

Original: 2283



P.O. Box 248 • 315 Limekiln Road • New Cumberland, PA 17070
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Web site: www.pmha.org • E-mail: general@pmha.org

September 27, 2002

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

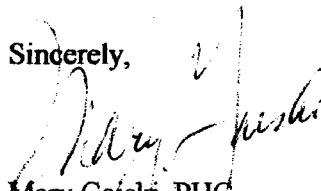
Re: Regulation #12-60 (IRRC #2283)
Department of Labor and Industry
Uniform Construction Code; Administrative and Enforcement, Elevators
and other Lifting Devices

Dear Mr. Jewett:

Per your e-mail of Thursday, September 26, 2002 enclosed you will find a copy of our comments, which were submitted, to Labor and Industry on September 11, 2002. Note that we did copy the IRRC.

Thank you for your time and consideration.

Sincerely,


Mary Gaiski, PHC
Executive Vice President

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McNees Wallace & Nurick LLC
attorneys at law

RECEIVED SEP 12 2002

LAWRENCE R. WIEDER
DIRECT DIAL: (717) 237-5229
E-MAIL ADDRESS: LWIEDER@MWN.COM

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

RECEIVED
SEP 11 2002
DEPARTMENT OF LABOR AND INDUSTRY

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home* is defined as a structure within the meaning of the Uniform Standards Code for Mobile Homes, a law which is now repealed. That law, which was apparently passed moments before the IHA, was repealed in 1982 and replaced by the applicable provisions of the Manufactured Housing Construction and Safety Standards Authorization Act.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

Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety
September 11, 2002
Page 2

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

Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety
September 11, 2002
Page 3

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.

Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety
September 11, 2002
Page 5

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 *installation* 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.

Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety
September 11, 2002
Page 8

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

Original; 2283

P. M. Associates

Auditors and Safety Engineers

Questions and concerns for the Hsb. "Road Show".

1) Will there be a grace period from when the new code becomes effective for Fee Co. inspectors to obtain their QEI? We have one inspector that got his Penna. credentials in September 1949! No Penna. Fee Co. inspector has received **official notice** from the Dept. about **ANY** code changes or new requirements for a QEI. We have two new people that took the Penna. test on Sept.6, 2002. If they pass shouldn't there be a significant period for them to study for their QEI? Several of our inspectors have never seen an ASME A17 code book.

Chapter Seven of the original "Act" which was enacted on Oct. 25, 1999 in section 701(e)(1) gave a 3-7 year window for existing inspectors to become fully qualified under the new regulations. Why should Fee Co.'s inspectors be penalized as a result of Hsb.'s delay(s) in getting the new regulations ready?

- (2) Why would the Pennsylvania Elevator Dept. make inspectors with commissions 30 years or more take another test? Are they having problems with accidents due to the older inspectors? If so, tell them to prove it to us.
- (3) Our commissions were good enough for 30 years and now they are not. Why?
- (4) I am retired as a full time inspector with my commissions granted in 1972. As a part time inspector with PM Associates, I have no benefits and get paid a fee per elevator. I would have to pay for a school in Baltimore (one full week) and all additional needed expenses plus the test cost. I wish only to work for 2 or 3 more years so the associated costs are not justified. Plus, if our history of inspections is good, with our present PA commissions, why do we need to be retested?

BOB RUMPLER
311 PRINCETON AVE.
PITTSBURGH, Pa.
15229

MM.# 1543

112 716-2954

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10/2/02 11:47

P. M. Associates
Auditors and Safety Engineers

To: Penna. Elevator Inspectors

9-3-02

Subject: New Penna. QEI Requirements

For those of you who do not have a QEI, the new Penna. Code will require a QEI to inspect in Penna. We have just learned that this requirement may be in force as soon as March 1 2003. Originally there was to be a 2 year grace period, but as of this date the grace period has been eliminated. We will give any assistance possible to help you get certified. You should call NAESA at 800-746-2372 to obtain the application forms. Study courses are offered through NAESA that are one week long and include the test. We can assist you with the application process and are attempting to get a test date and location in Penna. scheduled. The cost for the test alone is \$150.00 and you will need certain code books that cost between \$700-\$800 since the test is "open book" multiple choice. If you elect to take the course the cost for the course & test is \$1295.00 plus the cost for the books. You can reach me on my cell phone with any questions. Please let me know as soon as possible if you will not take the test, so we can schedule work accordingly. We are working closely with our Harrisburg contacts in an effort to reinstate the grace period in the new regulations. Keep in mind that any costs incurred on your part are completely tax deductible!

Yours Truly,



Eric

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PENN STATE
UNIVERSITY
HARRISBURG
PA
9/3/02

Original: 2283

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Chairperson
CARL E. DENSON Original: 2283
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GREGORY J. CELIA, JR.
Executive Director
HOMER C. FLOYD



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JOSEPH J. BORGIA
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COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION
301 Chestnut Street, Suite 300
P.O. Box 3145
Harrisburg, PA 17105
(717) 787-4410 (Voice)
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SEP 27 AM 8:08
P.O.I.S.
DIRECTOR'S OFFICE

www.phrc.state.pa.us

September 25, 2002

Charles J. Sludden
Director of 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: Proposed Rulemaking: Uniform Construction Code

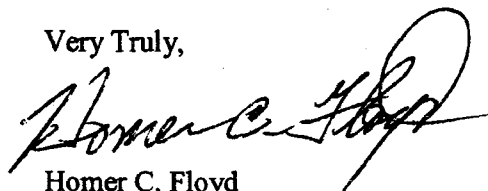
Dear Mr. Sludden;

The Pennsylvania Human Relations Commission (Commission) offers this comment as it relates to our enforcement of the Pennsylvania Human Relations Act, 43 P.S. §951 et seq. (PHRA), in particular, the accessibility requirements found in the public accommodations and housing sections of the PHRA at 43 P.S. 955(h)(7) and (i)(4). While the Commission believes that the Commonwealth's adoption of the model construction codes, issued by the International Code Council, as a part of Pennsylvania's Uniform Construction Code, greatly reduce the chances of permit approvals that are not in compliance with the accessibility requirements of the Americans with Disabilities Act, the Federal Fair Housing Act, the Federal Rehabilitation Act or PHRA, we are concerned that some variances that are granted may in fact not be in compliance.

Therefore, the Commission urges that the Department of Labor & Industry again officially recognize, as was done at Pennsylvania Bulletin, Volume 24, No. 11, page 1345, that compliance with the accessibility provisions of the Pennsylvania Construction Code Act does not necessarily indicate compliance with the ADA, the Fair Housing Act, the Pennsylvania Human Relations Act or the Federal Rehabilitation Act. Further, as also referenced at page 1345 Volume 24, the Commission requests that the Department continue to include in its letter of approval of plans submitted under the Act that approval by the Department does not indicate compliance with the ADA and other laws regarding accessibility and that the building owner remains responsible for violations of these other laws.

Thank you for your consideration in this matter. Should you have questions in this matter, please contact our Director of Housing & Commercial Property, Mr. Raymond Cartwright, at 717-787-4055.

Very Truly,

A handwritten signature in black ink, appearing to read "Homer C. Floyd". The signature is fluid and cursive, with a large loop at the end.

Homer C. Floyd
Executive Director



Fire Safety Consultants

509 Latsmere Drive • Harrisburg, PA 17109

Phone: 717.561.8787

02 SEP 20 5 11 48

firebuff@paonline.com

B.O.I.S.

DIRECTOR'S OFFICE

September 27, 2002

Mr. Charles J. Sludden, Jr., Director
Bureau of Occupational and Industrial Safety
PA Department of Labor and Industry
1613 L&I Building
Harrisburg, PA 17120

Dear Mr. Sludden:

The following is offered in response to the proposed regulations under Title 34 Labor and Industry Uniform Construction Code, Administrative and Enforcement Chapters 401-405.

Section 403.44, "Construction Materials and Changes", indicates the National Evaluation Services, Incorporated is the only agency for approval of material, equipment and devices considered as approved under the Uniform Construction Code (UCC). I am not aware of any fire protection equipment (sprinklers, valves, etc.) that are listed by the National Evaluation Services, Inc. This equipment is generally listed by Underwriter's Laboratory (U.L.) or Factory Mutual (FM). It is recommended that the regulations be modified to include these two nationally recognized organizations, U.L. and FM as acceptable organizations for the approval of materials, equipment and devices used in the construction of facilities covered by the UCC.

In lieu of naming any specific organization you may wish to use the term "Labeled" and the definition of this term as contained in the International Fire Code which reads:

"Equipment or material to which has been attached a label, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling is indicated compliance with nationally recognized standards or tests to determine suitable usage in a specified manner."

A third choice is to refer to those requirements for approval of material, equipment or devices that are contained in Chapter 17 of the International Building Code (IBC) which is the referenced document in the UCC.

Thank you for the opportunity to review and comment on the proposed regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rich E Botts".

Richard E. Botts, P.E.

President

Fire Safety Consultants, Inc.

Original: 2283

To: Charles J. Sludden, Jr.,

From: John Sykes, Electrical Inspector for Septa

02 SEP 25 AM 8:36

Amend the international residential code as follows:

Electrical, chapters 33-42, shall be deleted. The provisions of the ICC Electrical Code (NEC) shall apply to the installation of electrical systems, including alteration, repairs, replacement equipment, appliances, fixtures fittings and appurtenances thereto.

The international residential code is adopted as the building code for residential

Construction except for electrical wiring and related components which will be governed by The ICC electrical code.

*Sincerely,
John Sykes*

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ELECTRICAL


AMERICAN FOREST & PAPER ASSOCIATION

GROWING WITH AMERICA SINCE 1861

Northeast Regional Office

Original: 2283

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

Mr. Sludden:

The American Forest and Paper Association (AF&PA) would like to take this opportunity to comment on the proposed Regulations the Department is promulgating in response to Act 45, establishing the Uniform Construction Code (UCC). AF&PA congratulates the Department on its fine work in preparing the proposal. The proposed Administrative and Enforcement rules will enable the Commonwealth to bring some minimum standard for constructing buildings. The proposed rules go a long way to achieving that end.

AF&PA believes that a slight change in the rules will make significant improvement in their implementation and in securing the basic objective of the Act: "To start a process leading to the design, construction and alteration of buildings under a uniform standard." The Act requires that the Department of Labor and Industry (L&I) shall make any proposed local ordinance amending the UCC available for "public inspection". Insofar as L&I is somewhat geographically distant from many areas of the Commonwealth, it makes sense for the Department to use every means at its disposal to accomplish this legislative mandate. AF&PA therefore would urge the Department to reconsider its proposed rules to include the following language:

(j) A municipality may enact an ordinance containing standards that equal or exceed the Uniform Construction Code as adopted by §403.21 (relating to the Uniform Construction Code) under section 503 of the act (35 P.S. §7210.503) after Department has posted the proposed ordinance for public inspection pursuant to §503 (f) of the Act; has conducted its review; and issued approval of the proposed ordinance. Such posting shall occur via electronic media accessible by the general public and shall consist of the executive summary required in subsection (4) below, and shall occur within 5 business days of receipt of the information. The municipality shall notify the Department of the proposed ordinance and shall submit all of the following to the Department for its review:

- (1) (unchanged)
- (2) (unchanged)
- (3) (unchanged)

(4) Executive Summary of the proposed code text and the sections of the Uniform Construction Code or its referenced codes and standards effected by the change.

Items 1 through 4 above shall be submitted in both written, and when possible, electronic versions both of which shall be on a form and/or in a format required by the Department.

In addition to the posting of proposed ordinances regarding amendments to the UCC, AF&PA urges the Department to consider using the same vehicle to post notices of municipalities adopting ordinances for the purpose of enforcing the UCC. Maintaining a list of jurisdictions with local enforcement will provide designers and builders with important information when beginning a project. This would also result in economy for the Department by avoiding the recurring inquiries about departmental enforcement versus local enforcement.

AF&PA urges the consideration of this information for inclusion in the Proposed Regulations. Such inclusion will facilitate the Department's review of the proposed local ordinance and, when applicable, serve to cause pertinent information necessary to the Department's review to be made available to the Department.

Respectfully,

Sam Francis
Northeast Regional Manager, Codes and Standards
American Forest and Paper Association
(VIA EMAIL)

cc: Brian Abela, Dept. of Labor & Industry
Kim Sokoloski, Pugliese Associates

MODULAR
BUILDING SYSTEMS ASSOCIATION
BUILDING FOR TOMORROW

Original: 2283

3029 North Front Street
Suite 301
Harrisburg, PA 17110
717-238-9130
FAX 717-238-9156
www.modularhousing.com

September 24, 2002

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 Modular Building Systems Association (MBSA). The MBSA is a regional trade association representing the modular industry throughout the eastern United States. We have members located throughout that region and lobby, predominantly on the state level, in those states where our members ship homes. It is worth noting that Pennsylvania has more modular manufacturers than any other state in the eastern United States, and joins Indiana as one of the top two modular producing states in the country. Currently there are approximately 23 manufacturers located in Pennsylvania operating approximately 28 factories, employing in excess of 3,500 people in the design, manufacture and sale of modular homes. In 1996, there were approximately 6,500 modular homes manufactured in Pennsylvania. Of that number, 2,100 were sited in Pennsylvania and the rest were shipped to states other than Pennsylvania. Modular homes account for approximately 6% of the new housing starts each year in Pennsylvania. When you combine the modular manufacturing sector of the industry with the sizable building supply industry which has located in Pennsylvania to supply the manufacturer, it is not difficult to see the economic impact and tax revenue our industry generates in Pennsylvania.

When the statewide building code legislation was introduced, our association worked on amendments to the legislation which were eventually included in Act 45 of 1999. It is interesting to note, that of all the states throughout the eastern United States, Pennsylvania is the last state to adopt a statewide building code. However, for the modular industry, we have had a statewide building code in Pennsylvania since the

Industrialized Housing Act was passed in 1972. (Note: Modular housing is referred to as "industrialized housing" in Pennsylvania statutes.) Since the passage of the Industrialized Housing Act and its accompanying regulations, our industry has been required to build our homes to either BOCA or CABO (the national model code at that time) regardless of whether site-builders were required to do so. The Department of Community and Economic Development, who administers the Industrialized Housing Program is in the process of obtaining regulatory changes to update the code to the new International Codes contained in Act 45.

Because our industry is already required under the Industrialized Housing Act to build to a uniform code, and because of the extensive regulatory program provided for by the Industrialized Housing Act, administered by DCED, we were successful in having an amendment included in the legislation which became Act 45 to exempt our industry from the UCC. The amendment is contained in Section 901 of Act 45 and is straightforward and unambiguous. It states that the Industrialized Housing Industry is exempt from the Act. The language could not have been more clear and left no question for regulators to resolve.

With the adoption of Act 45, our industry was sure this issue was clearly addressed. For this reason, we were surprised when we received a copy of the Department of Labor and Industry's draft regulations and read Section 403.25 regulating the on-site completion of the modular home. Since that time, we have tried without success to help the Department understand that this section of the regulations is "...so entirely at odds with [the] fundamental principle [contained in Section 901 of the Act] as to be the expression of a whim [of the Department], rather than an exercise of judgment." (*See Housing Authority of Chester v. Pennsylvania State Civil Service Com'n.*, 730 A.2d 935 (Pa. 1999)).

Our argument in opposition to Section 403.25 of the Regulations is twofold: (1) It is in direct opposition to the language and intent of Act 45, and (2) it conflicts with the Industrialized Housing Act and regulations administered by the Department of Community and Economic Development which comprehensively regulates both the manufacture and on-site completion of the home.

