Original: 2283
IRRC

From: Angelo Visco [avisco@steuber.com]
Sent: Thursday, May 08, 2003 3:47 PM
To: IRRC
Subject: Critique of UCC

Respectfully submitted Thursday May 8th, 2003.

To the Attention of:
John R. McGinley, Chairman

An Opinion Critiquing the Statewide Building Code (UCC) Relating to Existing Accessibility Regulations:

As a disabled individual, I am shamefully saddened and deeply concerned regarding the passage of the Statewide Uniform Construction Code (U.C.C.) ***in its' current form.*** When Pennsylvania's **Act 235** passed in **1965** our state became a leader for the disabled by being the second state in the nation to have a law on the books addressing accessibility. After 33 years in a wheelchair, I lived to see and enjoy that magnificent transition. While this law was amended a number of times throughout the years, its' last amendment **(Act 166 of 1988)** unanimously passed both the House of Representatives and the Senate before being signed into law by the Governor. Obviously that's more than can be said for the Statewide Uniform Construction Code (U.C.C.).

However, when legislation for a Statewide Uniform Construction Code was being proposed, those of us with disabilities were intensely concerned about how it would impact what had taken us so long and so hard to accomplish. The original intent of the U.C.C. was to adopt the 1999 edition of the B.O.C.A. (Building Officials and Code Administrators) Code. But, this intent was changed when it was discovered that three major national codes, B.O.C.A. in the northeast, Southern Building Code in the south, and the Uniform Building Code serving the western part of the nation, were in the process of merging to form one standardized code. It was also interesting to note that this merger was done not so much to obtain a better code but rather to unite the three different legislative lobbying groups into one. The resulting Code became the *International Building Code*, or I.B.C.

Apparently Pennsylvania's legislators were not that familiar with how well **Act 235** has worked since being amended by **Act 1988-166**, because, after being quite correctly told, that the B.O.C.A. code has its' own chapter dealing with accessibility, the legislature ***acted to repeal Act 235 with the passage of the U.C.C. (Act 1999-45).*** At this point those of us with disabilities became alarmed enough to challenge that action. Ultimately, as a result of that challenge, we were given to believe that the U.C.C. would not diminish accessibility, as we currently know it. This is specifically addressed by **§7210.102(b)(7)** of the **Construction Code Act**, which mandated: "Further, it is the in-

tent of this act that the Uniform Construction Code requirements for making buildings accessible to and usable by persons with disabilities do not diminish from those requirements previously in effect under the former provision of the act of September 1, **1965(P.L. 459, No. 235)**, entitled as amended, 'An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement.'"

In my opinion, with the U.C.C., newly constructed buildings would not be too great an issue, other than when an elevator would be required. But, it is how the U.C.C. would handle existing buildings that I wish to address; and one of the key points, if not in fact **the** key point in the unanimous passage of Act 235's last amendment, **was exactly how** to address existing buildings. Without question, those of us with disabilities wanted, at the very least, a 'laundry' list of accessible features that would have to be provided in existing buildings, e.g., an accessible entry, parking if provided, etc. Those representing the building owners argued that, to remodel accordingly, would cost too much and force some businesses to close. As with any legislation, common ground was found in the form of a compromise where existing buildings would be allowed to remain "as is" until such time as the building owner remodeled, at which time the **cost amount** of the remodeling would dictate the degree of accessibility to apply. Basically this remodeling cost is broken down into four categories that must be understood to appreciate why the current proposal for the U.C.C. is undermining the present accessibility standards.

Under Act 235:

1. If the cost of remodeling is less than 30% of the worth of the existing building, then only those elements and features that are within the proposed scope of work are required to comply. The provision of an accessible route is not required.
2. If the cost of remodeling is over 30%, but less than 50% of the worth of the existing building, then not only are the elements and features within the proposed scope of work required to comply, but an accessible route to the remodeled area is required.

3. If the cost of remodeling exceeds 50% of the worth of the existing building, then the entire building and building site must be brought up to full accessibility standards.
4. When a series of remodeling is made to a building over any 3-year period then the **sum** of the remodeling costs would be applied to determine what was required as outlined in #'s 1, 2, or 3 above.

While the **technical** aspects between Act 235 and the I.B.C. are pretty much the same; it is this **scoping** issue between Act 235 and the I.B.C., which differs immensely. The I.B.C. addresses existing buildings in two fashions, the first being: if the structure undergoes a 'change of occupancy' then total compliance for accessibility is required, per **§3408.3**. As per **I.B.C 2000, §3408.5.1(2)**, if the existing structure does not undergo a change of occupancy then accessibility is limited to only those elements and features that are touched plus an additional 20% of remodeling costs is to be used for the provision of an accessible route. However, if the additional 20% would not cover the cost of an accessible route, then it may be ignored.

A comparison of the two accessibility standards is in order:

1. An individual wishes to open a small hair salon by remodeling the garage at his/her home. Currently, under Pennsylvania's Act 235, the costs of remodeling would dictate the amount of accessibility required. In all likelihood those remodeling costs, excluding equipment, would be less than 30% of the worth of the building *and therefore only those elements that are remodeled are required to comply.* The I.B.C., on the other hand, ***would require total compliance since the area in question is undergoing a change of occupancy***. This would mean that an accessible restroom would need to be furnished as well as an accessible route, possibly putting the project beyond the financial ability of a small business owner.
2. An existing building is to be remodeled in two phases over a three-year period. Pennsylvania's Act 235 would track the percentage change over the three years and add them up to determine the degree of accessibility required. Less than 30%, over 30% but less than 50%, or over 50%. If the total phased remodeling constituted over 50% of the worth of the existing

building, then the entire building and building site would be required to be made fully accessible. The I.B.C. only requires the current construction to comply and to add 20% to it for accessibility. (This is an area of major concern regarding code differences.) In a project that is done in phases, it would only require 20% be applied to the individual phase. A devious building owner, contractor, or even design professional ***could quite conceivably carry out a total remodeling of an existing structure in multiple phases where 20% of each phase would not be enough to provide an accessible route.***

While the disabled community wishes access to the goods and services that are being offered throughout this Commonwealth, it does not wish to see entrepreneurs discouraged by being mandated to totally comply with accessibility standards just because the area they want to use would undergo a change of occupancy. Likewise, those of us with disabilities do not wish to see the accessibility standards, which took so long to put in place, take a regressive hit by a dishonest building owner who would take advantage of the I.B.C. by simply scheduling remodeling in phases where the 20% per phase would never cover the cost of an accessible route.

Now, the elevator requirement between Act 235 and the I.B.C. is another big difference. Currently Pennsylvania's Act 235 requires any new building, which exceeds 12,500 net square feet to provide an accessible route to non-grade level floors ***regardless*** of what is being done on those floors. The I.B.C. on the other hand would not require the provision of an elevator to the non-grade level with a floor area of less than 3,000 square feet; e.g., a typical manufacturing plant could have a huge 1st floor production area- with a problematic if not downright restrictive 2nd floor office area where people with disabilities could otherwise be employed. In other words, under the I.B.C., a two story building of any square footage could be erected without the need of an elevator provided the area of the second floor did not exceed 3,000 sq. ft. Obviously this language does nothing to enhance accessibility design.

Conversely, Pennsylvania's Act 235 would require the provision of an elevator as soon as the structure exceeded 12,500 net square feet regardless of how many stories. Which brings to mind the question: By using the scoping allowed under the I.B.C., one

should consider how many job opportunities for the mobility impaired would be immediately lost.

Lastly, I wish to call attention to accessible housing. For far too long those of us with disabilities have been forced to 'make do' with what was available. With the amendment to Act 235 better accessible apartments became the norm. Under Act 235 regulations, when an apartment building contained 7 or more units, 10% of those units were ***required*** to be Type 'A' dwelling units **[§60.2(B)(4)].** Type 'A' being a reference to an American National Standard Institute (A.N.S.I.) publication on accessibility. A.N.S.I. has two types of dwelling units, Type 'A' and Type 'B'. The Type 'A' unit lends itself much better for those disabled individuals with "mobility" impairment (e.g. those of us in wheelchairs) while the Type 'B' may be suited to those individuals who are disabled yet still able to get around without a wheelchair (e.g. use of crutches or cane).

Currently **§1107.5.4** of the **2000 edition** of the I.B.C. ***would not mandate*** this Type 'A' dwelling unit ***until such time as the building contained 20 or more units***, essentially limiting those of us with mobility impairments to 'apartment complexes.'

Because of the above, I not only question the legality of the proposed regulations not meeting the letter of the law of **§7210.102(b)(7)**, but I also cannot help but feel that by adopting the I.B.C. for Pennsylvania's U.C.C. in its' present form, Pennsylvania is reneging and regressing on the disabled community. Consequently, for all the reasons enumerated above I would request that the actual *Universal Construction Code* Act be revisited and the issue of accessibility be readdressed so we do not lose the proven effectiveness of what is currently in place.

Respectfully Submitted:

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An Opinion Critiquing the Statewide Building Code (UCC) Relating to Existing Accessibility Regulations:

Good morning ladies and gentlemen. My name is Angelo Visco and I'm a member of the PA Labor & Industry Accessibility Advisory Board. I wish to thank the Independent Regulatory Review Committee for this opportunity to present this most personally important critique.

