

MINUTES

OREGON RACING COMMISSION SEPTEMBER 21, 2000

The Oregon Racing Commission met on Thursday, September 21, 2000, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair; Tom Towslee, David Price and Lisa Metcalf, DVM. Vice Chair Laura Fine was excused. As the first order of business Chair Walters introduced and welcomed the newest appointee to the commission, Dr. Metcalf, who is a veterinarian specializing in equine reproduction. Agenda items were discussed in the following order with resulting actions:

1. Approval of August 17, 2000, Minutes

ACTION: MOTION(Towslee) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

2. New Portland Meadows Projects Status Report

Following is a transcript of the discussion on this agenda item.

Walters: Welcome, gentlemen. Would you identify yourselves for your record, please.

Ferryman: Brian Ferryman, vice president, Portland Meadows.

Mitchell: Woody Mitchell, director of operations, Portland Meadows.

Brown: And I'm David Brown, counsel for Portland Meadows.

Walters: Thank you. Brian, are you going to...?

Ferryman: Sure. First of all, I'd like to apologize for not being at the August commission meeting. As most of you know...

Walters: We know where you were...

Ferryman: We were meeting with the HBPA, and we were able to reach an agreement and we have a three year contract with the HBPA, and...

Walters: Is that signed, Brian?

Ferryman: Yes it is, and it appears to be a pretty good deal. We're happy to have it behind us, purses will go up substantially at Portland Meadows which should have a great buzz around the industry.

Walters: Is that twenty-three percent, is that...?

Ferryman: About that. Purses will be six percent of everything wagered in the state of Oregon this year.

Walters: Okay.

Ferryman: Where we're at with the stalls, the barn area, currently today we have available for horses to fill 535 stalls. We opened the barn area yesterday. There were roughly 41 trainers that came out to the grounds, started bringing straw in, bringing tack back into their tack rooms, spreading clay in the stalls, just preparing themselves to bring the horses in. I think a lot of horsemen are waiting until after today to see what goes on in the commission meeting today to start bringing the majority of the horses on. Right now we have currently 105 stalls apps...

Walters: A hundred and five?

Ferryman: Hundred and five stall apps representing 850 horses...

Walters: Okay. Thank you.

Ferryman: ...which is good. The barn area itself, as you know we're doing construction back there on a daily basis. We have been issued seven of the nine permits that we've requested by the city of Portland for the repairs of the barns. I've outlined before kind of the process, how that goes, as we get 'em signed off they issue more. Right now [Barns] 1 and 2 have been signed off, Barn 3 will be, Dave Duke has indicated to me that Barn 3 will be ready for sign-off on Wednesday, September 27th, Barn 9 will be ready for sign-off on Wednesday, October 4th, and then we will continue down that...

Walters: By sign-off you mean the issuance of the permits for those...

Ferryman: No, the occupancy, or, don't know that it's occupancy. It's the city coming out and okaying all the repairs that have been made.

Walters: But, you have approval for stalls for 535 horses now...

Ferryman: Yes.

Walters: ...and then you anticipate getting the approval for [Barns] 3 and 9 in the timeframe...

Ferryman: Yes, which is roughly another 120 plus stalls.

Walters: Okay.

Ferryman: Another issue on the backside that I'm sure people are interested in is quarter horses, and we have only received apps for four quarter horses requesting stall space at this time. I think, I've talked over with both Dave Nelson and John Harris, until the barn area really gets up and going I think over a period of time we will see more apps come in and then with availability the stall man and the racing secretary will coordinate their location and space where we'll have the quarter horses.

Walters: Is the indication, do you have an indication whether people as opposed to applying for stalls at Portland Meadows for quarter horses would plan on, you know right now we plan on hauling in the way they've done in the past or...

Ferryman: I think most of them would. There are several of them that live outside the area, and if they want to run all weekend, you know, maybe they'll try to secure a few stalls so they don't have drive back and forth every day. The apps that came in were both thoroughbred and quarter horse mix trainers, so we haven't received any from just a straight quarter horse trainer yet.

The bunker area itself, as you know, the barn, number 4 barn is, we're still waiting on the permit for the fourth barn. We're very close. In the interim what we're going to do with the bunker area is we're scaffolding eight bunkers that are strategically located around the track. They'll roughly have a 16 foot high ceiling. It'll be a fabric ceiling, and it's designed to keep rainwater from commingling with the straw and manure and stopping the run-off. And that's part of an agreement that we have with the different bureaucratic regulators, I guess.

Walters: Present company excluded. (laughter) If you could, please, though give us a little more detail about where you are with your permit to do the structure...

Ferryman: I'd be happy to.

Walters: ...of Barn 4.

Ferryman: Where we're at with the permit is this process has been very, very painful. We submitted our engineering, engineered drawing on August 5th, and from that time kind of the way this process works is it starts on one person's desk at the bottom of pile. And as they work down through the pile they determine whether they need to make any comments or just sign off or maybe they don't even need to look at it. Then it goes to the next person's desk and the process repeats itself. Right now we're at a position where as far as the technical side of it there's zoning who needs to sign off, and what they're waiting on, planning and zoning, what they're waiting on is a landscape design because they're requiring us to put in \$9200 worth of landscaping, and I just found out this on Monday. I met with the landscape contractor today. He's going to work through the weekend

to get me the plan and I'll try to have it in there on Monday. So, talking to the gentleman at the city of Portland he said as soon as he gets it he'll sign off, it's not that big of a deal. And the other is mechanical, and I'm waiting on a mechanical engineer to get..., because they're requiring us to put ventilation, big fans in the roof of this barn, and we have the original specs and drawings but evidently they need some more mechanical stuff.

Walters: When do you expect to have the mechanical design completed so that you can get the other sign-off?

Ferryman: I just, the guy told me today that we had to get a mechanical engineer to take a look at this, so you know, I told him to get one.... You know, at this point I'm just telling my guys to do whatever it takes to get this thing through. I've done that all along, but it just seems like the system doesn't work that fast. I did find out today, though, the city yesterday agreed that they would give us a partial permit, and this would be a foundation permit and what it would be it would allow us to start building the slab and then we can build the building around the slab, so that's a plus. Before yesterday they weren't willing to do that. They wanted us to wait until the whole process was done. But what this tells me is that they see the process being relatively quick.

Walters: And the importance of being able to lay the slab is that that gets you going on the curing time...

Ferryman: Yes, right.

Walters: ...which is about a three week cure period?

Ferryman: Roughly. We stepped up the concrete. We went to a 4000 lb. concrete because evidentially the way concrete cures it cures very fast in the first week and then it stabilizes itself out and doesn't cure quite as fast the next several weeks, so at least within the [someone coughed] we'll have 2000 lb. concrete rating so small vehicles and stuff can get on it at that time. But at that point we're going to be building the building around, so it's really kind of convenient if we can get the slab on the ground...

Walters: I'm sorry. Did you mention when you thought they suggested you'd have this partial permit?

Ferryman: The way it works is we paid for the supplemental permit today, and the way it works is as soon as they approve it, it takes five to seven days after they decide to issue you the permit when you get the permit, so it's just the process that they go through.

Barham: And they've already done the deciding.

Ferryman: As far as I know. The person that I've been in contact with her name is Melissa Litton, and I talked to her yesterday on the phone and she told me that that was the process. 'Cause all the structural guys and the slab guys have all signed off on it. So I said, why can't we just get the permit today? You know, they've all signed off on it. Well, they have to look at it again and make sure that it's okay that you can get it in two pieces. Would you like me to go further?

Walters: Yeah, I mean, at some point we're going to ask you and I think Dave is going to participate in the discussions of the EPA issues and the events of last Friday and Monday and throughout this...

Ferryman: And I would prefer he...

Walters: That's fine. I did want to ask Woody or you to sort of report to us on the work on the track and where you are on that.

Ferryman: Woody will respond to that.

