



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor  
MANDY COHEN, MD, MPH • Secretary

JUNE 8, 2020

**ORDER OF ABATEMENT OF IMMINENT HAZARD**

**Background Statement**

1. The COVID-19 Public Health Emergency

1.1. **WHEREAS**, on March 10, 2020, the Governor issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

1.2. **WHEREAS**, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

1.3. **WHEREAS**, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

1.4. **WHEREAS**, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

1.5. **WHEREAS**, more than one million, nine hundred thousand (1,900,000) people in the United States have already had laboratory-confirmed cases of COVID-19, and over one hundred thousand (100,000) people in the United States have already died from the disease; and

1.6. **WHEREAS**, more than thirty-five thousand (35,000) people in North Carolina have already had laboratory-confirmed cases of COVID-19, and over one thousand (1,000) people in North Carolina have already died from the disease; and

1.7. **WHEREAS**, in Alamance County, four hundred ninety-four (494) people have already had laboratory-confirmed cases of COVID-19, and twenty-three (23) people have died of the disease, as of June 8, 2020; and

1.8. **WHEREAS**, Alamance County has a low rate of testing for COVID-19, and a high rate of

tests coming back positive, rendering it one of the counties in North Carolina that has the most troubling data indicative of a COVID-19 spread; and

1.9. **WHEREAS**, hospital administrators and health care providers continue to express concerns that unless the spread of COVID-19 is limited, existing health care resources and facilities may be insufficient to care for those who become sick; and

2. The State's Response to the Public Health Emergency

2.1. **WHEREAS**, the undersigned and the Governor have directed hospitals, physicians' practices, and other health care entities to undertake significant actions as part of North Carolina's emergency response to address the COVID-19 pandemic; and

2.2. **WHEREAS**, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

2.3. **WHEREAS**, the continued community spread of COVID-19 within North Carolina requires the State to continue some measures to slow the spread of this virus during the pandemic; and

2.4. **WHEREAS**, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the Governor has issued Executive Order Nos. 116-122, 124-25, 129-131, 133-136, and 138-144; and

2.5. **WHEREAS**, people in North Carolina must remain flexible to account for the evolving nature and scope of the public health emergency posed by COVID-19, and also return to – in a safe, strategic, and incremental manner – their normal personal and professional activities, to the extent public health circumstances permit; and

2.6. **WHEREAS**, people in North Carolina are encouraged to take on the challenges of living in a community beset by a global pandemic, while also returning to school, work, and social activities in a safe, strategic and incremental manner to help reduce the risk of COVID-19 transmission; and

2.7. **WHEREAS**, the North Carolina Department of Health & Human Services ("NCDHHS") has organized a Public Health Incident Management Team to manage the public health impacts of COVID-19 in this state; and

2.8. **WHEREAS**, since the issuance of executive orders to slow the spread of COVID-19, North Carolina has "flattened the curve" and prevented a surge or spike in cases across the state, and North Carolina has also increased its capacity for testing, tracing and the availability of personal protective equipment ("PPE"); and

2.9. **WHEREAS**, despite the overall stability in key metrics, North Carolina's daily case counts of COVID-19 continue to increase slightly in the context of increased testing, the percent positive tests of total tests is increasing slightly, and the number of hospitalizations for COVID-19 is

increasing slowly, demonstrating the state must remain vigilant in its work to slow the spread of the virus; and

3. Risks of Contracting and Transmitting COVID-19

3.1. **WHEREAS**, some people without symptoms may be able to spread the virus and may not know they are infected; and

3.2. **WHEREAS**, the risk of contracting and further transmitting COVID-19 is higher in settings in which people are in close physical contact for an extended period of time (for example, where people are sitting or standing next to others for more than 10-20 minutes); and

3.3. **WHEREAS**, limiting the duration of contact with others is critical to lowering the likelihood of contraction and transmission of the virus; and

3.4. **WHEREAS**, the risk of contracting and transmitting COVID-19 is higher in settings where people congregate, share facilities, or have increased respiratory effort (for example with vigorous exercise, singing, cheering, or yelling); and

3.5. **WHEREAS**, the risk of contracting and further transmitting COVID-19 is higher in gatherings where larger groups of people meet in close contact, because larger gathering are more likely to be attended by at least one person infected with COVID-19 and because a person infected with COVID-19 who attends a larger gathering has the potential to infect more people; and