As a disabled individual, I am deeply concerned regarding the passage of the Statewide **Uniform Construction Code** (U.C.C.) ***in its' current form.*** When Pennsylvania's **Act 235** passed in **1965,** we became a leader for the disabled by being the second state in the nation to have a law addressing accessibility. After 33 years in a wheelchair, I lived to see and enjoy that magnificent transition. **Act 235's** last amendment **(Act 166 of 1988)** unanimously passed both the House of Representatives and the Senate before being signed into law by the Governor. **This is the law currently in place and one that has had an immensely positive effect on the lives of all Pennsylvanians not just those of us with noticeable disabilities.**

However, when legislation for a Statewide Uniform Construction Code was being proposed, those of us with disabilities were intensely concerned about how it would impact the existing regulations, which were the result of a long and arduous process.

Unfortunately, after being told that the **B.O.C.A.** code had its' own chapter dealing with accessibility, the legislature ***acted to repeal Act 235 with the passage of the U.C.C. (Act 1999-45).*** Apparently, Pennsylvania's legislators **were not that familiar with how well Act 235** (amended) has **really** worked. As a matter of fact, those of us with disabilities ***were challenging this proposed legislation from the very time the bill was introduced in early 1995.***

§7210.102(b)(7) of the Universal Construction Code Act specifically mandates that:

".....Code requirements for making buildings accessible to and usable by persons with disabilities <u>do not diminish</u> from those requirements previously in effect, under the former provision of the act of September 1, 1965(P.L. 459, No. 235)."

The specific wording in the law, about the U.C.C. not diminishing accessibility, as we currently know it, (i.e. Act 235) was incorporated into the new legislation at our insistence. And, subsequently, *we were given to believe that the U.C.C. would not diminish accessibility, as we currently knew it.*

The key point in the unanimous passage of Act 235's last amendment was **exactly how to address existing buildings**. A subsequent disability advocates and building owners compromise allowed existing buildings to remain as is until the building was remodeled. Then, the remodeling cost amount would dictate the applied degree of accessibility. **There are four cost categories that must be understood to appreciate why the current proposal for the U.C.C. is actually undermining present accessibility standards. Under Act 235:**

1. If remodeling costs are less than 30% of the worth of existing buildings, only those elements and features within the proposed scope of work are required to comply. The provision of an accessible route is not required.
2. If remodeling costs are over 30%, but less than 50% of the worth of the existing building, then elements and features within the scope of work must comply and an accessible route must be provided.
3. If remodeling costs exceed 50% of the worth of the existing building, then the entire building and the site must be brought to full accessibility standards.
4. When a series of remodeling is made to a building over any three year period, the sum of the remodeling costs would be applied to determine what was required as outlined in #'s 1, 2 or 3 above.

The technical standards used by **Act 235 and the I.B.C. are pretty much the same. However, the scoping issues between Act 235 and the I.B.C. differ immensely and this is where the proposed regulations fall drastically short.** The I.B.C. addresses existing buildings in two fashions: **per §3408.3,** if the structure undergoes a *'change of occupancy'* then total compliance for accessibility is required **per I.B.C 2000, §3408.5.1(2)**, if the structure does **not** undergo a change of occupancy then accessibility applies to those elements and features that are touched plus an additional 20% of costs to provide an accessible route. ***However, if the additional 20% would not cover the cost of an accessible route, then it can be ignored.***

1. A comparison of the two accessibility standards is in order: If an existing building were to be remodeled in two phases over a three-year period, **Act 235 would track the percentage change over the three years and add them up to determine the degree of accessibility required.** If the phased remodeling **constituted over 50% of the worth of the existing building,** ***the entire building and building site must be made fully accessible.*** The major concern here regarding code differences is that the **I.B.C.** requires **only the current construction to comply and** ***to add 20% to it for accessibility.*** Conceivably, devious owners, contractors, or even design professionals ***could totally remodel an existing structure in phases where 20% of each phase would not be enough to provide an accessible route.***

2. . ***Another example***: Someone wishes to open a small hair salon by remodeling the garage at his/her home. Currently, under Pennsylvania's Act 235, the costs of remodeling would dictate the amount of accessibility required; those costs, excluding equipment, would probably be **less than 30%** of the building's worth **so** ***only those elements that are remodeled are required to comply.*** The **I.B.C.**, on the other hand, ***would require total compliance since the area in question is undergoing a change of occupancy.*** This would mean requiring an accessible restroom as well as an accessible route, possibly putting the project beyond the financial ability of a small business owner

The disabled community doesn't wish to see entrepreneurs discouraged by accessibility standards so ***stringent*** that they ***negatively impact useful areas forced to undergo a change of occupancy.*** However, Pennsylvanians with disabilities also do not wish to see Accessibility Standards, which took years to put into place, **take a regressive hit by dishonest individuals taking advantage of that grievous 20% per phase I.B.C. loophole which would never cover the cost of an accessible route.**

Further, the **elevator requirement** between **Act 235** and the **I.B.C.** are another big difference. Currently, **Act 235 requires any new building, which exceeds 12,500 net square feet, to provide an accessible route to non-grade level floors** ***regardless*** **of what is being done on those floors.** The **I.B.C.**, however, **would not require the pro-**

vision of an elevator to the non-grade level with a floor area of less than 3,000 square feet; ***e.g.,*** a manufacturing plant typically has a large 1st floor production area with a restrictive 2nd floor office area where people with disabilities could otherwise be employed. **But, under the I.B.C., this scenario would not require the provision of an elevator if the second floor did not exceed 3,000 sq. feet.** Obviously this language does not enhance accessibility design.

Conversely, Pennsylvania's Act 235 would require an elevator as soon as the structure exceeded 12,500 net square feet regardless of how many stories. Which brings to mind the question: **By using the scoping allowed under the I.B.C., how many job opportunities for the mobility impaired would be immediately lost?**

Lastly, I wish to call attention to accessible housing. With the **Act 166 amendment to Act 235** more and better accessible apartments became the norm. Under the current regulations, when an apartment building contained 7 or more units, 10% of those units were ***required*** to be Type 'A' dwelling units **[§60.2(B)(4)].** (Type 'A' per ANSI accessibility standards) A.N.S.I. categorizes dwelling units as Type 'A' or Type 'B'. The Type 'A' unit lends itself to those disabled individuals with "mobility" impairment (e.g. those in wheelchairs) while the Type 'B' may be suited to individuals who are disabled yet still mobile but without a wheelchair (e.g. use of crutches or cane).

The **I.B.C. 2000 edition, §1107.5.4,** ***would not mandate*** this Type 'A' accommodation ***until a building contained 20 or more units***, essentially limiting individuals with mobility impairments to *'apartment complexes.'*

I again seriously question the legality of the proposed regulations not meeting the letter of the law, §7210.102(b)(7), and also unequivocally feel that by adopting the **I.B.C.** for Pennsylvania's Universal Construction Code ***in its' present form*, Pennsylvania is reneging and regressing on the disabled community**. Then again the issue becomes even more tragically relevant if and when this learned committee should **adopt** this legislation with regard to accessibility, **as written**. I would submit the questions such as: are there any assurances that if and when the issue of possible future amendments arrives, will there be consideration for the accessibility concerns presently expressed? And, **if the Committee does adopt this legislation, as written,** and subsequently there is an eventual furor for a variety of other reasons and / or complaints that a motion is fostered

for **repeal----; does the committee recognize that if that repeal motion is pushed to success, the Pennsylvanians with disabilities would lose everything they worked 35 years to achieve?? Why? Because in the body of this legislation there already exists the repeal of the only assurances of serious compliance to accessibility that presently exists, i.e., Act 235, as amended by Act 166 in 1965.**

Consequently, for **all** the reasons enumerated above I would request that the ***Uniform Construction Code Act*** **be revisited. Not that I, nor those of us with disabilities, are against having a Uniform Construction Code, rather it's the issue of jeopardizing and possibly losing what has taken 35 years to accomplish.**

Respectfully Submitted:

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November 19, 2003

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Commission Members:

I am writing on behalf of the National Fire Protection Association (NFPA) concerning the Commissions consideration of the adoption of the International Building Code (IBC), in accordance with Act 45 mandating the Department of Labor and Industry's promulgation of the Uniform Construction Code (UCC). I urge the Commission to reject the adoption of the IBC and the adoption by reference of other codes developed by the International Code Council (ICC).

As you may know, NFPA is the worldwide leader in providing fire, electrical, and life safety to the public since 1896. Our mission is to reduce the worldwide burden of fire and other hazards on the quality of life by developing and advocating scientifically based consensus codes and standards, research, training, and education. We are proud to represent approximately 70,000 members representing a variety of interests including labor unions, industry professionals, government representatives, building officials and code enforcers, fire service members, and consumers.

The Document now proposed by the Department of Labor and Industry is the 2003 edition of the IBC, which in my view constitutes a new proposal. It is well known that the 2003 edition of the IBC has significant changes from the 2000 version. Just as consideration of the 2000 edition went through numerous public hearings and a public input process from all interested stakeholders, the 2003 edition should be subjected to the same public process. We believe the Independent Regulatory Review Commission (IRRC) should reject the current proposal on this issue alone.

Additionally, the Department of Labor and Industry has once again proposed inclusion of the ICC Electrical Code as a part of the UCC, citing the justification that Act 45 mandates inclusion of the whole family of I-Codes. I fail to find this requirement in Act 45. As you may know, in June 2001, the ICC issued a news release entitled, "ICC Sees No Need for Another Electrical Code." In its news release, the ICC announced that it "has no plans for the development of an electrical code that would duplicate the purpose and then compete with the *National Electrical Code.*" Like the vast majority of electrical professionals in this country, the ICC realizes that NFPA 70, *National Electrical Code*® is *the* electrical code used for the safe installation and maintenance of electrical systems. Adoption of the ICC Electrical Code will give Pennsylvania the dubious distinction of adopting a code that even the ICC has admitted is not needed. Such a distinction does a disservice to the citizens of the Commonwealth. This proposal should be rejected.