Mitchell: Well, we begin[sic] renovation since the last meeting and I indicated to you that I was going to totally renovate the surface of the track, which is what I've done. We've actually worked it up approximately 6 inches deep the entire surface. We have spent just one day grading. We're, the weather has been extremely dry. We need rain or moisture desperately on the racetrack surface to start tightening process back up. What my goal was in the original plan was to destroy all of the sub base that was built, not the base of the racetrack, but always think of the racetrack surface as three entities there. You've got a cushion that horse actually runs in, you've got a sub base which is a compacted sand but it's not like, you know, concrete, and our base out there is basically a clay/concrete base beneath that and it's approximately 6 inches and maybe a little less, maybe a little more in spots of actual material above that surface. Throughout the race meet we try to work the track, it's so weather dependent that you cannot always destroy what is being built as far as the sub base because it packs, and if you go around with the equipment necessary to chew it all up and keep a nice 4 inch soft

cushion, the weather it rains becomes so soupy it would just run off, so it wouldn't behoove us to do that type of thing. So, throughout the course of a race meet we end up with this sub base that's built and I'm not always sure that it's exactly level and is exactly to what I would like to see or what the horsemen would like to see or the horses, so we destroy that and start rebuilding and that's the process that we're in right now. The track is extremely deep. I was kind of hoping that the weatherman was going to be right today, but unfortunately not. They said some light showers. And what our intentions are is to start grooming the track as it's raining, putting moisture back in there and then controlling that at a 4 inch level, keeping that cushion at 4 inches, we're using our diamond harrow. And as far as material on the surface, there's no places that are really weak in material. We've got a couple of places where it's a little deeper than I'd like to see for, to keep that sub base built properly. So, we're going to do a little bit of moving of material around on the track and other than that it's looking very, very positive. But, one thing I went around and measured the rail in a lot of places to make sure that we were still in spec, but when you take compacted sand that's been sitting there for five months and you really work it up, you put a lot of air in it, so in a lot of places our rail right now measures 36 inches and you know it's normally 38 to the top of the rail, but the reason is we've got so much air, it's so dry, as soon as you get the moisture in it and start building it back and compacting it, getting it to the right firmness for the racing surface it'll meet the criteria that we've set up and developed.

Walters: If horses are coming in now and over the next few days, are they able to work on the track?

Mitchell: Oh, yes. Yeah, the track was open for training this morning, although no horses actually trained. Our outrider rode his horse around the track once, but no horses actually trained today. I think there's been a hesitation on people's part of moving horses onto the racetrack not necessarily because of the surface of the racetrack but more on the stability of the business itself. And so as soon as, a lot of people have told me that they've got 10 horses or 20 horses waiting to move in, they were going to wait until after the Racing Commission meeting today.

Walters: Let's do this before we get into the Dave Brown Show. Are there any questions or comments about the issues that Woody and Brian have addressed in terms of the status of the construction, the track surface. Oh, one other thing I wanted to ask about. You've had some discussions about repairs or improvements or whatever the proper term is to the jocks' room. Where are you on that?

Mitchell: I met with Darrell this morning, and he understands exactly, we have not begin[sic] painting, we have to begin cleaning the dust off the floors. All of that's scheduled to begin on Monday, and it's about a two week process. The people will be moving into the jocks' room... We had, I think, a very productive meeting this morning because we not only covered some of the issues that we have brought up in the past but some of the things that both him and I feel are important to the industry. There is very much a shortage of jockeys in the racing industry. He indicated that Playfair is experiencing some shortage. A few more have showed up, but he's given me some ideas of things that Portland Meadows can do to entice jockeys and I agree with some of his ideas, and so I think it's something we can work out. I did ask him this morning that I would like to set up a routine weekly meetings with a couple of representatives of the jockey's colony, and it can be one of the ladies and one of the gentlemen, I don't care, but meet on a weekly basis to discuss such issues that I'm going to throw out that's something that I think is important - track surface - because they're out there every day, okay? So, I'd like kind of a feel of how they think the track is handling day in and day out. Second of all is are there things that in the jocks' room, we kind of talked about how we're going to handle the food situation. I want to be able to work through that so that everybody has the same understanding. As far as the sauna for the girls jocks' room and a couple of things other, you know, we're talking about even maybe an exercise horse itself that they use in these jocks' rooms. So, there's all items that are on the table and things that him and I are going to work diligently on trying to solve and find a solution to so that it does make a very easy environment for the people to perform their duties.

Walters: One of the questions that occurred to me is the issues with regard to living space for people on the backside. Where are you on that? At the last meeting you were going to be meeting with the city of Portland, you were going to be meeting with the horsemen. Have you made any progress there?

Mitchell: The progress, there is no progress because of the way the codes for housing in the state of Oregon, city of Portland exist. There is no way that it can be accommodated on the backside of the racetrack without totally rebuilding a whole new facility. So, Dick Cartney and I have talked about it, we have not come to any real resolution. Things will be about like they were last year with the exception of no living on the inside of the racetrack in the tack rooms.

Walters: Other questions or comments by members of the commission on the issues that Brian and Woody have addressed?

Metcalfe: I have a question for Woody just so I am on the same page as everybody here. What, in your opinion, is the ideal surface for a track in the northwest?

Mitchell: I don't believe you could get a, my own personal opinion? I think that you need at least 2-1/2 to 3 inches of sand that has a moisture content somewhere between 20 and 30 percent, and it's got to be fluffy to, but see the problem is that Portland Meadows inclement weather 90 percent of the time when we're running it's so wet you can't get to that moisture content. Moisture is the single biggest factor affecting the racetrack surface at any facility, and unfortunately, it's much easier for tracks that run in the summertime to add moisture to a track than tracks that run during the wintertime to be able to take the moisture out of the surface. So, ideally I think you need 2-1/2 to 3 inches and it's got to be a reasonable moisture and it's got to be able to be groomed to keep the air in it so that it acts like a shock absorber in a way but not giving away to the horse's actual hoof to allow him to slip or stumble.

Metcalfe: So do tracks ever use composites with the rubber products that..., I'm sorry I just...

Mitchell: It's a good, you know, what you're saying is, I'm at the...

Metcalfe: I'm just trying to find out just how short we fall here when I ask where are we with what you have.

Mitchell: We have tr..., I mean, we at Portland Meadows has not tried rubber or fiber in the track since I've been there. Prior to my being employed at Portland Meadows, sometime in the eighties and I don't know when, they actually brought one of the racetrack experts up from California and he added some fiber material. I believe I was told this, and I wasn't there, to the racetrack surface which turned out to be a total disaster because if you add a wood fiber you're trying to contain and hold moisture, that's the reverse of the problem we have. You could go up north to Emerald Downs, and it's been recently built, and they've experienced a very difficult time trying to find that ideal composite for the racetrack surface. They have resurfaced, added material and plastic by-products, they've done everything. The problem with adding plastic or wood or any other foreign material to a racetrack that's basically sand you're going to get segregation because of different specific gravities. Whenever you have moisture its going to seek it's own level and it's going to stratify and you just, you're, it's a very difficult thing to try to handle. I don't really think right now that there's anything that can be added to that sand that would actually have any long-term effect. It might work on a day, one day, because you had ideal weather conditions on that given day, but day in and day out I can't think of a product that would work. It is a good idea and it's a very good question, but I just don't think there is anything that exists at this time.

Walters: Other questions, comments? Steve, you had one.

Barham: I do. It sounds, Woody, and you and I have talked before, but you're not planning to put any more sand on or strip any of the old sand off...

Mitchell: Not at this time.

Barham: Okay. Is the old sand, in your opinion, firm enough or big enough or...

Mitchell: Granular size, in other words?

Barham: ...or is it, or are we really talking about silt and dust and...

Mitchell: No. I believe if, we have not sampled the sand this year, but all of the other tests say that our percentages of fine material, clay, etc., fell into what most racetracks seek for percentage ratios on the work that we had done in the past, and I don't believe it would be any different if you tested it right now. One of the things that I do believe happens, and the reason that I say this if you go back and look at some of our test results, when we actually tested the very top inch of the surface and then we scraped down to this what I call sub base that was just like, becomes almost like concrete, and we dug some of that material up, it was much coarser, you know, when in the testing that we, you know, actually sent the samples out to the lab. So, that's one of the things that I'm very adamant about every year doing now is because during the race meet it's impossible to do that, one, because of the moisture content that's happening during that period of time, and two, you've got to be careful how much you upset that base, that sub base during a race meet just for horses' safety and everything else and the betting public also. So, we need to mix that all up once a year, and that's basically what we've tried to accomplish this year. And we'll know how well it works. We didn't have a lot of drainage problems last year, and one thing about it we didn't lose the sand that we normally lose like we did in prior years of my experience there. Part of that is that fortunately we've got a grader and we graded that thing once a week, every week that the weather was permitting and that helps. In other words, keep that material because every time you run around on anything that's set at a grade the material's naturally going to sluff to the center of the

racetrack. But, if you can keep it graded out, even if it's, even if you only move an inch, inch and a half, two inches, but you got to keep moving that material out because every time you come around with a piece of equipment and it falls it'll naturally fall to the lower side of the grade.

Barham: I guess..., I haven't been out since you told me you worked it and looked at it, and I guess, I mean, I'm not a track man anyway, so I maybe wouldn't be the best one to ask, but HBPA still has a track committee...

Mitchell: Right.

Barham: ...in it's contract with you, is that right? I'm kind of looking at Dick, too.

Mitchell: Yeah, I'm sure we do.

Barham: Okay. And you're going to be meeting with the jockeys weekly...

Mitchell: Right...

Barham: ...so, and like you say, they're the ones out there, so hopefully...

Mitchell: I will add one thing, and not to scare anybody, I won't be out there when all the other horses are, but I am going to bring my own horse in this year just to exercise on the track not during training hours just to ride around for pleasure and to find out what the track surface feels like from day to day or week to week or however often I am able to get out there.

