

**MINUTES**  
**WV RACING COMMISSION**  
**Wednesday, May 11, 2016**  
**Harry L. Buch Conference Room**

The WV Racing Commission met on May 11, 2016 to conduct business and consider administrative matters. Roll call was taken and Chairman Jack Rossi and Commissioner Bill Phillips were present. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott.

**The WVRC shall conduct an emergency meeting to address the unexpected cancellation of racing at Charles Town Racetrack due to unsafe track surface conditions caused by the placement of materials on the track containing rocks or stones. This cancellation and the unsafe track conditions pose an imminent substantial harm to the public constituents of the Racing Commission that ply their racing trades and patronize the track; and the cancellation of racing poses an imminent threat of material financial loss to the public constituents.**

Chairman Rossi stated the Commission called an emergency meeting because of the situation at the Charles Town racetrack. The purpose is to look into that situation, not to necessarily determine why it happened but to determine what procedures are in place to make sure it doesn't happen anymore, what is going to be done to get it remedied and to move things forward. He asked Erich Zimny and Doug Bowling to provide an update on the situation.

Erich Zimny stated they are still in the process of waiting out the weather. They need 2 or 3 days of dry weather to do what they need to do to the racetrack and finish up.

Doug Bowling stated they have done the track resurface for 10 years. During the 10 years they've had rock issues once or twice before, never a large amount. During the time they've done this they've also put protocols and procedures in place with the quarry to ensure this doesn't happen. However, anytime you get sand there is a potential for rocks in the sand. Up until now they felt they had the problem rectified. Their procedures at the quarry are that all trucks are to be washed out, the quarry screens and washes the product, they move it to a site on property that is an uncontaminated area and they have specific loaders assigned the duties of loading the trucks. When the trucks are all delivered in on property at the racetrack, they do not have room to dump 75 loads of material so they have to push it up as they are dumping it on site. Once they have the material in place they come up, as another protocol and safety procedure, and re-screen the material. They did the re-screening this time and never found any rock whatsoever. There were 3 piles and all 3 piles were tested, not 1 rock was found. This tells them that whatever contamination showed up was probably isolated into 1 truck and as the material was pushed up that one pile was probably in the very bottom and as they were spreading it on the racetrack that is where they found the rock was in the last 4 truckloads of the piles of sand. Once the spreader trucks hit the racetrack it got broadcast. Once it was broadcast and they saw the rock, they stopped. They went out and hand-picked the debris they could find, however, some of it was in the material and to be on the safe side for all of the animals and riders, they need to screen the material.

That brings them up to the situation they are in with the weather. They got the racetrack close to being dried up enough to run the screen Monday morning. They attempted the screen Monday morning and it was working, however, because they only had 1 day of drying time the screen was a slow task. They need to make about 12 laps total and they have 2 laps finished. It will take about 6-7 hours to do that. This is where they stand in the process at this time. They've done this twice a year for 10 years and have never had this issue, with the exception of

once they found it and found it where the whole pile was contaminated and the pile was re-screened before it was put on the track. Had they found contamination in the material before they started, they wouldn't have started the process, however, they had it tested and everything was good and that's when they started. Erich Zimny added to make clear what Mr. Bowling was talking about with the procedures at the quarry, that's the vendor they use and have used, not them. The trucking company they use is independently contracted as well. He wanted to make it clear that Charles Town is not the ones getting the sand at the quarry, obviously.

Chairman Rossi asked Mr. Bowling how much of the material did he hand-pick? Mr. Bowling replied they recovered about 5 gallons of rock. Chairman Rossi then asked how many more rocks did they retrieve after they did the 2 rounds of screening? Mr. Bowling replied they picked up about 2 inches of the 5 gallon bucket. So, once the screening is completed you're looking at probably another half of a 5 gallon bucket of contamination.

Chairman Rossi asked what kind of assurances do we have that we are getting everything out of there? Mr. Bowling replied the procedure is the sand is being sifted, or ran through a screen. The same process as when it comes up. You have to do the best due diligence you can do as far as running the product through the screen and catching it. Once they get the rock picker run over the track once they will go over it twice. The process of running the rock picker is not that slow if the condition of the track is dry enough to run through the screen.

Mr. Phillips asked Mr. Bowling to briefly describe again the process from the beginning of selecting the sand, laying it down, etc. After Mr. Bowling's explanation, Mr. Phillips asked if it is the vendor that pulls the sample from the piles of material for screening? Mr. Bowling replied yes. Mr. Phillips then asked if there were any representatives of the track present to observe that process? Mr. Bowling replied he was over there with them for about an hour of the 3 hours at different periods of time.

