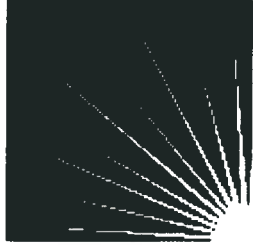


# 3120

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IRRC

Clean Air Council



November 12, 2015

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## EMBARGOED MATERIAL

Thank you for the opportunity to comment today. My comments will address IRRC number 3120 on today's docket. My name is Logan Welde, I am a staff attorney with the Clean Air Council (the "Council"). The Council is an environmental nonprofit whose mission is to protect everyone's right to breathe clean air. The Council respectfully asks this Commission to reject number 3120, a regulation adopting the revisions specified in the report from Uniform Construction Code Review and Advisory Council ("RAC") issued on May 29, 2015. Final Regulation with Notice of Proposed Rulemaking Omitted, Department of Labor & Industry, promulgation of regulations under the Pennsylvania Construction Code Act.

**The Commission should vote no because this regulation is contrary to the intent of the Pennsylvania Legislature against public policy.**

### I. Issue:

Buildings in suburban and rural areas consume up to 40% of the total energy produced; in urban areas, buildings consume up to 70% of the total energy produced. By adopting updated building codes that require more energy-efficient buildings to be constructed or re-constructed, Pennsylvania has the potential to greatly reduce the amount of energy produced and subsequently lower its greenhouse gas emissions and other air pollution.

Pennsylvania was one of the first states to adopt the updated triennial building codes issued by the International Code Council ("ICC"). Pennsylvania had an "opt-out" system that all but ensured new codes would be adopted unless a specific provision was objected to by a majority of the RAC. In 2011 Governor Corbett signed Act 1 into law, this reversed the code adoption process (now "opt-in"), making it extremely difficult for the state to adopt new codes. Pennsylvania is currently using 2009 codes; the most recent are the 2015 codes. The RAC, which is responsible for adopting new codes, recently voted to keep the 2009 codes in place in Pennsylvania—the RAC only adopted 16 out of 1902 revisions (the "Decision").

### II. Clean Air Council's Petition for Review in Commonwealth Court

Clean Air Council ("CAC") filed a Petition for Review with the Pennsylvania Commonwealth Court on June 19, 2015, and an amended petition on October 9, 2015 in order to reverse the Decision and undo the damage done over the last few years to the building code review process.

In its Petition CAC claimed:

- RAC's decision to reject the well-reasoned decisions of its subcommittees and reject all but 16 of 1902 revisions was arbitrary.
- RAC's process of code adoption violated CAC's right to due process.

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- Labor and Industry's ("L&I") interpretation of Act 1 was arbitrary and against legislative intent (L&I is responsible for code implementation and advising the RAC).
- RAC failed to perform its duty under Article I, Section 27 of the PA Constitution (Environmental Rights Amendment).
- Act 1 is unconstitutionally vague.
- Improper delegation of authority by the legislature.
- Violation of the federal Safe Drinking Water Act.

The Council is seeking relief through the Court by declaring Act 1 unconstitutional, in the alternative, declaring L&I's interpretation invalid, and reversing RAC's decision to reject all but 16 of the 2015 revisions among others.

### III. Pennsylvania's Current Code Adoption Process is Broken and is Against the Intent of the Legislature

Before Act 1, the code adoption process worked. The process fulfilled the intention of the Legislature in enacting Act 45 (the Pennsylvania Construction Code Act)—to adopt updated codes in the state. Unfortunately, Act 1 created a completely unworkable and broken system that all but ensured that Pennsylvania would be permanently relegated to the dark ages of building codes.

