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*Clearview*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
RESOURCES, :  
Plaintiff :

v. :

RICHARD M. HELLER, CLEARVIEW :  
LAND DEVELOPMENT, INC. and CITY :  
WIDE SERVICES, INC., :  
Defendants :

NO. 711 M.D. 1998



O R D E R

NOW, June 7, 1999, upon consideration of plaintiff's motion for leave to amend complaint, to which motion no answer has been filed, the motion is granted and plaintiff's amended complaint shall be filed and served within 15 days of entry of this order.

*[Handwritten Signature]*  
\_\_\_\_\_

S. J.

CERTIFIED FROM THE RECORD  
AND ORDER ENT

JUN 8 - 1999

*[Handwritten Signature]*  
Deputy Prothonctary - Chief Clerk



Pennsylvania Department of Environmental Protection



Office of Chief Counsel  
Lee Park - 555 North Lane - Suite 6015  
Conshohocken, PA 19428-2233  
June 21, 1999

Southeast Regional Counsel

Telephone: 610-832-6300  
Facsimile: 610-832-6321

Daniel Schuckers, Prothonotary  
Commonwealth Court of Pennsylvania  
P.O. Box 11730  
Harrisburg, PA 17108

Re: Commonwealth, DEP v. Mr. Richard M.  
Heller, Clearview Land Development, Inc.,  
and City Wide Services, Inc.  
No. 711 M.D. 1998

Dear Mr. Schuckers:

Enclosed for filing are an original and three copies of the Commonwealth's Amended Complaint in Equity. The court granted leave to file this amended complaint by order dated June 7, 1999. James A. Lynch, Esquire, attorney for the Defendants has agreed to accept service of the Amended Complaint, and I am serving him as indicated on the attached certificate of service.

Thank you for your attention to this matter.

Very truly yours,

Mary Y. Peck  
Assistant Counsel

MYP/vb

Enclosures

cc: James A. Lynch, III, Esquire

AR200038





**IN THE  
COMMONWEALTH COURT OF PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
<b>DEPARTMENT OF ENVIRONMENTAL</b>	:	
<b>PROTECTION,</b>	:	
<b>Petitioner</b>	:	
<b>v.</b>	:	<b>No. 711 M.D. 1998</b>
<b>RICHARD M. HELLER,</b>	:	<b>Complaint in Equity</b>
<b>CLEARVIEW LAND DEVELOPMENT, INC.</b>	:	
<b>and</b>	:	
<b>CITY WIDE SERVICES, INC.</b>	:	
<b>Respondents</b>	:	

**NOTICE**

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Dauphin County Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

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(Red)

IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION, :  
Plaintiff :

v. :


RICHARD M. HELLER, :  
CLEARVIEW LAND DEVELOPMENT, INC. :  
and :  
CITY WIDE SERVICES, INC. :  
Defendants :

No. 711 M.D. 1998  
Complaint in Equity

ORDER

NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 1999, in consideration of the Commonwealth of Pennsylvania, Department of Environmental Protections's Complaint in Equity and the response thereto, this court finds that Richard M. Heller, Clearview Land Development, Inc., and City Wide Services, Inc., ("Defendants") have violated and continue to be in violation of the Pennsylvania Solid Waste Management Act, of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101 et seq. It is hereby ORDERED that:

A. Richard M. Heller, Clearview Land Development, Inc., and City Wide Services, Inc., are permanently enjoined from processing or disposing of waste at the Site, or allowing the processing or disposing of waste at the site, including, but not limited to the following: burning, dumping and disposing of waste on the surface of the ground; and sorting or processing waste on the tipping floors or surface of the ground.



B. Within seven (7) days of the date of this order, Richard M. Heller, Clearview Land Development, Inc., or City Wide Services shall remove all waste from the Site and properly dispose of it in compliance with the Solid Waste Management Act., 35 P.S. §§ 6018.101 et seq.

C. Within fifteen (15) days of the date of this order, Richard M. Heller, Clearview Land Development, Inc., or City Wide Services shall submit a plan to the Department indicating how the stockpiling and removal of fill on top of the closed landfill will be operated to protect the landfill closure, and submit an erosion and sedimentation action control plan, the Township permit, and documentation of the total fill to the Delaware County Conservation District. The Defendants shall implement these plans as approved by the Department and the Delaware County Conservation District.