Walters: Wear a flak jacket.

Barham: And a helmet.

Mitchell: I will, and a helmet. I figured when I went out there I surely can't have a wreck.

Walters: Oh?

Mitchell: No, I seriously am because of the fact that I like riding but I also think you actually learn... One of the advantages I've had in what little experience and knowledge I have about that racetrack surface comes from people like Bud Keen and other people. He was also my track man but he also exercises horses daily. He was a starter, so it's kind of nice because they can come and tell you, hey that track's getting hard, or that track's this or that, and if it's something you can do something about you can catch it ahead of time before it becomes a real issue or a real problem. And that's one of the things that Darrell O'Haire[sic] and I spoke about this morning that I want more communication with the jockeys. I don't them to wait 'til the track's out of condition before I hear about it. I'd much rather hear about it on a weekly basis or daily basis.

Walters: Other questions, comments? Dave, you're on.

Brown: Thank you, Mr. Chair. First...

Unknown: (from the audience) Could I ask a couple of questions about the racetrack?

Walters: Sure. Why don't you come on up. What questions...

Unknown: I just basically want to ask when the last time new sand was placed on the racetrack and address the particle size. I'm asking Mr. Mitchell.

Walters: Okay. Woody?

Mitchell: Last year.

Walters: Last year.

Unknown: How much?

Mitchell: Eleven hundred yards, I believe.

Unknown: Uh-huh. And are the jockeys going to be the primary determinant of the quality of that racetrack?

Mitchell: I think it would be an effort, more of a group effort of the trainer, the jockey, the exercise people, state vet and anybody else that wants to be a part of that committee as far as input into the racetrack surface and quality I haven't a problem with. I don't know, I mean, I think it's, Dick Cartney and I, it's pretty open door policy as far as the people want to be part of that policy making group. I don't have a problem with it. I mean, I don't know, and when it comes down to the very last thing of whether or not, let's take a weather change to where the racetrack is frozen and we've worked it up and whether or not it's suitable and safe to ride, that's a call for the jockey, you know. I mean, if you say that you're asking me the criteria on who determines whether or not that's a safe track to ride on on a given day, that would be made by the jockey.

Unknown: ...[unintelligible] a racing program...

Walters: Excuse me, sir. First of all I need you to identify yourself for our record, and I don't want to just have a debate between you and Woody...

Unknown: I understand. I wasn't debating. I was asking for a clarification. Arthur Kennedy.

Walters: Okay. And what was the clarification you wanted?

Kennedy: He was saying the jockeys are determining what is a safe racetrack. That's only during the races.

Walters: Right.

Kennedy: The majority of the time that that racetrack is used is for training, and the majority of the injuries occur during training.

Walters: And my understanding of what you said, Woody, is that you talk to the horsemen, that the HBPA has a committee that you talk with, you talk with the starter, you talk with the people who are out there...

Mitchell: That's correct.

Walters: ...on a continuing basis, and it's your plan to do that during this race meet.

Mitchell: Right. That's correct.

Walters: Okay?

Kennedy: Well, it's starting now, I guess, because it hasn't been much. The horsemen have not been involved much in the past, but maybe that's starting now.

Walters: Rather than debate history, Woody is saying that that's the process they plan to follow, right?

Mitchell: That's correct.

Walters: Okay. Now, Dave.

Towslee: Wait. Obviously this guy's not happy with this answer, right?

Kennedy: Well, no. The point is...

Towslee: Why don't... Let him have his say.

Kennedy: No, I'm not making too big a deal about it. I'm not all that worked up about it, but the plain [unintelligible] of the matter is they're only doing it now. That racetrack has not been looked at critically by anyone of late, and it's a constant source of injury to the horses and some of the riders. And now they're saying we're going to do something about it now. I would like an acknowledgement...

Walters: Well, I don't think that's appropriate to ask for that acknowledgement or ask them to say that. As I say, I don't think we need to debate history. Woody is talking about what they're doing and what they plan to do in this race meet and...

Mitchell: I'd like to just make one comment along that line so that it doesn't appear that only individual, primarily myself, has been making those decisions about the racetrack surface. I talked with Dick Cartney, Steve Fisher, Nick

Lowe, Garry Roberts, those are the people that are on that track or have been on that track committee, people that I seek out and ask them how the track is on a daily basis...

Towslee: Have you ever talked to Mr. Kennedy?

Mitchell: Ah, no. Mr. Kennedy.

Towslee: Can we get agreement that you would do that in the future?

Mitchell: I would be more than happy.

Towslee: Is that okay with you, Mr. Kennedy?

Kennedy: I would be more than happy to speak with him.

Towslee: Great.

Mitchell: That's, but we have this, this is not a new committee. If you read our contract it's been in there and we've tried to honor it from both sides, I believe.

Walters: Dave.

Brown: Thank you, Mr. Chair, members of the commission. First, on behalf of Portland Meadows we would like to apologize for the notice that we felt we had to send last Friday delaying the return of horses to Portland Meadows. I was in Canada on Friday. I was available to Portland Meadows and to my office by phone but I wasn't able to arrange any meeting with the US attorney or with the EPA and try to understand what a cryptic communication meant.

Walters: Just so we're clear, Dave. What was that communication?

Brown: The communication was that the EPA Region 10 in Seattle had heard that horses were returning to Portland Meadows on Saturday, and that the work necessary to comply with the Clean Water Act hadn't been done and an alternate procedure in the understanding of the person who was making the complaint had not been agreed upon and certain information he was waiting for hadn't been received and that all of the range of penalties possible under the letter of the law of the Clean Water Act needed to be put on the table and raised as a possibility. And, if you open up federal statutes and look at the range of penalties available under the Clean Water Act they do include at kind of a discretionary level even criminal penalties, and we weren't able to have a direct dialog with the person who was raising these questions to find out exactly what information he didn't have or exactly what procedures he didn't feel were in place. We had that meeting on Monday as early as everyone could get together, and it went very well. It was an information exchange. I am quite satisfied that the message that was sent on Friday was in no way intended to generate the kind of concern within the industry and at Portland Meadows as it did, but I'm also sympathetic to everyone who got concerned because the range of possibilities in those circumstances can be pretty exciting. The representatives of the EPA and the US attorney's office have been very good since that meeting on Monday to try to rapidly reach a specific understanding with us as to what Portland Meadows will do and what will be permitted to occur while the long-range plan for Portland Meadows is worked out.

The EPA is not the agency that approves the plan and the program at Portland Meadows. The agency that has delegated jurisdiction under the Clean Water Act to regulate confined animal feeding operations in Oregon is the Oregon Department of Agriculture. And we do have a permit from the Oregon Department of Agriculture, a [unintelligible] permit, and we do have our management practices which are called best management practices or BMPs specifically approved. The new waste handling system is approved, so we have the approval in place that we need.

Walters: And you've submitted to us a copy of that letter.

Brown: Yes, the approval letter from the Oregon Department of Agriculture.

Walters: I'm sure it will be made available to anyone who wants a copy.

Brown: Sure, yes, that is available. And what the EPA does is it provides more of an oversight and monitoring function, and I think that the reason we are under the degree of scrutiny that we are is that once that oversight and monitoring begins it doesn't conclude until the problem is solved. The principal problem that we have

quite simply is that the..., when it rains water runs into the bunkers, rainwater falls through the bunkers, and as that water passes through the bedding straw it picks up fecal matter which then runs into our drainage ditches which then runs into our underground drain pipes which then empties into an open drainage system, and that drainage system after travelling for a distance of more than a mile is eventually pumped into the Columbia Slough. And the system that we've designed that's been approved is designed to eliminate the bunkers to put all of the bedding straw inside a new barn where it will not be subject to rain falling on it, thereby preventing the rainwater from being contaminated with fecal matter. As a supplement to that and these management practices that we're talking about, is to have employees dedicated to accident patrol when there's an accident on the roadway or going to and from the track and that has to be cleaned up immediately, and then in addition the hotwalker area has to be monitored and any deposits which occur in the hotwalker area are going to have to be cleaned out, and hotwalker base material when it's removed is going to have to be treated as bedding straw and transported to the new waste barn. In advance of the waste barn being completed, we are, we have proposed a series of management practices which are designed to minimize the incidence of rain contaminating bedding straw. The principal feature of those management practices are that 8 bunkers will be designated as the only bunkers eligible to receive bedding straw or hotwalker material. Those 8 bunkers will have scaffolding erected around them and they will be tarped, and they will have to be kept covered so that rain can't fall on them. The time of day when those bunkers are eligible to receive bedding straw is going to be limited to a window of time in the morning, and then in the late morning and early afternoon those bunkers will be emptied so that for the majority of the day there's nothing in those bunkers at all, and they will remain covered because, of course, there will be some contamination left behind when the fork truck and the cleaning is concluded. We have agreed that we will work with the HBPA and with the horsemen to educate them about these practices and that we will enforce them, and we have agreed that we will begin construction on the waste barn as soon as we're lawfully permitted to do so and that we will complete construction of that barn with diligence and continuity which we estimate will be 60 days. The way this project has gone it may be one or two hours longer than that, but in any event we will get that done as quickly as we can, and at that time the waste handling system will migrate from the system of 8 bunkers into the new barn area. We also have agreed that between now and October 1st the number of horses that come on will..., is not expected to exceed 400 and that after October 1st the number can grow to 850. The..., I think that's the summary. If there's any questions, I'd be happy to answer them.