In 2012, the RAC adopted no new revisions. Members of the RAC were interviewed after the vote and stated that they did not have enough time to fulfill the requirements of Act 1, and that they decided to not adopt new revisions because of policy considerations, "I think the sentiment was growing that this [code adoption process] is all happening too fast and we need to stop this - we need to slow this down,"<sup>1</sup> said Joe Mingioni, a member of the RAC. The chairman of the RAC during the 2012 vote, Frank Thompson, testified in front of a Pennsylvania Senate committee that the RAC "had a one-year timeframe, which is not enough for the [RAC] to do its work."<sup>2</sup>

The process seemed to work better during the review of the 2015 code revisions. The members of the RAC were assigned to subcommittees and were tasked to review the entirety of the 2015 revisions (excluding the revisions from 2009 to 2012). The subcommittees voted to adopt 98.7% of the 1902 revisions. When the RAC as a whole met to vote on the thoroughly considered recommendations of the subcommittees, the RAC inexplicably, and with no discernable reasoning, voted to only adopt 16 revisions, or 0.84% of the proposed 2015 revisions.

### IV. This Regulation is Against Public Interest and Will Negatively Impact Pennsylvania

Pennsylvania, like the rest of the country, is under a mandate to reduce its greenhouse gas emissions. The Clean Power Plan ("CPP") is an action by the U.S. Environmental Protection Agency ("EPA") to "[p]rotect [p]ublic [h]ealth, [r]educe [e]nergy [b]ills for [h]ouseholds and [b]usinesses, [c]reate [a]merican [j]obs, and [b]ring [c]lean [p]ower to [c]ommunities across the [c]ountry."<sup>3</sup> The purpose of the CPP is to reduce the amount of carbon emitted from America's power plants. One way to reduce the amount of carbon emitted is to reduce the demand for energy from power plants. This can be achieved, at least in part, by increasing the energy efficiency standards called for in construction and re-construction.

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<sup>1</sup> See WITF, "For state's building code, consensus that review requires more time." September 24, 2013, available at <http://www.witf.org/state-house-sound-bites/2013/09/for-states-building-code-consensus-that-review-requires-more-time.php>.

<sup>3</sup> Fact Sheet: President Obama to Announce Historic Carbon Pollution Standards for Power Plants, The White House, available at <https://www.whitehouse.gov/the-press-office/2015/08/09/fact-sheet-president-obama-announce-historic-carbon-pollution-standards>.

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It is in the public interest to reduce the amount of carbon emitted into our atmosphere, reduce energy bills, and create more jobs in Pennsylvania. This proposed regulation, only adopting 16 revisions, does nothing to increase energy efficiency of buildings in Pennsylvania.

The RAC and this Commission, have an obligation under Article 1, section 27 of the Pennsylvania Constitution, the Environmental Rights Amendment (“ERA”) to consider Pennsylvania’s natural environment when considering any potential regulation. The energy efficiency provisions of the 2015 building codes would greatly improve Pennsylvania air quality. An important environmental feature protected by the ERA—clean air—is at stake in the code revision process.

By its own admission, L&I declared that adopting this regulation is against the best interest of the public. In its September 22, 2015 answer to question 12 on the Regulatory Analysis Form, L&I stated that “[t]his regulation negatively impacts Pennsylvania’s ability to compete with other states . . . .”<sup>4</sup> The Department goes on to say:

This fragmentary nature of Pennsylvania’s regulations results in increased costs of having to buy and consult different yearly editions and causes confusion as to what Pennsylvania’s most current UCC actually requires. This difficulty in comprehending, applying and complying with Pennsylvania’s UCC will likely put the Commonwealth at a competitive disadvantage when businesses are choosing between different states for a construction project.

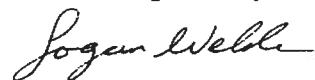
*Id.*

### V. Conclusion

Clean Air Council respectfully requests that this Commission fulfill its obligation and vote to deny this regulation because it is contrary to the intent of the Pennsylvania Legislature, and it is against public interest.

Thank you for your attention in this matter.

Respectfully submitted,



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<sup>4</sup> See *Regulatory Analysis Form*, completed by Pennsylvania Department of Labor and Industry, September 22, 2015, available at <http://www.irrc.state.pa.us/docs/3120/AGENCY/3120FO.pdf>.