I

As mentioned, the language in Section 403.25 of the regulations is in direct conflict with the Act. The Act specifies that modular housing is exempt. The regulations purport to regulate modular housing. Pennsylvania case law is clear on the issue of administrative agency interpretation of statutes. I have included a number of recent court decisions dealing with administrative agencies interpreting Pennsylvania statutes. Courts afford an administrative agency a certain amount of deference when interpreting a statute in regulations. However, if the Legislature has clearly spoken on an issue, regulations which do not "genuinely tracks the meaning of the law being interpreted are invalid." (*See Bailey v. Zoning Bd. Of Adjustment of City of Philadelphia*, 801 A.2d 492 (Pa. 2002)). Section 403.25 of the regulations does not genuinely tracks the meaning of the law. After numerous meetings with the Department of Labor and Industry, we have not been able to come to terms with this issue. Our association is determined to pursue this issue through the regulatory review process and in Commonwealth Court if necessary.

PENNSYLVANIA CASE LAW DEALING WITH ADMINISTRATIVE INTERPRETATION OF A STATUTE

“An administrative agency's interpretative rule cannot be valid unless it is reasonable and genuinely tracks the meaning of the law being interpreted.” *Bailey v. Zoning Bd. Of Adjustment of City of Philadelphia*, 801 A.2d 492 (Pa. 2002).

“A regulation contrary to intent of the statutory provision to which it relates has no validity.” *Moyer v. Berks County Bd. Of Assessment Appeals*, 2002 WL 1396032 (Pa.Cmwth.App. 2002).

“Where there is a conflict between statute and a regulation purporting to implement provisions of that statute, the regulation must give way.” *Bell Atlantic Mobile Systems, Inc. v. Commonwealth of Pennsylvania*, 2002 WL 1060044 (Pa.Cmwth.App. 2002).

“To show that agency's legislative rule-making powers have been exceeded, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another; error or lack of wisdom in exercising agency power is not equivalent to abuse, and what has been ordered **must appear to be so entirely at odds with fundamental principles as to be the expression of a whim, rather than an exercise of judgment.**” *Housing Authority of Chester v. Pennsylvania State Civil Service Com'n.*, 730 A.2d 935 (Pa. 1999).

“Rule adopted pursuant to agency's legislative rulemaking power is valid and is as binding upon court as a statute if it is (a) within grant of legislative power by legislative body, (b) issued pursuant to proper procedure, and (c) reasonable.” *Rohrbaugh v. Pennsylvania Public Utility Com'n*, 727 A.2d 1080 (Pa. 1999)

“Where there is conflict between statute and regulation purporting to implement provisions of that statute, regulation must give way.” *Com. v. Colonial Nissan, Inc.*, 691 A.2d 1005 (Pa.Cmwth.App. 1997).

“While courts traditionally accord interpretation of agency charged with administration of act some deference, meaning of statute is essentially question of law for court and, when convinced that interpretative regulation adopted by administrative agency is unwise or **violative of legislative intent, courts disregard regulation.**” *Philadelphia Suburban Corp. v. Com., Bd. of Finance and Revenue*, 635 A.2d 116 (Pa. 1993)

“Validity of interpretative rule rests upon willingness of reviewing court to say that it tracks meaning of statute it interprets as matter of law.” *Consulting Engineers Council of Pennsylvania v. Com., State Architects Licensure Bd.*, 551 A.2d 380 (Pa.Cmwth. 1988).

The reason for the exemption in Section 901 of the act is because the design, manufacture, factory inspection, and on-site completion of the modular home is extensively regulated under the Industrialized Housing Act regulations. The Purpose of the Industrialized Housing Regulations set forth in § 145.2 is to “[e]stablish uniform procedures to assure that industrialized housing and housing components intended for sale, lease or *installation* for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by the [regulations].”

§ 145.2. Purpose.

This chapter interprets and makes specific the provisions of the Industrialized Housing Act, as provided in section 5 of the act (35 P. S. § 1651.5). This chapter establishes administrative procedures for the implementation of the act which will facilitate the use of industrialized housing and housing components in this Commonwealth consistent with safeguarding the health, safety and welfare of citizens of the Commonwealth and will carry out the purposes set forth in the legislative findings in section 2 of the act (35 P. S. § 1651.2). More specifically, this chapter is intended primarily to achieve the following objectives:

* * *

(2) Establish uniform procedures to assure that industrialized housing and housing components intended for sale, lease or *installation* for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by this chapter. In particular, this chapter establishes procedures under which the essential structural, electrical, mechanical and plumbing elements of industrialized housing and housing components are subjected to compliance assurance procedures, including inspections, in the manufacturing facilities during the manufacturing process, thereby eliminating the need for subsequent inspections at the building site of those elements which are enclosed within the walls which might otherwise be subjected to disassembly, damage or destruction in the course of onsite inspections.

The scope of the regulations reiterates the intent of the Industrialized Housing Act to “govern the design, manufacture, storage, transportation and *installation* of industrialized housing and housing components which are sold, leased or *installed*, or are intended for sale, lease or installation, for use on a site in this Commonwealth.”

§ 145.3. Scope.

Except to the extent otherwise stated in the act and the provisions of this chapter and in other applicable laws of the Commonwealth which are not inconsistent with or superseded by the act and this chapter, this chapter governs the design, manufacture, storage, transportation and *installation* of industrialized housing and housing components which are sold, leased or installed, or are intended for sale, lease or installation, for use on a site in this Commonwealth.

§ 145.36 provides that industrialized housing built to the code adopted in the Industrialized Housing Regulations (currently BOCA and CABO), is deemed to comply with the local building code for a municipality. This provision preempts local enforcement of code provisions, which are not adopted consistent with the code adopted under the Industrialized Housing Act and regulations. The home is still subject to local zoning, subdivision, development and fire district regulations. Nothing in the Act or the regulations prohibit the municipality from requiring the modular home builder to secure a

building permit or the local code enforcement officer from inspecting the home on site and particularly the installation and other work done on site. The stipulation provided for in the Act and Regulations is that when inspecting the home, the local code inspector is required to inspect to the code and standards provided for in the Industrialized Housing Act, and not to the local code or the new Pennsylvania Uniform Construction Code.

As a practical matter, there will be little difference in the codes the inspector is inspecting to. Currently, the Industrialized Housing Act adopts by reference, the BOCA and CABO code. As mentioned, the Department of Community and Economic Development is promulgating regulations to update these codes to include the new International Building and Residential Codes.

The Department of Labor and Industry has continued to make the argument, particularly to local government organizations, that without Section 403.25 of the UCC Regulation, modular housing will not be inspected at the site, or our industry will somehow be unregulated. This argument is untrue and misleading. The regulations under § 145.81(a)(2) provide for the local enforcement agency to inspect the installation of the industrialized housing and housing components at the site for nonconformity with the "installation instructions in the Building System Approval Report." These installation instructions in the Building System Approval Report are pursuant to the Industrialized Housing Act and regulations and require the inspector to inspect to that standard.

§ 145.81. Responsibilities of local enforcement agencies.

(a) Local enforcement agencies can make an important contribution to the effective administration of the act and this chapter. In addition to discharging the responsibility under local law for the enforcement of applicable locally-enacted codes and ordinances governing site preparation work and water, sewer, electrical and other energy supply connections as described more particularly in § 145.36 (relating to applicability of locally-enacted codes and ordinances), and in view of the responsibilities of local enforcement agencies under State and local law and of the responsibilities of local governments to cooperate with agencies of the Commonwealth to protect the health, safety and welfare of the citizens of the Commonwealth, local enforcement agencies shall assist the Department in enforcing the act and this chapter for industrialized housing and housing components at the time of installation in the jurisdiction of their local government in the following respects:

* * *

(2) Site inspections of the installation of the industrialized housing and housing components at the site for nonconformity with the installation instructions in the Building System Approval Report.

The modular housing industry is intensely regulated in every phase of the process, in every state we ship to. This extensive regulation is a fact of life in our industry. However, as a result of the Industrialized Housing Regulations currently in place in Pennsylvania, consumers, state regulators and municipal officials are assured that the modular home is manufactured and installed free of defect in code and structural compliance and workmanship. If you discuss this issue with state regulators, they will tell you that compared to the number of homes sold in Pennsylvania, it is rare that a problem arises with a modular home.

Act 45, Section 901 is clear in it's exemption of our industry from compliance with the UCC. Section 403.25 violates that exemption and should be removed from the final regulation. Thank you for your consideration of these concerns.

Sincerely,

STEVE SNYDER

Steve Snyder
Executive Director

CC. MBSA Members
Robert E. Nyce Executive Director
Mary S. Wyatte, Esq. Chief Counsel

SECTION 901 OF ACT 45

Section 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. 139), 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.

SECTION 403.25 OF THE PROPOSED REGULATIONS

§ 403.25. Manufactured and industrialized housing.

(a) Manufactured housing is governed by the following under section 901(a) of the act (35 P.S. § 7210.901(a)):

(1) Except as provided in subsection (a)(2), the Uniform Construction Code does not apply to manufactured housing assembled by and shipped from the manufacturer and which bears a label which certifies that it conforms to Federal construction and safety standards adopted under the Housing and Community Development Act of 1974 (42 U.S.C.A. §§ 5401-5426).

(2) Sections AE501 through AE503 and AE601 through AE605 of Appendix E of the International Residential Code adopted under the Uniform Construction Code apply to the following:

- (i) Site preparation.
- (ii) Foundation construction.
- (iii) Connection to utilities.

(3) The Uniform Construction Code applies to the following:

- (i) Alteration or repair to the unit that do not fall within 24 CFR 3280.1-3280.904 (relating to manufactured home construction and safety standards) and the manufacturer's installation instructions after assembly and shipment by the manufacturer.
- (ii) Additions to the delivery to the unit after delivery to the site.
- (iii) Construction, alteration, repair or occupancy if the manufactured housing is resold to a subsequent purchaser.
- (iv) Construction, alteration, repair or occupancy if the original purchaser relocates the manufactured housing.

(b) Industrialized housing is governed by the following under section 901(a) of the act:

(1) Except as provided in subsection (b)(2), the Uniform Construction Code does not apply to industrialized housing assembled by and shipped from the manufacturer.

(2) The Uniform Construction Code applies to all of the following:

- (i) Site preparation.
- (ii) Foundation construction.

(iii) Utilities connection.

(iv) Installation.

(v) Construction, alteration or repair to the industrialized housing unit after installation.

(v)(i) Construction, alteration, repair or occupancy if industrialized housing is resold to a subsequent purchaser.

(v)(ii) Construction, alteration, repair or occupancy if industrialized housing is relocated.

(c) The Department of Community and Economic Development may enforce and take action under the Industrialized Housing Act (35 P.S. §§ 1651.1-1651.12) and the Manufactured Housing Construction and Safety Standards Authorization Act (35 P.S. §§ 1656.1-1656.9).

Original: 2283

Marce Schulz
517 Gettysburg Street
Pittsburgh, PA

02 SEP 24 AM 5:49

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

B.O.I.S.
DIRECTOR'S OFFICE

RE: PA Uniform Construction Code

The Department of Labor and Industry has chosen not to adopt the National Electrical Code, but rather to adopt the ICC Electrical Code for commercial buildings and the International Residential Code (IRC) for 1- and 2-family residential buildings.

The National Electrical Code is the most widely adopted standard of any kind in the world. It is the basis for training programs across the country, and any electrician can quote chapter and section on most wiring standards.

For the safety of Pennsylvanians, and continuity with the rest of the country, I propose that the Department of Labor and Industry adopt the National Electrical Code as part of the UCC package, and make those standards mandatory for *all* buildings.

The electrical chapters of the International Residential Code are of particular concern. Although they are based on the NEC, they are by no means comprehensive. In fact, on page 22 of the "Quick Start Guide to the IRC" it states, "NFPA 70, the National Electrical Code may be used for wiring methods or materials not covered in these chapters."

If the National Electrical Code has not been adopted by the jurisdiction, to what do electricians refer for those methods or materials? And how would they be enforced if the code is not adopted?

In addition to adding the National Electrical Code to the ICC codes, I propose the following change to 403.21(a)(6):

The "International Residential Code," except for Part VIII, Chapters 33-42, Electrical, substituting instead the National Electrical Code.

Thank you.

Original; 2283



CITY OF PHILADELPHIA

September 24, 2002

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

Dear Mr. Sludden:

The proposed regulations adopting a Uniform Construction Code for the Commonwealth of Pennsylvania, if adopted, will adversely affect the supply of affordable family and group home child care for the many families who must respond to the welfare to work initiative.

Presently, child care stakeholders and child care advocates in collaboration with the Office of Child Care are striving to influence the large population of unlicensed and unregulated caregivers (who now operate underground) to become apart of a licensed regulatory system facilitated by the City and State. Those caregivers who presently work illegally would see no benefit to becoming regulated, nor would new providers become regulated based on the requirements of the Uniform Construction Code 403.23(b). This regulation modifies current practice in which both DPW regulations and local building codes allow for up to six children in a family child care home as a residential use. As a result of limiting Family Day Care Homes to five or fewer children, new providers would be driven underground to compete with other providers who legally serve six children without the constraints of following the criteria of the Uniform Construction Code. The number of environments that may become unsafe for children, will produce the opposite effect of the intended regulation.

To provide child care services without being a legal provider prohibits that provider from accessibility to child care supports, and grants that exist for regulated caregivers, consequently, dooming the families and children to early care and education environments that are inferior in quality and lacking accountability. Infant /toddler care is already in short supply, this new regulation would further exacerbate the availability of care for families who prefer to use home-like settings.

OFFICE OF THE MANAGING DIRECTOR

ESTELLE B. RICHMAN
MANAGING DIRECTOR

1401 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102-1683

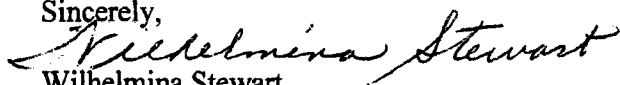
02 SEP 27 10 08 AM '02

B.O.I.S.
DIRECTOR'S OFFICE

RECEIVED - DIRECTOR'S OFFICE

The Office of Child Care urges you to reconsider these proposed regulations based on the probable decrease in child care capacity as a result of this change.

Sincerely,

A handwritten signature in cursive script that reads "Wilhelmina Stewart". The signature is written in black ink and is positioned above the printed name.

Wilhelmina Stewart
Director, Office of Child Care

Cc: Paul DiLorenzo
Director of Children's Policy



LOCAL UNION 98
International Brotherhood
of Electrical Workers

Apprentice Training for the Electrical Industry

1719-29 Spring Garden Street, 2nd Floor
Philadelphia, PA 19130

02 SEP 24 215-567-6477
FAX: 215-567-6477
B.O.I.S.
DIRECTOR'S OFFICE



Philadelphia Affiliates
PENN-DEL JERSEY CHAPTER
National Electrical
Contractors Association

Original: 2283

Charles J. Sludden, Jr., Director
Bureau of Occupational and Industrial Safety
PA Department of Labor and Industry
1613 L&I Building
Harrisburg, PA 17120

Dear Charles,

This letter is written to formally comment on the adoption of International Codes in the State of Pennsylvania. As Chairman of National Electrical Code making Panel 10 and National Instructor for NJATC/IBEW I represent the interest's wireman in the state of Pennsylvania. The present Electrical Codes up for adoption will create a tremendous amount of confusion, if accepted. The National Electrical Code is the cornerstone of our Industry, as it represents a standard of installation for all occupancies and is updated every three years by a consensus process with significant public input.

My Comment, in the form of an amendment, is as follows:

- > The International Residential Code is adopted as the building code for residential construction except for electrical wiring and related components which will be governed by the ICC Electrical Code.