D. A nonexclusive fine of \$1000.00 per day is assessed for each day that Richard M. Heller, Clearview Land Development, Inc., and City Wide Services, Inc. fail to comply with this Order.

E. The Commonwealth of Pennsylvania, Department of Environmental Protection is awarded its costs.

F. Jurisdiction is retained.

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J.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
CIVIL ACTION - EQUITY**

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
Plaintiff	:	
v.	:	No. 711 M.D. 1998
RICHARD M. HELLER,	:	Complaint in Equity
CLEARVIEW LAND DEVELOPMENT, INC.	:	
and	:	
CITY WIDE SERVICES, INC.	:	
Defendants	:	

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**AMENDED**


**COMPLAINT IN EQUITY**

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The Commonwealth of Pennsylvania, Department of Environmental Protection, now comes before this Honorable Court and respectfully avers the following:

**The Parties**

1. Plaintiff is the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"). The Department is the agency of the Commonwealth which is vested with the duty and authority to administer the provisions of the Solid Waste Management Act ("SWMA"), Act of July 7, 1980, P.L. 380, as amended, 35 P.S. § 6018.101 et seq., the Clean Streams Law ("CSL"), Act of June 22, 1937, P.L. 1987, as amended 35 P.S. § 69 1.1 et seq., Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17, and the rules and regulations promulgated thereunder.



2. Defendants are Richard M. Heller ("Heller"), City Wide Service, Inc., and Clearview Land Development Inc.

3. Heller is an individual who resides at 500 North Lemon Street, Media, PA 19063, and is the president of both Clearview Land Development, Inc. and City Wide Services, Inc.

4. City Wide Services, Inc. is a Pennsylvania corporation that conducts a trash hauling business, and has a mailing address of Avenue "A" and Darby Creek Road, Sharon Hill, PA 19679, and a registered office at 285 S. 63rd St., Philadelphia, PA.

5. Clearview Land Development, Inc. is a Pennsylvania corporation with a registered office of 1606 Rose Glen Rd., Havertown, PA, and is the owner of a tract of land on 83rd and Buißt Avenue ("the Site"), Darby Township, Delaware County.

#### Jurisdiction

6. The jurisdiction of this Honorable Court is invoked pursuant to Section 761 (a)(2) of the Judicial Code, 42 Pa. C. S. A. § 76 1 (a)(2); and Section 604 of the SWMA, 3 5 P. S. § 6018,604, which authorizes the Department to institute a suit in equity in the name of the Commonwealth to enforce the SWMA.



**Factual History**

7. Heller and his corporation, Clearview Land Development, Inc. have a long history of violating the SWMA, including the following:


a. Heller and Clearview Land Development, Inc. illegally operated a landfill at the Site during the 1970's.

b. On August 7, 1973, the Delaware County Court of Common Pleas ordered Clearview Land Development, Inc. to cease disposing of solid waste at the Site by September 30, 1973. This Honorable Court upheld and expanded the requirements of the August 7, 1973 order of the Court of Common Pleas of Delaware County in Clearview Land development Co., Inc. v. Commonwealth, et al., 327 A.2d 202 (1974). (A copy of the order of the Delaware County court of Common Pleas is attached hereto as "Exhibit A." A copy of the opinion and order of the Commonwealth Court is attached hereto as "Exhibit B.")

c. Numerous inspections by the Department in 1974 showed that Heller continued to dispose of solid waste at the Site in violation of the order of the Delaware County Court of Common Pleas.

d. Heller did not complete covering and grading of the landfill until 1976, nearly three years after the date imposed by the order of the Court of Common Pleas of Delaware County.






e. The Department received numerous complaints about the Site in the 1980's and 1990's, and conducted numerous inspections that revealed ongoing processing, dumping and open burning of waste, and severe rodent infestation.

f. On June 30, 1980 December 8, 1981, December 22, 1982, May 16, 1984, December 8, 1986, and October 27, 1987, the Department sent Heller notices of violation enumerating the violations of the SWMA at the Site. (Copies of these notices of violation are attached hereto as "Exhibit C.")

g. On September 3, 1980, the Department met with Heller and advised him to stop dumping and depositing or allowing the dumping or depositing of waste on the site and to cease burning waste on Site.

h. On at least two occasions, Heller refused to allow the Department access to the Site.