Further, we believe the IRRC should recommend changes to Act 45, allowing the Department of Labor and Industry to consider all Nationally Recognized Building Codes as the basis for the Uniform Construction Code. This would allow consideration of the NFPA 5000, *Building Construction & Safety Code*™ and the other codes that make up the *Comprehensive Consensus Codes*™(C3) set in addition to those currently under study.

NFPA and its partners have developed the only integrated set of codes for the built environment developed using a process accredited by the American National Standards Institute (ANSI). This set of codes, which includes well-known codes such as NFPA 101, *Life Safety Code®*, NFPA 70, *National Electrical Code®, NFPA 1, Uniform Fire Code™*, and many others, also includes NFPA 5000, *Building Construction & Safety Code.* NFPA 5000 is the first model building code to establish firefighter safety as part of its scope and the only model building code developed using a consensus process accredited by ANSI.

NFPA has remained committed to developing safety codes and standards through an open process that gives everyone, including every citizen in Pennsylvania the opportunity to participate fully in the process, including the right to vote. NFPA encourages input from all affected interests, including users, building officials and code enforcers, fire service members, industry professionals, government representatives, labor unions, and even the consumer. Any person can become a member of NFPA and any NFPA member can vote in the development process, unlike the other model codes. The NFPA offers a truly open and democratic process.

In addition, if the Commonwealth of Pennsylvania adopts any of the codes in the *C3* set, NFPA will provide complimentary copies of these documents to all government enforcers who attend our ***free*** training courses. This unmatched service ensures that fire and building officials are equipped with up-to-date reference materials and are trained by the best experts in the business ***at no cost***. And, NFPA will extend this offer each time the state adopts updated editions of codes in the *C3* set. NFPA is the only code development agency to offer this cost savings, which could provide significant relief to Pennsylvania taxpayers.

The benefits of selecting NFPA codes and standards also extend beyond code adoption. NFPA works closely with code enforcers and users to provide ongoing support through code interpretation, training, and certification programs. And NFPA channels its resources into independent research initiatives, continuing education services, and broad public education programs. No other code development organization shares NFPA's commitment to both the users of our codes, as well as the communities in which our codes are used.

In closing, I urge you to provide a thorough review of NFPA 5000 and the other codes in the *C3* set before adopting the ICC codes. As a matter of fairness to all Pennsylvania citizens and stakeholders, the Commission should review and consider adoption of NFPA 5000, *Building Construction & Safety Code™*, as well as additional codes that make up the *C3* set.

Sincerely,

Ben Roy
Mid-Atlantic Regional Manager
NFPA

cc: Hon. Mike Fisher, Pennsylvania Attorney General
Hon. Bob Allen, House Labor Relations Committee
Hon. Robert Belefanti, Jr., House Labor Relations Committee
Hon. Lynn Herman, House Committee on Local Government
Hon. Gaynor Cawley, House Committee on Local Government

original: 2283

IRRC

From: Katie Spear [kts@bbrslaw.com]
Sent: Monday, November 17, 2003 5:29 PM
To: IRRC
Subject: Comments on Regulation No. 2283 Department of Labor andIndustry No. 12-60

Please find attached comments from the Responsible Energy Codes Alliance (RECA) addressing Regulation No. 2283 Department of Labor and Industry No. 12-60: Uniform Construction Code; Administration and Enforcement; Elevators and Other Lifting Devices.

Thank you,

Katie Spear

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RECA

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November 17, 2003

VIA ELECTRONIC MAIL

John R. McGinley, Jr., Esq.
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Regulation No. 2283 Department of Labor and Industry No. 12-60: Uniform Construction Code; Administration and Enforcement; Elevators and Other Lifting Devices

Dear Chairman McGinley:

This letter addresses the final-form regulations issued by the Pennsylvania Department of Labor and Industry (DLI) regarding changes to the administration and enforcement provisions of the Uniform Construction Code (UCC).

The Responsible Energy Codes Alliance (RECA)* has twice submitted comments to DLI in response to the proposed changes to the UCC. Our position has not changed much since DLI's original proposal was published; RECA continues to strongly support Pennsylvania's efforts to update its building codes to improve the safety, energy-efficiency, and overall quality of construction within its borders. We fully support Pennsylvania's adoption of the International Code Council family of codes, and in particular, adoption of the International Energy Conservation Code (IECC) and the energy chapter of the International Residential Code (IRC). However, we remain opposed to the Pennsylvania Alternative Residential Energy Provisions (PHRC Alternative) because it will result in a number of missed energy saving opportunities, and is also likely to result in confusion among code users. Having said that, to

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* RECA is a broad-based coalition comprised of energy efficiency advocates, product and equipment manufacturers, and trade associations with expertise in the adoption, implementation and enforcement of building energy codes nationwide. RECA is very experienced with state model code adoptions, having been involved in an advisory or participatory fashion in numerous state code adoptions across the country. RECA is dedicated to improving the energy efficiency of homes through greater use of energy efficient practices and materials. A copy of RECA's Objective and Principles and a list of our members are attached to this letter.

avoid any further setback in adopting a new energy code for the state, RECA supports the adoption of the UCC as an improvement for the state with the understanding that future revisions to the UCC will take a long, hard look at removing the PHRC Alternative as an acceptable compliance path.

Adoption of the 2003 IECC would be a vast improvement over the current state energy code

With regard to energy savings, Pennsylvania's current state-developed building energy code based on ASHRAE 90A-1980 and 90B-1975 lags far behind modern codes. The energy provisions of the final-form regulations would be a major improvement in energy efficient building as compared to the current code. This huge improvement would be attributable, in part, to the UCC reference to the 2003 International Energy Conservation Code (IECC).

The US Department of Energy (DOE) has certified the 2000 version of the IECC as the nationally accepted residential energy efficiency code, per DOE's mandate under federal law, i.e., the 1992 Energy Policy Act (EPAct). Currently, the 2000 IECC is the version all states must review and consider adopting pursuant to EPAct. The 2003 version of the code, proposed here, is a further improvement upon the 2000 IECC, and would satisfy the state's EPAct reporting requirement. Upgrading to the 2003 IECC from the current code will produce significant energy and cost savings for Pennsylvania and its residents. By updating its uniform energy code to one based on the 2003 IECC, Pennsylvania would vastly improve the housing stock in the state, reduce air pollution through lower energy use, and save homeowners money. The reductions in energy usage and in peak demand would also offer the state some protection against energy crisis conditions like the blackouts that occurred in August 2003. With its adoption of the IECC, Pennsylvania also would be able to take advantage of numerous support materials DOE provides for the IECC. RECA supports the DLI recommendation that Pennsylvania adopt the 2003 IECC as part of the UCC energy provisions, thereby reaping large energy savings and gaining access to many available implementation support materials.

The PHRC Alternative reduces the energy savings possible under the new code

RECA's previous comments to the DLI highlighted the many benefits attributable to the IECC, but also focused on a major flaw in the UCC energy code provisions: the PHRC Alternative to Chapter 11 (since renamed Pennsylvania's Alternative Residential Energy Provisions). There are many drawbacks to the PHRC Alternative including lost energy savings for homes with larger glazing areas, conflicts between provisions of the IECC and the PHRC Alternative, fewer training and compliance tools, and a lack of energy code uniformity across the state. The PHRC Alternative contains several arbitrary trade-offs that wipe away solid provisions in the IECC and IRC energy chapter that ensure comfort, condensation resistance, and a baseline level of energy performance that all homeowners should experience.

In support of the PHRC Alternative, the DLI refers to a study by the Department of Energy's Pacific Northwest National Laboratory (PNNL). In the Preamble to the UCC proposal, the DLI summarizes the study's conclusion by stating that, while the PHRC

Alternative will result in requirements that will be less stringent than the IECC in certain cases, there would likely be an increase in compliance due to its simplicity. The PHRC is not going to be used in a vacuum, however. This over-simplified justification for the Alternative ignores the confusion that will result from adopting both the IECC and the PHRC Alternative. Simplicity, while an admirable goal, should not come at the expense of stringency. If a simplified alternative is desired, it should capture stringency levels that better reflect those in the IECC, as did DOE's actions at the recent ICC hearings.

The effects that a decrease in stringency will have on energy savings should not be ignored. The PHRC Alternative unnecessarily weakens the energy code requirements of the UCC. The weakness lies in the fact that builders having a choice between the IECC and the PHRC Alternative can choose energy provisions weaker than the IECC in certain cases. This point is well-stated by PNNL in the same study cited by the DLI:

> If equivalency must be achieved on a house-by-house basis, then the PHRC proposal should be rejected because it clearly falls short of the IECC for some house designs. Our analysis suggests that the PHRC proposal is effectively equivalent to the overall energy efficiency requirements of the IECC on a statewide average if the PHRC code is used for *all* new buildings.... The key point is that the PHRC proposal is an alternative to the IECC and therefore can be used selectively for some but not all new residences. The state of Pennsylvania must be aware that builders could predominantly use the requirements in the PHRC proposal when these requirements are less-stringent than the IECC. If this scenario occurs, the IECC plus the PHRC alternative path may fall slightly short of the energy efficiency of the IECC without the PHRC alternative path.

