 12-month period equaling or exceeding \$75,000 with one casino or \$225,000 with more than one casino.

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<sup>9</sup> Id.

<sup>10</sup> Id.



**e) Fees**

*Application Fee:* \$2,000 (nonrefundable)

**f) Other Requirements**

*Vendor Registration Form:* A casino purchasing at least \$10,000 in products and services from a company or individual during a 12-month period is required to file a Vendor Registration Form on behalf of that company or individual

**11. SOUTH DAKOTA - GAMING PRODUCTS AND SERVICES<sup>11</sup>****a) Licenses**

*Slot Machine Manufacturer/Distributor License:* This type of license is required for any company or individual that manufactures or distributes slot machine-related products and services for use in South Dakota.

**b) Fees**

*Application Fee:* \$5,000

*Slot Machine Manufacturer/Distributor License Fee:* \$1,000 for the first year, \$250 for subsequent years

**c) Non-gaming Products and Services**

The South Dakota Commission on Gaming does not require vendors of non-gaming products or services to be licensed by the state.

**STATE GAMING REGULATIONS**

This section includes a state-by-state look at specific regulations governing the procurement of products and services from disadvantaged and minority- or women-owned businesses by the commercial casino industry.

**1. Colorado**

Colorado has no regulations or statutes regarding the procurement of products and services from disadvantaged or minority- or women-owned businesses by gaming operators licensed by the Colorado Division of Gaming.<sup>12</sup>

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<sup>11</sup> Id.

## 2. Illinois

In determining whether to license a casino owner applicant, the Illinois Gaming Board will consider “the good faith affirmative action plan of each applicant to recruit, train and upgrade minorities in all employment classifications.”<sup>13</sup>

## 3. Indiana

A person issued an owner's license in Indiana must establish spending goals that are at least:

- 10 percent of the dollar value of the licensee's contracts for products and services with minority business enterprises (MBEs)
- 5 percent of the dollar value of the licensee's contracts for products and services with women’s business enterprises (WBEs)<sup>14</sup>

The Department of Administration, Minority Business Development (DAMBD) is authorized to certify minority- and women-owned businesses in the state and maintains a list of certified enterprises (i.e., MBEs, DBEs and WBEs) for the commission. The DAMBD may assist the commission in determining compliance with these regulations.<sup>15</sup>

## 4. Iowa

The Iowa code requires casino operators to utilize Iowa resources, products and services in its operations. The Iowa Racing and Gaming Commission has developed standards to assure that a substantial amount of products, services and entertainment used by the riverboat casinos are procured by Iowa businesses. All contracts and business arrangements, verbal or written, with any related party, or in which the term exceeds three years or the total value of the contract exceeds \$100,000, are agreements that qualify for submission to and approval by the commission.<sup>16</sup>

## 5. Louisiana

“The Commission shall promulgate rules providing for and determining the following:

- That preferential treatment is given to Louisiana firms to the extent allowed by law in the procurement of all resources and goods used in the operation of a riverboat come from Louisiana;

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<sup>12</sup> Source: American Gaming Association

[http://www.americangaming.org/diversity/vendors/state\\_regulations.cfm](http://www.americangaming.org/diversity/vendors/state_regulations.cfm)

<sup>13</sup> Source: Riverboat Gambling Act (230 ILCS 10) Section 7 (b) 4

<sup>14</sup> Source: Indiana Statute: Indiana Code Title 4, Article 33, Chapter 14-5; Administrative Code: Indiana Gaming Commission; 68 IAC 3-1-1; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2248

<sup>15</sup> Id.