Sincerely yours,

James T. Dollard Jr.
Chairman NFPA-70, CMP-10
Safety/Journeyman Training Coordinator IBEW Local 98

RECEIVED

SEP 24 1997

PHILADELPHIA

"BETTER TRAINING = FUTURE JOBS"



Original: 2283

IRRC

From: Swihart [swihart@nb.net]
Sent: Monday, September 23, 2002 10:01 PM
To: IRRC
Subject: Uniform Construction Code Regulations
September 23, 2002

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

Dear Commission Members:

The Department of Labor & Industry has asked you to review and comment on their proposed regulations for implementing the administration and enforcement of a new statewide Uniform Construction Code which the General Assembly has established with Act 45 of 1999. As an advocate for people with disabilities, I wish to call to your attention a serious deficiency in what the Department is proposing. I feel that it is completely inconsistent with the law.

The most significant concern that many of us in the disability community have about the Uniform Construction Code is how well municipalities are going to administer and enforce its accessibility requirements. The state's current accessibility law is Act 235 of 1965 as amended by Act 166 of 1988 which calls for the administration and enforcement of accessibility at the state level by the Department of Labor & Industry. As a member of the Accessibility Advisory Board for the past 13 years, I have observed firsthand that the Department has conscientiously and capably carried out this responsibility. However, things are about to change. Act 45 provides that once the regulations for the Uniform Construction Code are finally adopted, Act 235 will be repealed. From then on the accessibility provisions of the International Building Code will be used and the administration and enforcement of accessibility will be carried out by local code officials, most of whom will have had no experience with accessibility and some of whom, we fear, will not be particularly interested in it. Therefore, as the legislation was being developed to establish a statewide uniform building code, a number of us representing people with disabilities worked very hard to ensure that the legislation included language that would provide adequate state oversight of how well municipalities administered and enforced accessibility. We were concerned about this from the very beginning when Mike Waugh introduced his first bill in 1995 and it remained our concern to the very last. Assisted by our longtime ally, Senator James Rhoades, we were finally able to come to agreement with legislators, the Department, and the Governor's Office on language that we felt would provide the oversight that was needed. Only then were we willing to sign off on the bill.

The agreed-upon language is found in Section 301, subsection (5) of Act 45 where it states: "the regulations shall provide for a system of periodic compliance reviews conducted by the department and for enforcement procedures conducted by the department to ensure that code administrators are adequately administering and enforcing Chapter 11 (Accessibility) of the Uniform Construction Code and any other accessibility requirements contained in or referenced by the Uniform Construction Code." Note that in order to ensure compliance, the law gives the Department of Labor & Industry two specific responsibilities, which are, namely: (1) To perform periodic compliance reviews and (2) To carry out enforcement procedures.

The Department's response to this part of the law is found in Section § 403.103 of the proposed regulations titled "Department review." There the first responsibility is addressed by requiring the Department to review each municipal enforcement program at least once every five years (three years would be better) and submit a written report of its findings to the municipality. But, unfortunately, that is all there is. The proposed regulations totally ignore the second responsibility that the Department has for enforcement even though the law clearly states that the regulations shall provide for a system of enforcement procedures. To let the Department's responsibility end at simply submitting a report to the municipality is no kind of an enforcement program whatsoever. Nor can the investigation of complaints as called for in subsection (a) of Section § 403.103 be construed as the enforcement program required by the law. It simply is not to be found in the regulations the Department is proposing.

9/24/2002

I suggest that one way for providing the enforcement that the law calls for would be to make the following modifications to subsection (b) of Section § 403.103:

“(b) The Department will review each municipal enforcement program at least once every ~~5~~ 3 years to ensure that code administrators are adequately administering and enforcing the provisions of Chapter 11 (Accessibility) of the Uniform Construction Code and any other accessibility requirements contained in or referenced by the Uniform Construction Code. The Department will submit a written report to the municipality of its findings within 30 days of completion of its review. The municipality will have 30 days to submit a written response to the Department which describes action it will take to correct any deficiencies identified by the Department’s review and will have an additional 30 days to implement such action. The Department shall verify that corrective procedures have been put into place.”

The accessibility to buildings and facilities is so important to the lives of people with disabilities and Act 235 under the Department’s administration and enforcement has done a good job in providing it. In general, I think the administration and enforcement of the Uniform Construction Code is going to be an overwhelming task for some municipalities. I fear that without adequate state oversight, accessibility is going to be a very low priority.

I hope that you will agree with me that the regulations proposed by the Department are inconsistent with the law as they do not provide for the enforcement procedures called for by the law that will ensure that local municipalities are adequately administering and enforcing the accessibility provisions of the Uniform Construction Code.

Sincerely,

David Swihart, Acting Chair
Accessibility Advisory Board
Department of Labor & Industry

4810 Cherry Drive
Murrysville, PA 15668
Phone: (724)325-1248

9/24/2002

Original: 2283



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 23, 2002

Mr. Charles J. Sludden, Jr., Director
Bureau of Occupational and Industrial Safety
Pennsylvania Department of Labor and Industry
Room 1613 Labor and Industry Building
Harrisburg, PA 17120

Dear Mr. Sludden:

Following are our written comments on Regulation No. 02-1479, the Administrative and Enforcement Regulations for Act 45 of 1999, the statewide building code.

We appreciate the time and effort the Department has taken to meet with us and address many of our concerns with the original draft of these regulations during the proposed regulatory stage. We believe that the regulations have improved significantly from the initial draft and are now better organized and easier to understand. Again, thank you for taking time to meet with us.

With that said, we do have a number of comments and questions on the proposed regulations. We will discuss the major substantial comments first, then address specific sections with both technical and substantial comments.

We are very concerned that the Department may be overstepping its authority under Act 45 of 1999. Act 45 states in Section 104(a) that "This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth." However, in the definition of "permit" in Section 401.1, application to commercial structures in Section 403.1(a), commercial construction application in Section 403.42, and residential structure application in Section 403.62 appear to expand the act to include all sorts of minor repairs, maintenance, demolition, location, and installation. It appears that the regulations were directly derived from the International Building Code 2000 (*IBC 2000*). However, we believe that including these minor repairs, with the very narrow exceptions in Section 403.42 and Section 403.62, go beyond both the explicit language in Act 45, as well as its intent. Most of these exceptions would simply be unenforceable, especially for residential construction. We strongly urge the Department to either significantly expand the exceptions in Section 403.42 and Section 403.62 or narrow the application in the above referenced sections. Otherwise, it appears that a permit would be needed when a plumber or electrician is called to fix a minor repair if an existing pipe or wire is replaced. We believe that these provisions are simply unnecessary and enforcement of minor repairs and alterations that take place inside a home or business will be impossible. It will drive municipalities away from electing to enforce the act and create strife between the residents and the enforcing entities. This is a major deviation from the law and needs to be changed.

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PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Mr. Charles J. Sludden, Jr., Director
September 23, 2002
Page 2

On another issue, it was agreed to during the negotiations for Act 45 of 1999, as stated in Section 501(b)(5) of the act, that a municipality may choose to administer only the residential portion of the code and leave the enforcement of commercial construction with the department. Section 403.31 appears to state otherwise, that the Department is not recognizing this as an option. We strongly urge the Department to reconsider its position and make appropriate changes to bring the regulations into compliance with the act. There are many townships that simply do not have the resources to enforce the commercial and industrial portion of the act and will elect out rather than enforce the entire act.

Another major concern with these regulations is the inconsistency in the use of terms throughout the act. For example, several terms are used interchangeably for the individual requesting or holding a UCC permit. The term varies significantly throughout the document, in some cases throughout a single section, and could present problem with enforcement. One example is Section 403.63, where four different terms are used: building permit applicant in subsection (a), permit holder or his duly authorized agent in (b), permit holder in (c), and building permit holder in (g). Clarity and consistency is sorely missing from this document. **We have attached a list of the sections where the interchangeable terms are used for permit holder.**

We suggest that a single term be defined and used throughout the regulations. While we are open to other options, we suggest the following be used: *Permit applicant*-An individual or entity that applies for and receives a building permit. The term shall include a permit holder, owner, or owner's agent.

Another example of the inconsistency throughout the document that creates confusion for the reader is the interchangeable use of building code official/construction code administrator. In Section 401.1, the definition of a "permit" states that the document will be "*issued by a code administrator*". This definition conflicts with the definitions of "code administrator" in the finalized Training and Certification Regulations and the definition of "building code official" in the proposed regulation. Under the definition for building code official, it states specifically that this official shall issue the permit. This is not true for the definition of "code administrator", which does not include permit issuance. Under the definitions, a building code official may be a code administrator since both are defined to be "construction code officials", yet a code administrator cannot be a building code official.

This confusion is further exemplified in the regulation where the terms building code official and code administrator are used interchangeably even though they are defined differently. We contend that this confusion will lead to problems in the administration and enforcement of the UCC. For example, Section 403.1(e) states that a "code administrator" grants an exemption to the electrical provisions of the UCC. Since the law allows an electrical exemption for recognized religious sects from the building permit and regulation requirements,

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Mr. Charles J. Sludden, Jr., Director

September 23, 2002

Page 3

should it not be the "building code official" that grants the exemption, since the building code official issues the permit under the definition of "permit"? Also, Section 403.24 (historic structures) states that the building code official may exclude these structures from compliance with the UCC. We contend that the regulations should be reviewed to correct this potential headache for municipalities.

In addition, other terms are randomly used throughout the document, but are never defined. If a term is going to be used, such as "facility", it should be defined and then used consistently throughout the document. Also, there should be consistency between the parallel sections under commercial construction and residential construction, unless differences are necessary.

We support the language the Department has used for manufactured and industrialized housing in Sections 403.25. While the act exempts these structures from compliance, the footers, foundation, and connections to utilities are made outside of the factory and need to comply with a uniform standard.

We also support the use of a minimum uniform permit application in Sections 403.42(b) and 403.62(b) as developed by the Department of Community and Economic Development, as long as this form remains a minimum form. Municipalities must be able to attach an addendum to the permit form without seeking the permission of the Department. Also, this form should be used by the Department and third-party agencies to ensure consistency in record-keeping.

We support the Pennsylvania Housing Research Center's Code for the Conservation of Space Conditioning Energy for Housing in Pennsylvania. We believe it satisfies the requirement of Act 45 for an alternative prescriptive approach to the energy conservation code performance standards in the UCC.

We support the language in Section 403.22 on Health Care Facilities. This sets up standards for health care facilities and although the Department of Health regulates certain aspects of these facilities, the structure itself must be built to the UCC like other types of structures.

Also, we raise the issue of Section 501(d) of the act. The regulations are silent on this section. We contend that if a municipality is not enforcing the UCC, then the municipality may not prohibit construction code officials from performing inspections within their jurisdiction if the official meets the requirements of chapter 7.

Finally, we must bring to your attention an oversight with the issue of third-party agencies and their ability to contract for services. The Training and Certification Regulations, Section 401.11(a), states who the third-party agencies may contract with and municipalities were

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Mr. Charles J. Sludden, Jr., Director

September 23, 2002

Page 4

inadvertently left out. In our discussions with the Department during the approval process of the Training and Certification Regulations it was agreed that this oversight would be addressed in the Administration and Enforcement Regulations if we refrained from asking the Independent Regulatory Review Commission for a denial. We do not see the correction in the Administration and Enforcement Regulations and urge the Department to make this necessary correction.

Following are comments on specific sections of the regulations. Some are substantial and some are technical. Most of the substantial comments were alluded to already, but the sections show clear examples of the problems.

Section 401.1. Board of appeals definition. Why is the board of appeals given authority to grant extensions of time? It makes more sense for the building code official to grant extensions of time. If the extension is denied, it could be appealed to the board of appeals.

Section 401.1. Building Code official definition. Insert "code" between "building" and "enforcement" on line 2.

Section 401.1. Commercial construction. Why is "facility" included here? It is not defined anywhere in the act and is used inconsistently.

Section 401.1. Permit. Why is "location, repair, and maintenance" included here, particularly maintenance? By definition it is very minor and should not require a permit. Must a plumber/electrician/etc. show up at a residence to fix a leak or an electrical short with a permit?

Section 401.1. Residential building. Why does this say "and the dwelling's accessory structures?" Accessory structures are separate and not part of a residential building. They are also exempt from the UCC if 500 square feet or less.

Section 401.2(b). Delete the phrase "The building code official for". The statement that the "building code official" must make the fee schedule available implies that if the official is not present, the schedule will not be available. The administering entity should be responsible for establishing and providing the fee schedule to the public, whether it is a municipality or a third-party agency.

Section 403.1(a). Again, why is "location and maintenance" included in the UCC regulations? Also, why are structures that are "not legally occupied" referenced? All existing structures are exempt except in the case of major improvements, etc. See Section 403.42(a), which is a similar, but better list.

Section 403.1(e)(1). "A member of" should be replaced with "The applicant".

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Section 403.65. See comments for Section 403.47.

Section 403.82 (3): This section uses the term "building code official or his designee". This is the first time the reference "or his designee" is used in relation to the building code official. Why this new designation? One could argue that a construction code official could inspect the structure without this designation. The concern is how will other sections be interpreted where "or his designee" is not referenced.

Section 403.83(c). Again, who is responsible for granting extensions of time? It should be the building code official. If the request is denied, it can be appealed to the board of appeals.

Section 403.85(a) and (b). Replace "building code official" with "municipality or third-party agency". The enforcing agency, NOT the individual, must be responsible for maintaining records. Also, (b) should reference Act 100 of 200, the new open records law.

Also, why does every single record need to be retained for the life of the building? Permits and orders should be maintained, and possibly the plans for the building, but not every piece of paper in the file.

Section 403.101(d). The Department should develop a form for this information to promote consistency.

Section 403.101(g). Eliminate the reference to subsection (b).

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Section 403.101 (i): The reference to section 401.3 is incorrect, it should be replaced with Section 401.2a.

Section 403.101(m): What does "under this part" mean?

Section 403.102(f)(3): The name of the building or structure should be replaced with "type" of structure. L&I should provide a sample form for this notification to promote consistency.

Section 403.121(b): Again, who is granting extensions of time, the building code official or the board of appeals?

Section 403.122(a): We question why an appeal must be filed with the building code official? We contend that a code administrator or even the construction code official could handle the filing of a variance or extension of time or appeal under their "administrative and enforcement" functions. We contend that the applicant should file the petition on a form provided by the municipality, with the municipality.

Section 403.122(c): Does this subsection allow an applicant to continue with construction, demolition, or renovation until the appeal or variance is heard? One could argue that if it is not a safety issue and the construction, etc. is completed, what is the need for the hearing? This section automatically gives the applicant an extension of time during the period that he is waiting for the hearing.

Thank you for the opportunity to comment on these important regulations. We look forward to working with you in addressing these concerns.