Assessment of the Pennsylvania Housing Research Center Alternative Code, Prepared for the U.S. Department of Energy by the Pacific Northwest National Laboratory, February 2001, page 17 (*emphasis added*).

RECA supports the IRRC's adoption of the IECC and IRC energy chapter in Pennsylvania; the PHRC Alternative, if adopted, should be an interim compliance option, only

In spite of the failings of the PHRC Alternative, RECA recognizes that having a modern energy code in place, particularly one that allows the 2003 IECC as an option, is a substantial improvement over the existing code. Both the IECC and the PHRC Alternative contain prescriptive paths to simplify the energy code requirements for builders, which can be a boon to compliance. In terms of energy efficient construction, if the proposed UCC is adopted, Pennsylvania will be in a much better position than it has been over the past four years since the enabling legislation for adoption of an energy code was passed into law. RECA recommends that the Independent Regulatory Review Commission accept DLI's building energy code proposal to allow the state to begin to capture some of the energy savings possible

RECA
RESPONSIBLE ENERGY CODES ALLIANCE
1200 18th Street, NW, Suite 900
Washington, DC 20036

under a modern energy code and to avoid further delays in doing so. However, we urge DLI to adopt the PHRC Alternative as an interim measure only. DLI should eliminate the PHRC alternative as an acceptable compliance path at the earliest possible opportunity.

We hope that you will consider RECA's position as expressed in this letter. RECA offers its assistance and its extensive expertise in energy code adoption and implementation to you. We hope that you will not hesitate to draw on RECA's support and willingness to help. Please contact me at 202-530-2245 if you have any questions or comments.

Respectfully Submitted,

Kate Offringa

THE RESPONSIBLE ENERGY CODES ALLIANCE

Attachment

About RECA

RECA is a broad-based consortium of energy efficiency professionals, product and equipment manufacturers, and trade associations with expertise in the adoption, implementation and enforcement of building energy codes nationwide. RECA is dedicated to improving the energy efficiency of homes in Pennsylvania and throughout the U.S. through greater use of energy efficient practices and building products. It is administered by the Alliance to Save Energy, a non-profit coalition of business, government, environmental and consumer leaders that supports energy efficiency as a cost-effective energy resource under existing market conditions and advocates energy-efficiency policies that minimize costs to society and individual consumers.

OBJECTIVE AND PRINCIPLES OF THE RESPONSIBLE ENERGY CODES ALLIANCE (RECA)

RECA Primary Objective:

RECA's primary objective is to support and urge all states and localities to adopt and implement the 2000 International Energy Conservation Code, without substantive local weakening amendments.

RECA Supporting Principles:

RECA believes that:

- One nationwide building energy efficiency code is in the best interest of building and home owners, operators and builders, manufacturers and the general public welfare. The 2000 IECC has been certified by the United States Department of Energy under federal law and is the most up-to-date, fully supported nationwide model building energy efficiency code for all buildings.

- The 2000 IECC is preferable to the 2000 International Residential Code, but the IRC is an acceptable alternative for residential construction.

- Adoption of the amendments incorporated in the 2001 Supplement to the IECC, particularly the incorporation of ASHRAE 90.1- 99 for commercial buildings, are an acceptable alternative that RECA can support.

- While adoption of an earlier version of the MEC or amendments to the IECC is generally better than no code at all, RECA strongly urges that all jurisdictions adopt or upgrade to the complete 2000 IECC, without substantive local amendments.

- Any desirable improvements to the 2000 IECC should be pursued through the ICC code change process, rather than through local amendment.

RECA

RESPONSIBLE ENERGY CODES ALLIANCE

Alliance to Save Energy

American Architectural Manufacturers Association

American Chemistry Council / American Plastics Council

American Council for an Energy Efficient Economy

Building Codes Assistance Project

Cardinal Glass Industries, Inc.

CertainTeed Corporation

Chemical Industry Council of Illinois

Dow Construction Materials

Energy Systems Laboratory, Texas A&M University

Guardian Industries Corporation

International Code Council

Johns Manville Corporation

Knauf Insulation

Midwest Energy Efficiency Alliance

National Fenestration Rating Council

Northeast Energy Efficiency Partnerships, Inc.

North American Insulation Manufacturers Association

Owens Corning

Pactiv Corporation

Polyisocyanurate Insulation Manufacturers Association

Southwest Energy Efficiency Project

Original: 2283

Clarion

Administrative and Police Offices

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1400 East Main Street
Clarion, Pennsylvania 16214

Police
(814) 226-9140

November 14, 2003

Independent Regulatory Review Commission
Mr. John R. McGinley, Jr., Esq., Chairman
333 Market St., 14th Floor
Harrisburg, PA 17101

RE: Docket #2283
Labor and Industry Submission #12-60, Uniform Construction Code

Dear Mr. McGinley:

I am the Code Enforcement Officer for Clarion Borough, Clarion, Pennsylvania. Clarion Borough is the home of Clarion University of Pennsylvania, a state-owned institution. The University has a student population of 6,500 and some 300 faculty and staff. I am writing in regard to Pa. Act 45, the Uniform Construction Code, which is now before your Committee for review. Specifically, I wish to address the provisions of Chapter 1, Section 105 (b) (1) and (3) which, purportedly, removes responsibility for plan review and inspection of state-owned buildings from the local municipality and places this responsibility solely on the Department of Labor and Industry. Because the University is located within the Borough, I am particularly concerned with the health and safety of the students and faculty of this institution. In the past, my office has worked in conjunction with the Department as to plan review and construction inspections with emphasis not only on the building construction but with particular focus on the provisions of the BOCA National Fire Prevention Code regarding sprinkler systems and egress requirements. To eliminate the Borough from direct participation in the plan review and inspection process would be a tremendous oversight on the part of the governing body.

I strongly urge the Commission to closely review this particular section of the Act and recommend to the Department amending this section to include the local municipalities, particularly those that host state-owned universities, in the plan review

and inspection process with jurisdiction in conjunction with the Department of Labor and Industry. This dual oversight will undoubtedly insure safer and sustainable building construction.

Sincerely,

Robert J. Ragon
Zoning Officer

RJR/lml
Copy: State Representative Fred McIlhattan
State Senator Mary Jo White

Original: 2283

IRRC

From: Timothy Palaski [ttap@stargate.net]
Sent: Thursday, November 13, 2003 7:09 PM
To: IRRC
Subject: Proposed Regulations, Title 34, Part XIV, Chapters 401, 403 and 405.

November 11, 2003

John R. McGinley Jr.

Chairperson IRRC

14th Floor

333 Market Street

Harrisburg, PA 17101

Page 1

Re: Proposed Regulations, Title 34, Part XIV, Chapters 401, 403 and 405.

Dear Chairman McGinley;

Five months have transpired since the Department of Labor and Industry (L&I) withdrew their proposed regulations from your commission's review process. The withdrawal caused widespread debate and controversy throughout the state. Jon Balson's e-mail on June 16, 2003 explaining the withdrawal and L&I's hope on the re-submittal (within 30 days) of the proposed regulations, did help alleviate some of the apprehension that was originally generated. But after the 31st day, with no word on the regulations being resubmitted, the speculation, rumors and innuendo have reached the panic stage.

We in the construction industry are happy to see that L&I has finally resubmitted the proposed regulations to your committee for consideration. This should, at the least, put to rest the Nay Sayers and skeptics that felt Act 45 was dead in the water. But will this be the final review? Unfortunately, I can only say, we hope not. In the five months that have past, L&I only addressed a few of the many shortcomings in the proposed regulations and again, unfortunately, the changes that L&I made do not take into account the economic impact, public health and safety, reasonableness, and clarity needed to make the Uniform Construction Code uniform throughout all of Pennsylvania.

In the paragraphs that follow, I will attempt to explain many of the problems with the proposed regulations through the eyes of an experienced multi-discipline code enforcement inspector, past contractor and lifetime resident of Pennsylvania.

In the Preamble issued with the proposed rulemaking document Annex A, the Department of Labor and Industry states:

Statutory Authority

"This rulemaking is adopted under the authority provided in sections 301 and 304 of the Act (Act 45)(35 P.S. §§ 7210.301, 7210.304), which requires the Department to promulgate regulations adopting the 1999 BOCA National Building Code and successor codes and allows the Department to make changes to Chapter 1 of the 1999 BOCA Code. The Department must also adopt the *International Fuel Gas Code* and prescriptive methods for energy related standards under section 301."

The Act (Act 45) Section 301(a)(1) only allows for the adoption of the 1999 BOCA National Building Code. Section 301(a)(2) allows for the adoption of the 1998 ICC International One and Two Family Dwelling Code. And Section 301(b) allows for the adoption of the International Fuel Gas Code (note: no edition is listed.)

Further Section 304(a)(1) & (2) does give the Department the authority to update the BOCA and ICC One and Two Family Dwelling Code to the successor codes by December 31, of the year they are issued. Section 304(b) gives the Department this same authority for the International Fuel Gas Code.

The problem with the proposed regulation is that under Standards § 403.21 *Uniform Construction Code*, the Department fails to list all of the standards recognized in the 1999 BOCA code. The Department has chosen to list only ICC codes and has even added additional codes that were not in existence at the time of passage of the Act. No reason is offered for the Department's decision. Shouldn't the Department provide substantiation for this action? The Department has stated in § 403.21(a) that "these codes are adopted and incorporated by REFERENCE as the Uniform Construction Code." In order for the Act to be uniform, ALL referenced standards must be recognized. The Department was not given the authority to change the intent of the Act or the definition of the Uniform Construction Code. It is hoped that all referenced standards listed in Chapter 35 of the 1999 BOCA National Building Code are included in the regulations, as was clearly the intent of the Act.