<sup>16</sup> Source: Code of Iowa, Title III, Subtitle 4, Chapter 99F.7

- That preferential treatment to the extent allowable by law in the awarding of contracts for services and entertainment is given to Louisiana firms and residents.<sup>17</sup>

“It shall be required by the owners to provide the maximum practical opportunities, for participation by the broadest number of minority-owned businesses. Such offering of participation by owners to the disadvantaged business enterprises who qualify under the provision of this chapter, shall be at a price not to exceed the price paid per share or interest paid by the ownership interests.<sup>18</sup>”

## 6. Michigan

The casino development agreements negotiated by Detroit Mayor Kwame Kilpatrick and approved by the Detroit City Council require the operators to use reasonable best efforts to:

- Have a workforce that is at least 51 percent composed of City of Detroit residents.
- With respect to construction projects, for worker hours to be at least 50 percent Detroit residents, 25 percent minority and 5 percent women, at least. This is a goal - not a requirement.<sup>19</sup>

## 7. Mississippi

While Mississippi does not have state-mandated hiring policies, the Mississippi Gaming Commission has a nonbinding, nonpublic directive requesting that, when possible, operators contract with state-based businesses.<sup>20</sup>

## 8. Missouri

A Class A casino operator license applicant must disclose the following plans for compliance:

- Policies with respect to minority contracting;
- A copy of its equal opportunity statement and policy dated and signed by the company’s CEO;
- A copy of affirmative action policy procedures dated and signed by the company’s CEO; and,

<sup>17</sup> Source: Title 27, Sec.52, Sub (2) (g); Title 27, Sec.70, Sub. (7)(a); Title 27, Sec.70, Sub. (7)(b)

<sup>18</sup> Id.

<sup>19</sup> Source: Casino Development Agreements, Exec. Order 4, Exec. Order 22

<sup>20</sup> Source: American Gaming Association

[http://www.americangaming.org/diversity/vendors/state\\_regulations.cfm](http://www.americangaming.org/diversity/vendors/state_regulations.cfm)

- Identification of an affirmative action officer, including name, title, address and telephone number.<sup>21</sup>

## 9. Nevada

Nevada has no regulations or statutes regarding the procurement of products and services from disadvantaged or minority- or women-owned businesses by gaming operators licensed by the Nevada Gaming Control Board.<sup>22</sup>

## 10. New Jersey

Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. No license will be issued to an applicant that has not agreed to afford equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the commission and in line with the provision of the “Law Against Discrimination”<sup>23</sup>

## 11. South Dakota

South Dakota has no regulations or statutes regarding the procurement of products and services from disadvantaged or minority- or women-owned businesses by gaming operators licensed by the South Dakota Commission on Gaming.<sup>24</sup>

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<sup>21</sup> Source: Sec. 313.805, subsection 18; Code of State Regulations: 11 CSR 45-4.030 Application for Class A License.

<sup>22</sup> Source: American Gaming Association

[http://www.americangaming.org/diversity/vendors/state\\_regulations.cfm](http://www.americangaming.org/diversity/vendors/state_regulations.cfm)

<sup>23</sup> Id.

<sup>24</sup> Id.

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**MINORITY SUPPLIER DEVELOPMENT COUNCIL OF PA-NJ-DE and  
PITTSBURGH REGIONAL MINORITY PURCHASING COUNCIL**

**COMMENTS CONCERNING**

**“DIVERSITY PARTICIPATION” AND “A DIVERSITY PLAN” REFERENCED  
IN CHAPTER 437 OF THE VENDOR REGISTRATION AND LICENSING  
REGULATIONS OF THE PENNSYLVANIA  
GAMING CONTROL BOARD**

Dated: October 10, 2005

## I. INTRODUCTION

Providing a direct link between corporate America and minority-owned businesses is the primary objective of the National Minority Supplier Development Council (NMSDC), one of the country's leading business membership organizations. It was chartered in 1972 to provide increased procurement and business opportunities for minority businesses of all sizes.

The NMSDC Network includes a National Office in New York and 39 regional councils across the country. There are 3,500 corporate members throughout the network, including most of America's largest publicly-owned, privately-owned and foreign-owned companies, as well as universities, hospitals and other buying institutions. The regional councils certify and match more than 15,000 minority owned businesses (Asian, Black, Hispanic and Native American) with member corporations which want to purchase goods and services.

Two of the NMSDC's regional councils are located in Pennsylvania: The Minority Supplier Development Council of PA-NJ-DE and the Pittsburgh Regional Minority Purchasing Council.