8. In response to observations made in a routine coastal zone fly-over, the Department, on April 14, 1997, conducted an inspection of the Site. The inspection revealed that Heller was again processing and disposing of solid waste without a permit. Specifically the




Department observed municipal waste including, but not limited to, household municipal waste, construction and demolition waste, waste tires, used appliances and recyclable material deposited onto the surface of the ground, and on two tipping floors at the Site.

9. On April 17, 1997, the Department conducted an inspection of the Site. The inspection revealed that Heller was continuing to process and dispose of solid waste without a permit. Specifically the Department observed municipal waste including, but not limited to, household municipal waste and construction and demolition waste on the surface of the ground. Further, Heller did not provide records, and refused to state where the waste was collected.

10. On April 22, 1997, the Department conducted an inspection of the Site. The inspection revealed that Heller was continuing to process and dispose of solid waste without a permit. Specifically the Department observed municipal waste including, but not limited to, household municipal waste, construction and demolition waste, a mattress, a boxspring, and furniture.

11. On April 25, 1997, the Department issued a notice of violation to Heller enumerating the violations observed during the inspections of April 14, 17 and 22, 1997, and requesting Heller to submit, within fourteen days, a proposed program and schedule for abatement of these violations. (A copy of this notice of violation is attached hereto as "Exhibit D.")



12. The Department conducted an inspection of the Site on June 24, 1997 that revealed that, although waste was no longer present on the tipping floors, waste remained on the surface of the ground at the Site.

13. On October 8, 1997, the Department met with Heller and advised him to stop dumping and depositing or allowing the dumping or depositing of waste on the site. Heller agreed to have a plan for the removal of the waste on site to the Department by October 17, 1991.

14. On October 27, 1997, the Department conducted an inspection of the Site that revealed that solid waste including, but not limited to tires, a mattress, a car seat, metal and styrofoam were dumped on one of the tipping floors, and previously observed waste remained on the surface of the ground.

15. An inspection conducted by the Department on May 5, 1998 revealed that additional waste was on the Site including, but not limited to, tires, glass, dimensional lumber, metal, and plastic bags containing municipal waste. Odors were present and flies were observed around the plastic bags of waste, indicating that the waste was putrescible. The Department did not receive any disposal receipts. Previously observed waste remained on the surface of the ground.


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16. The Department mailed its inspection report from the May 5, 1998 inspection to Richard Heller on that day, and the report recommended that Heller cease dumping or allowing the dumping of waste at the Site, and that he properly dispose of all solid waste on the Site within 30 days, and provide disposal receipts within 35 days.

17. Subsequent to the May 5, 1998 inspection, the Department received a complaint alleging suspicious activity at the closed landfill and a significant increase in the amount of trucks going to the facility. In response to this complaint, the Department conducted an inspection on May 12, 1998.

18. The May 12, 1998 inspection revealed that the waste observed on the tipping floor on May 5, 1998, remained, and additional waste had been dumped there subsequent to May 5, 1998. The previously observed waste on the surface of the ground also remained.

19. During the May 12, 1998 inspection, Richard Heller admitted that he dumps waste on the tipping floor to sort through it for recyclable material, and he also admitted that he does not clean his hauling vehicles.



20. The Department again recommended that Heller cease dumping or allowing the dumping of waste on the site, properly dispose of all waste on the Site, and provide the Department with disposal receipts. The Department further recommended that Richard Heller cease sorting through waste, and ensure that waste hauling vehicles are cleaned in accordance with the municipal waste regulations, 25 Pa. Code §§ 285.213 and 285.214.

21. On June 8, 1998, the Department conducted another inspection that revealed that, although waste was removed from the tipping floor, previously observed waste remained on the surface of the ground.

22. To date the Department has not received a plan from Heller, and waste remains on the surface of the ground at the Site.

#### **Count I - The Solid Waste Management Act**

23. Paragraphs 1-22, inclusive, are hereby incorporated as though fully set forth herein.

24. Section 201(a) of the SWMA, 35 P.S. § 6018.201(a), provides, "[n]o person or municipality shall store, collect, transport, process, or dispose of municipal waste within this Commonwealth unless such storage, collection, transportation, processing or disposal is

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authorized by the rules and regulations of the department and no person or municipality shall own or operate a municipal waste processing or disposal facility unless such person or municipality has first obtained a permit for such facility from the department."


