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INDEPENDENT REGULATORY
REVIEW COMMISSION

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December 8, 2008

VIA HAND DELIVERY

Richard M. Sandusky
Pennsylvania Gaming Control Board
5th Floor - Strawberry Square
Harrisburg, PA 17101

Attn: Public Comment on Regulation No. 125-92


Re: Downs Racing, L.P.'s Comments to Proposed Rulemaking
In re: Regulation No. 125-92 (Smoking Area)

Dear Mr. Sandusky:

Enclosed please find comments on behalf of Downs Racing, L.P. in regard to the above-referenced proposed rulemaking.

Thank you for your attention to this matter.

Sincerely,


Alan C. Kohler
For WolfBlock LLP

ACK
Enclosures

HAR:83989.1/MOH005-222463

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE:	:	
	:	
Proposed Rulemaking - .	:	Proposed Rulemaking
58 Pa. Code Chapters 441a and 467a.	:	125-92

**DOWN'S RACING L.P.'S
COMMENTS TO PROPOSED RULEMAKING**

Down's Racing, L.P. t/d/b/a Mohegan Sun at Pocono Downs ("MSPD") submits these comments to the above-captioned Proposed Rulemaking which was published in the Pennsylvania Bulletin on November 8, 2008 at 38 Pa. B. 6158.

INTRODUCTION:

The Pennsylvania legislature recently enacted the Clean Indoor Air Act, 35 P.S. §§ 637.1 et seq., which sets forth certain restrictions on smoking throughout the Commonwealth. Contained within the Act are twelve (12) exemptions from the smoking ban, which includes an exemption for licensed gaming facilities. Specifically, a licensed gaming facility is permitted to allow smoking on 25% of the gaming floor from September 11, 2008 until December 10, 2008, and then is permitted to increase the size of the smoking area under a formula contained in the Act which compares the average slot machine revenues per machine in the smoking area with the average slot machine revenues per machine in the non-smoking area.

In response to the passage of the Act, the Pennsylvania Gaming Control Board ("Board") has promulgated Proposed Rulemakings, which regulate, among other things, the level of smoking and non-smoking signage that will be required at the licensed

gaming facilities.¹ MSPD has reviewed the Proposed Rulemaking and while MSPD does not object to the actual regulation proposed by the Board, it strongly objects to any Board consideration which requires the gaming licensees to label each slot machine on the gaming floor with a smoking or non-smoking sign.² In addition to being unnecessary and overly burdensome, such a requirement would be problematic from a financial, aesthetic, customer care and logistical perspective.

FORMAL COMMENTS:

A. Disruption of Aesthetic Environment

MSPD has spent countless hours and a significant amount of financial resources to design, construct and foster an environment that is welcoming to the general public and aesthetically pleasing. The craftsmanship and quality of the materials used in all Mohegan Sun properties are second to none in the gaming industry and this level of detail has become synonymous with the Mohegan Sun brand. Accordingly, the proposed level of signage for the smoking/nonsmoking areas would seriously disrupt the design and flow of the gaming environment, which MSPD has worked diligently to create.

Patrons to MSPD should be allowed to focus their attention on the exquisite details of the property, the numerous non-gaming amenities available for their enjoyment, and the ever expanding gaming opportunities, rather than face an immediate and continuous onslaught of smoking/nonsmoking signs as they proceed through the facility. Further, there is minimal (if any) benefit of such signage, especially when compared to

¹ See Proposed Rulemaking at 58 Pa. Code § 441a.25(g).

² While the Board's proposed regulation does not include such a requirement, in the Board's description of the Proposed Rulemaking, it has requested interested parties to comment on the possibility of including such a requirement in the Board's final form rulemaking in this matter.

the negative effect it would have on the aesthetic environment MSPD has created for its gaming patrons.

The sheer volume of smoking/nonsmoking signs contemplated by the Board can not feasibly be integrated into the current aesthetic environment at MSPD. The design of the gaming facility has incorporated natural elements of the four seasons, as experienced in Northeast Pennsylvania. The casino environment at MSPD allows for a seamless transition from one season to the next as patrons pass through the gaming facility. It is without doubt that this seamless design will be significantly disrupted and permanently altered if smoking/nonsmoking signs are required to be placed on every entrance, designated area and slot machine throughout the gaming facility. It would destroy the welcoming and aesthetically pleasing environment MSPD has built its reputation on, while also diminishing the level of customer care and satisfaction for each gaming patron at MSPD.