The Minority Supplier Development Council of Pennsylvania-New Jersey-Delaware (MSDC) promotes and expands purchasing opportunities for minority business enterprises (MBEs) among the Council's diverse corporate membership. MSDC accomplishes its mission by directly linking the Council's corporate and institutional purchasing agents with qualified MBEs. The Council and its member corporations serve as a vital business development resource for MBEs expanding their market base into the private sector. Headquartered in Philadelphia, The MSDC of PA-NJ-DE serves a diverse

corporate membership base whose operations are located in eastern and central Pennsylvania, southern New Jersey, and Delaware. The MSDC of PA-NJ-DE enables corporate buyers to tap into the Council's database of qualified minority vendors when procurement opportunities arise.

For more than 30 years, the Pittsburgh Regional Minority Purchasing Council (PRMPC) has been helping minority business enterprises (MBEs) in western Pennsylvania and West Virginia achieve success in the marketplace. PRMPC's has established a strong record of certifying minority businesses and providing business development and expansion for its minority business owners. Pittsburgh's MBEs are also included in a comprehensive database, which is made available to major corporations nationwide. PRMPC's certification process assures its corporate members that they are dealing with only legitimate, qualified minority owned and operated businesses.

Together, the MSDC and PRMPC provide support services to minority owned businesses and corporations throughout Pennsylvania.

The MSDC and PRMPC (hereinafter the "Minority Councils") have joined in this comment to provide the Pennsylvania Gaming Commission with the benefit of their combined experience and observations. Based upon their combined experience with minority-owned businesses and major corporations, the Minority Councils offer the following comments concerning the diversity plans and objectives of the Commission.

**II. THE DIVERSITY PLANS OF APPLICANTS MUST BE SPECIFIC, MEASURABLE AND ENFORCED**

In describing the format prescribed by the Board for the vendor registration form, Section 437.2(6) of the proposed regulations request information on the form concerning

“Whether the vendor is minority- or women-owned and controlled and the vendor’s enterprise certification number, if any, as required by section 481.3 (relating to diversity participation).” Similarly, section 437.4(18) of the proposed regulations requires that licensees submit information with a vendor license application which includes “A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481, signed by the chief executive officer of the applicant.”

The Minority Councils commend the Commission for its emphasis and attention to diversity in the gaming industry within Pennsylvania. Accountable diversity plans with tracked and audited return on investment for MBE/MWDVBE enterprises are critical to ensure business inclusion and equal access to the economic opportunities that will evolve from slot machine gaming in Pennsylvania. These plans must be **monitored** to ensure a positive return on investment for communities that will be identified as areas for gaming activity.

This Commission must examine the Diversity Plans of applicants as a key component in the determination of whether to award an applicant a gaming license. Diversity commitments must be demonstrated in work force inclusion and in procurement opportunities. These diversity commitments must be implemented in all phases of the gaming application and diversity plan.

The Minority Councils urge this Commission to follow the example of the Indiana Gaming Commission, where a person issued an owner's license must establish spending goals that are at least:

- 10 percent of the dollar value of the licensee's contracts for products and services with minority business enterprises (MBEs)



- 5 percent of the dollar value of the licensee's contracts for products and services with women's business enterprises (WBEs)<sup>1</sup>

These “spending goals” are more than reasonable in Pennsylvania, where the minority population (Blacks, Hispanics and Asians) represents approximately 16% of Pennsylvanians.<sup>2</sup> For these reasons, diversity plans must not be viewed as “secondary” criteria in awarding a gaming license in Pennsylvania.

Additionally, there must be some consequences for failure to meet such plans. “Good Faith” efforts are not enough. The Minority Councils recognize that even written commitments of inclusion and participation, without consequences for failure, are worthless. We therefore urge this Commission to adopt a quarterly monitoring system for compliance with diversity initiatives.