- Walters: Just a couple. First of all, was this person who raised this issue last Friday in the meetings that you had with the EPA? I mean is this person on board?
- Brown: Yes.
- Walters: Do you know what prompted this action, sort of, out of the blue?
- Brown: Um, well I am satisfied that it was not undertaken in any kind of bad faith or vindictiveness or anything like that. The..., I do think it was a communication problem. The person that we were communicating with because, at least from my perspective this has primarily been a legal issue, has been the lawyer here in Portland, and he was away for a period of time. There is material that we had sent to him that hadn't gotten forwarded on to Seattle and I think that we, Brian and I, had an understanding after meeting that was just different from the communication that was three weeks ago when we thought we had specific approval to bring the horses back. I mean, we thought that was the purpose of the meeting was to get that approval. And that approval instead occurred on this Monday instead of the month earlier.
- Walters: You have described the general outline to the agreement that you have with the EPA. Do you have more than just oral assurances that gee, this is going to work?
- Brown: The EPA has sent us a letter. They've asked that we keep it confidential because it is in the nature of an ongoing settlement of a very contested matter. We have not admitted liability under the Clean Water Act nor have we admitted any violations of the Clean Water Act. However, both Portland Meadows and the EPA are interested in pursuing a settlement of the issue in which the principal foundation of the settlement is practices that will result in reduced or actually eliminate discharge of fecal matter into that drainage ditch. And it's in connection with trying to reach that comprehensive agreement, which is technically referred to as a consent decree, that this correspondence has been exchanged; but since it is not a consent decree, it's only proposed or intermediate and so it's not a final order yet.
- Walters: But at least there is a writing that sort of reflects where you are on Monday.
- Brown: Yes. This time there's no possibility that the parties are confused about what they've said to each other because it is in writing, yes.

Walters: And then the basic question is how can we and you and the horsemen be assured that this isn't going to happen again next week or two weeks from now or a month from now that the EPA is going to come out and say, Everybody out of the pool. There's not going to be a race meet.

Brown: Well, I think that's a very fair question. The..., we haven't always had a smooth ride with the EPA on this issue. We were quite upset with them a year ago when the enforcement letter first arrived. But, we ran all last year and there was never any effort made to issue an injunction or to shut us down or prevent Portland Meadows from running, and during that period of time we learned a lot more about our system and how it worked and what the problems were, and the EPA spent some time sampling and they ordered us to prepare engineering reports, which we did, and share with them, and I think that they were satisfied throughout that reach that we were working with them cooperatively to try to get the problem resolved. I'm very satisfied they still feel that way, and the practices that we have in place until the waste barn is completed I'm very satisfied will substantially reduce the incidence of fecal matter in the drainage ditch. In addition, Woody Mitchell and his crew have done a detective's job of trying to find if there are other contributing sources to the pollution that has continued to be measured at the outflow pipe this summer even though the horses have been gone for several months now. And we have identified abandoned areas of the backside that we had no idea existed, they were abandoned long before the New Portland Meadows was formed, that very much appear to have been making a significant contribution to the problem and those are being evacuated and disinfected and cleaned out as a continuing good faith on Portland Meadows' part to really get to the bottom of the problem and resolve it. So, I'm satisfied enough to advise my clients that we can proceed without any likelihood of the kinds of things that were raised last week.

Walters: Just so, as this is obviously very important, just so we understand what the status is with the EPA is that this agreement you have with the EPA has allowed you to be comfortable to bring horses to the backside. Is it that if you do certain specific things in terms of practices that you will be okay, not that the EPA suddenly says, They're not working, or Gee, we had a bad reading, or something of that sort.

Brown: Correct.

Walters: Do I understand that correctly?

Brown: Correct. It is my understanding though this is not specifically part of the letter, Mr. Chair, but it is my understanding that no one knows if these practices will be sufficient. It's more a matter of application, experience as opposed to science. A part of it is just the discipline of the humans who are an essential part of the system to operate these practices without substantial flaw. But, I believe that if the readings through the race meet rise to a level that is of substantial concern, that the first and second response will be to re-examine the practices and try to improve on the practices, and I don't expect any experience that is according to our understanding and our experts are likely to happen to cause the race meet to be threatened with a shut-down even if we don't reach full Clean Water Act compliance; though, I have been advised quite specifically, pointedly by the fellow at the EPA that Clean Water Act compliance is where we are headed and while that's not tomorrow or the next day the EPA isn't going to sign off on a plan that doesn't have Clean Water Act compliance as its end result.

Walters: And, just again, I realize I'm putting you on the spot but I'd like to ask you and Brian: How confident are you that you're going to be able to run this race meet without being shut down by the EPA?

Brown: Um, I am quite confident of that. The..., my principal area of confidence is from our experience last year when we were having readings that we shouldn't come close to, we hope we don't come close to this year, depending again on the implementation of the practices...

Walters: And you are absolutely satisfied that this incident last Friday was a misunderstanding rather than something that's likely to be repeated?

Brown: Yes, on that I'm absolutely satisfied. Yes. I've talked to all the participants, and that is what everyone has said.

Walters: Questions or comments from members of the commission?

Towslee: Mr. Chairman? How much responsibility is going to be laid on the horsemen on the backside for meeting these best management practices that the EPA is asking you, and what have you done to let the horsemen know what their responsibilities are?

Brown: I'll answer the first part and Brian turn to for the second. The principal additional burdens on the horsemen are to transport the bedding straw a greater distance for most of them and much greater distance for some of them to the new barn instead of to the 16 or so bunkers that we previously had. So in the past, there was a bunker pretty close to every barn...

Towsee: You're talking about the temporary solution.

Brown: No, this is the final solution. Oh, the temporary solution.

Towslee: Right.

Brown: Oh. The temporary solution will have 8 bunkers in service instead of 16, so some people will have to go farther to get to one of the 8 bunkers, but they're scattered about to try to have that be convenient. And we just have to insist that accidents are cleaned up. We will have employees dedicated to doing that. We are also are expecting horsemen to help us in seeing that accidents are cleaned up.

Towslee: Brian, do you want to add anything to that?

Ferryman: I think the second part of it is have they been part of these discussions, and they have. I've kept Dick Cartney totally involved with where we're going. After we got the notice on Friday I talked to Dick. Monday we met at the track, we had a several hour meeting, I don't know, time flies. But, we met and went over, What can we do? What can we do to make the EPA happy? Because at that point I hadn't had an opportunity to talk to 'em, so at that point it was..., at that point I didn't know what I was doing wrong, so we were trying to grasp at things. What can we do? You know, we were trying to develop the best plan that we could. Anyway, we were in that, we came up with a strategy, that strategy is what we're following now, so he was part of that decision-making process.

Towslee: Okay, so you're comfortable that the horsemen understand Number 1 that...

Ferryman: The leadership of the HBPA. You know, as far as their transmitting that information to their body, I don't...

Towslee: But are you confident that the horsemen understand that, One, their responsibility, and Two, the consequences if this is not handled correctly.

Ferryman: I think everybody understands the consequences.

Towslee: Okay. My second question has to do with the city of Portland. Are you as confident about the city of Portland and its efforts to license your buildings as you are about the EPA and whether or not they have the authority, the desire or what have you to jeopardize either the start of the meet or the continuation of the meet?

Brown: No, I'm not as confident with the city of Portland. I haven't met with them...

Towslee: Well, does the city of Portland have the authority to close down the meet or delay a start?

Brown: No. No.

Towslee: Okay.

Barham: Just on adding up your barns, I mean 'cause I don't think that the city of Portland is like EPA by any stretch of the imagination, but there were 9 barns, is that right, that were cited last year by...

Mitchell: Ten barns cited, and the No. 4 barn was one of those 10 and it has since been removed.

Barham: Alright. So we got 10 barns that were cited, you have the No. 4 barn is gone, so now we're down to 9. What I wrote down here was Barn 1 and 2 were signed off, you got Barn 3 probably September 27th, Barn 9 October 4th. There's 19 barns back there total, right?

Ferryman: Twenty.

Mitchell: Nineteen now, that's correct.

Barham: Okay. So kind of my math says that there's a few more barns back there that are still in progress, right? So, like 6 or 5, something like that?

Ferryman: I guess I'm not following the question.

Barham: Well...

Brown: He's asking when the other 5 will be done. Four of them will be done by October 4th, and what you said, I think, is that others will continue on schedule...

