

# Kennywood

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4800 Kennywood Boulevard  
West Mifflin, Pennsylvania 15122  
412/461-0500

July 20, 2007

Department of Agriculture  
Bureau of Ride and Measurement Standards  
Division of Ride Safety  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

Attention: Joe Filoromo

Dear Sir or Madam:

Kennywood Entertainment, Inc. and related companies own and operate 2 amusement parks; Kennywood located in West Mifflin, PA and Idlewild located in Ligonier, PA and a water park, Sandcastle located in West Homestead, PA which are subject to the provisions contained in the Amusement Ride Inspection Act as amended.

We have reviewed the proposed rulemaking dated June 23, 2007. The proposed regulations are necessary for the Department of Agriculture to carry out its duties under the Act in accordance with the directives of the Pennsylvania legislature. The regulations will provide needed guidance to park operators and assist in uniform application of the law. We applaud the Department for updating the regulations.

We respectfully offer the following comments relative to the proposed rulemaking:

## Sec. 139.1 Scope

In recent years Halloween and Fall Harvest seasonal attractions offered to the general public for an admission fee have spread across Pennsylvania. We suggest the regulations clarify that such attractions fall within the scope of the Act. Numerous such attractions are operated without the required permits, inspections or insurance coverage. We believe the Act covers such attractions whether they are operated in a fixed site amusement park or temporary locations and the Act should apply equally to for profit entities or not for profit entities.

## Sec. 139.2 Definitions

We request the Department provide a concise definition for the word "accident" as used in the Act. Park and attraction operators need clarification of this term in order to apply the reporting provisions contained in Sec. 139.11 Accident Reporting. Currently operators are using varying criteria to determine whether an event is a reportable "accident". We do not think it is in the best interest of the Department of Agriculture, the amusement parks in Pennsylvania or the general public to report events to the legislature that are not truly accidents during the operation of the ride. Overstating the number of real accidents could mislead the media and the legislature as to the safety of the rides.

The following are dictionary definitions for the word "accident"; any event that happens unexpectedly, an undesirable happening that occurs unintentionally and results in harm, injury or damage and a legal definition; a happening resulting in injury for which compensation is sought.

We suggest the following concise definition be considered for the word "accident"; a mechanical, electrical or structural defect or malfunction that results in the failure of the ride or attraction to operate as designed or intended; failure by the ride operator to follow standard operating procedures resulting in an injury to a rider. This definition will eliminate any uncertainty regarding reports filed in cases where the ride operates as intended, completes the ride cycle without mishap due to any defect, malfunction or operator error.

AMERICA'S FINEST TRADITIONAL AMUSEMENT PARK

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REVIEW COMMISSION

The proposed rulemaking provides a new definition for the term "operation". The definition expands the literal meaning of the term "operation" to include the loading and unloading of guests while the ride is in a stationary position. Reporting bumps, bruises, twisted ankles or other events while loading or unloading a ride will only serve to inflate the number of accidents. Such events are more a reflection on the physical condition of the guests and their ability to pay attention than on ride safety. We do not think the number of guests encountering problems boarding rides is any more or less than for passengers boarding buses, planes or other transportation vehicles. The legislature does not compile data in those cases. We request that events while loading and unloading rides be eliminated from the definition of "operation".

The term "serious injury" needs to be clarified for certain cases. We request that in order to meet the definition of "serious injury or illness" the park operator must have knowledge of the event prior to the time the patron leaves the park or the operator has subsequently received medical records verifying that offsite medical treatment was administered. This modification will clarify reporting for telephone calls or letters reporting alleged injuries or illness received days or weeks after an event where the operator lacks any prior knowledge. We request clarification that any offsite medical treatment must be administered or recommended by a licensed physician. This will eliminate the uncertainty of who must recommend treatment in order for it to be a "serious injury or illness". Many parks hire first aid professionals to provide on site assistance. In almost every case the first aid provider will suggest to a guest that they follow up with their own physician if any problems arise. This recommendation should not by itself elevate a minor injury to a "serious injury".

The term "Professional Engineer" refers only to those engineers registered in the State of Pennsylvania. We request consideration given to any professional engineer licensed in any state and who is a member of the National Society of Professional Engineers.

#### Sec. 139.5 Insurance

The proposed regulations pertaining to insurance coverage eliminates any insurers referred to as "surplus lines carriers". We strongly object to this proposal. We currently have liability insurance coverage with three carriers, two of which are non-admitted surplus lines carriers. We believe this requirement is not necessary to protect the general public and by excluding these insurance markets there will be an additional burden on the operators to secure the necessary insurance coverage.