Diversity it is not a soft and emotionally driven concept. It is a practical one. Diversity recognizes that minority groups represent significant purchasing and supply chain groups. In fact, recent statistics suggest that by the year 2010 over 50% of the US buying public will be non-Caucasian.<sup>3</sup>

The Minority Councils stress the importance of aligning diversity programs with the business objectives of licensees and putting metrics in place to measure the program's success. Each dollar spent with a diversity supplier should represent credit towards those diversity efforts so that it is easy to measure the ultimate effectiveness of the diversity program.

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<sup>1</sup> *Source: Indiana Statute: Indiana Code Title 4, Article 33, Chapter 14-5; Administrative Code: Indiana Gaming Commission; 68 IAC 3-1-1; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2248*

<sup>2</sup> U.S. Census Bureau;

[http://factfinder.census.gov/servlet/MYPTable?\\_bm=y&-qr\\_name=ACS\\_2004\\_EST\\_G00\\_MYP1\\_15&-geo\\_id=04000US42&-ds\\_name=ACS\\_2004\\_EST\\_G00\\_&-scrollToRow=34](http://factfinder.census.gov/servlet/MYPTable?_bm=y&-qr_name=ACS_2004_EST_G00_MYP1_15&-geo_id=04000US42&-ds_name=ACS_2004_EST_G00_&-scrollToRow=34)

<sup>3</sup> Id.

A licensee should also be permitted to use either Tier 1 or Tier 2 diversity vendors to count towards their diversity spending. A Tier 1 supplier is a direct supplier to the company while a Tier 2 vendor is a subcontractor to the Tier 1 supplier. The Minority Councils recognize that many minority and women-owned businesses are Tier 2 suppliers.

### III. CONCLUSION

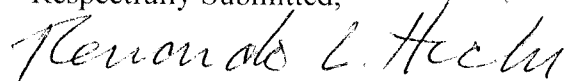
For all of the reasons outlined above, this Commission must ensure that the diversity plans adopted by licensees are specific, measurable and enforced. Licensees interested in serving the needs of Pennsylvania's diverse community of consumers in hiring and procuring goods and services will be rewarded by that community.

### IV. CONTACT INFORMATION OF THE MINORITY COUNCILS

Darlene Jenkins  
President and CEO  
Minority Supplier Development  
Council of PA-NJ-DE

Alexander J. Nichols, Jr.  
President  
Pittsburgh Regional Minority  
Purchasing Council

Respectfully Submitted,



Renardo L. Hicks, Esquire  
Anderson, Gulotta & Hicks, PC

DATED: October 10, 2005



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October 10, 2005



HARRAH'S  
ENTERTAINMENT,  
INC.

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

Attention: Public Comment

**Re: Comments to Proposed Regulations for Vendor Registration and Licensing Provisions**

Dear Chairman Decker and Board Members:

The following comments regarding the Vendor Registration and Licensing proposed regulations are offered for your consideration by the operating subsidiaries of Harrah's Entertainment, Inc. (collectively "Harrah's").

In general, it appears that the Vendor Registration and Licensing provisions are modeled after those found in New Jersey. Harrah's respectfully submits that there are other models which the Board may wish to consider that satisfy the regulatory interests regarding non-gaming vendors (e.g. Louisiana). For example, the Board may wish to consider a process for vendor registration and licensing that does not involve slot machine licensees; one where vendors would file their completed registration forms or license application forms directly with the Board.

The proposed draft regulations require the vendor registration form and vendor license application forms to be verified by the slot machine licensee (or applicant) and then be submitted to the Board. The proposed process could be streamlined by having the vendors deal directly with the Board. The only direct involvement of the slot machine licensee appears to be the requirement to provide a verification "... of the location of the vendor's services in the licensed facility." This information could certainly be provided by the vendor in its application to the Board. The licensee's connection with the vendor registration form or the vendor licensing application form seems minimal at best. It is therefore respectfully submitted that the proposed regulations be rewritten to provide that the vendor registration forms and vendor licensing application forms be filed directly with the Board by the applicant.



**Dennis Gallagher**  
Vice President Legal Affairs  
Central & Western Divisions



Pennsylvania Gaming Control Board  
October 10, 2005  
Page 2

In addition to the foregoing, Harrah's submits the following comments regarding particular provisions of the proposed regulations as noted.

