

## CREATING A CULTURE OF COMPLIANCE

Those of us who have worked in Trenton know that there are four branches of government. In addition to the three branches that we learned about in elementary school – the Executive Branch, Legislative Branch and Judicial Branch – there are also the Administrative agencies that wield enormous power over their regulated industries. Members of the New Jersey Amusement Association have been dealing with this powerful "fourth branch of government" since July 1, 1998 when the Carnival-Amusement Ride Safety Program moved to the DCA from the Department of Labor. Since the DCA became the amusement industry's "fourth branch of government," it has created an innovative new system of ride regulation involving design review and type certifications for manufacturers and owners of hard rides and inflatables. In that regard, New Jersey regulations have become a model that other states are following.

The New Jersey Carnival-Amusement Ride Safety Act also makes the DCA responsible for compliance and enforcement of ride regulations with the power to punish alleged violations by issuing monetary penalties. Since the DCA took over in 1998, the system of enforcement and compliance has changed dramatically. The DCA raised the maximum fine from \$500 to \$5,000 and eliminated the procedure which allowed operators to admit a technical violation "without prejudice." Under the current system, the operator charged with a violation has fewer options. If the operator appeals the Order to Pay, the DCA will compromise penalties to a certain extent, but that is becoming an expensive option as the number and amount of fines in each Order to Pay seems to be increasing. Moreover, the operator charged with a violation is required to admit the violation or face a hearing in the Office of Administrative Law (OAL). The problem with an appeal to the OAL is that it often requires legal representation and dealing with the OAL presents its own set of problems as adjournments and scheduling issues are becoming harder to work out. The end result is a system where lessons learned are not as important as penalties paid.

It is time for the NJAA to work with the DCA to explore new and innovative enforcement and compliance approaches. We need a broader range of enforcement remedies in addressing violations and new programs to educate operators and promote future compliance. A positive step in that direction is the special ride safety seminars being presented by the DCA this Spring. Everyone who has attended these seminars has praised the Seminar and the information supplied by the DCA as helpful to understanding the DCA's compliance goals.

The DCA borrowed the Type Certification idea from the Federal Aviation Administration and federal programs are a good place to begin looking for innovative enforcement and compliance solutions. The Environmental Protection Agency and the Federal Aviation Administration have created new compliance programs that do not rely solely on civil money penalties. Enforcement remedies in the FAA, for example, include re-inspection and re-examination, remedial training, reporting and correction under voluntary disclosure, and warning notices and letters of correction. Administrative enforcement considers whether the violation was inadvertent, and if the violation was not the result of a substantial disregard for safety or security. FAA Administrators may consider if the violator has a constructive attitude towards complying with the regulation, and if the violation itself, without a monetary penalty, will serve

as an adequate deterrent. The Environmental Protection Agency promotes environmental compliance among small businesses (those with 100 or fewer employees) by providing incentives to discover and correct environmental problems.

Working together, the DCA and the NJAA can promote public safety by taking steps to foster a culture of compliance. Monetary penalties have their place in the system, but should not be the primary tool available to the DCA when an apparent violation occurs. As always, the DCA will find that the NJAA is a willing partner in coming up with a solution.

On a personal note, I would like to thank Bill Gehlhaus for his service as President of the Association. During his term as President, Bill also served on the Advisory Board and as Chair of the NJAA Waterpark and Ride Committees. Bill was effective in all of his roles and accomplished much during his tenure.

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