And furthermore the **Preamble page 7** states: The IRRC and numerous other commentators questioned the adoption of the IEC as part of the UCC in section 403.21(a)(2).

The Department explains that they do not have "the authority to adopt other codes, such as the NEC, except if these codes are incorporated in an ICC building code or enumerated in Act 45. 35 P.S. §§ 7210.301(a), 7210.304." The department goes on to state that "The ICC Electrical Code contains only administrative provisions and adopts, by REFERENCE, the NEC as it's electrical construction standard." Pennsylvania needs the

NEC in its entirety and all future editions should be made part of the UCC, as was the intent of the legislators. With the 2003 edition of the ICC codes the 2002 NEC is the **referenced** standard, in 2005 a new NEC will be published and Pennsylvania will not have the authority to implement it until the following year under the Departments current proposal.

The Act under section 102(b) and under the heading **"Background"** of the Preamble for the proposed regulations states the intent and purpose of the UCC. The regulations are severely lacking in meeting this intent and purpose. Residential construction throughout the State will be ignored by the regulations. The code is being adopted but only limited enforcement is being mandated for one and two family dwellings in municipalities that choose to "Opt Out" of enforcement. The intent is to **"provide standards for the protection of life, health, property and environment and for the safety and welfare of the consumer, general public and the owners and occupants of building and structures".** This does not limit the intent to just commercial occupancies.

§ 401.2a (c) states: "A municipality or third party agency may establish a fee refund policy."

The Department does not allow for their inclusion in establishing "a fee refund policy" as is proposed for

municipalities and third party agency to do in §401.2a(c). We propose the Department add their refund policy/amount in §401.2(b) as a new line item (6).

§ 403.1 (b)(2) states: (The UCC does not apply to) "New buildings or renovations to existing buildings on which a contract for design or construction was signed before (*Editor's Note:* The blank referes to the effective date of adoption of THESE REGULATIONS.)."

Section 104 (b)(2) of the Act only covers these instances "on projects requiring department approval." With the current wording of the proposed regulations it can be misunderstood that any project (New or Renovation) that had a design contract signed prior to the effective date of the UCC would be exempt from the UCC. The words are clear - to cover only projects that have been submitted to the Department for approval and were not yet returned to the applicants so that they could apply for a local permit. This oversight in writing the proposed regulations paves the way for unscrupulous individuals to circumvent the clear intent of the legislators. In fact this misinturpertation is currently posted on the Departments web site

§ 403.42 (c)(1)(xiii) states for commercial construction: (A permit is not required for) "WINDOW REPLACEMENT WITHOUT STRUCTURAL CHANGE."

In the first paragragh on Page 11 of the Preamble the Department stated that "Code officials presented information that permits should not be required for window replacement without structural change." No further explanation is given on just what type

of information was presented.

Three very important considerations are being overlooked by this action.

1. Public safety (safety glazing is required in numerous locations throughout buildings)

2. Energy efficiency (the U-value of the window is part of the over-all envelope of the building)

3. Widespread improper code administration only compounds the problem and should not be used as an excuse.

Without a permit and inspection safety glazing and energy efficiency cannot be verified for code compliance.

§ 403.42 (c)(5)(i) states: (A permit is not required for) "Stopping leaks in a drain and a water, soil, waste or vent pipe. The UCC applies if a **concealed** trap, drainpipe, water, soil, waste or vent pipe becomes defective and is removed and replaced with new material."

The wording in this first sentence leads the reader to believe that if only a water, soil, waste or vent pipe is leaking and no drain is involved that they would be exempt. Removing "and a" between "drain" and "water" would clarify this sentence.

Stating "CONCEALED" in the second sentence leads the reader to believe that they could in fact remove and replace all exposed faulty plumbing with new material and not have the work inspected under the UCC. Removing the word "concealed" would correct this misunderstanding.

§ 403.42(f) along with subsections **(1), (2) and (3)** state: "A building code official may issue an annual permit instead of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation. All of the following are required:"

(1) The applicant shall regularly employ at least one qualified trades person in the building or structure owned or operated by the applicant.

(2) The applicant shall submit an application in accordance with §403.42a(m).

(3) An annual permit holder shall keep detailed records of alterations made in accordance with the annual permit. The permit holder shall provide access to these records to the building code official.

The use of the word "may" is not definitive. No guidelines are being established to direct the building code official on "may" or "may not" issues.

Under item (1) the broad term "qualified trades person" is left to the imagination of the building code official. The ICC codes do not offer a definition of a "qualified trades person". There is no mention in the proposed regulations to cover a different "qualified trades person" for each discipline ie. Plumbing, Electrical, Gas or Mechanical that may qualify for an annual permit.

If as required in item (2) an application will be required for each alteration (even with the annual permit) then progressive inspection should occur as the work is performed. Not

on an annual basis. The true intent of all codes is to safeguard people and their property from the hazards associated with the use of the structure. Allowing for alterations to a system that was inspected for code compliance, by anyone, even a "qualified trades person" does not assure a code compliant or safe installation. Please remember that in most cases the original installation is normally performed by trades people and we in the inspection industry find violations everyday on them.

§ 403.42a(f)(4) Page 11 of the preamble references this section in the proposed regulations. Page 22 of the proposed regulations does not include this section. The correct section number is **§ 403.42a(f)(i) not "(4)"**

§ 403.43(c) states: "A building code official shall stamp or place a notation on EACH PAGE OF the set of reviewed construction documents that the documents were reviewed and approved for UCC compliance before the permit is issued. The building code official shall clearly mark any required NON-DESIGN changes on the construction documents. The building code official shall return a set of the construction documents with this notation and any required changes to the applicant. The permit holder shall keep a copy of the construction documents at the work site open to inspection by the construction code official or authorized representative."

Paragraph (c) of this section as well as paragraph (f) of this section seem to indicate that a permit will be issued if the construction documents are not fully in compliance with the UCC.

The first sentence uses the term "approved" to be marked on each page of the Construction documents. If there are NON-DESIGN items marked on a page, how can this page be marked "approved"? What are NON-DESIGN items?

Suggested wording for this paragraph (c): A building code official shall stamp or place a notation on each page of the set of reviewed construction documents that the documents were reviewed for UCC compliance. The building code official shall notify, in writing, the permit applicant of any items that are non-code compliant. The permit applicant shall make all necessary changes and return the construction documents for re-review of code compliance before a permit is issued. The permit holder shall keep a copy of the final reviewed construction documents at the work site open to inspection by the construction code official or an authorized representative.

§ 403.43(l) and § 403.63(j) state: "Work shall be installed in accordance with the approved construction documents. The permit holder shall submit a revised set of construction documents for approval for changes made during construction that are not in accordance with the approved construction documents."

In the first paragraph on Page 12 of the Preamble the Department makes reference to their practice of requiring the submission of revised plans for changes made during construction. The problem with § 403.43(l) and § 403.63 (j) in the proposed regulations

is that no definitive time frame is given for the revised plans to be submited. I would hope that the regulations

would mention that the work should not proceed until the revision is reviewed and approved by the Building Code Official.

Preamble Page 13 Second, third and fourth paragraphs. The department gives a detailed account of rewriting section 403.62 to limit the impact of the regulations "on citizens making minor repairs to their residences."

I do agree that not all minor repairs should need to be inspected for UCC code compliance. What I do not agree with is exempting these minor repairs from the permit process. Building code officials should make the final decision if the work proposed will be exempt from the inspection process. All citizens making minor repairs or having them performed by others should be offered the same benefit of code safety as their neighbors doing larger, more detailed improvements. A minimal cost for plan review, setback requirements verification, material approvals for the application proposed and workers comensation insurance if a contractor is involved will go a long way in limiting the long term impact on all citizens in Pennsylvania.

With the departments inclusion of section **§ 403.62(c)'s wording** "A permit is not required for the exceptions listed in § 403.1(b) (relating to scope) and the following construction **if the work does not violate a law or ordinance:**" How will the Building Code Official know **if the work does not violate a law or ordinance** if the citizen doesn't need a permit? The list of exemptions that follow section **§ 403.62(c)** will surely be misunderstood and misapplied if left to the discretion of our citizenry or the contractors they may hire to work for them.

Nowhere in Act 45 does it mention that the Department is granted the authority to make changes to Chapter 1 of the IRC. I would hope that the regulations will reflect only the exemption granted in Chapter 1 of the IRC for residential occupancies.

§ 403.62 (c)(1)(ix)(for residential construction) states: (A permit is not required for) "Replacement of glass in any window or door. The replacement glass shall comply with the minimum requirements of the International Residential Code."

How will the Building Code Official know **if the glass complys with the minimum requirements of the IRC** if the citizen doesn't need a permit? How will the citizen know if it complys? Will contractors install untempered glass where tempered glass is required?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(x) states: (A permit is not required for) "Installation and replacement of a window, door, garage door, storm window and storm door in the same opening if the

dimensions or framing of the original opening are not altered. The installation and means of egress and emergency escape windows may be made in the same opening without altering the demensions or framing of the original opening if the required height, width or net clear opening of the previous window or door assembly is not reduced."

