

Case No.: 07-17A

Name: Jessop Amusements, Inc.

Administrative Law Judge: William K. Teegarden

Date: October 11, 2007

Commission Action: Affirmed

FINDINGS OF FACT

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-15, and 685 IAC 1 apply to this proceeding.
3. The Agency is the state department responsible for inspecting and certifying amusement rides operating in the State of Indiana.
4. The Commission is the ultimate authority within the meaning of IC 4-21.5 over enforcement actions taken by the Agency.
5. At all times relevant to this proceeding, the Company operated amusement rides in Indiana and has done so for a number of years.
6. On May 17, 2007, a duly authorized inspector employed by the Agency conducted a routine inspection of the company's rides as part of the annual certification process.
7. The inspector cited three deficiencies which were appealed and several other minor problems which were not.
8. The Agency later withdrew the citation for worn wheels on the Platform Train, leaving just two issues for the hearing.
9. One involved a cracked bushing on Horse #11 of the Merry-go-round.
10. The Company contends that the bushing in question is not required for the safe operation of the ride as its only function deals with the horse going up and down.
11. If the part fails completely, all that happens is the horse will not move, leaving a customer entitled to a free ride on another horse but not causing safety problems.
12. The Agency contends that the ride must comply with manufacturer's specifications, which do not include cracked bushings. See 385 IAC 1-5-7.
13. The trier of fact agrees with the Company that the cracked bushing does not constitute a safety hazard, but the Agency is correct; there is a violation of the Amusement Ride rules and repairs need to be made.
14. The trier of fact finds for the Company in that repairs can be put off until the winter season but otherwise affirms the order as to the Merry-go-round.
15. The remaining order pertains to the Ferris Wheel which the inspector did not certify for use on May 17.
16. The Company obtained this ride used from an operator in Florida.
17. The ride manufacturer no longer exists and the Company was told by the seller that it was manufactured in 1969 and no manual was known to exist.
18. For five years, the Company has received certification for the Ferris Wheel by filing an affidavit stating no manual exists.

19. Unknown to the Company (and apparently to several prior inspectors), the National Association for Amusement rides, called NAARSO, has a manual for this ride.
20. The inspector in this cause had the NAARSO list of older manuals and correctly refused to certify the ride on May 17, 2007, because he could not inspect it to the manufacturer's specifications as required by 685 IAC 1.
21. Upon being advised NAARSO had a manual, the owner, contacted NAARSO and obtained a copy.
22. At that time, the inspector re-inspected the ride and issued a certificate.
23. Since a manual did exist, the order of the inspector requiring production of the manual prior to issuing a certificate for the ride and the assessment of a re-inspection fee should be affirmed.

ORDER

The Order issued May 17, 2007, to Jessop Amusements, Inc., requiring repair of a cracked bushing on Horse 11 of the Merry-go-round is affirmed subject to the condition that the operator is given until the start of the 2008 amusement ride season to make the repair.

The Order issued May 17, 2007, to Jessop Amusements, Inc., requiring production of the manual for the Ferris Wheel before issuing certification is also affirmed.