Ferryman: They will. As we go..., the unfortunate part of this deal is when you start with 9 barns you have people spread out throughout the whole barn area or all those barns. We have people tearing out walls, we have people cleaning up, we have people setting footings, and so they're doing that in all different barns. So, as the number of barns decrease, the amount of people that are isolated to one barn or a couple barns becomes greater and then more work can get done. So, I see as these barns start whittling themselves away the remaining ones even go faster.

Barham: And that makes sense. I'm just questioning about these 5 barns that weren't in the sign-off thing, when are those..., are we looking at the beginning of the race meet...?

Ferryman: Well, we're going to do it as fast as we can because we want to run a race meet, so we have every incentive in the world to 'em done.

Barham: I understand that, Brian. My question is, you got 5 barns that have about 60 stalls per barn, so you're looking at 300 head of horses, okay? And I'm looking over here at the 850 that you look like, you know, where, how does this thing work? Are we looking at October 19th having 850 head or are we looking at having 550 head? I mean, that's just the math, that's all I'm needing to know.

Walters: Does the math include, I'm adding it up right, were there 9 or 10 barns that were not cited?

Ferryman: Right.

Barham: Uh-huh.

Walters: So, you can occupy those now, and so then, now you have 12 and by October 1st you plan to have 14.

Brown: We have 535 stalls today.

Ferryman: And we'll have...

Barham: I don't know. I'm just talking about the other 5 barns.

Ferryman: ...we'll have roughly by the mid first week in October we'll have over 650 and then as barns are approved we'll have roughly 60 to 70 stalls every barn that's approved.

Barham: Okay. So, basically then what I guess the Chair's saying and maybe you're saying is you really don't even need the 5 extra barns to get up to the 850 stalls.

Ferryman: We will need, yeah. We will need them. I don't know if we need them all, but after these 2 barns by the middle of the first week of October get signed off we'll be somewhere over 650 stalls available at that time...

Barham: Okay. That's...

Ferryman: ...which is still more stalls than any other facility in the state of Oregon.

Walters: Other questions of folks at Portland Meadows, comments? Thank you very much, gentlemen. Thanks. We have some other people, I think, who would like to say a few words. Dick, I am going to ask you for some comments, but ma'am, if you'd like to come up and identify yourself.

Hurley: Susan Hurley, owner, pony person, gallop person, and so forth and so on.

Walters: Welcome.

Hurley: My question actually was for Portland Meadows people in that have the limits of the pollutants been checked over the summer? If so, how much change has there been without horses present? What steps have they

taken to dispute the findings of the EPA, if any. And the comment made by the attorney was his understanding as I recall last year at the beginning of the meet Portland Meadows' understanding was as long as they took the tests every week and everything was hunky dory, there would be nothing, everything was fine. And then at the end of the meet, we get the little notice we have to move everything out because Portland Meadows will no longer be open as a training facility for the summer.

Walters: Okay. Dave? Woody? Brian? Can one or all of you respond to those questions?

Brown: David Brown. I'd be happy to do that. We have monitored the readings over the summer and have been surprised at how they haven't really declined. The counts are concentration by volume and the volume of water has decreased hugely so that the total colonies that are being measured are less but the concentration has continued to be at levels that are not, that are just not acceptable, and that has been a surprise. We've talked with the EPA and they've talked with their people and everyone was surprised by that. We had expected that as the distance of time for the horses to be gone that those would drop right down. In the last six weeks or so a pretty aggressive campaign has been underway to try to discover what that is, and two I guess somewhat obvious sources have been identified. One would be residual contamination in the underground piping system itself. Apparently these bacteria colonies can live for quite a long time in a damp and dark environment, and so we've done everything that is within the rules to wash out the pipes and blast that out of there and try to clean whatever residual sludge and mud and gray matter we can find in the piping system, even to the point of me asking Woody if he would climb up the pipe and see what was in there.

Walters: Where does that proposal stand?

Brown: Well, I'm still working it. He's not eager. We have also, and I don't want to get into this too much, but we have also looked for areas where there may have been sources of contamination in the past, we're talking about cesspools, and we've been working, Woody especially has been working with a backhoe and a shovel and tried to find, you know, was there something here before and is there a problem. And there are areas that are now connected to the sewer where the cesspools had not been cleaned or removed and, I mean, I'll be, I'll say I was surprised that even after years and years, these are places that are before our corporation was even formed, that they are still obviously contaminated and as we've found those, those have all been cleaned out and washed out, and a couple of weeks ago the levels finally dropped way down, not to zero but way down. Now what we are trying to determine is there contaminated earth or is there a contaminated water table that'll be contributing and we're taking tests on a very, very regular, almost a daily basis and trying to monitor that situation especially now before the return of the horses confounds that data.

Her second question is, are we undertaking any efforts to dispute the findings of the EPA. As a lawyer I want to say, bless you, of course we are. We haven't admitted anything. There are a number of issues that I find especially when Portland Meadows is a tenant who has come to a static and existing situation and is engaged in practices that are generally better than the practices that have occurred in the past. On the other hand, the outflow pipe has the reading that it has and it is not a trivial matter and we have to deal realistically with that fact.

As far as the expectations at the beginning of the meet I hope we didn't oversell something last fall. This has been recognized as a serious problem all last year. We were surprised at the levels and the readings during the meet last year. We expected the findings to be much lower than they were. We think that the reason for high levels may be insignificant result by the contribution of these other non-horse sources, but there was no question that by the time the meet ended last year we had to take some pretty drastic steps to address this. And having the horses gone is the only way we could think of to isolate the source of the problem.

Barham: Dave, on those other areas, have you used dye to make sure that, I mean, or is it like a pipe that hooks 'em in to really find out whether or not that's contributing or is it just...

Brown: The, we've talked about dye and they make some isotope signatures that you can use, too, but the first strategy that Woody followed which has worked actually pretty well since it's so darn dry out there is to just pump a hell of a lot of water from the water truck into the area you're curious about and then go down and look at the pipe and see if it comes out. And hydrologic connection has been pretty affirmatively established that way.

Walters: Okay. Thanks, Dave. Dick, would you please come forward?

Cartney: Dick Cartney, Oregon HBPA. Mr. Chairman, members of the commission, I'd just like to make a few comments regarding the situation with Portland Meadows. First of all, I'd like echo what Brian said about the contract that we have with Portland Meadows which we negotiated over the summer, eventually came to a

resolution through the arbitration process. We're very happy to have that contract, we're looking forward to running for increased purses this year, and we're just very pleased with that. We're also very happy that the barn area did get open even if it was a couple of days late, and that's certainly a step in the right direction toward getting this meet off the ground. We, as horsemen I think we need to run. We support horse racing, we need to run whether it's here or wherever, but right now we're focusing on Portland Meadows and so we're hoping that everything goes well from here. We realize there are some problems, and some of the things that we're very concerned about right now is the, and we realize that they've had a lot of problems with the EPA and working on those things have maybe stretched things a little bit thin and maybe there's some things that weren't, didn't get as much attention as maybe we would have liked. Right now we're a little bit concerned about the condition of the barn area because of all the construction that was going on and they were trying so hard to get the barns ready in time that there's still quite a bit of cleanup, I believe, that needs to be done. I think those things can be handled, but we, some of the people that are moving in are remarking to me that things are not that good a shape, and I know they're going to eventually get them back in shape, but we are concerned about that.

We are also a little bit concerned about the fact that they're going to have on-going construction while horses are in training, and I'm not sure exactly, I've talked with Brian and Woody and tried to keep abreast of what was going on and I'm not sure exactly how we're going to handle this problem yet, but somehow the construction areas are going to have to be, I would think would have to be some kind of a barrier or something there to keep the horses from, if they get loose, from running into an area where there's construction going on, possibly being injured. I don't exactly how that'll work out, but I'm hoping that somebody has a plan to take care of that.

We also are very, very concerned about the condition of the racetrack. I've kind of been holding off on this, I was waiting for, Woody indicated he was going to start working on it a few days and he has been working on it, so I wanted to see what transpired before we got into the racetrack situation. I've had some comments from a few of the horsemen that have looked at it so far. Like I say, I don't think anybody has actually been on it, but it certainly does not look good, at least in my opinion. And the people that have looked at it have expressed that opinion, too. So, I'm not a racing surface guy, so I don't know what the answer is, but I think we need to do more work in that area. I know a couple years ago we did put more sand on the racetrack, we were trying to, we had a really bad year, they did put sand on it, it seemed to help a little bit, but it wasn't the total answer that we were looking for. I think we need to do more for us to have a safe racing surface. We're going to have to keep working harder on that and find the solutions. I'm not sure what they are, but whatever we have to do, we need to do that.

Walters: There is this racetrack surface committee of the HBPA?