Sincerely,

Elam M. Herr
Assistant Executive Director

EMH:ls

Enclosure

cc: Independent Regulatory Review Commission
Senator Gerlach
Senator Logan
Representative Herman
Representative Cawley

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Page	13	Section 403.1	(c)	permit holder
	14		(e) (1) (i)	applicant
	14		(e) (1) (iii)	applicant
	14		(e) (1) (iv)	applicant / applicant's
	14		(e) (3)	applicant
	15		(e) (3)	applicant
	17	Section 403.21	(e)	permit applicant
	17	Section 403.22	(c)	applicant
	18		(d)	applicant
	23	Section 403.42	(a)	owner or authorized agent
	23		(b)	applicant
	26		(f)	permit applicant / applicant
	26		(i)	applicant
	27		(j)	applicant
	28		(m)	permit applicant
	28		(n)	permit applicant
	28		(o)	permit applicant
	28		(q)	permit applicant
	29	Section 403.43	(a)	applicant
	29		(c)	applicant
	29		(e)	applicant
	29		(f)	owner
	30		(g)	permit applicant
	30		(h)	owner
	30		(i)	permit applicant
	30	Section 403.45	(c)	permit holder or his duly authorized agent
	31		(d)	permit holder
	32	Section 403.46	(d)	permit applicant / building owner
	33	Section 403.62	(a)	owner or authorized agent
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	35		(e)	applicant
	35		(e) (3)	applicant
	36	Section 403.63	(a)	building permit applicant
	36		(b)	permit holder or his duly authorized agent
	36		(c)	permit holder
	36		(g)	building permit holder
	37	Section 403.64	(b) (2)	owner
	38	403.64	(d)	permit applicant
	38		(d)	owner
	38		(e)	building permit holder
	39	Section 403.81	(b)	permit owner or the owner's agent
	39		(c)	person
	39	Section 403.82	(1)	owner or owner's agent

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- 39 (2) owner or owner's agent
- 39 (3) owner
- 39 Section 403.83 (a) owner
- 40 (b) owner / owner or owner's agent
- 40 (c) owner
- 40 (d) permit owner / owner
- 40 (f) owner
- 41 (g) owner or owner's agent
- 41 Section 403.84 (c) owner or owner's agent / owner, agent or person
- 41 (e) owner
- 41 (f) owner
- 42 Section 403.86 (b) occupant
- 42 (c) owner or agent
- 46 Section 403.102 (f) permit applicant
- 48 Section 403.122 (a) owner or owner's agent
- 48 (d) owner
- 48 (e) applicant
- 49 (h) owner
- 49 (j) owner
- 49 (k) owner
- 50 Section 403.141 (e) owner
- 51 Section 403.142 (d) (1) owner or owner's agent
- 51 (d) (4) owner
- 51 (d) (5) owner
- 52 (d) (8) owner or owner's agent

Elevators continues the same format, should we list them also.

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PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 23, 2002

Mr. Charles J. Sludden, Jr., Director
Bureau of Occupational and Industrial Safety
Pennsylvania Department of Labor and Industry
Room 1613 Labor and Industry Building
Harrisburg, PA 17120

Dear Mr. Sludden:

Following are our written comments on Regulation No. 02-1479, the Administrative and Enforcement Regulations for Act 45 of 1999, the statewide building code.

We appreciate the time and effort the Department has taken to meet with us and address many of our concerns with the original draft of these regulations during the proposed regulatory stage. We believe that the regulations have improved significantly from the initial draft and are now better organized and easier to understand. Again, thank you for taking time to meet with us.

With that said, we do have a number of comments and questions on the proposed regulations. We will discuss the major substantial comments first, then address specific sections with both technical and substantial comments.

We are very concerned that the Department may be overstepping its authority under Act 45 of 1999. Act 45 states in Section 104(a) that "This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth." However, in the definition of "permit" in Section 401.1, application to commercial structures in Section 403.1(a), commercial construction application in Section 403.42, and residential structure application in Section 403.62 appear to expand the act to include all sorts of minor repairs, maintenance, demolition, location, and installation. It appears that the regulations were directly derived from the International Building Code 2000 (*IBC 2000*). However, we believe that including these minor repairs, with the very narrow exceptions in Section 403.42 and Section 403.62, go beyond both the explicit language in Act 45, as well as its intent. Most of these exceptions would simply be unenforceable, especially for residential construction. We strongly urge the Department to either significantly expand the exceptions in Section 403.42 and Section 403.62 or narrow the application in the above referenced sections. Otherwise, it appears that a permit would be needed when a plumber or electrician is called to fix a minor repair if an existing pipe or wire is replaced. We believe that these provisions are simply unnecessary and enforcement of minor repairs and alterations that take place inside a home or business will be impossible. It will drive municipalities away from electing to enforce the act and create strife between the residents and the enforcing entities. This is a major deviation from the law and needs to be changed.

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On another issue, it was agreed to during the negotiations for Act 45 of 1999, as stated in Section 501(b)(5) of the act, that a municipality may choose to administer only the residential portion of the code and leave the enforcement of commercial construction with the department. Section 403.31 appears to state otherwise, that the Department is not recognizing this as an option. We strongly urge the Department to reconsider its position and make appropriate changes to bring the regulations into compliance with the act. There are many townships that simply do not have the resources to enforce the commercial and industrial portion of the act and will elect out rather than enforce the entire act.

Another major concern with these regulations is the inconsistency in the use of terms throughout the act. For example, several terms are used interchangeably for the individual requesting or holding a UCC permit. The term varies significantly throughout the document, in some cases throughout a single section, and could present problem with enforcement. One example is Section 403.63, where four different terms are used: building permit applicant in subsection (a), permit holder or his duly authorized agent in (b), permit holder in (c), and building permit holder in (g). Clarity and consistency is sorely missing from this document. **We have attached a list of the sections where the interchangeable terms are used for permit holder.**

We suggest that a single term be defined and used throughout the regulations. While we are open to other options, we suggest the following be used: *Permit applicant*-An individual or entity that applies for and receives a building permit. The term shall include a permit holder, owner, or owner's agent.

Another example of the inconsistency throughout the document that creates confusion for the reader is the interchangeable use of building code official/construction code administrator. In Section 401.1, the definition of a "permit" states that the document will be "*issued by a code administrator*". This definition conflicts with the definitions of "code administrator" in the finalized Training and Certification Regulations and the definition of "building code official" in the proposed regulation. Under the definition for building code official, it states specifically that this official shall issue the permit. This is not true for the definition of "code administrator", which does not include permit issuance. Under the definitions, a building code official may be a code administrator since both are defined to be "construction code officials", yet a code administrator cannot be a building code official.

This confusion is further exemplified in the regulation where the terms building code official and code administrator are used interchangeably even though they are defined differently. We contend that this confusion will lead to problems in the administration and enforcement of the UCC. For example, Section 403.1(e) states that a "code administrator" grants an exemption to the electrical provisions of the UCC. Since the law allows an electrical exemption for recognized religious sects from the building permit and regulation requirements,

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should it not be the "building code official" that grants the exemption, since the building code official issues the permit under the definition of "permit"? Also, Section 403.24 (historic structures) states that the building code official may exclude these structures from compliance with the UCC. We contend that the regulations should be reviewed to correct this potential headache for municipalities.

In addition, other terms are randomly used throughout the document, but are never defined. If a term is going to be used, such as "facility", it should be defined and then used consistently throughout the document. Also, there should be consistency between the parallel sections under commercial construction and residential construction, unless differences are necessary.

We support the language the Department has used for manufactured and industrialized housing in Sections 403.25. While the act exempts these structures from compliance, the footers, foundation, and connections to utilities are made outside of the factory and need to comply with a uniform standard.

We also support the use of a minimum uniform permit application in Sections 403.42(b) and 403.62(b) as developed by the Department of Community and Economic Development, as long as this form remains a minimum form. Municipalities must be able to attach an addendum to the permit form without seeking the permission of the Department. Also, this form should be used by the Department and third-party agencies to ensure consistency in record-keeping.

We support the Pennsylvania Housing Research Center's Code for the Conservation of Space Conditioning Energy for Housing in Pennsylvania. We believe it satisfies the requirement of Act 45 for an alternative prescriptive approach to the energy conservation code performance standards in the UCC.

We support the language in Section 403.22 on Health Care Facilities. This sets up standards for health care facilities and although the Department of Health regulates certain aspects of these facilities, the structure itself must be built to the UCC like other types of structures.

Also, we raise the issue of Section 501(d) of the act. The regulations are silent on this section. We contend that if a municipality is not enforcing the UCC, then the municipality may not prohibit construction code officials from performing inspections within their jurisdiction if the official meets the requirements of chapter 7.

Finally, we must bring to your attention an oversight with the issue of third-party agencies and their ability to contract for services. The Training and Certification Regulations, Section 401.11(a), states who the third-party agencies may contract with and municipalities were

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inadvertently left out. In our discussions with the Department during the approval process of the Training and Certification Regulations it was agreed that this oversight would be addressed in the Administration and Enforcement Regulations if we refrained from asking the Independent Regulatory Review Commission for a denial. We do not see the correction in the Administration and Enforcement Regulations and urge the Department to make this necessary correction.

Following are comments on specific sections of the regulations. Some are substantial and some are technical. Most of the substantial comments were alluded to already, but the sections show clear examples of the problems.

Section 401.1. Board of appeals definition. Why is the board of appeals given authority to grant extensions of time? It makes more sense for the building code official to grant extensions of time. If the extension is denied, it could be appealed to the board of appeals.

Section 401.1. Building Code official definition. Insert "code" between "building" and "enforcement" on line 2.

Section 401.1. Commercial construction. Why is "facility" included here? It is not defined anywhere in the act and is used inconsistently.

Section 401.1. Permit. Why is "location, repair, and maintenance" included here, particularly maintenance? By definition it is very minor and should not require a permit. Must a plumber/electrician/etc. show up at a residence to fix a leak or an electrical short with a permit?

Section 401.1. Residential building. Why does this say "and the dwelling's accessory structures?" Accessory structures are separate and not part of a residential building. They are also exempt from the UCC if 500 square feet or less.

Section 401.2(b). Delete the phrase "The building code official for". The statement that the "building code official" must make the fee schedule available implies that if the official is not present, the schedule will not be available. The administering entity should be responsible for establishing and providing the fee schedule to the public, whether it is a municipality or a third-party agency.

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(7) There is no similar section listed under commercial. Why is this here?

(8) This reads different from the similar provision under commercial.

Section 403.65. See comments for Section 403.47.

Section 403.82 (3): This section uses the term "building code official or his designee". This is the first time the reference "or his designee" is used in relation to the building code official. Why this new designation? One could argue that a construction code official could inspect the structure without this designation. The concern is how will other sections be interpreted where "or his designee" is not referenced.

Section 403.83(c). Again, who is responsible for granting extensions of time? It should be the building code official. If the request is denied, it can be appealed to the board of appeals.

Section 403.85(a) and (b). Replace "building code official" with "municipality or third-party agency". The enforcing agency, NOT the individual, must be responsible for maintaining records. Also, (b) should reference Act 100 of 200, the new open records law.

Also, why does every single record need to be retained for the life of the building? Permits and orders should be maintained, and possibly the plans for the building, but not every piece of paper in the file.

Section 403.101(d). The Department should develop a form for this information to promote consistency.

Section 403.101(g). Eliminate the reference to subsection (b).

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Mr. Charles J. Sludden, Jr., Director
September 23, 2002
Page 9

Section 403.101 (f): The reference to section 401.3 is incorrect, it should be replaced with Section 401.2a.

Section 403.101(m). What does "under this part" mean?

Section 403.102(f)(3). The name of the building or structure should be replaced with "type" of structure. L&I should provide a sample form for this notification to promote consistency.

Section 403.121(b). Again, who is granting extensions of time, the building code official or the board of appeals?

Section 403.122(a). We question why an appeal must be filed with the building code official? We contend that a code administrator or even the construction code official could handle the filing of a variance or extension of time or appeal under their "administrative and enforcement" functions. We contend that the applicant should file the petition on a form provided by the municipality, with the municipality.

Section 403.122(c). Does this subsection allow an applicant to continue with construction, demolition, or renovation until the appeal or variance is heard? One could argue that if it is not a safety issue and the construction, etc. is completed, what is the need for the hearing? This section automatically gives the applicant an extension of time during the period that he is waiting for the hearing.

Thank you for the opportunity to comment on these important regulations. We look forward to working with you in addressing these concerns.

Sincerely,

Elam M. Herr
Assistant Executive Director

EMH:ls

Enclosure

cc: Independent Regulatory Review Commission
Senator Gerlach
Senator Logan
Representative Herman
Representative Cawley

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Original: 2283

Page	13	Section 403.1	(c)	permit holder
	14		(e) (1) (i)	applicant
	14		(e) (1) (iii)	applicant
	14		(e) (1) (iv)	applicant / applicant's
	14		(e) (3)	applicant
	15		(e) (3)	applicant
	17	Section 403.21	(e)	permit applicant
	17	Section 403.22	(c)	applicant
	18		(d)	applicant
	23	Section 403.42	(a)	owner or authorized agent
	23		(b)	applicant
	26		(f)	permit applicant / applicant
	26		(i)	applicant
	27		(j)	applicant
	28		(m)	permit applicant
	28		(n)	permit applicant
	28		(o)	permit applicant
	28		(q)	permit applicant
	29	Section 403.43	(a)	applicant
	29		(c)	applicant
	29		(e)	applicant
	29		(f)	owner
	30		(g)	permit applicant
	30		(h)	owner
	30		(i)	permit applicant
	30	Section 403.45	(c)	permit holder or his duly authorized agent
	31		(d)	permit holder
	32	Section 403.46	(d)	permit applicant / building owner
	33	Section 403.62	(a)	owner or authorized agent
	33		(b)	applicant
	35		(e)	applicant
	35		(e) (3)	applicant
	36	Section 403.63	(a)	building permit applicant
	36		(b)	permit holder or his duly authorized agent
	36		(c)	permit holder
	36		(g)	building permit holder
	37	Section 403.64	(b) (2)	owner
	38	403.64	(d)	permit applicant
	38		(d)	owner
	38		(e)	building permit holder
	39	Section 403.81	(b)	permit owner or the owner's agent
	39		(c)	person
	39	Section 403.82	(1)	owner or owner's agent

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

39	(2)	owner or owner's agent
39	(3)	owner
39	Section 403.83 (a)	owner
40	(b)	owner / owner or owner's agent
40	(c)	owner
40	(d)	permit owner / owner
40	(f)	owner
41	(g)	owner or owner's agent
41	Section 403.84 (c)	owner or owner's agent / owner, agent or person
41	(e)	owner
41	(f)	owner
42	Section 403.86 (b)	occupant
42	(c)	owner or agent
46	Section 403.102 (f)	permit applicant
48	Section 403.122 (a)	owner or owner's agent
48	(d)	owner
48	(e)	applicant
49	(h)	owner
49	(j)	owner
49	(k)	owner
50	Section 403.141 (e)	owner
51	Section 403.142 (d) (1)	owner or owner's agent
51	(d) (4)	owner
51	(d) (5)	owner
52	(d) (8)	owner or owner's agent

Elevators continues the same format, should we list them also.

73 4 11 02 0 0 0 0 0 0

Original: 2283

Abela, Brian

From: Sludden, Charles
Sent: Monday, September 23, 2002 11:46 AM
To: Abela, Brian; Holzman, James A. (GC-LI)
Subject: FW: U.C.C. Comments

FYI

-----Original Message-----

From: vze2phye [mailto:vze2phye@verizon.net]
Sent: Sunday, September 22, 2002 6:41 PM
To: Csludden@state.pa.us
Subject: U.C.C. Comments

Chuck:

The following are additional issues, which I feel need to be addressed within the Uniform Construction Code's Regulations.

Jerry

1. §401.2(b)(4), of the *Proposed Regulations* outlines a \$200.00 fee is to be charged for an "Interim Accessibility Plan Review and Inspection". However, this term is not defined, nor is it expanded upon to show what this Interim Accessibility encompasses.
2. Likewise, §403.1(a) makes reference that the Uniform Construction Code applies to all existing structures that are not "Legally Occupied", yet does not give a definition of same.
3. §401.2(g) indicates that there will be a \$100.00 fee applied to petition either the Industrial Board or the Accessibility Advisory Board. Clarification needs to be made as to if this fee is **per request or per appearance before the Board.**
4. Section 701(k) of the 'Act' mandates: (k) Insurance. - The department shall promulgate regulations requiring code administrators in third-party agencies to carry minimum levels of liability insurance. However, nowhere within the "*Proposed Regulations*" is there a reference to this insurance issue.