B. Practical and Logistical Effect

The purpose of the signage requirement under the Clean Indoor Air Act, 32 P.S. § 637.4, is to provide notice to all patrons at a licensed gaming facility where smoking is permitted. This goal is easily satisfied without the need to place individual signs on each slot machine. Furthermore, the excessive amount of smoking/nonsmoking signs presently contemplated by the Board may actually confuse patrons and lead to inadvertent smoking violations.

It is unrealistic to believe that a gaming floor will be divided for smoking/nonsmoking purposes by slot machine. Such a division is not only impractical for the operators, but also would present difficulties in regulatory oversight. Moreover,

gaming facilities are constantly reconfiguring the location of their slot machines on the gaming floor. Therefore, under the proposed regulation, operators would have to continuously purchase and re-label slot machines after each move, which in many cases can occur on a daily basis.

Additionally, the regional smoking designations that are currently utilized by MSPD are sufficient to advise patrons where smoking is authorized in the gaming facility. The purpose of the signage requirement is to provide patrons with the option to avoid or seek out areas of the casino where smoking is authorized. Once in a designated smoking or nonsmoking area, a patron has made a determination on his/her desired gaming environment. Upon entry into their chosen gaming area, a patron must make an affirmative decision to leave and enter the alternatively designated areas (either smoking or nonsmoking). Should a patron seek such a change in environment, the regional smoking designations currently utilized by MSPD clearly identify these areas and allow for easy navigation through the gaming floor. However, signage on each slot machine would not assist a patron in identifying an area of smoking or nonsmoking within the gaming floor, and is likely to simply confuse the patron. Moreover, individual signage on each slot machine may actually diminish patron awareness of the designated areas because rather than stand out, the overwhelming number of such signs will simply blend together and lose meaning in the eyes of the patron.

C. Financial Cost

In addition to the disruption of the well-crafted environment at MSPD and the ineffective nature due to overwhelming numbers, individual smoking/nonsmoking labels on each slot machine would generate significant expense to the licensee. Since

Pennsylvania has imposed a nearly sixty percent (60%) tax on gross gaming revenues, profit margins for the operators are extremely thin. In this type of taxing environment, any volatility or additional/unexpected expense to operators can lead to a significant decline in profits. When profits decline, operators are not able to reinvest in their properties to ensure that the highest level of customer care and satisfaction are maintained. If gaming patrons are not satisfied with their experience at a licensed facility it is likely that gaming revenues will decline, thereby reducing taxable revenues to the Commonwealth.

As a licensed operator, MSPD is authorized to place up to 5,000 slot machines on its gaming floor, pursuant to Section 1210 of the Pennsylvania Race Horse Development and Gaming Act. The expense MSPD would incur if it was required to label each machine would be significant and outside of its existing operating budget. As discussed above, MSPD takes great pride in ensuring all aspects of its gaming facility are of the highest quality, fit and finish. To that end, MSPD would not be able to simply purchase the basic entry level type of labels envisioned by the Board. Rather, MSPD would feel compelled to have custom smoking/nonsmoking labels manufactured in an attempt to minimize the inevitable disruption in its specifically crafted gaming environment.

Such an endeavor becomes even more costly for MSPD in light of the fact that slot machines have a relatively short lifespan on the gaming floor. In order to satisfy customer demand and attract new customers, operators must continuously infuse their gaming floor with games that offer the latest gaming technology. As slot machines become less productive, operators will reconfigure the gaming floor to optimize the location of the most productive machines. These types of relocations and

reconfigurations will necessitate both new and re-labeling of slot machines under the signage requirements contemplated by the Board; thereby, exponentially increasing MSPD's signage costs.

CONCLUSION:

In light of the foregoing, it is undeniable that the signage requirements presently contemplated by the Board would result in significant expense to the operators and disruption of the gaming environment without providing any appreciable benefit to the gaming industry or patrons of the Commonwealth's gaming facilities. Therefore, MSPD respectfully requests that prior to proceeding to Final Form, the Board modify the Proposed Rulemaking consistent with these comments and not implement a signage requirement for each slot machine located on a gaming floor.

Respectfully submitted:

Of Counsel:

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