Cartney: We have a track committee and we do meet, and we have had conversations with management and they usually tell us that they're going to work on it and try to get it better. And I'm not saying that they aren't trying, but we just, we haven't reached, in my opinion, we haven't reached the solution yet. We need to do whatever it is whether it requires new material or different way of working it or whatever it is, but we, I'm very concerned that it's not in as good a shape as we need it to be. It's going to be very critical particularly this year because if we are short of horses, you know, we're going to have to keep as many of them on the track as we can, and so it's even more important this year than maybe any other year.

Towslee: Can I ask what your specific concerns about the track are?

Cartney: Basically right now the material that's on the track, and maybe it has something to do with that it's dry, I'm not a track surface guy I want to tell you right now, so you're getting an amateur opinion here. It seems like it's very powdery for some reason, and when you get, when it mixes with water it just becomes soup. And instead of having what we'd like to see, the cushion that we've had in some year's past horses just go right through it and hit the sub-base or the base where it's down there where it's hard and then they start experiencing injuries, I believe. So, that's my amateur opinion. I don't know whether wrong material or whether the material that's on it is wore out. I know in previous years we had sand that was more like beach sand where water would drain down through it and you'd have compacted on the top and you'd have a cushion for the horses to run on, and...

Towslee: Well, they have a month until their meet starts. Is that enough time, in your mind, to get the track in a condition in which both of you could agree that it's fine?

Cartney: I believe that's enough time if we get started on the process and find out what the answer is, which I'd be the first to tell you I'm not sure what the answer is, but I know it needs to be, something needs to be done. And as far as the other things with the EPA solutions, we've had some discussions with the folks at Salem. We had a

meeting down there to let them know about when the barn is built that they're going to have to be required to move their manure from their barn to there. Needless to say not everyone's happy about that, but we realize under the circumstances there's not much else we can do about it. And the short-term solution, we haven't had a chance to talk to too many people about it because it just came up pretty quickly, but it seems, of all the solutions we looked at this one was the most reasonable one that they came up with. I believe the horsemen will bend over backwards to do their part in trying to solve this problem 'cause I know they want to race, they want everybody to do well here, and I just hope that we'll get a little help from management, maybe getting a few extra people 'cause when horses are going up and down the road the trainer's not going to be able to run out there and scoop up manure. I mean, they're going to be busy doing different things, and maybe they can clean their lockers on a daily or bi-week or couple day's basis, but they're going to need some help with maybe additional people to do some of these other things. But I think the horsemen will cooperate to the best of their ability, and it's going to take a little education, I mean, 'cause they're not used to doing this and, but we're going to try to work with them as best we can and make sure the meet gets off on time and just hope that these things will work themselves out.

Walters: What is your take on people taking their horses out to Portland Meadows now. Is that happening? What's the reaction been? The observation of the people from Portland Meadows was they felt that people were waiting for today to see what would happen.

Cartney: Well, I think there was a great deal of skepticism going in and then, of course, the other day when they were unable to get the barn area open I think that just fueled the fire even more, so we have a lot of people who are very concerned, very nervous, they're not sure what to do. I have a lot of people asking me, "Should I move in?" you know, "What happens if I move in and then a few days later, a week later they tell us we have to move out?"

Towslee: What will you tell them now, Dick?

Cartney: I really don't have a real good answer. I'm just saying that it's a day-to-day thing. I mean, I take it for, I listen to what Portland Meadows is telling me that they've got this thing under control, but things do change, so, I mean, I'm not giving anybody a hard, firm answer. I'm not going to tell them something that I can't absolutely back up, but I think it's something that's going to be gradual. People will gradually come in, and as things go well and we don't have any problems then people will gradually, more and more people will come in.

Towslee: So, the assurances that you got from Portland Meadows today don't do much for you.

Cartney: I'm sorry, what's that?

Towslee: The assurances that you got from Portland Meadows today about them opening and running...

Cartney: I believe what they say, Tom...

Towslee: ...don't do much for you.

Cartney: ...I'm not going to sit here and say they don't mean what they say, but a lot of things have happened, I mean, some of them beyond their control, I mean, and so we have to be aware of that. And so for that reason people are still going to be concerned until some time goes by.

Walters: Dick, we just before walking into the meeting today I was handed, and we've copied it and handed it out to other members of the commission, a petition signed by, I haven't counted the number of horsemen and women who signed the petition, and sort of the premise of the petition was that there may be a misimpression on part of the commission that all the horsemen and women want to run at Portland Meadows and this is a group of people who say they would rather run at Salem. I guess there are a lot of assumptions there and I don't know that they're all correct. And there's also sort of an assumption that a race meet at Salem is a possibility when among other things the RFP that the fair put out no one bid on, and they put out another one and no one's probably going to bid on that because the conditions of it are so onerous and burdensome. But, sort of putting that aside, first of all this doesn't purport to be an HBPA petition and then my understanding is that the HBPA itself is not part of the petition or...

Cartney: No, we're not. I am aware of it. I was in process of being at Salem for the race meet down there. I was made aware that there was a petition going around, and I do understand where those people are coming from. I understand that it is not an HBPA proposal. I welcome their input, and I'm very pleased to know, get an idea of what their feelings are, but basically from the HBPA's standpoint, as you know we have a contract with Portland Meadows that was reached. As I understand it Portland Meadows has a license to run, so that pretty

much puts us in one particular place at this time. Now, that isn't to say that somewhere down the line if the situation changes that we couldn't do something different. As I'm sure you're aware, we've had conversations with some of the folks that were at one time and maybe still are, I don't know, interested in running at Salem or Grants Pass. Basically that's always been in my mind was, would only occur if something were to happen at Portland Meadows. So, we're prepared for whatever contingency there is, but right now, you know, from our perspective we're racing at Portland Meadows.

- Walters: Just, you sort of led into the second question I was going to ask you, which is we also got a letter, I believe it came in, well it's dated today, from The Cummings Group advising us that they can be prepared to within five days submit a race meet application to run at Grants Pass. There's a letter from Al Westhoff confirming that they have control of facility, and it says that he has, that they have an agreement with the HBPA for race meets in areas other than Clackamas, Washington and Multnomah counties which cover a number of conditions. Obviously, you know, one alternative for the commission would be to entertain a race meet application from that group as a fallback or an alternative or something of that sort. I'm wondering if that sort of procedure by the commission might do more harm than good in terms of suggesting to people that, well, you ought to keep your horses away from Portland Meadows and shouldn't go someplace else, and again I, you know, without putting you on the spot and without asking you to speak for the HBPA board I'd like to ask your reaction to those sorts of issues.
- Cartney: Well, I think, Mr. Chairman, that yes, we do have a contract with The Cummings Group. It was negotiated back during the summer, and basically from our perspective I believe what we were looking at was should for any reason, and there were a number of things out there, whether it was EPA, whether it was a legal situation with the property owners, whether it was the fact that maybe they just didn't want to continue any further or whatever, that should Portland Meadows not be available as a race meet we wanted to have a backup plan, some place to go so that we weren't out of business. And so we, with that in mind, we did enter in negotiations with The Cummings Group and we did reach a contract, so we were prepared should anything happen at Portland Meadows which, obviously, they have the license so we're kind of, that's where we are right now.
- Walters: What do you think would be effect on the horsemen if we were entertaining of an application, sort of a backup application, in the event that something else happened at Portland Meadows and Portland Meadows couldn't run? Do you think that would cause people to say, well I'm not going to go to Portland Meadows; do you think, what, just what reaction would you think...
- Cartney: Well, I think it would certainly, you know, add a little bit more of the uncertainty of where do we go, what do we do, do we stay here or do we go there, on not knowing what to do. So, I'm not sure how to answer that completely.
- Walters: I think you've given me...
- Cartney: We definitely support having a race meet somewhere, I mean, we don't want to be out of business.
- Towslee: Don't go out on a limb, Dick.
- Cartney: So, we're trying to cover all our bases so to speak.
- Walters: Thanks, Dick. Any other questions or comments for Dick? Thanks very much. I would like to ask if there's any, not for you, any other member of the public who would like to address us on the issues of where we are with the race meet at Portland Meadows, the alternatives that I was discussing with Dick, the petition we've gotten. Is there anyone else who would like to address the commission on these subjects? Yes, sir.
- Unknown: Is it too late to ask a question on the concerns of the...
- Walters: Why don't you come forward and identify yourself and then we can ask Dave or Brian or whoever is the appropriate person to respond to your question.
- Dronen: My name is Sam Dronen. I'm an owner/trainer at Portland Meadows. The concern I had was listening to the discussion about the EPA. I know Mr. Walters, so the commission's got a concern whether or not if they can shut us down during the meet and what the probability of that is, and it, I'm sure the horsemen are concerned about the same thing. It seems like the discussion was kind of one sided as far as management was concerned. Why don't we have a representative from the EPA here at this meeting?
- Walters: Take it, Steve.

Barham: I've been calling the EPA folks all week and actually started before that and have received no call backs or nobody will take the call. So, I would like to have them here, too, or at least talk to them directly, but so far have not been able to do.