We request consideration be given to allow surplus line carriers who have an insurance rating by A. M. Best of B+ or higher.

We request a modification to Item (c) (3), Identification of Amusement Rides and Attractions listed on the Certificate of Insurance. We request that the certificate includes a blanket statement for all the rides and attractions located within the facility as opposed to the naming of each one individually. This same information is listed on the registration form that is filed with the department.

#### Sec. 139.7 Inspection

Based upon our knowledge and information our insurance carriers will not declare a ride safe to reopen after a fatal accident. They will provide coverage. We suggest that the regulations contain a provision that prior to reopening a ride or attraction after a death the operator must provide the Department with proof of insurance.

#### Sec. 139.10 Advisory Board

It appears that this section has been eliminated or "Reserved". We would assume that the make-up of the Board would be the same as referenced in the Act under Section 405.

#### Sec. 139.11 Accident Reporting

The proposed rulemaking related to the information to be provided in an accident report goes far beyond what is specifically stated in the Act. The Act states that the report shall describe the amusement ride or attraction involved in the accident and the nature of the injuries. We request the regulations be modified to include in the report only the information listed in the Act. We do not think it is appropriate to provide the names of the injured persons and the names and personal information of all known witnesses in a public report. We question the legality of this requirement under the HIPPA Laws. We believe that such information should remain confidential. We suggest that the regulations indicate that the operator retain all additional information related to the accident and that the inspector shall be permitted to review such records during any follow up inspections.

We request the elimination of the word "serious illness" in the definitions section and the accident reporting section.

Based upon all the information presented, any individual who exits a ride and begins to experience motion sickness, illness or vomiting, which is not uncommon at an amusement facility, would require an accident report to be filed. This would dramatically increase the number of "false" accident reports.

#### Section 139.12 Variances

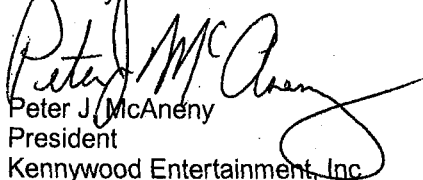
It appears that this section has been eliminated or "Reserved". We would assume that the Variance section would be the same as referenced in the Act under Section 409.

#### Section 139.72 Erection/Disassembly of Amusement Rides and Attractions

(3) Ride Entry and Discharge. We request that those current registered rides that have means of egress of less than 36" be "grandfathered".

We thank you for the opportunity to comment on the proposed rulemaking. **We request an opportunity to discuss our suggestions in person when the State schedules public hearings on the new changes.**

Sincerely,

  
Peter J. McAneny  
President  
Kennywood Entertainment, Inc.



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COMMONWEALTH OF PENNSYLVANIA INDEPENDENT REGULATORY  
DEPARTMENT OF AGRICULTURE REVIEW COMMISSION  
BUREAU OF RIDE & MEASUREMENT STANDARDS  
AMUSEMENT RIDE SAFETY DIVISION

July 26, 2007

Mr. Peter J. McAneny, President  
Kennywood Entertainment, Inc  
4800 Kennywood Blvd  
West Mifflin, PA 15122

**Re: NOTICE OF PROPOSED RULEMAKING**  
**Department of Agriculture**  
**7 Pa. Code Chapter 139**  
**Amusement Rides and Attractions Erected Permanently**  
**or Temporarily at Carnivals, Fairs and Amusement Parks**  
**I.D. No. 2-102**  
**37 #25(Volume) Pennsylvania Bulletin 2823 (Page) (June 23, 2007)**

Dear Mr. McAneny:

You were among the persons who offered written comments with respect to the proposed regulation referenced above. I hereby acknowledge receipt of those written comments.

Under the provisions of the Regulatory Review Act (at 71 P.S. § 745.5a), this Department is required to review and consider your comments as it prepares the "final-form" version of this regulation. The Regulatory Review Act *also* prescribes a process by which you can formally request: (1) a copy of the final-form regulation (showing any changes that have been made as a result of the comment review process); and (2) notification of the date upon which this Department delivers the final-form regulation to the Independent Regulatory Review Commission for review by that body. The Regulatory Review Act requires you be notified that - if you wish to make this formal request - you can do so by contacting me at the mailing address or telephone number set forth on this letterhead. ***Rather than require you to make this formal request, though, this office will mail you a copy of the final-form regulation on or before the day it delivers that document to the Independent Regulatory Review Commission, and will advise you of that delivery date.***

If I may be of further assistance, please advise.

Sincerely,

cc: Dwight-Jared Smith, Esq., with Comment Letter

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Harrisburg, PA 17110-940

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