Section 437.2(13) and Section 437.4(20) will require applicants for vendor registration and vendor licensing to consent to inspections and searches and seizures. It is respectfully submitted that this requirement may have a chilling effect upon private businesses who otherwise may be interested in doing business with slot machine licensees. While prospective vendors may not object to providing information concerning their ownership, they may not be willing to provide consents in these areas. The result may be fewer vendors with whom slot machine licensees may contract for goods and services. The Board may wish to consider the extent of these consents in the applications for vendor registration applications and vendor licensing applications and their potential impact on the vendor pool.

Section 437.6 provides a process for applicants for conditional category 1 licenses who may have existing agreements with vendors. The proposed regulation would provide that the applicant could continue to do business with such a vendor during the application process provided four conditions were present. Those conditions are: (1) a pre-existing relationship for a period of two years preceding the date of application; (2) applicant certifies due diligence has been performed on the vendor; (3) a vendor registration form or vendor licensing application has been filed by the applicant; and (4) a copy of the agreement is submitted. The regulation does not address a scenario where one or more of the above criteria are not present. For example, what if the applicant only has a relationship that extends one year with the vendor? Section 437.6 also appears to be limited in scope to only applicants for conditional category 1 licenses. It appears that applicants for a "regular" category 1 license along with applicants for category 2 and 3 will not be subject to this provision. In other words, all non-conditional category 1 applicants will not be subject to a provision for existing agreements with vendors. Is the Board contemplating a similar provision for applicants other than conditional category 1 applicants?

Regarding Section 437.7 which authorizes a slot machine licensee or applicant to file a petition to do business with an applicant for a vendor license, it is respectfully suggested that the provision be amended to allow the applicant for the vendor license to also file such a petition.

In Section 437.9(a)(13), it is respectfully suggested that the exemption provided for professional entertainers, sports figures and other celebrities be expanded to include agents, agencies and other entities that provide for the professional services of such individuals (e.g. a corporate entity owned by the entertainer).

Pennsylvania Gaming Control Board  
October 10, 2005  
Page 3

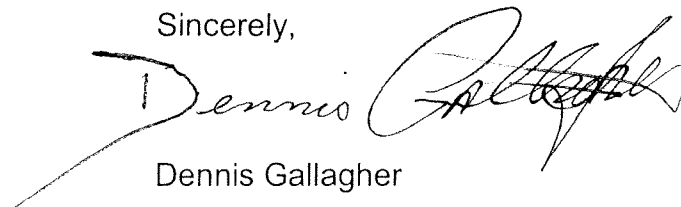
Section 437.10 provides a process in which the services of an unregistered or unlicensed vendor may be secured in certain emergency circumstances. It is respectfully submitted that this provision be amended to provide that the slot machine licensee give notice to the Board of such an emergency as soon as practicable along with the identity of the unregistered or unlicensed vendor. The proposed draft would also require that a vendor registration form or vendor licensing application form be filed within 72 hours of the vendor's commencement of services. It is respectfully submitted that such a filing may be beyond the control of the slot machine licensee and that this requirement be deleted. If the vendor failed to file a registration or application form, the slot machine licensee would be precluded from doing business with it, and in addition, the Board would have the ability to enter such a vendor on its prohibited list.

Section 441.17(a)(2) requires a payee register of transactions drawn by affiliates of the slot machine or applicant for goods or services that benefit the slot machine licensee or applicant. It is respectfully submitted that this provision be clarified to indicate that the benefit to the slot machine licensee or applicant be a direct tangible of goods or services. Agreements by affiliates which may provide a benefit to the slot machine licensee should not be reportable so long as the licensee is not paying for the goods or services.

Finally, Section 441.17(a)(3) appears to require a register of all vendor transactions where the slot machine licensee or applicant is acting in the capacity of a vendor providing goods and services to itself. It is unclear the purpose of this provision and any additional clarification that the Board could provide would be greatly appreciated.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Gallagher", with a large, stylized flourish extending from the end of the signature.

Dennis Gallagher

DG:pjr