Mr. Phillips asked if there are various grades of sand one would purchase for the track? Chairman Rossi followed up and asked what is the grade the track would order? Mr. Bowling replied there is fine sand, a mid-grade sand, and basically their specifications come from the NYRA racing specifications of what the granulation should be. In order to get the combination of what they recommend you have to use approximately 3 different style sands. You have to put fine sand, a medium sand, and you have to put a coarse sand in as well. When they go into the winter months they take a portion of it off so they put the coarse sand in, which allows the water to drain out a little faster and that is the exact opposite process in the spring. They take off the coarse sand and add more fine sand and the purpose of adding the fine sand is to hold the moisture longer so the racetrack won't dry out as fast. Mr. Phillips asked if the sand they used this year is the same as was used in previous years? Mr. Bowling replied yes. This sand is the same vendor, the same quarry, the same site and the same price they've been paying, with the exception of the increase in trucking of the material, for the past 10 years of this resurface. Mr. Phillips asked what is the name of the vendor that provided the sand? Mr. Bowling replied York Building. Mr. Phillips asked how often have they used them? Mr. Bowling replied ten years, twice a year. Mr. Phillips added these would be the same vendors that provided the sand when they previously had rocks? Mr. Bowling responded it's the same vendor they have used. Mr. Phillips asked what year did they have the previous rock issue? Mr. Bowling replied it was 3 years ago. Mr. Zimny added that's what led to a lot of the protocols Mr. Bowling has been discussing and put into place. Mr. Phillips asked if there are other vendors nearby they could have used since they had a bad experience 3 years ago? Mr. Bowling replied they have researched vendors nearby and far away. In order to find the material that is required to meet NYRA standards and to find material that actually holds up and lasts, this is one of the best suppliers, and is also the same supplier Delaware Park uses, that is in this area. They switched from the Pennsylvania sand because they are not silica sands and they break down very fast. This product is a US grade silica sand that is state certified.

Mr. Phillips asked Mr. Bowling how long he has been in his position and what is his title? Mr. Bowling responded track superintendent and he took this job in 1999. Mr. Phillips asked if there are specific personnel qualifications one must have to serve in this position? Mr. Zimny replied this is a very difficult position to find and fortunately they haven't had to hire anyone for several years. You would look for someone that has grounds experience in their past and also go to a lot of industry seminars, that Mr. Bowling attends, to keep up education wise.

Mr. Phillips asked who was present when the sand was being laid down on the track? Were representatives of the track there watching that initial dump, so to speak, of sand as it was being disbursed on the track? Mr. Bowling replied yes he was present, each and every day every minute. Mr. Phillips asked if it's standard operating procedure that a Steward be present representing eyes of the Commission when this sand is being laid down on the track? Danny Wright replied there has been no requirement for a Steward to be present and is not an area of their expertise. They rely on management and their people with those expertise to take care of that part of it and it has never been an issue until what happened recently. Chairman Rossi asked Mr. Bowling when did he detect this and how? Then he asked Mr. Wright when was he made aware of it? Mr. Wright replied they were made aware of it the next day. Management did not hesitate to come to them and let them know there was an issue and this could have been taken care of in a couple of hours if the weather was in their favor. Mr. Phillips added he doesn't think the weather has anything to do with what occurred initially. The weather is deterring the ability to correct what happened but the weather has absolutely nothing to do with what happened initially, and that is rocks were dumped onto the track. Mr. Wright added it was brought to his attention that there was a possibility that one of the trucks that was responsible for disbursing the sand could have had rocks in the bottom.

Mr. Phillips stated it is his understanding that this occurred on April 25<sup>th</sup>, is this correct? Mr. Bowling replied the material was gotten together on Sunday, April 24<sup>th</sup>. They loaded the material up, hauled it off of the racetrack Monday April 25<sup>th</sup>. On Tuesday, April 26<sup>th</sup> at approximately 8AM is when they started applying the new sand onto the racetrack. Somewhere around 1PM was the first sight of any detected rock. Mr. Phillips asked when did someone decide it was finally time to let the Racing Commission know that this had occurred? The first he recalls seeing anything about it was April 30<sup>th</sup>. According to Mr. Moore, this happened on April 26<sup>th</sup> so there were 4 days that either the track didn't think it was important enough to call and tell us or our own staff didn't think it was important enough, if he's understanding it correctly. Mr. Moore stated as he understands it Mr. Wright left on a brief vacation after the Classics on April 23<sup>rd</sup>. When he returned, he placed a call to Mr. Moore on Saturday, April 30<sup>th</sup> to notify him of the rock situation. The Stewards may have been notified by the track before that but that was the communication from staff to himself, which occurred on April 30<sup>th</sup>. Mr. Phillips stated he thinks someone should have notified the Commission sooner of this problem, whether it have been another Steward or the track itself.

Mr. Phillips asked who was the hauler that hauled this sand? Mr. Bowling responded York Building. Mr. Phillips then asked if sand has grades? Mr. Bowling replied if he's referring to the quality of the sand, a silica sand is the highest grade sand you can find and that is what they buy.

Mr. McDermott asked if the process that was described is the same as the process that prevails at other tracks? Mr. Bowling replied yes. Mr. McDermott then asked if the problem that is being discussed one that happens at other tracks? Mr. Zimny replied yes, there was a major problem at Ellis Park maybe 2 years ago and was a much worse problem than this. Mr. McDermott stated so this is in no way a unique problem or unusual. Mr. Zimny replied no. Mr. McDermott asked if there is anything in particular that they can identify or point to that might be corrected or done differently to try to make sure the problem doesn't develop again in the future? Mr. Zimny replied they are probably going to submit a capital reimbursement request for a rock picker.