Original: 2283



September 23, 2002

Mr. Charles Sludden, Director
Bureau of Occupational & Industrial Safety
1613 Labor & Industry Bldg
Harrisburg, PA 17120

Dear Chuck:

On behalf of the Western Pennsylvania Chapter of the National Electrical Contractors Association, we are concerned to hear that Pennsylvania is considering adoption of the entire package of ICC building codes, including the International Residential Code (IRC) and so-called ICC Electrical Code as part of the package of regulations presently being promulgated for the Uniform Construction Code.

NECA supports direct adoption of the *National Electrical Code* (ANSI/NFPA 70-2002) as the standard for safe electrical installations. There is no benefit to adopting the *NEC* by reference through the ICC building codes, and doing so may lead to public safety problems in the future. Consider the following:

Misleading. The ICC has consistently described its electrical code as an administrative document that merely adopts the *National Electrical Code* by reference. But the ICC Electrical Code (and the IRC) both contain technical requirements that differ from those of the *NEC*. Back in 1999, the International Code Council even proposed adopting the Canadian Electrical Code for regulatory purposes in this country—a highly impractical and potential hazardous approach, to anyone familiar with the U.S. electrical safety system.

If it works, why fix it? The *National Electrical Code* has a century-long track record of ensuring electrical safety in this country. It has been called the world's best-known and most professional building code. The *NEC* is updated every three years to keep it current with new technology and construction methods. Electrical professionals can't think of a reason to exchange the proven *NEC* for an unproven, competing code.

Competing codes increase costs. The *National Electrical Code* is already adopted by most states and municipalities as wiring rules. Current electrician apprenticeship programs are based on the *NEC*. Pennsylvania consulting engineers are familiar with and accustomed to working with *NEC* rules. If a different electrical code is adopted, re-training and re-education for labor, contractors, and specifiers will be needed on a massive scale.

Increased public costs. Adopting electrical codes other than the *NEC* will increase costs for state and local building departments that must purchase these new books and re-train their personnel on new non-*NEC*

electrical requirements. This is a major concern for the inspectors' groups across the country on a regular basis.

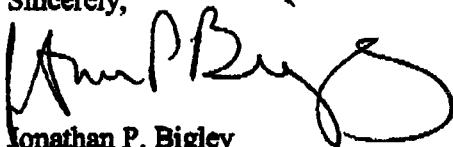
Importance of uniform codes. The primary goal of the Statewide Building Code legislation was to provide for a uniformity of codes across the Commonwealth. It is vital to have uniform wiring rules in metropolitan areas made up of multiple cities, towns, and counties. Electricity acts the same regardless of official boundaries, and having consistent rules everywhere adds to public safety. Adopting IRC (which contains electrical rules) and ICC Electrical Code even on a statewide basis will potentially cause problems in metropolitan areas that overlap on state borders.

Restrictive procedures. The *National Electrical Code* revision process is open and consensus-based. All interests can participate including engineers, contractors, inspectors, safety professional, testing laboratories, consumer experts, and building owner-managers. By contrast, the ICC code-development procedures are very restrictive, and participation is limited to their own members. There aren't even any electrical inspectors on the committee that approves the ICC Electrical Code. Nor are there any electrical engineers or contractors.

NECA's recommendation. NECA urges the Commonwealth of Pennsylvania to adopt the 2002 *National Electrical Code* as its wiring rules. We can see no advantage—and the possible serious disadvantages described above—to adopting the *NEC* by reference as part of a "package" of other, non-electric building codes. The *NEC* is a complete stand-alone regulatory document suitable for adoption by itself. It has a century-long record of safety and is developed by public procedures that allow all technical interests with a legitimate interest to participate.

Supporting material. Copies of various articles and materials that explain the history of this issue in greater depth are enclosed with this letter. NECA appreciates the opportunity to submit its views on this important public safety issues, for consideration by the Department of Labor & Industry.

Sincerely,



Jonathan P. Bigley
Senior Vice President
Government Relations

JPB/jvb

Enclosures

Original; 2283

September 23, 2002

20020923 11:40:05

Rhea Starr
512 Bean Blossom Dr.
Lancaster, PA 17603

Mr. Charles J. Sludden, Director
Bureau of Occupational and Industrial Safety, Department of Labor and Industry
Room 1613, Labor and Industry Bldg.,
7th and Forster Streets
Harrisburg, PA 17120 (L) 717/787-8363

Dear Mr. Sludden:

I am writing to express my concerns to the proposed regulations adopting a Uniform Construction Code for the Commonwealth of Pennsylvania. If adopted, these regulations will significantly affect the supply of affordable child care, especially for infants and toddlers for whom care is already in short supply.

Section 403.23 of the proposed regulations would create new building standards for family and group child care programs. 403.23(b) would require a family child care home in which care is provided to six children to meet commercial building standards, either as an Educational use or I-4 use, depending on the age of the child. This regulation modifies current practice, in which both DPW regulations and local building codes allow care for up to six children in a family child care home as a residential use.

Section 403.23 (d) would require a group child care home, in which care is provided to 7 to 12 children, to meet the more stringent I-4 requirements if one of those children is under 2 and ½ years of age.

Finally, by adopting the International Building Code, all new child care centers in which care is provided for six or more 2 ½ year old children would need to meet the I-4 construction standards. These standards are cost prohibitive for child care programs and will severely affect the supply of child care programs in the future.

I understand the intent of the regulations is to ensure protection of young children in out of home settings. However, I believe the proposed rules go beyond what is necessary to ensure a child or children can be safely removed in a fire. Moreover, I fear that the response will be more illegal care, hidden from any government oversight, and as a result, environments that are less safe, the opposite result of the intent of these regulations.

~~I~~ We believe the construction code should be consistent with Department of Public Welfare (DPW) family child care regulations, which allow up to six children in a home. DPW regulations are based upon sound research in health and safety practice. In addition, DPW regulations limit the number of infants in a family home to two, which helps to ensure safe exit in case of fire.

The proposed regulations are also more restrictive than those recommended in Caring for Our Children, promulgated by the American Academy of Pediatrics, which is the industry standard for child care programs nationally.

The group regulations are more restrictive than the International Building Code. The IBC requires child care centers to meet I-4 requirements if they serve more than five children under 2 1/2, not one as is suggested in this rulemaking. In fact, requirements in homes would be more restrictive than group child care in a commercial building.

Each of these provisions would create extreme hardship for child care programs and would result in fewer new family and group child care homes, and as a consequence, a decline in the availability of care for young children. The cost of meeting the construction and fire safety provisions of the E or I-4 use groups would be prohibitive for family child care providers and for group providers who wish to care for young children. Home-based child care, whether in a family or group child care home, is preferred by many parents who appreciate the option of a less institutional, more home-like setting, especially for young children. The proposed regulations would further undermine the already precarious financial condition of home-based child care, making it less feasible for new programs to open, leaving less care for Pennsylvania's children.

I urge you to reconsider these proposed regulations as they will negatively impact the care of children in Pennsylvania.

Sincerely,

Rhea Starr
Rhea Starr

(F) 717-290-6955

Original: 2283

Abela, Brian

From: Sludden, Charles
Sent: Monday, September 23, 2002 10:38 AM
To: Abela, Brian; Holzman, James A. (GC-LI)
Subject: FW: Comments on UCC Proposed Regulations

FYI Chuck

-----Original Message-----

From: Seville, Jerry
Sent: Friday, September 20, 2002 2:56 PM
To: Sludden, Charles
Cc: Swihart David (E-mail); Trusky Bill (E-mail)
Subject: Comments on UCC Proposed Regulations

Chuck:

I am writing you on behalf of the Pennsylvania Accessibility Advisory Board to provide supporting reasons for their recommendation that the Department adopt Appendix E of the IBC 2000, as part of the Uniform Construction Code. (To be followed by the info in your attachment.)

The adoption of Appendix 'E', *Supplemental Accessibility Requirements*, should be made to assurance that the degree of accessibility is not diminished from what is currently being enforced within the Commonwealth. Otherwise, a number of features and elements would no longer be required to be accessible.

Some examples are:

1. The *I.B.C.* (International Building Code) classifies Hotels / Motels as "R-1" occupancy classification and while §1107.5.1 of Chapter 11 mandates minimum number of accessible rooms to furnish within a hotel/motel, these rooms deal with mobility impairments and not 'hearing' impairments. Hearing impairments would be addressed under appendix E.

§E1104.3 Communication features.

In transient lodging facilities, sleeping accommodations with accessible communication features shall be provided in accordance with Table E1104.3 and shall comply with Section E1104.3.1.

§E1104.3.1 Notification devices.

Visual notification devices shall be provided to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to visual alarm signal appliances. Permanently installed telephones shall have volume controls and an electrical outlet complying with ICC/ANSI A117.1 located within 48 inches (1219 mm) of the telephone to facilitate the use of a TTY.

2. §E1105.1 Water coolers.

Where water coolers are provided, at least 50 percent, but not less than one, of such units provided on each floor shall comply with ICC/ANSI A117.1.

The references made within the *2000 International Plumbing Code* to ASME 112.19.1, ASME 112.19.2, and ASME 112.19.9 deal with the mechanical aspects of the installation and not the accessibility of.

3. §E1105.2 Portable toilet and bathing rooms.
Where multiple single-user portable toilet or bathing units are clustered at a single location, at least 5 percent, but not less than one toilet unit or bathing unit at each cluster, shall comply with ICC/ANSI A117.1
4. §E1105.3 Laundry equipment.
Where washing machines or clothes dryers are provided in spaces required to be accessible, at least one of each type shall comply with ICC/ANSI A117.1.
5. §E1105.4 Vending machines and similar equipment.
In restaurants and cafeterias, spaces for vending machines and similar equipment shall comply with ICC/ANSI A117.1.
6. §E1105.5 Automatic teller machines and fare machines.
Where automatic teller machines or self-service fare vending, collection, or adjustment machines are provided, at least one machine of each type at each location where such machines are provided shall be accessible. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type shall be accessible.
7. §E1106.1 Telephones. Both wheelchair accessible and hearing impaired.
8. Although §1109 of the *I.B.C.* addresses signage: It only requires parking spaces, passenger loading zones, areas of refuge (a.k.a. - areas of rescue assistance), restrooms, accessible entrances where all are not accessible, check out aisles and fitting rooms. Permanently assigned rooms, i.e. rooms in a hotel, would not be required to have raised character Braille under §1109. This feature is picked-up by §E1107.2 of Appendix E.
9. "Bus Stops" are not addressed under the *I.B.C.*
10. The *I.B.C.* does not address the accessibility features for 'Transportation Facilities'. i.e. Tactile signage to identify the station, accessibility of fare machines, height differential of rail-to-platform, track crossings, public address systems and clocks to name a few.
11. Similar features of 'Airports' are not addressed within the *I.B.C.*

Abela, Brian

From: Sludden, Charles
Sent: Monday, September 23, 2002 10:40 AM
To: Abela, Brian; Holzman, James A. (GC-LI)
Subject: FW: Berks Homebased Child Care Providers Association

FYI Chuck

-----Original Message-----

From: BHCCPA (Cathy) [mailto:bhccpa@comcast.net]
Sent: Friday, September 20, 2002 3:08 PM
To: csludden@dli.state.pa.us
Subject: Berks Homebased Child Care Providers Association

----- Original Message -----

From: BHCCPA (Cathy)
To: csludden@dli.state.pa.us
Sent: Friday, September 20, 2002 3:06 PM
Subject: Berks Homebased Child Care Providers Association

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

Dear Mr. Sludden:

The undersigned organizations write to express our objection to the proposed regulations adopting a Uniform Construction Code for the Commonwealth of Pennsylvania. Specifically, we object to the provisions relating to family and group child care programs. If adopted, these regulations will significantly affect the supply of affordable child care, especially for infants and toddlers for whom care is already in short supply.

Section 403.23 of the proposed regulations would create new building standards for family and group child care programs. 403.23(b) would require a family child care home in which care is provided to six children to meet commercial building standards, either as an Educational use or I-4 use, depending on the age of the child. This regulation modifies current practice, in which both DPW regulations and local building codes allow care for up to six children in a family child care home as a residential use.

Section 403.23 (d) would require a group child care home, in which care is provided to 7 to 12 children, to meet the more stringent I-4 requirements if one of those children is under 2 and ½ years of age.

We believe the construction code should be consistent with Department of Public Welfare (DPW) family child care regulations, which allow up to six children in a home. DPW regulations are based upon sound research in health and safety practice. In addition, DPW regulations limit the number of infants in a family home to two, which helps to ensure safe exit in case of fire.

The group regulations are more restrictive than the International Building Code. The IBC requires child care centers to meet I-4 requirements if they serve more than five children under 2 1/2, not one as is suggested in this rulemaking. In fact, requirements in homes would be more restrictive than group child care in a commercial building.

Both of these provisions would create extreme hardship for child care programs and would result in fewer new family and group child care homes, and as a consequence, a decline in the availability of care for young children. The cost of meeting the construction and fire safety provisions of the E or I-4 use

9/23/2002

groups would be prohibitive for family child care providers and for group providers who wish to care for young children. Home-based child care, whether in a family or group child care home, is preferred by many parents who appreciate the option of a less institutional, more home-like setting, especially for young children. The proposed regulations would further undermine the already precarious financial condition of home-based child care, making it less feasible for new programs to open, leaving less care for Pennsylvania's children.

We fully understand the intent of the regulations is ensure protection of young children in out of home settings. However, we believe the proposed rules go beyond what is necessary to ensure child can be safely removed in a fire. Moreover, we fear that the response will be more illegal care, hidden from any government oversight, and as a result, environments that are less safe, the opposite result of the intent of these regulations.

We urge you to reconsider these proposed regulations

Cathy L. Schaeffer
36 North Wayne Street
Robesonia, PA 19551

Members of the Berks Homebased Childcare Providers Association

Original: 2283

Sludden, Charles

From: saronson@verizon.net
Sent: Monday, September 23, 2002 12:35 PM
To: csludden@state.pa.us
Cc: syunghans@paaap.org; arequa@paaap.org
Subject: proposed child care regulations

It is difficult to assess the implications of this proposed regulation at the level of technical detail that I think is necessary to determine whether it actually reduces risk or is just an imposition of overly stringent requirements. We need a mechanism to study not only about the incompatibility of the proposal with current DPW regs, but also with the 2002 federally funded national health and safety performance standards for out-of-home child care published by the American Academy of Pediatrics and the American Public Health Association with the collaboration with HHS HRSA-Maternal and Child Health Bureau. These standards are known by their short title - Caring for Our Children - and include specific recommendations with regard to the number of children who can be accommodated in family child care homes and in centers, as well as references to facility requirements for construction and fire safety.

We need to cross walk the facilities standards in Caring for Our Children and the proposed code where there are corresponding issues before any change is instituted in Pennsylvania.

I am working from a remote Internet access point while traveling, but would be able to discuss the cross walk with Caring for Our Children in more detail when I return to my home office.

Susan S. Aronson, MD, FAAP
Co-Chair, Steering Committee for the preparation of the second edition of Caring For Our Children

Home office contact information:

605 Moreno Road
Narberth, PA 19072

tel: 610/664-3923
fax: 610/664-3924
email: saronson@bellatlantic.net

RECEIVED
SEP 23 2002
12:35 PM

Original: 2283

FAX TRANSMISSION

THE PRESCHOOL PROJECT
1080 N. DELAWARE AVE., SUITE 200
PHILA, PA 19125
215-634-3325
FAX: 215-634-1535

To: Mr Charles Sludden

Date: 9/23/02

Fax #: 717-787-8363

Pages: 4 , including this cover sheet.