25. Section 610 of the SWMA, 35 P. S. § 6018.6 10 makes it unlawful for any person or municipality to:

(1) dump, deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or into the waters of the Commonwealth unless a permit has first been obtained from the Department;

(2) construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the Department as required by the SWMA;

(3) burn solid wastes without a permit from the Department;

(4) store, collect, transport, process, treat, beneficially use, or dispose of solid waste contrary to the rules and regulations of the Department or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare; or to




(7) refuse, hinder, obstruct, delay, or threaten any agent or employee of the Department in the course of performance of any duty under this act including, but not limited to, entry and inspection under any circumstances.

(9) cause or assist in the violation of any provision of the SWMA or any order of the Department.

26. Section 601 of the SWMA, 35 P. S. § 6018.601 states that "[a]ny violation of any provision of this act, any rule or regulation of the department, [or] order of the department ... shall constitute a public nuisance. Any person or municipality causing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation."

27. The Site, as identified in Paragraph 1, is a "facility" as that term is defined in 103 of the SWMA, 35 P.S. § 6018.103.

28. Section 604 of the SWMA, 35 P. S. § 6018.604, authorizes the Department to "institute a suit in equity in the name of the Commonwealth where a violation of law or nuisance exists for an injunction to restrain a violation of this act or the rules, regulations, standards or



orders adopted or issued thereunder and to restrain the maintenance or threat of a public nuisance." Moreover, "[i]n any such proceeding, the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory injunction if it finds that the defendant is engaging in unlawful conduct which is causing immediate and irreparable harm to the public."

29. The actions of Heller, City Wide Services, Inc., and Clearview Land Development, Inc. in failing to comply with the repeated orders and requests of the Department, in continuing to own and/or operate the Site as a disposal and processing facility for solid waste, are creating a manifest danger of immediate and irreparable harm to the public health and safety and to the environment and constitute violations of the law under the SWMA and a public nuisance as defined therein.

30. The Department lacks an adequate remedy at law to restrain Heller, City Wide Services, Inc., and Clearview Land Development, Inc. from continuing to violate the SWMA.

WHEREFORE, the Commonwealth respectfully requests and petitions this Court to issue a restraining injunction to Heller, Clearview Land Development, Inc., and City Wide Services, Inc. to immediately and permanently cease the processing, dumping, disposing or burning of all solid waste at the Site, to cease authorizing or otherwise allowing the processing, dumping, disposing or burning of all solid wastes at the Site, and to issue a mandatory injunction to Heller, Clearview Land Development, Inc., and City Wide Services, Inc. to remove all waste on the Site.



**Count II - Administrative Code and Public Nuisance**

31. Paragraph 1-30, inclusive, are hereby incorporated as though fully set forth herein.

32. Section 1917-A of the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17, states: "[t]he Department of Environmental Protection shall have the power and its duty shall be: (1) To protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the Department..."

33. The actions of Heller, Clearview Land Development, Inc., and City Wide Services, Inc. have created a public nuisance and a statutory nuisance such that an equity action by public authorities will lie for the abatement of such nuisances through a prohibitive and mandatory injunction.

WHEREFORE, the Department respectfully requests this Court to issue a restraining injunction to Heller, Clearview Land Development, Inc., and City Wide Services, Inc. to immediately and permanently cease the processing, dumping, disposing or burning of all solid waste at the Site, to cease authorizing or otherwise allowing the processing, dumping, disposing or burning of all solid wastes at the Site, and to issue a mandatory injunction to Heller, Clearview Land Development, Inc., and City Wide Services, Inc. to immediately remove all waste from the Site.

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**Count III - The Clean Stream Law**

34. Paragraphs 1-33, inclusive, are hereby incorporated as though fully set forth herein.

35. Chapter 102 of the Department's regulations 25 Pa. Code, § 102.4,

requires the following:

**§ 102.4. General.**

(a) Earthmoving activities within this Commonwealth shall be conducted in such a way as to prevent accelerated erosion and the resulting sedimentation. To accomplish this, except as provided in subsection (b), a landowner, person or municipality engaged in earthmoving activities shall develop, implement and maintain erosion and sedimentation control measures which effectively minimize accelerated erosion and sedimentation. These erosion and sedimentation measures shall be set forth in a plan as set forth in § 102.5 (relating to erosion and sedimentation control plan) and be available at all times at the site of the activity. The Department or its designee may, at its discretion, require this plan to be filed with the Department or its designee.