Editorial note: In the second sentence above, the correct wording should be "The installation **of** means of egress..." Not "The installation **and** means of egress..."

The Department does not have the authority to modify certain standards under section 301(a)(1) of Act 45. Exempting window, door, garage door, storm window and storm door installations if they are or are not emergency escape or means of egress is not the direction to go in order to reduce the impact of the regulations on Pennsylvania's citizens.

Three very important considerations are being overlooked by this action.

1. Public safety (in numerous locations throughout buildings safety glazing is required)

2. Energy efficiency (the U-value of the window is part of the over-all envelope of the building) Windows and doors are the second largest concern in a home after the roof structure for energy efficiency correction.

3. Widespread improper code administration only compounds the problem and should not be used as an excuse.

Without a permit and inspection safety glazing and energy efficiency cannot be verified for code compliance.

And again how will the Building Code Official know **if the original openings are altered or if the net clear opening of the previous window or door assembly is not reduced** if the citizen doesn't need a permit and the work is not inspected?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(xiv) states: (A permit is not required for) "Repair or replacement of any part of a porch or stoop which does not structurally support a roof located above the porch or stoop."

Many porch and or stoop installations are 30 inches or more above final grade and require guardrails and handrails in accordance with the IRC. Many of the existing porch and or stoop installations were not erected according to any code and they do not currently incorporate the needed safety features of today. When repairing or replaceing these stoops or porches it is the opportune time to make these installations code compliant.

By not requiring a permit for porch and/or stoop repair or replacement we will be prolonging these unsafe conditions for the life of the structure.

Page 8

§ 403.62 (c)(1)(xv) states: (A permit is not required for) "Installation of an additional roll or batt insulation"

Editorial note: The correct wording should read; "Installation of an additional roll **of** batt insulation" Not "Installation of an additional roll **or** batt insulation"

With the skyrocketing cost of energy this practice is becoming common place. The problems associated with adding an additional roll of batt type insulation are numerous. Is there an existing vapor barrier? Are there existing recessed luminaires, exhaust fans or appliances that are not designed to be covered? Is the area ventilated? Are there any electrical junction boxes present that should not be covered? Does the additional roll have a vapor barrier? Will the additional roll block any ventilation openings? Will the additional roll cover any device, appliance, junction box or luminaire that should not be covered?

For a residential property owner to spend hundreds, if not thousands, of dollars in the hopes of making the structure more energy efficient, it shows that they are concerned with cost, comfort and maintaining their property for the future. And if done correctly the added insulation should be a good return on their investment. But none of these things will be possible if the roll of additional batt insulation is installed incorrectly. And in reality, in some cases this additional roll could be very dangerous if not properly installed. Under the proposed regulations, these residential property owners will not know if the insulation was installed correctly or if any of the above mentioned problems have been created.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(xvi) states: (A permit is not required for) "Replacement of exterior rain water gutters and leaders."

Are we to assume that all existing exterior rain water gutters and leaders are installed correctly? That they are directed away from the foundation a minimum of five feet or are directed into an approved drainage system? Too many of our municipal sewer authorities are finding (at great cost) that many existing exterior rain water gutters and leaders are currently directed into their systems. Many property owners are faced with wet basements/crawlspaces because the exterior rain water gutters and leaders are not directed away from the

foundations.

To allow for the replacement of exterior rain water gutters and leaders without inspection is only going to continue the problems that already exist, and in some cases create new problems because of improper installations.

Page 9

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(ii) states: (A permit is not required for) "Replacement of a receptacle, switch or lighting fixture rated at 20 amps or less and operating at less than 150 volts to ground with a like or similar item. This shall not include replacement of receptacles in locations where ground-fault circuit interrupter protection is required."

Experience has shown us in the inspection industry that these supposedly simple replacements (even when performed by contractors) are not completed correctly. It is being assumed by these proposed regulations, that the existing installation was done correctly and that the proper wiring method, device enclosure, luminaire (lighting fixture) was originaly installed. What is also being ignored by these regulations is that the majority of Pennsylvanians do not know where ground fault circuit interrupter (GFCI) protection is required. Even some electrical contractors are not always certain of all the GFCI requirements and installation procedures.

To exempt these replacements from the permitting process is doing Pennsylvania a disservice. This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(iv) states: (A permit is not required for) "Installation, alteration or rearrangement of communication wiring."

With this short simple sentence the Department is deleting an entire Article of the National Electrical Code (NEC). Article 800 of the NEC lists the detailed requirements for the installation of communication wiring in all occupancies, including residential. Communication wiring systems are in almost every residential occupancy in our state; with the constant advances in technology their application will continue to expand. The proper installation, connection and grounding of these systems must be verified to assure that they will operate when needed and be as safe as possible for the people utilizing this equipment.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(v) states: (A permit is not required for) "Replacement of dishwashers"

Are we to assume that all existing dishwashers are installed correctly, and that they are all standardized for their connections? Any individual who has ever replaced a number of these units will surely tell you that they (existing dishwashers) are NOT always installed properly. And that the new units are NOT all standard in their connections. What is often found is a multitude of incorrect fittings, connections, extension cords and devices that are leaking, sparking, frayed or opened. To assume that this is a normal/simple

Page 10

replacement is wrong. To not require a permit for this procedure is just opening the door for more problems in the future.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(vi) states: (A permit is not required for) "Replacement of kitchen range hoods."

Are we to assume that all existing kitchen range hoods are installed correctly, and that they are all standardized for their connections? Any individual who has ever replaced a number of these units will surely tell you that they (existing kitchen range hoods) are NOT always installed properly. And that the new units are NOT all standard is their connections. Is the replacement hood to be vented? Was the existing hood vented? Was the vent installed correctly? What is often found is a multitude of incorrect fittings, connections, extension cords and devices that are sparking, frayed or opened. To assume that this is a normal/simple replacement is wrong. To not require a permit for this procedure is just opening the door for more problems in the future.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(4)(v) states: (A permit is not required for) "Replacement of any minor part that does not alter approval of equipment or make the equipment unsafe."

Paragraph (3)(ii) of this section was modified to remove the word "any" between "of" and "minor" and replace it with the word "a". Making this same wording change in this section would help standardize these regulations.

§ 403.62 (c)(5)(i) states: (A permit is not required for) "Replacement of bib valves if the replacement hose bib valves are provided with an approved atmospheric vacuum breaker."

How will the Building Code Official know **"if the replacement hose bib valves are provided with an approved atmospheric vacuum breaker."** if the citizen doesn't need a permit and the work is not inspected?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(5)(x) Please see comments for section § 403.62 (c)(2)(v)

§ 403.62 (c)(6)(vi) Please see comments for section § 403.62 (c)(2)(vi)

§ 403.63 (a) states: "... The building code official and the applicant may agree in writing to extend the deadline by a specific number of days."

Section 502 (a)(3) of the Act only allows for this extension of time for one family and two family dwellings in historic districts.

§ 403.63 (c) states: "A building code official shall stamp or place a notation on EACH PAGE OF the set of reviewed construction documents that the documents were reviewed and approved for UCC compliance before the permit is issued. The building code official shall clearly mark any required NON-DESIGN changes on the construction documents. The building code official shall return a set of the construction documents with this notation and any required changes to the applicant. The permit holder shall keep a copy of the construction documents at the work site open to inspection by the construction code official or authorized representative."

Paragraph (c) of this section as well as paragraph (f) of this section seem to indicate that a permit will be issued if the construction documents are not fully in compliance with the UCC.

The first sentence uses the term "approved" to be marked on each page of the Construction documents. If there are NON-DESIGN items marked on a page, how can this page be marked "approved"? What are NON-DESIGN items?

Suggested wording for this paragraph (c): A building code official shall stamp or place a notation on each page of the set of reviewed construction documents that the documents were reviewed for UCC compliance. The building

code official shall notify, in writing, the permit applicant of any items that are not code compliant. The permit applicant shall make all necessary changes and return the construction documents for re-review of code compliance before a permit is issued. The permit holder shall keep a copy of the final reviewed construction documents at the work site open to inspection by the construction code official or an authorized representative.

§ 403.63 (h) states: "The permit holder shall keep a copy of the permit on the work site until the completion of the construction."

The inspection industry would greatly appreciate the assistance of the department by requesting the following sentence to be added to this section of the proposed regulations.

The permit holder or their agent shall post the permit on the jobsite in an accessible and conspicuous place, visible from the road, street or highway where the property is located.

§ 403.64 (g) states: "A third-party agency under contract with a permit holder shall submit a copy of the final inspection report to the property owner, builder and the lender designated by the builder."

The property owner, builder and the lender may not be known to the third-party agency.

Suggested wording: A third-party agency under contract with a permit holder shall submit 3 copies of the final inspection report to the permit holder.

§ 403.81, § 403.82, § 403.83 and § 403.84 are a few of the proposed regulations for "*Department, Municipal and Third-Party Enforcement for Noncompliance*". These regulations cover the procedures that are to be followed to issue Stop Work Orders, Notices of Violation, Orders to Show Cause/Order to Vacate and how to deal with Unsafe Buildings, Structures or Equipment for all buildings in our State.

Section 104 (a) of the Act states: "This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth."

It might appear that the regulations meet the intent of the Act, but what is being overlooked are residential properties in "opt-out" areas of the state. There are no appeal boards in "opt-out" municipalities (§ 403.103).

§ 403.83 (c) states: "The building code offical shall forward all requests for variance, extensions of time or appeals regarding interpretations of the UCC to the board of appeals within 5 business days."