From: Anne Rahn

Subject: Child care aspects of Construction Codes

COMMENTS:

RECEIVED
SEP 23 2002
10:07 AM



September 20, 2002

1080

N. Delaware Avenue

Suite 400

Philadelphia

PA 19125

215.634.3325

fax: 215.634.1535

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

Dear Mr. Sludden:

On behalf of The Preschool Project and the hundreds of child care home family providers, group day cares, and child day care centers with whom we work I want to express our concerns about some of the child care regulations as proposed in section 403.23. If adopted, these regulations will significantly affect the supply of affordable child care, especially for infants and toddlers for whom care is already in short supply. We believe that these regulations, if adopted in their present form, will increase confusion among providers and regulatory agencies and reduce the level of services legally allowable. This will have the unintended effect of causing more unregulated child care to develop, thus decreasing the safety of children.

We do fully appreciate the safety concerns that underlie these proposed regulations. We believe the following measures would be some of the best ways to safeguard the public safety and especially the safety of infants and toddlers in child day care:

(1) Fully apply and enforce current codes: many currently licensed child care programs have over the years expanded their program services and the spaces they occupy ... without obtaining the required expanded certificate of occupancy. Often this expansion has been to accommodate children under two and one half years of age. However, building inspectors, DPW inspectors, and grant agencies fail to check for the expanded or updated certificate of occupancy and potential accompanying change in use group classification that needs to accompany such program expansions.

(2) Align the building code expectations and terminology with the DPW regulations that apply to all child day care as follows:

a. Define family child day care (R-4) as 1-6 children. Define group day care as 7-12 children.

DPW defines group homes as seven to twelve children. Building codes should do the same. This would mean that a family child day care home meeting R-4 residential standards could care for six children. This is currently the case. The proposed regulations drop this number to five.

In keeping with DPW regulations, it would be reasonable for building codes to stipulate that only two of these six children would be infants under the age of one year.

In keeping consistency with DPW regulations for family child day care and for group child care, it would be reasonable to clarify under what circumstances the provider's own children and the children of other close family members would or would not be included in this number.

b. Define "center" as "seven or more children unrelated to the operator." DPW defines a child day care center as "The premises in which care is provided at any one time for seven or more children unrelated to the operator." Providers and potential providers would find it extremely helpful if building codes would use the same definition. Your proposed regulations and the International Building Code change this number to six.

c. Adopt the infant (birth through 12 months of age), young toddler (13-24 months of age) and older toddler 25-36 months of age) definitions used by DPW. The "under 2 ½ years of age" criteria used in building codes does not match with any other regulatory or developmental criteria.

d. Redefine I-4: consult with DPW about the feasibility, safety, and supervision issues involved in changing the I-4 use group classification to apply to children under two years of age. Developmentally, two year olds generally are very mobile, can move

quickly, and do understand and can follow basic directions. While close supervision is needed, they do not need to be individually carried one on one.

3. Maintain the E use group classification for centers and groups caring for no more than six children under 2 ½ years of age. This would be consistent with the Boca Code. The IBC 2000 drops this number to five children under 2 ½ years of age. Your proposed regulations call for the I-4 use group for group day care and centers serving even one child under 2 ½ years of age.

4. Change the 2 ½ years of age line to 2 years. This would align with DPW definitions and with subsidy reimbursement system age breaks. Confusion would decrease and compliance would increase.

5. Convene a small working group of child care professionals, DPW regulatory people, and building and code people to examine together all building codes relating to child day care facilities and make recommendations. This type of effort would greatly increase the consistency between regulatory agencies, improve the overall rate of compliance in all areas, and significantly increase the health and safety of the children of Pennsylvania.

Thank you for your attention to these concerns. I can be contacted for further information at 215-634-3325.

Sincerely,



Anne Rahn
Executive Director

09/23/2002 16:26

2155639442

PCCV

Original: 2283

QUEST

7 Ben Franklin Parkway
Philadelphia, PA 19103

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

Dear Mr. Sludden:

The undersigned organizations write to express our objection to the proposed regulations adopting a Uniform Construction Code for the Commonwealth of Pennsylvania. If adopted, these regulations will significantly affect the supply of affordable child care, especially for infants and toddlers for whom care is already in short supply.

Section 403.23 of the proposed regulations would create new building standards for family and group child care programs. 403.23(b) would require a family child care home in which care is provided to 6 children to meet commercial building standards, either as an Educational use or I-4 use, depending on the age of the child. This regulation modifies current practice, in which both Department of Public Welfare (DPW) regulations and local building codes allow care for up to 6 children in a family child care home as a residential use.

Section 403.23 (d) would require a group child care home, in which care is provided to 7 to 12 children, to meet the more stringent I-4 requirements if one of those children is under 2 and ½ years of age.

Finally, by adopting the International Building Code (IBC), all new child care centers in which care is provided for 6 or more 2 ½ year old children would need to meet the I-4 construction standards. These standards are cost prohibitive for child care programs and will severely affect the supply of child care programs in the future.

We believe the construction code should be consistent with DPW family child care regulations, which allow up to six children in a home. DPW regulations are based upon sound research in health and safety practice. In addition, DPW regulations limit the number of infants in a family home to 2, which helps to ensure safe exit in case of fire.

The proposed regulations are also more restrictive than those recommended in *Caring for Our Children*, promulgated by the American Academy of Pediatrics, which is the industry standard for child care programs nationally.

The group regulations are more restrictive than the International Building Code. The IBC requires child care centers to meet I-4 requirements if they serve more than 5 children under 2 1/2, not one as is suggested in this rulemaking. In fact, requirements in homes would be more restrictive than group child care in a commercial building.

Each of these provisions would create extreme hardship for child care programs and would result in fewer new family and group child care homes, and as a consequence, a decline in the

availability of care for young children. The cost of meeting the construction and fire safety provisions of the E or I-4 use groups would be prohibitive for family child care providers and for group providers who wish to care for young children. Home-based child care, whether in a family or group child care home, is preferred by many parents who appreciate the option of a less institutional, more home-like setting, especially for young children. The proposed regulations would further undermine the already precarious financial condition of home-based child care, making it less feasible for new programs to open, leaving less care for Pennsylvania's children.

We fully understand the intent of the regulations is to ensure protection of young children in out of home settings. However, we believe the proposed rules go beyond what is necessary to ensure a child or children can be safely removed in a fire. Moreover, we fear that the response will be more illegal care, hidden from any government oversight, and as a result, environments that are less safe, the opposite result of the intent of these regulations.

We urge you to reconsider these proposed regulations and would be happy to discuss it with you at your convenience.

For further information, please contact Sharon Ward at Philadelphia Citizens for Children and Youth (215-563-5848) or Terry Casey at the Pennsylvania Child Care Association (717-657-9000).

Philadelphia Citizens for Children and Youth

Pennsylvania Child Care Association

Child Care Matters

Pennsylvania Home-based Providers Association

Pennsylvania Partnerships for Children

For the Love of Children, Bucks County

Capital Area Association for the Education of Young Children

Delaware Valley Child Care Council

The Preschool Project, Philadelphia

Central Susquehanna Association for the Education of Young Children

The United Way of Berks County Child Care Initiative

The Danville Child Development Center

Maternity Care Coalition, Philadelphia

Parent-Infant Center, Philadelphia

Children's Village Child Care Center, Philadelphia

Associated Day Care Services, Inc.

Montgomery Early Learning Centers

Montgomery County Community College

Delaware Valley Association for the Education of Young Children

United Way of Lancaster County Success by Six

The Neighborhood Child Care Resource Program, Northwest Interfaith Movement

Federation Day Care Centers

Westmoreland County School Readiness Initiative

Cc: House Local Government Committee

House Children and Youth Committee

Department of Public Welfare

Original: 2283



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 23, 2002

Mr. Charles J. Sludden, Jr., Director
Bureau of Occupational and Industrial Safety
Pennsylvania Department of Labor and Industry
Room 1613 Labor and Industry Building
Harrisburg, PA 17120

02 SEP 23 PM 1:46
B.O.I.S.
DIRECTOR'S OFFICE

Dear Mr. Sludden:

Following are our written comments on Regulation No. 02-1479, the Administrative and Enforcement Regulations for Act 45 of 1999, the statewide building code.

We appreciate the time and effort the Department has taken to meet with us and address many of our concerns with the original draft of these regulations during the proposed regulatory stage. We believe that the regulations have improved significantly from the initial draft and are now better organized and easier to understand. Again, thank you for taking time to meet with us.

With that said, we do have a number of comments and questions on the proposed regulations. We will discuss the major substantial comments first, then address specific sections with both technical and substantial comments.

We are very concerned that the Department may be overstepping its authority under Act 45 of 1999. Act 45 states in Section 104(a) that "This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth." However, in the definition of "permit" in Section 401.1, application to commercial structures in Section 403.1(a), commercial construction application in Section 403.42, and residential structure application in Section 403.62 appear to expand the act to include all sorts of minor repairs, maintenance, demolition, location, and installation. It appears that the regulations were directly derived from the International Building Code 2000 (*IBC 2000*). However, we believe that including these minor repairs, with the very narrow exceptions in Section 403.42 and Section 403.62, go beyond both the explicit language in Act 45, as well as its intent. Most of these exceptions would simply be unenforceable, especially for residential construction. We strongly urge the Department to either significantly expand the exceptions in Section 403.42 and Section 403.62 or narrow the application in the above referenced sections. Otherwise, it appears that a permit would be needed when a plumber or electrician is called to fix a minor repair if an existing pipe or wire is replaced. We believe that these provisions are simply unnecessary and enforcement of minor repairs and alterations that take place inside a home or business will be impossible. It will drive municipalities away from electing to enforce the act and create strife between the residents and the enforcing entities. This is a major deviation from the law and needs to be changed.

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Mr. Charles J. Sludden, Jr., Director
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On another issue, it was agreed to during the negotiations for Act 45 of 1999, as stated in Section 501(b)(5) of the act, that a municipality may choose to administer only the residential portion of the code and leave the enforcement of commercial construction with the department. Section 403.31 appears to state otherwise, that the Department is not recognizing this as an option. We strongly urge the Department to reconsider its position and make appropriate changes to bring the regulations into compliance with the act. There are many townships that simply do not have the resources to enforce the commercial and industrial portion of the act and will elect out rather than enforce the entire act.

Another major concern with these regulations is the inconsistency in the use of terms throughout the act. For example, several terms are used interchangeably for the individual requesting or holding a UCC permit. The term varies significantly throughout the document, in some cases throughout a single section, and could present problem with enforcement. One example is Section 403.63, where four different terms are used: building permit applicant in subsection (a), permit holder or his duly authorized agent in (b), permit holder in (c), and building permit holder in (g). Clarity and consistency is sorely missing from this document. **We have attached a list of the sections where the interchangeable terms are used for permit holder.**

We suggest that a single term be defined and used throughout the regulations. While we are open to other options, we suggest the following be used: *Permit applicant*-An individual or entity that applies for and receives a building permit. The term shall include a permit holder, owner, or owner's agent.

Another example of the inconsistency throughout the document that creates confusion for the reader is the interchangeable use of building code official/construction code administrator. In Section 401.1, the definition of a "permit" states that the document will be "*issued by a code administrator*". This definition conflicts with the definitions of "code administrator" in the finalized Training and Certification Regulations and the definition of "building code official" in the proposed regulation. Under the definition for building code official, it states specifically that this official shall issue the permit. This is not true for the definition of "code administrator", which does not include permit issuance. Under the definitions, a building code official may be a code administrator since both are defined to be "construction code officials", yet a code administrator cannot be a building code official.

This confusion is further exemplified in the regulation where the terms building code official and code administrator are used interchangeably even though they are defined differently. We contend that this confusion will lead to problems in the administration and enforcement of the UCC. For example, Section 403.1(e) states that a "code administrator" grants an exemption to the electrical provisions of the UCC. Since the law allows an electrical exemption for recognized religious sects from the building permit and regulation requirements,

Mr. Charles J. Sludden, Jr., Director

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should it not be the "building code official" that grants the exemption, since the building code official issues the permit under the definition of "permit"? Also, Section 403.24 (historic structures) states that the building code official may exclude these structures from compliance with the UCC. We contend that the regulations should be reviewed to correct this potential headache for municipalities.

In addition, other terms are randomly used throughout the document, but are never defined. If a term is going to be used, such as "facility", it should be defined and then used consistently throughout the document. Also, there should be consistency between the parallel sections under commercial construction and residential construction, unless differences are necessary.

We support the language the Department has used for manufactured and industrialized housing in Sections 403.25. While the act exempts these structures from compliance, the footers, foundation, and connections to utilities are made outside of the factory and need to comply with a uniform standard.

We also support the use of a minimum uniform permit application in Sections 403.42(b) and 403.62(b) as developed by the Department of Community and Economic Development, as long as this form remains a minimum form. Municipalities must be able to attach an addendum to the permit form without seeking the permission of the Department. Also, this form should be used by the Department and third-party agencies to ensure consistency in record-keeping.

We support the Pennsylvania Housing Research Center's Code for the Conservation of Space Conditioning Energy for Housing in Pennsylvania. We believe it satisfies the requirement of Act 45 for an alternative prescriptive approach to the energy conservation code performance standards in the UCC.

We support the language in Section 403.22 on Health Care Facilities. This sets up standards for health care facilities and although the Department of Health regulates certain aspects of these facilities, the structure itself must be built to the UCC like other types of structures.

Also, we raise the issue of Section 501(d) of the act. The regulations are silent on this section. We contend that if a municipality is not enforcing the UCC, then the municipality may not prohibit construction code officials from performing inspections within their jurisdiction if the official meets the requirements of chapter 7.

Finally, we must bring to your attention an oversight with the issue of third-party agencies and their ability to contract for services. The Training and Certification Regulations, Section 401.11(a), states who the third-party agencies may contract with and municipalities were

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inadvertently left out. In our discussions with the Department during the approval process of the Training and Certification Regulations it was agreed that this oversight would be addressed in the Administration and Enforcement Regulations if we refrained from asking the Independent Regulatory Review Commission for a denial. We do not see the correction in the Administration and Enforcement Regulations and urge the Department to make this necessary correction.

Following are comments on specific sections of the regulations. Some are substantial and some are technical. Most of the substantial comments were alluded to already, but the sections show clear examples of the problems.

Section 401.1. Board of appeals definition. Why is the board of appeals given authority to grant extensions of time? It makes more sense for the building code official to grant extensions of time. If the extension is denied, it could be appealed to the board of appeals.

Section 401.1. Building Code official definition. Insert "code" between "building" and "enforcement" on line 2.

Section 401.1. Commercial construction. Why is "facility" included here? It is not defined anywhere in the act and is used inconsistently.

Section 401.1. Permit. Why is "location, repair, and maintenance" included here, particularly maintenance? By definition it is very minor and should not require a permit. Must a plumber/electrician/etc. show up at a residence to fix a leak or an electrical short with a permit?

Section 401.1. Residential building. Why does this say "and the dwelling's accessory structures?" Accessory structures are separate and not part of a residential building. They are also exempt from the UCC if 500 square feet or less.

Section 401.2(b). Delete the phrase "The building code official for". The statement that the "building code official" must make the fee schedule available implies that if the official is not present, the schedule will not be available. The administering entity should be responsible for establishing and providing the fee schedule to the public, whether it is a municipality or a third-party agency.

Section 403.1(a). Again, why is "location and maintenance" included in the UCC regulations? Also, why are structures that are "not legally occupied" referenced? All existing structures are exempt except in the case of major improvements, etc. See Section 403.42(a), which is a similar, but better list.

Section 403.1(e)(1). "A member of" should be replaced with "The applicant".

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Section 403.2(a). The July 1, 1999 grandfather clause should be referenced here.

Section 403.23(e) and (f). Move (e) and (f) to after (j) on page 20. It is currently in a poor order. Rearranging these clauses would make sense.

Section 403.24(1). Historic buildings, structures and sites. This provision conflicts with Section 902 of the act. This section should read: "Existing buildings or structures or a new building or structure that is not intended for residential use on an historic site" or the language in Section 902 of the act should be used.