36. Chapter 102 was promulgated under the authority of Sections 5 and 402 of the Clean Streams Law, which authorize the Department to regulate activities, not otherwise requiring a permit under the Clean Streams Law, which create a danger of pollution to the waters of the Commonwealth.


37. Section 611 of the Clean Streams Law, 35 P.S. § 691.611, provides that it shall be unlawful to fail to comply with any rule or regulation adopted under the Clean Streams Law.



38. The Department conducted an inspection of the site on November 16, 1998, which revealed that Heller was stockpiling soil on top of the closed landfill without any erosion and sedimentation controls or an approved erosion and sedimentation control plan. The Department also observed a large pile of leaves, refrigerators, white goods and recyclable material commingled with waste on the tipping floor. There was municipal waste pushed over the edge of the tipping floor. The Department also observed, on top of the site, numerous piles of fill consisting of, but not limited to, used asphalt, brick, cement, dirt and ash.

39. The actions of Heller, City Wide Services, Inc., and Clearview Land Development, Inc. in conducting earthmoving activities in violation of the Clean Streams Law are creating a potential for pollution to the waters of the Commonwealth and constitute violations of the Clean Streams Law and a public nuisance as defined therein.

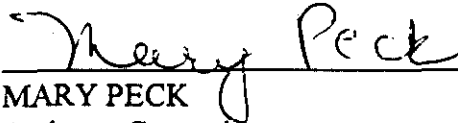
40. The Department lacks an adequate remedy at law to restrain Heller, City Wide Services, Inc., and Clearview Land Development, Inc. from continuing to violate the Clean Streams Law.



WHEREFORE, the Commonwealth respectfully requests and petitions this Court to issue a restraining injunction to Heller, City Wide Services, Inc., and Clearview Land Development, Inc., requiring them to submit a plan to the Department indicating how the stockpiling and removal of fill on top of the closed landfill will be operated to protect the landfill closure, and submit an erosion and sedimentation action control plan, the Township permit, and documentation of the total fill to the Delaware County Conservation District. The Defendants shall implement these plans as approved by the Department and the Delaware County Conservation District.

Respectfully Submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MARY PECK  
Assistant Counsel  
Attorney ID# 41707  
Office of Chief Counsel - Southeast Region  
Lee Park - 555 North Lane - Suite 6015  
Conshohocken, PA 19428  
Telephone: 610-832-6300

DATE: 6/21/99



IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
CIVIL ACTION - EQUITY

COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION, :

Plaintiff

v.

RICHARD M. HELLER, :  
CLEARVIEW LAND DEVELOPMENT INC. :  
and :  
CITY WIDE SERVICES, INC. :

Defendants

Docket No.


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VERIFICATION OF ACCURACY OF COMPLAINT

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I, Nancy Roncetti, Chief of Operations for the Commonwealth of Pennsylvania, Department of Environmental Protection, Southeast Region Bureau of Waste Management, do hereby aver and affirm that the facts alleged in the foregoing Complaint in Equity are true and correct to the best of my knowledge and belief.

I understand that this verification is made subject to the penalties provided in 18 Pa.C.S. § 4909 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Nancy Roncetti  
Chief of Operations

IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
CIVIL ACTION - EQUITY

COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION, :  
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v. :  
RICHARD M. HELLER, :  
CLEARVIEW LAND DEVELOPMENT, INC. :  
and :  
CITY WIDE SERVICES, INC. :  
Defendants :

No. 711 M.D. 1998  
Complaint in Equity


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VERIFICATION

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I, Frank DeFrancesco, Compliance Specialist for the Commonwealth of Pennsylvania, Department of Environmental Protection, Southeast Region Bureau of Water Management, do hereby aver and affirm that the facts alleged in the foregoing Amended Complaint are true and correct to the best of my knowledge and belief.

I understand that this verification is made subject to the penalties provided in 18 Pa. C.S. § 4909 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Frank DeFrancesco  
Compliance Specialist