3.6. **WHEREAS**, risk is also higher if the setting involves extended, close-range, face-to-face conversation, as demonstrated by (1) a recent review of COVID-19 outbreaks in indoor, outdoor, and mixed indoor-outdoor crowded, socially animated spaces and (2) a recent study showing that attendees at large, festive gathering were more likely to contract COVID-19, relative to other settings, and that such attendees experienced more symptoms of COVID-19 than individuals who contracted the virus in other settings; and

3.7. **WHEREAS**, by their very nature, certain types of sports and entertainment facilities such as stadiums, arenas, and racetracks present greater risk for the spread of COVID-19 because of the nature of the activity, the way that people traditionally act and interact with each other in that space, and the duration that patrons remain in the establishment; and

3.8. **WHEREAS**, in both outdoor and indoor venues where alcohol consumption is expected and part of the entertainment environment, spectators' compliance with personal protection measures is likely to decrease, which adds to concern about increased viral spread; and

4. Executive Order No. 141

4.1. **WHEREAS**, to lower the risk of contracting and further transmitting COVID-19, this Order and Executive Order No. 141 impose restrictions on mass gatherings and businesses, which limit the number of contacts between people, particularly in settings where people are in close

contact for long periods of time such as in the grandstands at automobile races and other large sporting events; and

4.2. **WHEREAS**, among other specific measures, Executive Order No. 141 prohibits “mass gatherings,” which are defined as “an event or convening that brings together more than ten (10) people indoors or more than twenty-five (25) people outdoors at the same time in a single confined indoor or outdoor space, such as an auditorium, stadium, arena, or meeting hall,” in order to prevent the increased and rapid spread of COVID-19; and

4.3. **WHEREAS**, Section 9 of Executive Order No. 141 specifically addresses “Entertainment and Sporting Events in Large Venues,” providing that outdoor entertainment or sporting venues with a capacity of at least five hundred (500) people must limit the number of spectators or other attendees to no more than twenty-five (25) people and must control the flow of people through common spaces to allow for social distancing; and

4.4. **WHEREAS**, among other specific measures, Executive Order No. 141 exempts from its restrictions “other activities constituting the exercise of First Amendment rights,” which provision exempts such other activities from the restrictions in Executive Order No. 141, solely to the extent doing so is necessary to comply with the First Amendment; and

5. ACE Speedway Held Mass Gatherings In Violation of Executive Order No. 141

5.1. **WHEREAS**, on May 23, 2020, just one day after Executive Order No. 141 went into effect, ACE Speedway hosted a series of stock car races at its track in Alamance County that, according to public reports, more than 2,500, and possibly as many as 4,000 spectators—a near-capacity crowd—attended; came in close proximity with each other at concession stands, restrooms, concourses, and entry and exit points; and sat, stood, yelled, and cheered for several hours, often should-to-shoulder in the grandstands;

5.2. **WHEREAS**, the *Raleigh News & Observer* also reported that “[o]nly a few people wore any kind of coverings over their face” at the May 23, 2020, event<sup>1</sup>; and

5.3. **WHEREAS**, prior to holding the May 23, 2020, event, ACE Speedway and its owners knew about Executive Order No. 141 and its prohibition on mass gathering; and

5.4. **WHEREAS**, according to news reports, before the May 23 event ACE Speedway promulgated “Precaution Requirements” that addressed certain measures they planned to take to protect health and safety<sup>2</sup>; and

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<sup>1</sup> Andrew Carter, “In rural NC, racing fans packed a speedway to defy governor in pursuit of ‘freedom’,” *News & Observer* (Raleigh) (May 24, 2020), available at <https://www.newsobserver.com/sports/article242966241.html>.

<sup>2</sup> Lee Sanderlin, “Ace Speedway, Alamance County didn’t follow health protocols, according to documents,” *Winston-Salem Journal* (May 28, 2020), available at [https://www.journalnow.com/news/local/ace-speedway-alamance-county-didn-t-follow-health-protocols-according-to-documents/article\\_d4022ac1-3251-5793-945e-1a3c26649737.html](https://www.journalnow.com/news/local/ace-speedway-alamance-county-didn-t-follow-health-protocols-according-to-documents/article_d4022ac1-3251-5793-945e-1a3c26649737.html).