Section 403.26(b). What is a "part"? Chapter, subchapter, part, etc. are used interchangeably in the regulations and it is very difficult to discern what a particular term is referring to when different terms are used in the same context. Please clarify.

Section 403.41. This section seems to imply that if a municipality elects to enforce the UCC under 403.101, they will have to enforce both the residential and commercial provisions. If our reading is correct, this creates a problem since the statute does not require a municipality to do both if they so choose. This section should be amended to read "...and municipalities electing to administer and enforce commercial construction under the UCC..."

Section 403.42. These exceptions are very strict. Does this comply with Act 45?

Section 403.42(a) This is a different (*but better*) list than in Section 403.1(a). It should read "building or structure" and delete "facility". Why is repair on this list? Will someone need a permit for a plumber? What about replacing something with something identical, i.e., a window?

Section 403.42(b). Delete "to the municipality" in the first sentence and add "or the Department" after municipality in the second sentence.

Section 403.42(c)(1)(x). The term "construction" is used here. We contend that swings and playground equipment are not accessory to the construction but rather to the "structure". Also, structure is defined in these regulations.

Section 403.42(c)(1)(i). Delete "over" and insert "more than."

Section 403.42(c)(1)(iii). Delete "over" and insert "more than."

Section 403.42(c)(1)(vii). Sentence is incorrect. "Theater sets stage sets and scenery"? This does not make sense.

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Section 403.42(c)(5)(i). What is "new material"? Does this mean a new piece of PVC to replace an identical, leaking piece of PVC?

Section 403.42(d)(4). Why is "replacement of" included?

Section 403.42(i). Eliminate comma after "detail". Delete "building code official" and replace with "Department or municipality".

Section 403.42(n) and (o). Why are these sections included? Are they really needed? What about just having inspections performed by appropriate entity? Having observers watch the construction seems unnecessary when the structure must be inspected anyway.

Section 403.43(g). Here it states that the building code official may grant extensions of time. In other sections it states that only the board of appeals may grant extensions of time. This request should not go to the board of appeals unless the building code official denies the request.

Also, 5 years is a long time for a permit to be valid, especially when the IBC version changes every three years. This time frame should be changed to one year, then the permit applicant would have to apply for a new permit.

Section 403.43(i). This contradicts with (g) and says only that the board of appeals may grant an extension of time. Which is it?

Section 403.45(b). Again, what is a "facility."?

Section 403.45(e). We support the list of required inspections. However, why is (8) included here, elevators? Municipalities can never enforce this provision.

Section 403.46(a). Here is "facility" again.

Section 403.46(b). Why is "after receipt of a final inspection report" here? What if the building code official FILES this report? Again, why is "facility" here?

Section 403.47(a). What is a "system"? This sentence reads poorly and has too many qualifications. Is it "source" or "service"? Both should not be used.

Section 403.47(b). "System" again...what does this mean? "Utility", "utility source", and "utility service" are used interchangeable. What is an "occupant" of a "system"? This doesn't make sense.

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Section 403.61. This section should be consistent with section 403.41. Different terms are used, "section", "chapter", "subchapter". We believe "subchapter" is the appropriate term to use. The reference to sections 403.62-403.65 could be removed.

Section 403.62(a). This section requires that an applicant apply to the "building code official" for a permit. We suggest that this section be amended to read "...shall first apply to the municipality or third party agency."

Section 403.62(a)(1) and (2). Why is "repair" included here? Why is this covered? Do we need a permit every time we call a plumber? Will the plumber/electrician/gas man have to apply for a permit to fix something that needs repaired ASAP?

Section 403.62(b). What about third parties? Eliminate "to the municipality" and add "or third party agency" after "by the municipality".

Section 403.62(c)(2). What does this mean? This seems overly stringent.

Section 403.62(c)(5). Again, what does this mean? These "exemptions" seem terribly stringent.

Section 403.62(e). Why does this section read differently than Section 403.42(m)? The floodplain requirements should be the same for both residential and commercial. There is no reason why the requirements should be different.

Section 403.62 (g). Delete "Section 401.2 and 401.3 (*relating to Department fees; and municipal and third-party agency fees*)."

and insert "Section 401.2a (*relating to municipal and third-party agency fees*)."

The Department has stated that it is not enforcing residential construction and the Department's fees do not apply to residential construction. Why is it included here?

Section 403.63(c). This section should be identical to Section 403.45(d).

Section 403.63(d) and (f). Why are these lists different? If only the inspections listed in (d) are required, how can the final inspection report include different information than what was inspected?

Section 403.63(f). The letter (f) should be (h).

Section 403.64(a) and (b). The undefined term "facility" is used again.

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Section 403.64(b). This section should be clarified to state that the certificate of occupancy is only for meeting the requirements of the UCC. Municipalities require applicants to fulfill other requirements, such as zoning and sewage. These requirements may also require the issuance of certificates of occupancy. Without this clarification, an applicant may presume that once he has the certificate he may occupy the structure. We suggest that the section be amended to read "...shall issue a certificate of occupancy that only covers the UCC after receipt of a final...."

Subsection (1) includes "facility" yet subsections (2), (3), and (4) do not. Why was facility included in one and not the others? It should either be included in all or removed from (1).

This section should be consistent with Section 403.46(b).

(2) There is no similar section listed under commercial.

(4) There is no similar section listed under commercial.

(7) There is no similar section listed under commercial. Why is this here?

(8) This reads different from the similar provision under commercial.

Section 403.65. See comments for Section 403.47.

Section 403.82 (3): This section uses the term "building code official or his designee". This is the first time the reference "or his designee" is used in relation to the building code official. Why this new designation? One could argue that a construction code official could inspect the structure without this designation. The concern is how will other sections be interpreted where "or his designee" is not referenced.

Section 403.83(c). Again, who is responsible for granting extensions of time? It should be the building code official. If the request is denied, it can be appealed to the board of appeals.

Section 403.85(a) and (b). Replace "building code official" with "municipality or third-party agency". The enforcing agency, NOT the individual, must be responsible for maintaining records. Also, (b) should reference Act 100 of 200, the new open records law.

Also, why does every single record need to be retained for the life of the building? Permits and orders should be maintained, and possibly the plans for the building, but not every piece of paper in the file.

Section 403.101(d). The Department should develop a form for this information to promote consistency.

Section 403.101(g). Eliminate the reference to subsection (b).

Mr. Charles J. Sludden, Jr., Director
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Section 403.101 (i): The reference to section 401.3 is incorrect, it should be replaced with Section 401.2a.

Section 403.101(m). What does "under this part" mean?

Section 403.102(f)(3). The name of the building or structure should be replaced with "type" of structure. L&I should provide a sample form for this notification to promote consistency.

Section 403.121(b). Again, who is granting extensions of time, the building code official or the board of appeals?

Section 403.122(a). We question why an appeal must be filed with the building code official? We contend that a code administrator or even the construction code official could handle the filing of a variance or extension of time or appeal under their "administrative and enforcement" functions. We contend that the applicant should file the petition on a form provided by the municipality, with the municipality.

Section 403.122(c). Does this subsection allow an applicant to continue with construction, demolition, or renovation until the appeal or variance is heard? One could argue that if it is not a safety issue and the construction, etc. is completed, what is the need for the hearing? This section automatically gives the applicant an extension of time during the period that he is waiting for the hearing.

Thank you for the opportunity to comment on these important regulations. We look forward to working with you in addressing these concerns.

Sincerely,



Elam M. Herr
Assistant Executive Director

EMH:ls

Enclosure

cc: Independent Regulatory Review Commission
Senator Gerlach
Senator Logan
Representative Herman
Representative Cawley

Page	13	Section 403.1	(c)	permit holder
	14		(e) (1) (i)	applicant
	14		(e) (1) (iii)	applicant
	14		(e) (1) (iv)	applicant / applicant's
	14		(e) (3)	applicant
	15		(e) (3)	applicant
	17	Section 403.21	(e)	permit applicant
	17	Section 403.22	(c)	applicant
	18		(d)	applicant
	23	Section 403.42	(a)	owner or authorized agent
	23		(b)	applicant
	26		(f)	permit applicant / applicant
	26		(i)	applicant
	27		(j)	applicant
	28		(m)	permit applicant
	28		(n)	permit applicant
	28		(o)	permit applicant
	28		(q)	permit applicant
	29	Section 403.43	(a)	applicant
	29		(c)	applicant
	29		(e)	applicant
	29		(f)	owner
	30		(g)	permit applicant
	30		(h)	owner
	30		(i)	permit applicant
	30	Section 403.45	(c)	permit holder or his duly authorized agent
	31		(d)	permit holder
	32	Section 403.46	(d)	permit applicant / building owner
	33	Section 403.62	(a)	owner or authorized agent
	33		(b)	applicant
	35		(e)	applicant
	35		(e) (3)	applicant
	36	Section 403.63	(a)	building permit applicant
	36		(b)	permit holder or his duly authorized agent
	36		(c)	permit holder
	36		(g)	building permit holder
	37	Section 403.64	(b) (2)	owner
	38	403.64	(d)	permit applicant
	38		(d)	owner
	38		(e)	building permit holder
	39	Section 403.81	(b)	permit owner or the owner's agent
	39		(c)	person
	39	Section 403.82	(1)	owner or owner's agent

39		(2)	owner or owner's agent
39		(3)	owner
39	Section 403.83	(a)	owner
40		(b)	owner / owner or owner's agent
40		(c)	owner
40		(d)	permit owner / owner
40		(f)	owner
41		(g)	owner or owner's agent
41	Section 403.84	(c)	owner or owner's agent / owner, agent or person
41		(e)	owner
41		(f)	owner
42	Section 403.86	(b)	occupant
42		(c)	owner or agent
46	Section 403.102	(f)	permit applicant
48	Section 403.122	(a)	owner or owner's agent
48		(d)	owner
48		(e)	applicant
49		(h)	owner
49		(j)	owner
49		(k)	owner
50	Section 403.141	(e)	owner
51	Section 403.142	(d) (1)	owner or owner's agent
51		(d) (4)	owner
51		(d) (5)	owner
52		(d) (8)	owner or owner's agent

Elevators continues the same format, should we list them also.

Original: 2283



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September 23, 2002

Mr. Charles J. Studden
Director
Bureau of Occupational and Industrial Safety
Department of Labor and Industry
Room 1613 Labor and Industry Building
Harrisburg, PA 17120

Subject: Proposed Rulemaking
Title 34 Labor and Industry
Uniform Construction Code
Administrative and Enforcement

~~Check~~
Dear Mr. Studden:

This submission is in response to the Pennsylvania Department of Labor and Industry's (DLI) proposed rulemaking for the administrative and enforcement provisions of the Uniform Construction Code (Act 45 of 1999). The following comments represent the PHRC's collective experience in training over 2,500 code officials, design professionals, elected officials, builders and contractors on the 2000 International Residential Code over the past 18 months.

First, I would like to preface my comments by commending the Department on their efforts. It is a large and thankless task to put in place such far reaching regulations that will regulate so many facets of construction in Pennsylvania.

The following comments are intended to be constructive, not criticism. In this light, our comments identify potential problems and, in most cases, provide at least one potential solution. The comments provided are organized by sections of the proposed regulations and are not prioritized.

I hope you find this input valuable. Please do not hesitate to call with any questions or concerns.

Yours sincerely,

Mark R. Fortney
Assistant Director

PHRC
UNIFORM CONSTRUCTION CODE
ADMINISTRATIVE AND ENFORCEMENT

PHRC Comments

Issue 1 § 401.1 Definitions

Residential building – Construction that relates to detached one-family and two-family dwellings and multiple single-family dwellings (townhouses) that are not more than three stories in height with a separate means of egress and the dwellings' accessory structures. The term includes construction relating to a townhouse consisting of a dwelling unit constructed in a group of three or more units and each unit extends from foundation to roof and has open space on at least two sides.

Discussion: This definition does not define a story nor whether a basement is included. Some larger houses and many townhouses are three stories above grade with a walk-out basement. The definition as it stands would move them into commercial construction requirements and enforcement.

Solution:

Residential building – Construction that relates to detached one-family and two-family dwellings and multiple single-family dwellings (townhouses) that are not more than three stories in height above grade with a separate means of egress and the dwellings' accessory structures. The term includes construction relating to a townhouse consisting of a dwelling unit constructed in a group of three or more units and each unit extends from foundation to roof and has open space on at least two sides.

Issue 2 § 401.1 Definitions

No definition for third party agency.

Discussion: Third party agencies are intended to play an important role in enforcing the UCC. They are referenced in numerous sections of the regulations. However, their most prominent role appears to be in § 403.61 through § 403.65. With their prominence they should be defined in these regulations as well as in the Training and Certification regulations.

Solution: Add definition of third party agency from § 401.1 Definitions of the Training and Certification Regulations.

Issue 3 § 403.21 Uniform Construction Code

There is no allowance for alternative methods or materials.

Discussion: This is a normal feature of model building codes that appears to be eliminated by DLI not adopting Chapter 1 of the International Building Code. The only reference I could find in the regulations was § 403.102(c) which only applies to municipalities that elect not to enforce the UCC. These sections of the IBC provide a mechanism for code officials to allow new and innovative construction methods or materials that perform to a similar level as the general code requirements. These provisions of model codes are used every day for such items as wood trusses and precast concrete construction.

PHRC Comments

Solution: Insert language from IBC § 104.11 *Alternative materials, design and methods of construction and equipment* and § 104.10 *Modifications*.

Issue 4 § 403.21 Uniform Construction Code

No guidance on completing Table 302.2(1) of the International Residential Code (IRC)

Discussion: One of the requirements for adopting the IRC is that Table R302.2(1), *Climatic and geographic design criteria*, is completed by the enacting jurisdiction, which in this case would be the Department. This table is used for determining such fundamental tasks as sizing wall headers, sizing roof rafters, determining the depth a foundation must be placed to protect it from frost, or the required compressive strength of concrete.

Solution: There are two options. The first is to complete the table for all geographic areas in Pennsylvania. If this option was pursued it would probably be logical doing at a county level. This option would have the benefit that it would create more uniform code requirements, at least within any particular county.

The second option would be to require municipalities who opt to enforce the UCC and third party agencies to complete this table for their municipalities in geographic areas where they will be operating. These tables must be made readily available to building permit applicants.

Issue 3 § 403.21 (e)

(e) A permit applicant may utilize one of the following prescriptive methods to demonstrate compliance with the energy conservation requirements of the Uniform Construction Code in addition to the prescriptive methods contained in the Uniform Construction Code. The standards are those listed for the climatic zone of this Commonwealth where the building or structure is located.

(1) The prescriptive methods for detached residential buildings contained in MECcheck™ or the PHRC Alternative to Chapter 11.

(2) The prescriptive methods for all other buildings or structures contained in COMcheck™.

Discussion: The inclusion of the word "prescriptive" limits the use of many of the options contained within the MECcheck and COMcheck packages. These packages are tools that were developed by the U.S. Department of Energy to document compliance with the International Energy Conservation Code (IECC). They include a package of tools such as computer software packages as well as prescriptive oriented compliance tools such as trade off matrices, worksheets, etc. The computer software is a performance oriented tool that provides a lot of design flexibility. However, because it is performance oriented it could be disallowed under current wording of the regulations. I do not think that is the Department's intent. Therefore the word prescriptive should be deleted as described in the solution below.

PHRC Comments

Item (1) is limited to "*detached*" residential building which would only allow the use of these compliance approaches to a subset of who they are intended for. These options should be allowed for all residential building as defined in the regulations.