Walters: And the other response I would give to you, I mean we definitely would have liked to have heard directly from the EPA. One of the things that I think is very important is that as Dave said there is a letter from the EPA outlining the terms of the agreement that they reached on Monday. It is something that Portland Meadows is being asked by the EPA to consider proprietary and so not to make part of the public record. And that's at the EPA's request because it's part of an ongoing negotiation, but there is more than just oral assurances that yeah, this is what we think is going to happen. There is documentation from the EPA and there also is a letter of approval from the Department of Agriculture for the measures they propose which, again, is documentary proof not just oral assurances that we think this is the way it's going to go. Anyone else like to address the commission on these subjects? Yes, sir.

Unknown: Yeah, I'd like...

Walters: Could you come forward, please?

Jensen: My name's Eric Jensen. I'm an owner/trainer. One of my concerns is is after ten o'clock on the horses there, you know, they got security there. If a horse, you know, casts itself who's going to get it up? Because we have no grooms and stuff there, you know, like... Well, there's no grooms on the backside...

Walters: They can't sleep in the tack rooms.

Jensen: Well, anyway they're, you know, we've got a lot of time and money invested in these horses and if they cast themselves, they can hurt themselves, you know, quite a bit there.

Walters: Um...

Towslee: Cast themselves. I don't know that term.

Jensen: When they lay down they can't get up.

Towslee: They fall down...

Jensen: Yeah. They're on the ground and stuff, and see we can't be there after like ten o'clock, so there should be security walking around to make sure that these horses don't cast themselves or they colic or something to where they're sick or something like that because, like I say,

Walters: That's a reasonable question. I'd like, if Brian or Woody could answer it for us...

Jensen: Okay. Thank you.

Walters: Thank you, sir.

Mitchell: Woody, Portland Meadows. We had this meetings last year when it became an issue on the backside when we had to ask everyone to leave, not actually live or sleep on the backside. Part of a misnomer is that when someone says I can't be there after ten o'clock that's not true. What's true is they cannot reside or set up residency on the backside, and in no way shape or form, our security department will not in any way restrict people from access to the horse area at any time. I mean, they're, you know, one of the things that we did initiate last year with the backside security was a sign-in sheet. And it wasn't that we're trying to find out who's coming and who's going or this type of thing, but I actually did it out of concern for safety because if one individual signs in and goes into the backside say after ten o'clock and nobody sees or hears from him from 'til, you know, the next morning somebody finds out he got hit or kicked or whatever in the stall, we just don't want, we want to know who's on backside after ten o'clock just for safety's sake. And that was the only reason or issue that the reason we actually started a sign-in policy. One of the things that we're going to do this year, I'm not giving lip service to, we're going to, because of the concerns of the horsemen, of a horse getting cast in a stall or other things taking place, we're going to have a walking security and they are not going to be sitting in the guard shack as everybody will imply. They are going to be out there doing their job, and I mean that's just as simple as that, and I understand and maybe our past practices haven't been as ideal and probably wasn't as necessary because of the fact that there were people roaming around on the backside at all times, but the circumstances have all changed. At the very end of the meet we did have a pretty efficient system set up with some bugs in it that needed to be worked out. And so, I think on behalf of Portland Meadows, you know, one

of the things the vets, people that, they need to get access to that backside. It's the same as it always is, they can go on. The one thing that I still would like to ask for the cooperation is the sign-in, and the only reason I'm asking for that is that if I know you sign in at one o'clock in the morning and I don't see you for three hours and I know that you were going in to check a horse and I haven't crossed, the walking guard has not come across you, we're going to find out, you know, locate you, I mean, because there could be a problem. And so that's basically the only issue, but it is a very legitimate concern on the horsemen's part and it is going to be addressed.

Walters: Thank you, Woody.

Barham: One thing. You do plan to have 24 hour security...

Mitchell: That's correct. Twenty-four/seven. Pardon?

Barham: ...at the guard shack.

Mitchell: Yes, oh yeah, there's two people. That's what I said. Right.

Barham: Thank you. I thought that's what you meant.

Mitchell: Yeah, right. In other words there's only one person manning that gate at all times and the guy will be on foot and making his rounds.

Walters: Okay. Thank you, Woody. Any other folks like to address the commission? Dick.

Cummings: Good afternoon, Mr. Chair, commissioners. Dick Cummings from The Cummings Group. I just thought I'd make mention of the letter that you received today. I don't want to have any misperception that that letter was meant as competition to but an alternative to the Portland Meadows ongoing application and licensing procedure. I just wanted to make sure that that was clarified and that we do, in fact, as an entity have a venue which is Grants Pass Downs which is explained in the letter, of course, and that we do, in fact, have an agreement with the HBPA excluding the counties of Multnomah, Clackamas and Washington. And that our position is that we are a relief valve. We're heartened by the rather optimistic prognosis of Portland Meadows today, truly hope that comes to pass. Frankly, I believe the position of our entity would urge all horsemen to support that meet just as quickly as they can. With the fragile nature of horse racing as it is today I think it would behoove everybody in this room to "rally 'round the flag, boys". That having been said, the relief valve exists. Should for some unseen reason, unknown reason at this point in time that resolution isn't, in fact, achieved from the auspices of the EPA, we will be available upon very short notice and notification of the commission that that condition does, in fact, exist, be prepared to submit very quickly and timely an application to do horse racing with the appropriate authorizations, etc., at a venue at a minimum at Grants Pass Downs. So, I just thought that was probably important for you.

Walters: I really appreciate that, Dick. That's very gracious of you and very positive, which is the sort of thing we've come to expect dealing with you over the years. And those are very helpful comments. Thank you.

Cummings: Thank you very much. Thank you.

Walters: Anyone else like to address the commission on these issues? Are there any other comments or questions or thoughts by members of the commission about where we are on the upcoming race meet at Portland Meadows?

Obviously the... Did you...?

Unknown: I'd like to...

Walters: Okay. Please come up.

Bischoff: I'm Eulia Bischoff. I'm an owner and a trainer. Thank you for accepting me. I live here in Portland and I have traveled every day to Salem to take care of my horses, and I was delighted to hear that it had finally opened. So, what I did was come up yesterday for the first time all summer. We brought 178 bales of straw with us. We wanted to bed our stalls and we knew there were other people in here to be bedding, needed bedding. I got up here and I was appalled by the way it looked. Have you gone through the whole barn area and taken a look at it? I picked up nails all over, boards with nails, torn out conduit to the walkers. How can we run a race meet when there's a mess like that? Barn 8 is not going to be replaced for a long time. They told us that,

they've told us all along, that was fine. Barn 9 is not ready. Barn 10 is not ready. Barn 11 is not ready. Barn 12 is not ready. Barn 12B is not ready. In that whole one line Barn 14 is the only one that is ready. There's 120 stalls in each one of those barns. Where are all the people going to put their horses? The walkers, the juice to the walkers aren't hooked up, electrical connections where they tore them out. I went up to go to the bathroom. Barn 8, as everybody knows, is not going to be used or replaced for awhile. There was three men, one of them our head who was supposed to run the backside and two other guys, they were fixing a sliding door on Barn 8 and putting a stop on it. It wasn't torn down or anything, but *what* in the *hell* were they working on it for when we're not going to use it?!! Excuse me, but I was furious! We brought that straw back to Salem, didn't even undo it. That's how dismal it is. I'm sorry, but you fellows need to go through that barn area. I'm sorry for the horsemen that they make a living at this. I'm retired from another job. I don't have to do this. I do it for my health, and I love the horses. I love the horse racing. But these people that are living off the money of horse racing, I feel sorry for them. Now I'm sorry. I'm about in tears because I feel sorry for the rest of the horsemen! Thank you.

Walters: Brian or Woody, can... (Clapping from audience). Brian or Woody, would you address where we are in terms of cleaning up the construction debris and getting the backside in a condition to have folks to bring their horses on?

Mitchell: I guess I am going to start out by saying I concur with part of what she said. We have an area of I'm going to say 14 barns, because we had the two rows of 7 barns, that we've done a lot of construction in. I've got guys going around with magnets and yes, it's an ongoing process of picking up and removing the debris. There's probably, I can't remember the exact number, but I think there was 17 walkers that electrical hadn't been tore out of...

Walters: Out of how many?