Another key issue that is missing from the regulations for "opt-out" municipalities is what to do when it is discovered that an Unlawful Act is being committed. The 2003 IBC and IRC cover Unlawful Acts in section 113.1 of each book. Sections 113.1 and R113.1 state: "It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause the same to be done, in conflict with or in violation of any of the provisions of this code." To whom does a building code official report an Unlawful Act (swimming pool, room addition, new dwelling, etc.) discovered in "opt-out" municipalities?

It is understood that by virtue of Sections 301(a)(1) and 304(a)(1) of the Act that the Department has the authority to promulgate separate regulations which may make changes to Chapter 1 of the 1999 BOCA NBC and its successor codes, relating to administration. Nothing in the Act or the proposed regulations allows for the deletion of Chapter 1 of the 1998 ICC International One and Two Family Dwelling Code or its revised or successor codes.

§ 403.86 (c) states: "A construction code official may not enter a building, structure or premises that is unoccupied or after normal business hours without obtaining permission to enter from the owner or the owner's agent."

This section appears to contradict section **§ 403.86 (a) "which states that a construction code official may enter a building, structure or premises during normal business hours..."** I would like to point out that normally new construction is "unoccupied" and the permit holder calling for the inspection may or may not be the

"owner or the owner's agent".

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Including the term **permit holder** in the last sentence of section **§ 403.86 (c) and** the first sentence of section **§ 403.86 (a)** would clarify both of the sections and allow for inspections to be made by the CCO on "unoccupied" projects.

§ 403.86 (e) states: "This section shall be used in conjunction with the Fire and Panic Act."

Some sections of the Fire and Panic Act are being repealed by Act 45.

Suggested wording: This section shall be used in conjunction with the **saved portions** of the Fire and Panic Act covered in Section 1101 of the Act.

§ 403.101 (a) states: "The Fire and Panic Act and a locally enacted building code shall remain in effect until the date that one of the following has transpired:"

Suggested wording: The **complete** Fire and Panic Act and **all** locally enacted building code**s** shall remain in effect until...

§ 403.102 (g)(1) states: "Employ at least one construction code official and designating an employee to serve as a building code official."

Section 501 (b) (1)-(5) of the Act covers how a municipality may elect to administer and enforce the UCC. Nowhere does it state in the Act that a municipality shall **EMPLOY** a construction code official. What is stated is that they may **RETAIN** one or more construction code officials. The wording should change "Employ" back to "Retain" to correctly state the law.

§ 403.102 (i)(2) could be clarified by adding "of 403.102" at the end of the sentence.

§ 403.103 (d) states: "A building code official shall determine the climactic and geographic design criteria contained in table R301.2 (1) of the IRC for residential construction."

Building Code Officials are not design professionals. Guidelines are needed from the Department to complete this important table. Current statistics gathered by the Department are indicating that a large portion of municipalities in our state will be "opting out" of enforcement of the UCC. Table R301.2 (1) of the IRC is (by code section 301.2) to be completed by the local jurisdiction. If this is left to the discretion of any BCO, then it is certain to have numerous different calculations from one project to the next. As an example, we could have neighbors building to different frost depths. One at 36" and the next at 42", when in fact the true depth may need to be 48". If in this same example one of the projects is a commercial building being inspected by the Department, the Department will be required by section 1805.2.1 of the IBC to know the local frost

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depth for the commercial project. Since the Department must develop standards for every geographical area of the state for their purposes, they should distribute this information to all BCOs for insertion in Table R301.2 (1) of the IRC. The intent of the General Assembly (Section 102 (b)(1), (2), (3) and (8) of Act 45) is not being met if blank tables are made part of the regulations.

§ 403.103 (f) states: "A third-party agency shall send a copy of the final inspection report to the property owner, builder and a lender designated by the builder."

All that may be known to the third-party agency at the time of the final inspection is the municipality and the permit holder. The Department of Labor & Industry has stated in numerous public meetings that if a municipality "opts-out", they could not issue Certificates of Occupancy or a Building Permit.

Section 501 (e)(4) of the Act states: "In municipalities which require a building permit or a certificate of occupancy but do not conduct inspections, the code administrator shall also be required to submit a copy of the report to the municipality."

The legislature recognized some municipalities would issue permits and certificates of occupancy but not conduct inspections, and the lawmakers did not prohibit this.

Suggested wording: A third-party agency under contract with a permit holder shall submit 3 copies of the final inspection report to the permit holder and one copy to the local municipality.

The Department quotes section 501(e)(3) of Act 45 as their reason for removing "municipalities" from the list of those required to be sent a copy of the final inspection report. But this appears to contradict section 501 (e)(4) of Act 45.

§ 403.121 (a) states: "A municipality which has adopted an ordinance for the administration and enforcement of the UCC or is a party to an agreement for the joint administration and enforcement of the UCC shall establish and appoint members to serve on a board of appeals under section 501(c) of the act."

501(c) of the Act refers the municipality to Chapter 1 of the 1999 BOCA NBC for direction in establishing their appeals board. Section 121.2 in Chapter 1 of the 1999 BOCA NBC states: "The board of appeals shall consist of **five** members..."

There is no mention in the regulations as to how many people are needed to make up the appeals board. To meet the intent of the Act, I propose a new sentence at the end of §403.121(c)(1) stating: The board of appeals shall consist of **five** members appointed by the municipality's governing body.

§ 403.121 (c) 3 states: "Members of a municipality's governing body and its code administrators may not serve on a board of appeals."

Section 112.3 of the IBC 2003 states: "The board of appeals shall consist of members

who are qualified by experience and training to pass on matters pertaining to building construction and **are not employees of the jurisdiction.**"

To meet the intent of the act the wording "municipal employees" should be added to this list of non-approved members of the appeals board.

Preamble Fiscal Impact pages 3 & 4: The Department states that it "will augment its plan review staff and may have to increase its inspection staff to review and approve plans and perform required inspections under the UCC."

What is lacking in the proposed regulations is any language pertaining to how a third-party agency with appropriate categories of certification, may contract with the Department to conduct the plan review and inspections required by this act.

The Department has been given the authority in Section 501(e)(2) of the act to contract with a third-party agency. With the combined efforts of the Department and Registered Third-Party Agencies, the Fiscal Impact may be controlled, but a regulation is needed to allow for the contracting with the third-party agencies.

The comments and suggestions that are offered are, to the best of my knowledge and understanding, based on portions of the law and are within the power of the Department to develop proper and suitable regulations.

If the commission requires any clarification, or has any questions regarding these comments and suggestions, please feel free to contact me.

Sincerely

Timothy A. Palaski

Manager Codes & Standards, MDIA

Original: 2283

PMHA
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November 12, 2003

John R. McGinley, Jr., Esq., Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Uniform Construction Code Administration Regulations proposed by Department of Labor and Industry

Dear Chairman McGinley:

I am writing on behalf of the Pennsylvania Manufactured Housing Association (PMHA) regarding the Uniform Construction Code Administration Regulations proposed by Department of Labor and Industry. PMHA is a state trade association representing 650 members involved in the manufactured and industrialized housing industries.

It continues to be our position that Section 901 of Act 45-1999 is clear in its exemption of the manufactured and industrialized housing with the UCC. Department of Labor and Industry does not have the authority to promulgate regulations, which in any manner, regulate manufactured or industrialized housing in the Commonwealth.

I have attached a copy of a letter you were sent back on September 11, 2002 from our legal office – McNees, Wallace & Nurick – that explains our position in more detail.

After review we trust you will remove Section 403.25 from the final regulations.

Thank you for your consideration.

Sincerely,

Mary Gaiski, PHC
Executive Vice President

Enclosure

McNees Wallace & Nurick LLC
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September 11, 2002

Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety
Department of Labor and Industry
Room 1613, Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120

RE: PMHA Response to Proposed Regulations Published August 24, 2002

Dear Mr. Sludden:

At the request of PMHA, I write concerning the proposed regulations of the Department of Labor and Industry (the "Department"), which were published in the Pennsylvania Bulletin, No. 34, on August 24, 2002. The regulations are being promulgated pursuant to the Pennsylvania Construction Code Act (the "CCA"), 35 P.S. § 7210.101 *et. seq.* and seek to create a Uniform Construction Code ("UCC") in the Commonwealth.

In 1972 the General Assembly passed the Industrialized Housing Act (hereinafter the "IHA"). This law is codified at 35 P.S. 1651.1 *et. seq.* It provides that *mobile homes* should be certified separately from other categories of industrialized housing. A *mobile home* is defined as a structure within the meaning of the Uniform Standards Code for Mobile Homes, a law which is now repealed. That law, which was apparently passed moments before the IHA, was repealed in 1982 and replaced by the applicable provisions of the Manufactured Housing Construction and Safety Standards Authorization Act.

Pursuant to the IHA, regulations were promulgated. These regulations, which were last changed in 1997 are at 12 Pa. Code Chapter 145 and are entitled *Industrial Housing and Components.*

The IHA contains the following definitions:

Industrialized housing;

[A]ny structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities for installation, or assembly and installation, on the

building site; however, for the purposes of this act, that category of housing units defined as mobile homes is excluded from this definition.

Installation:

[T]he assembly of industrialized housing on site and the process of affixing industrialized housing or housing components to land, a foundation, footings, utilities or an existing building.

Mobile Home:

[E]very structure defined as a 'mobile home" in section 2 of the Uniform Standards Code for Mobile Homes. (35 P.S. § 1655.2 {repealed; see now 35 P.S. § 1656.2}).

