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July 2, 1999

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Bob:

Thank you for your input during my June 18th meeting with Attorney Joe Bubba and the individuals from Wild Water Kingdom. As you remember, we discussed the IRRCs review of the Department of Health Regulation #10-155/ Public Swimming and Bathing Places.

I have enclosed a copy of Mr. Bubba's memorandum to you and Charles Tyrrell. I would appreciate being kept apprised of your findings.

Again, thank you for your assistance in this matter.

With best wishes,

Sincerely,

CHARLES W. DENT
State Senator, 16th District
Commonwealth of Pennsylvania

CWD/crh
enclosure

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FITZPATRICK LENTZ & BUBBA, P. C.

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MEMORANDUM

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JUL 07 1999

**TO: ROBERT E. NYCE, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION**

**CHARLES TYRRELL, ANALYST
INDEPENDENT REGULATORY REVIEW COMMISSION**

FROM: JOSEPH A. BUBBA, ESQUIRE

**RE: DEPARTMENT OF HEALTH REGULATION #10-155/
PUBLIC SWIMMING AND BATHING PLACES**

DATE: JUNE 30, 1999

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On April 15, 1999, the Independent Regulatory Review Commission ("IRRC") issued Comments on the proposed Department of Health Lifeguard Regulations. This firm has been asked by Cedar Fair, L.P. as the owner and operator of Dorney Park and Wildwater Kingdom to respond to those Comments.

Dorney Park and Wildwater Kingdom supports the Regulations as proposed by the Department of Health. Those Regulations were the result of the Department's receipt and review of a significant amount of material from the aquatic industry including specifically independent lifeguard certifying agencies. The Park believes the Regulations regarding "lifeguard coverage" represent the state of the art of the aquatic safety industry. In that regard, while the Park recognizes and applauds IRRC's desire to protect public health, safety and welfare, we believe on further review IRRC will understand that the existing Regulations are the absolute best way to accomplish that goal.

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Memorandum

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In paragraph 3 of IRRC's Comments, it indicates that any regulation relating to the number of lifeguards "should specify the required number of lifeguards for a particular pool contingent on the size of the facility, participant on site, support staff and scheduled activities." Dorney Park respectfully submits that any criteria based upon the size of the facility and the number of participants is an antiquated methodology for establishing lifeguard coverage which has been generally rejected by the experts in aquatic safety.

There are only a few nationally recognized lifeguard certifying agencies (such as the American Red Cross, Ellis & Associates, etc.). Those independent, outside entities have generally rejected lifeguard coverage criteria based upon purely physical characteristics such as the size, dimension or shape of a swimming facility. Rather, those certifying agencies have adopted a flexible adaptable standard which generally indicates that a facility must have that number of lifeguards located at certain locations which will permit each lifeguard to scan and view a certain area within ten (10) seconds and then reach the farthest part of that zone within twenty (20) seconds. That "10/20" rule in one form or another is the state of the art in aquatic safety and is used by outside certifying agencies. The proposed Department of Health Regulations adopt that rule and, most importantly, they place the lifeguard safety program within the control of those outside certifying agencies that have been specifically approved by the Department of Health. Therefore, rather than trying to determine on a retrospective basis whether or not an operator of a pool or water park used an adequate number of lifeguards, the Department of Health Regulations indicate that every recreational swimming establishment must adhere to a lifeguard coverage plan conforming to the standards of a "Department-recognized lifeguard certifying authority". Those lifeguard certifying authorities must be approved by the Department in the notice published in *The Pennsylvania Bulletin*.

We can provide one particular example of how a static system of establishing a number of lifeguards can be problematic in today's recreational swimming environment. Many water park facilities are not a standard size or shape which can be covered by equally distant lifeguard chairs and stations. Rather, the individual pools or amusements may be a series of slides, tubes and meandering streams. Lifeguard coverage for those types of unusual water facilities must be established on an individual basis by a lifeguard certifying authority. That authority would then develop a plan for lifeguard coverage for an individual swimming facility and under the proposed Regulations, regardless of size, content, etc., coverage would be assured.

In conclusion, this seems to be one of those rare instances in which members of the industry and the legislature are in complete agreement. Aquatic safety is the common primary concern of Dorney Park and the members of your Committee. The Park believes that any objective review of the industry standards will indicate that some

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adaptation of the 10/20 rule as it can be applied for each individual park and each individual water amusement park will result in a much safer set of Regulations for the Commonwealth. Frankly, Dorney Park and Wildwater Kingdom could not (in good conscience) follow Regulations based upon purely dimensional criteria. We appreciate your time and consideration. Any questions can be directed to me and I will assure that the appropriate person at Dorney Park responds to your specific inquiries. Thank you.

cc: Senator Charles w. Dent
Senator Harold F. Mowery, Jr.
Senator Vincent J. Hughes
Representative Dennis M. O'Brien
Representative Frank L. Oliver
William N. Williams, Department of Health
John Albino
Albert Leitgeb, II
Joseph Minninger
Jeffrey Ellis

P.S. Attached to this Memorandum is a self-explanatory letter from Ellis & Associates, Inc. in support of the proposed regulations. Thank you.

Jeff Ellis & Associates, Inc.
International Aquatic Safety Consultants



Office of Communications
3654 N. Mitchner
Indianapolis, IN 46226

June 21, 1999

Fitzpatrick, Lentz, and Bubba, P.C. Attorneys at Law
Saucon Valley Rd. at Rt 309
P.O.Box 219
Center Valley, PA 18034-0219
Attn: Joseph Bubba

Dear Mr. Bubba,

We have been asked to review the rationale for the use of the 10/20 protection rule as a measure for determining lifeguard coverage in public swimming facilities.

The 10/20 rule means simply that a lifeguard must be able to scan his or her assigned area every 10 seconds, and initiate a rescue/response in the following 20 seconds. The 10/20 has become the standard in the industry for several reasons:

1. It is objective, and easily established in any type or size of facility.
2. It is easily monitored and checked. (One can easily ascertain whether or not a guard is scanning the assigned area every 10 seconds.)
3. It provides for maximum safety by mandating contact and rescue within the critical 30 second window.
4. It is now used by the larger national training agencies.
5. It is far more easily implemented than the old fashioned "size of the pool/number of swimmers" rule. (It is often very difficult to accurately assess the number of swimmers in a facility.)
6. It simplifies the determination of the number of lifeguards required to safely guard a facility: the number required is based upon the areas which can be scanned in 10 seconds. The very simplicity of the concept makes it easily understood and implemented.
7. If this concept is NOT used, but rather the number of guards is based on square footage, there would in some instances be fewer guards than are needed for safety: for instance, the square footage of a "Lazy River" would mandate very few guards, while the application of the 10/20 would mandate that the whole area, including curves, etc., would be safely scanned. This concept applies also to other types of attractions and pools. Thus it is both safer and more comprehensive.

Because of the above factors, it became the "standard of the industry" several years ago.

Sincerely,

JEFF ELLIS & ASSOCIATES
Louise Priest for the firm

cc: JLE
J.Minninger