Chairman Rossi stated the next issue on this that they need to make sure they have resolved is the issue of canceling races. It's up to the Commission to determine whether or not they reduce the number of racing days because they have to approve that schedule. Mr. Phillips stated this is an unfortunate event and everyone involved missed probably the two most important days of racing with The Oaks on Friday and the Derby on Saturday last week and obviously brings in a pretty high day of handle. He wonders if anyone has any idea, or if they would research it and provide the information to the Commission, about what the average handle is on those days so we can see what kind of funds were really lost by all of the parties concerned. Mr. Zimny stated they are in the process on their end of doing this and they have been kind of surprised with the amount of import business done there on Derby day and was better than expected. Mr. McDermott stated he thinks the evaluation would also include evaluation of the recovery that will occur when the days are made up. Mr. Zimny stated that would be subtracted out and very well might be more than on Derby day. The biggest piece would be the amount of food and beverage lost on those days. Mr. Phillips stated he knows the handle was up, in general, for The Oaks across the country and the handle for the Derby was down.

Mr. Phillips stated the initial press release indicated days would be added to make up for the days lost as a result of this. It seems to him there is a need to commit to making up the 173 days, at that point, to the 175 and now there are 2 days this week so they're talking about 4 more full days of racing, not just adding a race at the end of a card. It would seem to him you would do better if you had the full day of racing, as far as handle is concerned. Mr. Zimny stated if you added the race when you have the horses onto the existing card over the course of time that would probably be a little bit better. He stated they will reschedule these days in whole. There are some spots in the calendar where they might be able to do that. The thought at the time about adding races was more that it was going to make the horsemen whole quicker and their heart was in the right place but they understand their organization would like those days made up in whole and as far as their contract goes they will do that. Mr. Phillips asked Randy Funkhouser to comment on the plan that was just outlined by Mr. Zimny. Mr. Funkhouser stated the horsemen do want to make up the days and it looks like it will probably be in July and August when they have 3 day a week racing. The real problem is these horsemen have not been able to train other than on the small track and it's very difficult to work horses over that track. The horsemen are very frustrated they can't run and they've had owners leave one of the largest stables on the ground. With shortage of purses and shortage of race days and now you add this to it, it becomes very frustrating. They want to get back to racing as quickly as possible so they want to make these days up.

Mr. Phillips stated when they get the final analysis of the purse funds that have been lost and take the other side of the coin as Mr. McDermott has mentioned, the track is responsible for maintaining the track and keeping it open so people can run, is there any thoughts or plans being given as to how we can help return some of this revenue to the purse funds that has been lost with some assistance from the track? Mr. Zimny replied when they race that is eventually going to be put back into the purse fund when they make these days up and the purses paid are going to be the same as they would've been. They will be made whole in very close proximity, if not identical, by the time all of these are made up. Mr. Funkhouser stated he would like to request perhaps they put on an extra race or two a day to help the horsemen get their horses back. Mr. Phillips stated he thought that was already agreed to? Mr. Zimny stated yes that was why they had their original plan that they put in was to do. As long as they have the horses they still plan on doing that. Mr. Phillips asked if he heard Mr. Funkhouser correctly that there have been trainers that have taken their horses and moved on? Mr. Funkhouser replied yes. There was one trainer that left and a large part of the stable of one of their largest trainers got rid of their horses and he thinks others are doing the same. They are looking at Pennsylvania and Maryland because they feel it's a much more stable environment and that's the problem we

have here is with this unstable environment. Mr. McDermott asked Mr. Funkhouser when he used the term unstable environment, that contemplates much more than the condition of the track surface that is the subject matter of this emergency meeting, correct? Mr. Funkhouser replied yes. Mr. McDermott stated to clarify, the trainers that Mr. Funkhouser eluded to that left, they left because of this unstable environment? Mr. Funkhouser replied he thinks it was a combination of both. They were looking at the unstable environment, and then when they haven't been able to race their horses for several weeks now, that was the straw that broke the camel's back.

Chairman Rossi stated his feelings are we're not reducing the number of race days and they are going to make up those days. He feels they have vetted this situation and if they need to make a decision they will. He asked for comments from the other two Commissioners. Mr. McDermott stated he wanted to convey his appreciation to those who spoke. It was helpful to him to better understand the situation.

Chairman Rossi stated they don't have to take action on anything. It didn't come before them to reduce number of race days. They've looked at the safety concerns, the situation of what they've done and what they're going to do. There may be further issues down the road concerning that. Mr. Phillips stated he would like to request this issue be added as an agenda item for their meeting next week in case something new has developed so they will be able to do something with it because it's on the agenda. Mr. McDermott stated he was in agreement with that as long as there is time to do that and comply with whatever protocol they must comply with. Chairman Rossi stated he encourages everyone to work together and he encourages the track to do whatever they need to do to remedy the situation they have up there.

### **Adjournment**

Motion was made by Mr. McDermott to adjourn, seconded by Mr. Phillips. Meeting adjourned.