5.5. **WHEREAS**, the very first line of the “Precaution Requirements” stated “Per Executive Order 141, spectator attendance cannot exceed 25 participants,” but fan attendance at the May 23, 2020, event was reported to be 160 times the limit imposed by Executive Order No. 141; and

5.6. **WHEREAS**, on May 30, 2020, just before the next race was scheduled at ACE Speedway, Alamance County Sheriff Terry Johnson met with ACE Speedway officials and drivers at the request of the Governor to request that ACE Speedway comply with the COVID-19 Orders by calling off the night’s races or risk sanction; and

5.7. **WHEREAS**, ACE Speedway ignored the Sheriff’s request and held races on the night of May 30, 2020, with thousands of spectators attending, coming in close proximity with each other at concession stands, restrooms, concourses, and entry and exit points; and sitting, standing, and cheering for several hours, often shoulder-to-shoulder in the grandstands; and

5.8. **WHEREAS**, following the May 30, 2020, race, Sheriff Johnson indicated publicly that he would refuse to take any further steps to enforce Executive Order No. 141; and

5.9. **WHEREAS**, on June 5, 2020, the Governor, through his counsel, sent a letter to the Chair of the Alamance County Commission and Sheriff Johnson, with a copy to ACE Speedway’s owner, stating that the May 23 and May 30, 2020, events held at ACE Speedway violated the mass gathering prohibition and social distancing requirements applicable to large entertainment and sporting venues, like ACE Speedway, in Executive Order No. 141; and

5.10. **WHEREAS**, notwithstanding Mr. McKinney’s letter, on June 6, 2020, ACE Speedway held additional stock car races at its facility that, according to public reports, more than 2,000 spectators attended; came in close proximity with each other at concession stands, restrooms, concourses, and entry and exit points; and sat, stood, and cheered for several hours, often should-to-shoulder in the grandstands

5.11. **WHEREAS**, the May 23, May 30, and June 6, 2020, races at ACE Speedway violated Executive Order No. 141 and placed members of the public at increased risk for communal spread of COVID-19, as the races were “mass gatherings,” as defined by the Executive Order No. 141, and they were not subject to any exception or exemption; and

## 6. Need for an Abatement Order

6.1. **WHEREAS**, according to its public schedule, ACE Speedway has another set of stock car races planned for Friday, June 19, 2020. *See* <https://acespeedway.net/schedule>; and

6.2. **WHEREAS**, previous actions by ACE Speedway and its owners show that, without action to protect public health, ACE Speedway and its owners will again host mass gatherings in violation of Executive Order No. 141, placing the public at imminent risk; and

6.3. **WHEREAS**, the event on June 19, 2020, is “likely to cause an immediate threat to human life, an immediate threat of serious physical injury, [or] an immediate threat of serious adverse health effects . . . if no immediate action is taken.” N.C. Gen. Stat. § 130A-2(3); and

6.4. **WHEREAS**, ACE Speedway has operated openly in contradiction of the restrictions and recommendations in Executive Order No. 141, and refuses to take all necessary public health measures to protect patrons and participants from the increased risk of the spread of COVID-19 caused by the nature of the events at ACE Speedway, including the way that people have acted and interacted with each other during races at ACE Speedway during the last three weeks; and

6.5. **WHEREAS**, thousands of people have attended races at ACE Speedway in the last three weeks without being required to follow the public health requirements and recommendations in Executive Order No. 141, and such actions create a significantly increased risk of spreading COVID-19 among those in attendance, and an increased risk of exposing many other persons in Alamance and neighboring counties to COVID-19, after attendees and participants return from races at ACE Speedway; and

6.6. **WHEREAS**, increased exposure to thousands of people attending races at ACE Speedway, and thousands more who may be exposed to COVID-19 by family members, friends, and neighbors who have attended or will attend races at ACE Speedway, could lead to a spike in cases, hospitalizations, and deaths in North Carolina, straining the State's healthcare system and necessitating further limitations to mitigate the spread of the disease, including the reimposition of restrictions that had already been lifted; and

7. Authority for Abatement Order

7.1. **WHEREAS**, under N.C. Gen. Stat. § 130A-2(3), an "imminent hazard" is defined as a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken; and

7.2. **WHEREAS**, under N.C. Gen. Stat. § 130A-20(a), if the Secretary of Health and Human Services determines that an imminent hazard exists, the Secretary may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard; and

7.3. **WHEREAS**, ACE Speedway and its owners and operators have not complied with, and have openly defied, the provisions of Executive Order No. 141, by operating without social distancing measures and out of compliance with mass gathering and large sport venue limitations.