Solution:

(e) A permit applicant may utilize one of the following ~~prescriptive~~ methods to demonstrate compliance with the energy conservation requirements of the Uniform Construction Code in addition to the prescriptive methods contained in the Uniform Construction Code. The standards are those listed for the climatic zone of this Commonwealth where the building or structure is located.

(1) The ~~prescriptive~~ methods for ~~detached~~ residential buildings contained in MECcheck™ or the prescriptive PHRC Alternative to Chapter 11.

(2) The ~~prescriptive~~ methods for all other buildings or structures contained in COMcheck™.

Issue 4 § 403.25(a)(3)(ii)

(ii) Additions to the delivery to the unit after delivery to the site.

Discussion: Typo

Solution:

(ii) Additions ~~to the delivery~~ to the unit after delivery to the site.

Issue 5 § 403.61 through § 403.86

Discussion: The distinction of responsibilities between municipalities and third party agencies is not clear. For example § 403.62(b) directs municipalities to use a DCED created permit. Shouldn't the Department direct both municipalities and third party agencies to use this form?

Solution: The department should review these sections and clarify the enforcement and administrative responsibilities for both municipalities and third party agencies.

Issue 6 § 403.61 through § 403.86

Discussion: The regulations use several terms to refer to an individual who must apply for a building permit. Terms include permit applicant, permit holder, building permit holder, permit owner, owner.

Solution: The Department should designate one term to use and add this to the definition. The definition can be broadened to include the person(s) who own the building or their agent.

PHRC Comments

Issue 7 § 403.82 Notice of Violation

(2) The building code official may issue a written notice of violations to the owner or owner's agent. The notice is to contain a description of the violations and an order requiring correction of the violations within a reasonable period determined by the building code official. When a violation relates to an unsafe building, structure or equipment, a building code official shall act in accordance with § 403.84 (relating to unsafe building, structure or equipment).

Discussion: A notice of violation (NOV) should not be a casual action. If there is a violation observed during an inspection, and the building code official is requiring it to be corrected, a written notice should be required. Allowing a verbal NOV will lead to confusion and misinterpretations. A written NOV should be required and it should describe the violation and provide a code reference for the violation(s).

Solution:

(2) The building code official shall ~~may~~ issue a written notice of violations to the owner or owner's agent. The notice is to contain a description of the violations, reference the applicable code section(s), and an order requiring correction of the violations within a reasonable period determined by the building code official. When a violation relates to an unsafe building, structure or equipment, a building code official shall act in accordance with § 403.84 (relating to unsafe building, structure or equipment).

Issue 8 § 403.101(j)

Missing reference to actions of an aggrieved party under section 503(j), *Challenge of ordinances*, of the act (35 P.S. § 7210.503)

Discussion: The legislation refers to a second stage of review of a proposed municipal ordinance that exceeds the UCC requirements. This second stage is reached when an aggrieved party challenges the proposed ordinance.

Solution: Add an additional section or subsection giving municipalities guidance on this process. At minimum there needs to be a clear reference to the requirements in the legislation.

Issue 9 § 403.103(a)

(a) The Department will investigate written and signed complaints concerning the enforcement and administration of the Uniform Construction Code under section 105 of the act (35 P.S. § 7210.105). The Department will make a report to the governing body of the municipality or third-party agency that was the subject of the review and provide recommendations to address any deficiencies found by the Department.

Discussion: This section should include a brief description of the actions the Department can pursue against municipalities and third part agencies such as requiring remedial education or decertification of building code officials.

PHRC Comments

Solution:

(a) The Department will investigate written and signed complaints concerning the enforcement and administration of the Uniform Construction Code under section 105 of the act (35 P.S. § 7210.105). The Department will make a report to the governing body of the municipality or third-party agency that was the subject of the review and provide recommendations and measures to address any deficiencies found by the Department. These measures may include requiring remedial education or the initiation of a decertification process.

Original: 2283



Pennsylvania Housing Research/Resource Center

Phone: (814) 865-2341
Fax: (814) 863-7304
PHRC@psu.edu
www.engr.psu.edu/phrc

The Pennsylvania State University
219 Sackett Building
University Park, PA 16802

September 23, 2002

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

Subject: Proposed Rulemaking
Title 34 Labor and Industry
Uniform Construction Code
Administrative and Enforcement

Dear Mr. Sludden,

The purpose of this letter is to restate the objectives of the PHRC Alternative to Chapter 11 of the International Residential Code (IRC) and to update the Department on activities on a national level since our initial submission in May 2000.

The PHRC Alternative is not intended to inhibit either the adoption of the 2000 international Energy Conservation Code (IECC) or to replace Chapter 11 of the IRC, but rather to be a companion document. Our objective was to provide an alternative to Chapter 11 in the IRC 2000 that would be:

- simpler;
- more rational;
- more flexible;
- focused on Pennsylvania's climatic conditions; and,
- equivalent to the provisions of the IECC.

Our primary intention was to make the energy related requirements in Chapter 11 easier to understand largely in order to facilitate their adoption, acceptance and use in Pennsylvania. This is especially important with energy codes since their requirements are not really concerned with issues of life, health or safety. Moreover new code provisions involve change, learning and additional work for both builders and inspectors. For these reasons building code officials may not be able provide the same level of enforcement as other code requirements. It is our conviction that simplification, rationalization and flexibility make it much easier for builders and contractors to accept and to implement and for code officials to enforce.

In the PHRC Code some degree of simplification was accomplished by reducing the number of climate zones from six to three and eliminating the requirement for window to wall area ratio calculation and comparison. Since our initial submittal to L and I, the need for simplification of the energy code has been confirmed by studies by the states of Massachusetts, New York and

PHRC
UNIVERSITY PARK, PA 16802

Washington as well as a study, for DOE, by Pacific Northwest National Laboratory (PNNL). The findings of these state-based studies confirmed a relatively low compliance for energy codes, non-compliance ranged from 50 to 75 percent. In fact the US Department of Energy (DOE) is considering a strategic code change that would eliminate window area restrictions in the IECC for residential buildings. Compliance is definitely an issue and, in the case of the PHRC alternative, we have addressed this strategic consideration without in any way reducing the energy impacts of the IRC 2000 Code.

I believe that the energy codes being adopted will provide a significant benefit to the citizens of Pennsylvania by significantly decreasing energy consumption of new houses for decades to come. I am also convinced that the PHRC Alternative will enable these benefits to accrue faster and with much less hassle and resentment. I would also point out that adjustments and improvements can be made to the PHRC Alternative on the same schedule as they are made to the IRC Code.

I trust that these comments are of value to you and your staff.

Yours truly,



Eric Burnett, Director

and Hankin Chair in the Departments of Civil and Environmental Engineering and Architectural Engineering at Penn State.



Original: 2283

Pennsylvania Housing Research/Resource Center

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Fax: (814) 863-7304
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The Pennsylvania State University
219 Sackett Building
University Park, PA 16802

September 23, 2002

02 SEP 26 PM 12:31
B.O.I.S.
DIRECTOR'S OFFICE

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

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Title 34 Labor and Industry
Uniform Construction Code
Administrative and Enforcement

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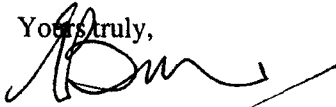
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I trust that these comments are of value to you and your staff.

Yours truly,

A handwritten signature in black ink, appearing to read 'Eric Burnett', written over a horizontal line.

Eric Burnett, Director

and Hankin Chair in the Departments of Civil and Environmental Engineering and
Architectural Engineering at Penn State.



02 SEP 23 PM 1:19

B.O.I.S.
DIRECTOR'S OFFICE

COMMENTS OF

**THE PENNSYLVANIA PETROLEUM MARKETERS &
CONVENIENCE STORE ASSOCIATION**

ON:

**PROPOSED RULEMAKING
TITLE 34 LABOR & INDUSTRY
UNIFORM CONSTRUCTION CODE**

**JOHN V. KULIK
EXECUTIVE VICE PRESIDENT**

SEPTEMBER 20, 2002

RECEIVED
SEP 23 2002
BUREAU OF
INDUSTRIAL
COMMERCE

The Pennsylvania Petroleum Marketers and Convenience Store Association (PPMCSA) represents over 450 petroleum marketers from all areas of the Commonwealth. The majority of these firms supply home heating oil to residences and other buildings, as well as installing and servicing oil-fired and other mechanical equipment. Over 1.2 million housing units, which represent over 25 percent of all housing units in the state, are heated with oil.

We recently became aware of the "Code for the Conservation of Space Conditioning Energy for Housing in Pennsylvania: PHRC Alternative to Chapter 11, Energy Efficiency, of the International Residential Code (IRC) 2000" for use in Pennsylvania.

It is difficult to evaluate the substitute prescriptive methods in PHRC 11, without the relative studies assuring that it is equal to or better than the IRC, Chapter 11.

Why is it found desirable to adopt the "2000 IRC" made up of 42 chapters and 12 appendices and the "2000 International Energy Conservation Code" (IECC) made up of 9 chapters with the one exception, chapter 11?

Further, we feel that more timely versions of both IRC and IECC will be available for adoption shortly, so it will be counterproductive to base our state requirements on standards that are out of date.

The PHRC alternative, as well as restating values for the building envelope which appear to be less stringent than the values in the IRC, also introduces its own partial or piecemeal requirements for "high efficiency tradeoffs, table PA 1103.6." The rationale is commendable but appears to be a "single source specification" dictating the use of one fuel type over others by using a favorable efficiency value.

The difference in energy saving between 80 or 85 AFUE versus 90 AFUE is not that significant when the corresponding envelope value reductions may vary between 20% to 25% from the 2000 IRC values.

It would appear that the rationale for the PHRC alternative is open to question, since neighboring states and other areas of the country do not seem to have problems with the requirements of the 2000 IRC.

Deliverable fuels, such as home heating oil, are used extensively in rural areas, which may be less affluent and in colder zones. These consumers would be required to use 2000 IRC, since commonly available oil furnaces have AFUE ratings of 80 to 85. Oil and gas-fired boilers would not qualify for the high efficiency tradeoff in any part of the state, since efficiencies are below 90 AFUE.

We respectfully request that the PHRC alternative be critically reviewed by design consultants before being adopted. More supporting data is needed for the statements made by PHRC and for the "new" insulation, wall and window standards proposed, or adopt the latest version of the IRC.

Original: 2283



**Pennsylvania Association of
Plumbing, Heating, Cooling Contractors, Inc.**

4015 Jonestown Road
Harrisburg, PA 17109-2212
Phone: 717-541-9109
1-800-220-7422
FAX: (717) 541-9823
Website: www.PAPHCC.ORG

09/23/09

Mr. Jon Balson
PA Department of Labor & Industry
Room 1700
7th & Forrest Streets
Harrisburg, PA 17120

Re: The Upcoming Building Code Adoption for the State of Pennsylvania.

Dear Mr. Balson:

On behalf of the Pennsylvania Association of Plumbing-Heating-Cooling Contractors (PAPHCC) we are requesting that you delay any decision for a new code adoption until Labor & Industry has ample time to conduct a through review of all codes before any ruling may occur. We feel that this would be in the best interest of the citizens of the State of Pennsylvania's health, safety, comfort and protection.

In this course of action, we are respectfully requesting that the PAPHCC participate in the review process and have a voice in assisting with the final code selection.

Thank you for your consideration in this matter

Sincerely,

Christopher Moyer
President PAPHCC

Alfred A. Ruscito
Executive Director

RECEIVED TIME SEP. 25. 2:35PM

PRINT TIME SEP. 25. 2:36PM



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

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THE SECRETARY
1700 LABOR AND INDUSTRY BUILDING
SEVENTH AND FORSTER STREETS
HARRISBURG, PA 17120

June 9, 2003

Original: 2283

The Honorable John R. McGinley
Independent Regulatory Review Committee
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17120

**Re: Final-form regulation
Labor & Industry
Uniform Construction Code
No. 12-60**

RECEIVED
2003 JUN -9 PM 5:05
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Chairman McGinley:

In accordance with the Regulatory Review Act, the Department of Labor and Industry formally withdraws its final-form regulation to address concerns with the regulation and to make appropriate revisions. The Department intends to resubmit this final regulation within 2 years of the close of the public comment period for the proposed rulemaking.

Thank you for your review of this regulation. Please feel free to contact the Department's staff to provide further input.

Sincerely,

Stephen M. Schmerin
Secretary

SMS/



GOVERNOR'S OFFICE OF
GENERAL COUNSEL

DEPUTY CHIEF COUNSEL
OFFICE OF CHIEF COUNSEL
LABOR LAW COMPLIANCE DIVISION
10TH FLOOR, LABOR & INDUSTRY BUILDING
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717-787-4186 Fax: 717-783-5027 www.dli.state.pa.us



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

June 9, 2003

FACSIMILE TRANSMISSION

TO: John Jewett
Independent Regulatory Review Commission

FAX NO: 783-2664

FROM: James A. Holzman
Deputy Chief Counsel

PAGES: 2
(including cover)

TIME: 4:59 PM

RE: Uniform Construction Code Regulations (12-60)

RECEIVED
2003 JUN -9 PH 5:04
INDEPENDENT REGULATORY
REVIEW COMMISSION

Withdrawal letter. Original document will be delivered today.

Confidentiality Note:

The documents accompanying this fax transmittal contain information from the Commonwealth, Department of Labor & Industry, Office of Chief Counsel which are confidential or legally privileged. The information is intended only for the use of the individual or entity named on this sheet. If you have received this document in error, please immediately telephone the sender and arrange for its return. If you are not the intended recipient, you are notified that any disclosure, copying, distribution or taking any action on reliance on the contents of this fax transmission is strictly prohibited.



THE SECRETARY
1700 LABOR AND INDUSTRY BUILDING
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DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

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June 9, 2003

The Honorable John R. McGinley
Independent Regulatory Review Committee
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17120

Re: **Final-form regulation
Labor & Industry
Uniform Construction Code
No. 12-60**

INDEPENDENT REGULATORY
REVIEW COMMISSION

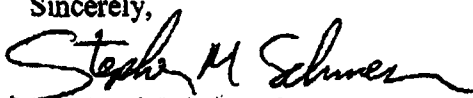
2003 JUN -9 PM 5: 04

RECEIVED

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Thank you for your review of this regulation. Please feel free to contact the Department's staff to provide further input.

Sincerely,

Stephen M. Schmerin
Secretary

SMS/



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BISH, VICE CHAIRMAN
DANIEL E. CLARK, ESQ.
ARTHUR COCCODRIU
MURRAY UBERG, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL

**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
333 MARKET STREET
14TH FLOOR
HARRISBURG, PA 17101**

[irrc@irrc.state.pa.us](http://www.irrc.state.pa.us)
<http://www.irrc.state.pa.us>
(717) 783-5417
Fax (717) 783-2664

November 10, 2003

Honorable Stephen M. Schmerin, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-60 (IRRC #2283)
Uniform Construction Code; Administration and Enforcement;
Elevators and Other Lifting Devices

Dear Secretary Schmerin:

We received your letter informing us of your intent to toll the subject regulation and your revisions to the regulation on November 6, 2003. The Commission does not object to your request.

Pursuant to Sections 5.1(g)(3) and (j.2) of the Act (71 P.S. §§ 745.5a(g)(3) and (j.2)), the Committees will now have until November 19, 2003, to complete their review. The Commission will act on this regulation at its public meeting on November 20, 2003.

If you have any questions, please contact me at 783-5506 or bohn@irrc.state.pa.us.

Sincerely,

Robert E. Nyce
Executive Director

wbg

cc: Honorable Joseph B. Scarnati, III, Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee
Honorable Bob Allen, Majority Chairman, House Labor Relations Committee
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee
Robert A. Mulle, Esq., Office of Attorney General
David J. DeVries, Esq., Office of General Counsel
James Holzman, Esq., Deputy Chief Counsel