Mitchell: Out of say 70 being, that's a rough estimate, but out of 70. The electricians have been there every day this week and two days last week running new conduit and replacing the electrical to all of the hotwalkers. We actually went through and flagged the good ones and, you know, they're in the process of repairing 'em. One of the things that they, they got destroyed when we had to scrape all that hotwalker material, base material off or actually the cover material not the actual base. It is a difficult time we're dealing with at Portland Meadows. It's not going to be easy. We've talked among ourselves and everything else. It's a 24/7 job trying to get that race meet to light off, and I think we've made a huge progress. I think she indicated Barn 1 looked halfway decent and I agree with her in that respect. We've still got a couple of things that we were waiting for for parts to finish up Barn 3. The crews are, when we say that barns I'm going to go 8, 9, 10, 11, 12, 12B, when we say those barns aren't ready right now, a walk-through of those barns would tell you that there's construction in each and every one of those barns to the point that wrapping it up or buttoning it up isn't going to take that long. It is going to take time. My goal is I think October something, I can't remember the exact date, that Dave Duke is anticipating Barn 9 to be finished, but I'm saying that by the first of November we should have everything buttoned up on those barns. I'm confident that that can be reached. We're working very diligently at it. There is, it's, you know, it's not easy to do that much work on an establishment that's that old and not have all of this debris. We've torn down, I don't know, I can't even give you an honest estimate of number of walls plus the entire Barn 4. There's stuff scattered around there, we've been trying to pick it up and I guess what I'm saying is that we're making a diligent effort to get this thing ready to go. It's going to take some cooperation from the horsemen, and I realize this and I'm the first to tell you I sympathize with their position right now. I'm not saying that that is in the shape that either Brian or Gene or myself or anyone would like to see it, but we're trying to make the effort to get it to that point. I don't believe that ten days from now that it'll look anywhere near like it does today. It's empty now, it's an empty shell. As soon as people get in there and we get the rest of the material cleaned up, we've got a couple of trash boxes, 30 yard dumpsters that are still sitting out in the street on the first road, we get all that stuff picked up and out of there it'll start making it look more like a race track, and I think it is much cleaner than it has been in the past because of the move-out last year we were able to get rid of a lot of stuff that has been setting[sic] around. But there's still a lot of work to be done. I'm not setting[sic] here telling you that that thing is in tiptop shape and ready to go. It's in ready-to-go shape but we've got some cleanup and this type of thing that needs to be done. You know, the racetrack surface, I'm not settin' here and telling you that racetrack is what I want today 'cause it's definitely not. I indicated that we need some rain, we need some moisture. You can't work the material until you get some moisture, and we can add it with the water truck but all that does is press the sand down where the track, and the wheels and the, you know, the tires marks on the track, so Mother Nature would be the way to go if we could get it, this type of thing. I mean, I think the backside crew, and she indicated they were puttin' up a barn door on 8, we salvaged some things from Barn 4 that we took off and are trying to make, you know, just movin' stuff around, so it's not I hope that they think that people are wasting their time because they really, the crews back there are dedicated. They want this thing to be any easy operation, but they're puttin' a lot of effort and it is a tough job. Working around the construction is going to be a real problem. We've talked about it a length.

It's just going to be an issue that we have to deal with on a daily basis. It's going to take a high level of cooperation to make this thing to where people can enjoy themselves at Portland Meadows.

Walters: Would it make sense to have folks, or maybe you do have folks, on the backside sort of working with the horsemen and women as they bring their horses in and trying to make this transition as smooth as possible, recognizing that it's going work on everyone's part?

Mitchell: Yes, and we do have, I have since these best waste management practices are something that we have to help everybody learn and educate and understand the reasons for I've got a person that's going to be doing that. I've got people that are going to be walking around and we are going to try to address these issues. I've told, for example, security realizes I have a full-time electrician, St. Johns Electric's, got a full-time person out there right now to address those very issues of conduits and plugs, and what doesn't work we'll try to fix. We'll try to address it immediately. James Easley is the backside superintendent and I think the guy's done an outstanding job working with the tools and the conditions which he's had to work within, so...

Walters: Are you still working the two shifts and the two crews?

Mitchell: We haven't got two crews on, we've just got a bunch of people now. We've doubled up, we've hired another framer that's gonna come in on Monday to add to another section of the crew so we can knock out the rest of the framing. A lot of it was demolition, walls that couldn't be repaired in place to come down. You gotta take a pick, pour a footing, frame it and this type of thing, and that's just, you know, it's just time consuming. And there's a lot of debris, and it's, uh, it is, it's just, you go through and clean it up once and it's clean, and we're just in that process, so. And she's correct, and I have not a problem with, I'm not going to set[sic] up here and say anything other than that. We all walked through that barn area and it looked kind of vacant, I believe, if you'd recall when, you know, the commission came out there, and you just have to add to that the fact that we've tore down probably out of those 9 barns that are still remaining standing, we've probably tore 35 percent of the walls out of them. That's a lot of material to be removed.

Walters: Thanks, Woody. Questions for Woody? Thank you, Woody. Anyone else care to address the commission on these issues? I, for one, appreciate the participation of everyone who has talked to us about this. I think this has been a very good and productive exchange to get issues on the table, to get people's concerns aired and see where we are and where we are going. I don't know, unless there's another proposal by a member of the commission, that there is action for us to take. Dick Cummings has made clear, and I use the term graciously and I think that's an appropriate term, that his interest is as an alternative or a safety valve in case something unexpected and untoward happens at the race meet at Portland Meadows. But, from what I hear from the HBPA, from Dick, that, and which makes sense, is that there is a race meet planned at Portland Meadows, that Portland Meadows has a license, and for all of the concerns we have heard today and the issues that have arisen it is clear, to me at least, that the management at Portland Meadows is working hard to overcome those obstacles and will listed to people and will talk to them on issues like the track surface, on issues like the cleanup, on issues such as getting the hotwalkers working and making the places as hospitable as possible, recognizing that there is going to be inconvenience to everyone until this work is finally done.

The, obviously, there was a great deal of concern by I think all of us on this commission when we got the news that was upsetting to everyone last Friday that there was going to be a delay in getting the horses on at Portland Meadows. You know, we've had a number of discussions with representatives of Portland Meadows. They have produced for us the goods, I think, in terms of documented evidence of the approval of the Department of Agriculture, all those letters, is again not something that we can make part of the public record. There is a letter from the EPA outlining the terms of the agreement which seems rather clearly to allow this race meet to go forward. So, while not all uncertainty is removed, where I am at this point is that Portland Meadows is licensed to run and am hoping that the horsemen and women will get behind the management there and work with them. And it's a two-way street, the horsemen and women with the management and the management with the horsemen and women, to move this race meet forward, recognizing among other things that there is, that the HBPA has done quite a good job in getting a very substantial increase in the purse structure at Portland Meadows, and that for the first time in five years you're looking at the prospect of a rather substantial purse increase which I would hope would attract the horsemen and women to come there and work to make this meet a success. Any other comments? All right. Thank you.

(the commission took a five minute break)

3. Greyhound Channel, LLC Quarterly Update

Ben Hayes, attorney for Greyhound Channel, LLC, provided their first quarterly report which ended June 30th. Through the quarter they ended up with thirteen greyhound tracks and accepting wagers from thirteen

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different jurisdictions. Total amount of gross wagers was \$231,356 during that period. Since then they have permission to accept wagers on horses, and they are currently in the process of getting horse tracks on board as well as expanding the number of states from which they can accept wagers.

4. Multnomah Greyhound Park Update

Carl Wilson welcomed Dr. Metcalf to the commission and invited her to visit MGP. He also congratulated the HBPA and Lonnie and Glen for their successful race meet at Salem. He reported they have seventeen performances left in the season, and handle levels have been consistent with what has been reported at previous meetings. The Derby stakes race took place at the end of August and the Oregon Futurity will take place this coming Saturday. Mr. Wilson raised an issue that is getting a lot of attention nationally is the subject of rebating, especially with large gamblers putting together their own hubs which have the players realizing the takeout. He was raising the subject because some of the big tracks around the country are currently facing this issue.

5. NTRA Services LLC's Request to Provide Legislative Update in Response to Questions by Commissioners During Quarterly Update at August Meeting

Roger Nyquist reported on questions asked by commissioners at last month's meeting regarding what was going on legislatively in other states and nationally. He wanted to report that California currently has a bill before the governor on allowing account wagering. There's also been some progress in New York. He was not as optimistic regarding the Kyle bill.

6. Amendment of OAR 462-200-0305 - Approval Criteria of The Commission for Authorizing Receiving Tracks

Steve Barham reported this action is a procedural process. This item came before the commission in July at which time there was a proposal to change the proposed rule. Commissioner Price, at that time, provided some revisions to the proposed rule and the commission approved the revisions. We did not, however, complete the necessary filing with the Secretary of State's office in order to enact the new rule. The Notice of Proposed Rulemaking has now been properly filed, the waiting time has passed to receive comments and so the commission now needs to formally take action to approve this rule.

ACTION: MOTION(Towslee) Adopt the proposed rule.

VOTE: 4 Aye, 0 Nay, 1 Excused

7. Proposed Final Order by Default for Michael D. Williams

Chair Walters acted as hearing officer on this case and wrote the proposed order.

ACTION: MOTION(Price) Adopt the proposed order as a final order.

VOTE: 4 Aye, 0 Nay, 1 Excused

There being no further business, the meeting was adjourned.