At 36 P.S. § 1651.2(7) the IHA provides:

While recognizing that mobile homes constitute a category of industrialized housing, it is further recognized that mobile homes differ in characteristics of sufficient significance that they should be certified separately by the Commonwealth from other categories of industrialized housing to be used in the Commonwealth.

Further, the regulations at 12 Pa. Code § 145.33 state:

§ 145.33. Manufactured homes excluded.

Manufactured homes which are subject to sections 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5403 and 5424) and the regulations issued thereunder by the United States Department of Housing and Urban Development are not subject to this chapter.

The regulations define a *mobile home*, presumably to determine the type of unit, which is excluded from regulation. That definition is:

Mobile home:

A structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet in length and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including

> the plumbing, heating, air conditioning and electrical system combined therein manufactured in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401 – 5426).

Based upon the above, it is clear that the installation of *mobile homes* is not regulated by the IHA or its regulations. The installation of *industrialized housing;* however, is. The regulations are § 147.70(3)(i) provide:

> *(3) Inspection services by the Department will include:*
>
> *(i) Monitoring the manufacturer's compliance control program for the manufacture, transportation and installation of industrialized housing or housing components.*

You should also be made aware of § 145.91(e) of the regulations, which provide:

> **§ 145.91. Reports to the Department**
>
> (e) A person installing industrialized housing or housing components for use on a site in a jurisdiction in this Commonwealth without a local enforcement agency shall prepare and mail to the inspection agency a Site Installation Inspection Report on a form furnished by the Department. If the manufacturer is not installing the industrialized housing or housing components, the manufacturer shall be responsible for furnishing to the person performing the installation a copy of the Site Installation Inspection Report form and instructions as to its intended use.

Based upon the above, it is my opinion that the IHA regulates the installation of *industrialized housing,* but not *mobile homes.* The term *industrialized housing* includes both manufactured homes and modular homes.

In 1982 the General Assembly passed the Manufactured Housing Construction and Safety Standards Authorization Act (hereinafter the "MHA"). The purpose of the Act is to establish construction standards for the manufacture and sale of manufactured homes in Pennsylvania. The law is codified at 35 P.S. 1656.1 *et. seq.* Accompanying regulations were promulgated and are codified at 12 Pa. Code Chapter 143. They are entitled *Manufactured Housing.*

The Act defines a *Manufactured Home* as:

Manufactured home:

A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Department of Housing and Urban Development and complies with the standards established under this act.

I note that a mobile home falls within the definition of a *manufactured home.*

Relative to the installation of *manufactured homes,* the regulations at 12 Pa. Code § 143.3 provide:

§ 143.3. Scope.

Except to the extent otherwise stated in other applicable laws of the Commonwealth which are not inconsistent with or superseded by the act or Federal act, this chapter governs the design, manufacture, storage, transportation and installation of manufactured housing which is sold, leased or installed, or is intended for sale, lease or installation, or use on a site in this Commonwealth, or manufactured in this Commonwealth and sold or offered for sale outside this Commonwealth. This chapter applies to manufactured housing manufactured in manufacturing facilities located within or outside this Commonwealth.

Accordingly, the standards concerning the installation of *manufactured homes* falls with the purview of the regulations.

In 1999, the General Assembly passed the CCA. The proposed regulations are being promulgated pursuant to that law. The CCA defines *industrialized housing* as per the IHA. It further defines *manufactured housing* as housing that bears a label required by Pennsylvania's MHA. The Act does not contain a specific definition of a *mobile home;* accordingly, unless one determines that a mobile home falls within the definition of *industrialized housing* as contained in the IHA (which it does not), the CCA does not govern mobile homes.

The CCA provides:

§ 7210.901. Exemptions.

> This act shall not apply to manufactured housing which bears a label, as required by and referred to in the act of November 17, 1982 (P.L. 676, No. 192), known as the Manufactured Housing Construction and Safety Standards Authorization Act, which certifies that it conforms to Federal construction and safety standards adopted under the Housing and Community Development Act of 1974 (Public Law 93-383, 88 Stat. 633), nor shall it apply to industrialized housing, as defined in the act of May 11, 1972 (P.L. 286, No. 70), known as the Industrialized Housing Act.

The exemption is clear and unambiguous. The Act cannot, in any manner, regulate manufactured, modular or mobile homes. The continued position of the Department and apparently the Office of the Attorney General, that the exemption applies only to the manufacture of the homes, ignores the specific language of the Act. The regulation which seeks to mandate the manner in which a manufactured, modular or mobile home is installed in the ground, hooked up to utilities, altered or repaired regulates the very housing, which the law specifically states cannot be regulated.

Pennsylvania courts have consistently held "that the power and authority exercised by an administrative agency in its rule-making must be conferred by language that is clear and unmistakable and the regulatory action must be within the strict and exact limits defined by the statute." *Pennsylvania Medical Society v. Pennsylvania State Board of Medicine,* 118 Pa. Commw. 635, 546 A.2d 720 (1988) citing *DeMarco v. Department of Health, 40 Pa. Commw. 248, 397 A. 2d 61* (1979). See also *McKinley v. State Board of Funeral Directors*, 11 Pa. Commw. 241, 313 A.2d 180 (1973), *Volunteer Firemen's Relief Association of the City of Reading v. Minehart,* 425 Pa. 82, 227 A.2d *632* (1967) and *Commonwealth v. DiMeglio*, 385 Pa. 119, 122 A.2d 77 (1956). The Department has no authority to regulate manufactured, modular or mobile homes, because that power was not conferred by the General Assembly.

Assuming arguendo, that somehow the Department is authorized to promulgate the regulations, their review evidences other problem areas as well. Relative to *manufactured housing*, the regulations adopt Appendix E of the IRC. Our review of the CCA does not evidence that the legislature authorized the Department to adopt an appendix to a Code.

Further, a review of Appendix E reveals that generally speaking, it provides standards for the *installation* of manufactured housing. Since § 403.25(a)(2) of the regulations does not list installation as an area being regulated, we do not understand the basis for the adoption of the Appendix. Such an adoption serves only to create confusion as to whether there is a regulatory standard and if so, what it is.

Similarly, the adopted sections of Appendix E are incomplete and vague. For example Section AE501 states:

> **AE501.1 General.** A manufactured home shall be installed on a foundation system which is designed and constructed to sustain within the stress limitations specified in this code and all loads specified in this code.
>
> **AE501.3 Rationality.** Any system or method to be used shall admit to a rational analysis in accordance with well-established principles of mechanics.

Relative to AE501.1, the referenced sections of the Code do not appear to have been adopted. Relative to AE 501.3, the section is vague.

Finally, the Department's proposed regulations regarding *industrialized housing* do not adopt the Appendix E guidelines for installation; however, § 403.25(b)(2)(iv) specifically includes *installation* as an area to be regulated. As such, the standards governing the installation of industrialized housing are in doubt as the regulations do not appear to contain any.

The CCA provides:

> **§ 7210.104. Application**
>
> **(a) General Rule.** – This act shall apply to the construction, alteration, repair and occupancy of all building in this Commonwealth.

A review of the above indicates that the word *installation* does not appear. The rules of Statutory Construction dictate that in determining legislative intent, the use of a word or its absence has meaning. Since the General Assembly used the word *install* in similar legislation, it could have used the same word in this Act, if it chose to do so.

Moreover, the word is not one that would have escaped the attention of the General Assembly. The failure of the General Assembly to use the word *install* in §104 further evidences its intent that the Act not apply to the installation of manufactured, modular or mobile homes. Not only do the proposed regulations seek to regulate the installation of industrialized housing, but we regard site preparation, foundation construction and connection to utilities as *installation.* Those mandates apply to both manufactured and industrialized housing.

That same issue is addressed elsewhere in the CCA, which at § 7210.301(d) provides:

(d) Scope of regulations.

(1) The regulations adopted by the department implementing these codes shall supersede and preempt all local building codes regulating any aspect of the construction, alteration and repair of buildings adopted or enforced by any municipality or authority or pursuant to any deed restriction, rule, regulation, ordinance, resolution, tariff or order of any public utility or any State or local board, agency, commission or homeowners' association except as may be otherwise specifically provided in this act. (Emphasis supplied).

Again, the absence of the word *install*ation from the Scope of regulations is telling. Not only does the Act specifically exempt manufactured, modular and mobile homes from any form of regulation, but the Scope of the regulations contains no authorization for the regulation of the installation of housing.

In summary, we believe the following to be a correct synopsis of the law:

1. The IHA applies to *industrialized housing,* a term which includes manufactured homes and modular homes, but not mobile homes. There are regulations which govern the installation of the applicable homes. They are based upon the manufacturers standards.

2. The MHA applies to *manufactured homes*, a term which includes *mobile homes.* The scope of the regulations promulgated pursuant to the MHA address the installation of those homes.

3. The CCA does not apply to *manufactured housing*, (as defined by the MHA) which bears a label, as required by the MHA nor to *industrialized housing* (as defined by the IHA). The definitions of both those terms encompass manufactured, modular and mobile homes.

4. The Department does not have the authority to promulgate regulations, which in any manner, regulate manufactured or industrialized housing in the Commonwealth.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Lawrence R. Wieder

LRW/jlh
Enclosure
c: Pennsylvania Independent Regulatory Review Commission
Ms. Mary Gaiski, Pennsylvania Manufactured Housing Association
John P. Milliron, Esquire