**NOW, THEREFORE**, by the authority vested in me pursuant to N.C. Gen. Stat. § 130A-20(a) as Secretary of Health and Human Services:

I hereby **DECLARE** that the operation of ACE Speedway, without the restrictions required under Executive Order No. 141 and other measures to control the spread of COVID-19 that have been approved by NCDHHS, constitutes an imminent hazard for the spread of COVID-19 under N.C. Gen. Stat. § 130A-2(3). Further, **IT IS ORDERED**:

**Section 1. Declaration**

- (a) For the purposes of this Order, "ACE Speedway" is defined as (1) ACE Speedway Racing Ltd., a North Carolina corporation, and any other corporation, business entity,

proprietorship, or individuals that own or operate the facility currently known and operated as ACE Speedway in Alamance County, North Carolina.

## **Section 2. Prohibition**

- (a) The ACE Speedway facility shall be closed immediately as an imminent hazard. Because of this imminent hazard, ACE Speedway shall not allow races or other events to take place in its facility. ACE Speedway shall not allow any spectators to enter or attend the facility while it is closed under this Order.
- (b) ACE Speedway shall notify the public by 5:00 pm on Tuesday, June 9, 2020, that its upcoming races and other events, including, without limitation, the scheduled June 19, 2020, races are cancelled until Executive Order No. 141 expires at 5:00 pm on June 26, 2020. Further, ACE Speedway shall confirm to NCDHHS, in writing, by 5:00 pm on Tuesday, June 9, 2020, that it has notified the public that its upcoming races and other events have been canceled.
- (c) ACE Speedway may propose a plan to abate the imminent hazard that would allow races or other events at ACE Speedway in compliance with Executive Order No. 141. ACE Speedway may not reopen for races or other events until such a plan is approved by NCDHHS. Such a plan shall, at a minimum, require ACE Speedway to:
  1. Adhere to mass gathering restrictions of 10 spectators inside and 25 spectators outside, consistent with Sections 7 and 9 of Executive Order No. 141; and
  2. Ensure that any entertainers or participants in the sporting activities stay six (6) feet away from spectators, consistent with Section 9(D) of Executive Order No. 141; and
  3. Post signage reminding attendees, customers, and workers about social distancing (staying six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter, consistent with Sections 1(2)(b) and 9(E)(1) of Executive Order No. 141; and
  4. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace, consistent with Sections 1(2)(c) and 9(E)(1) of Executive Order No. 141; and
  5. Immediately isolate and remove sick workers, consistent with Sections 1(2)(d) and 9(E)(1) of Executive Order No. 141; and
  6. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19), consistent with Sections 1(2)(e) and 9(E)(1) of Executive Order No. 141; and
  7. Increase disinfection during peak times or high customer density times, consistent with Section 9(E)(2) of Executive Order No. 141; and

8. Disinfect all shared objects (e.g., payment terminals, tables, countertops/bars, and receipt trays) between use, consistent with Section 9(E)(3) of Executive Order No. 141; and
9. If ACE provides any food service, comply with the restrictions stated in Section 6 of Executive Order No. 141, consistent with Section 9(E)(4) of Executive Order No. 141.

(d) If a plan is proposed by ACE Speedway and approved by NCDHHS, ACE Speedway's reopening will be conditional upon it complying with that plan and Executive Order No. 141. Any noncompliance by ACE Speedway with the plan or Executive Order No. 141 will violate this Order, rescind any approval of the plan by NCDHHS, and require renewed termination of activity at the ACE Speedway facility.

### **Section 3. Enforcement**

Pursuant to N.C. Gen. Stat. §§ 130A-18 and 130A-25, failure to comply with this imminent hazard abatement order may result in injunctive relief or prosecution for a misdemeanor offense.

### **Section 4. Effective Date and Duration**

This Abatement Order is effective immediately. This Order remains in effect until the expiration of Executive Order No. 141; provided, however, that if Executive Order No. 141 is extended or replaced with an executive order that includes the restrictions listed in Section 2(c)(1)-(9) above, this Order shall continue in effect until those restrictions expire.

I have hereunto signed my name, this the eighth day of June two thousand and twenty.



Mandy Cohen, MD, MPH  
Secretary, NCDHHS