



Public Interest Law Center of Philadelphia

Volume 4, No. 1

September 1986

ENVIRONMENTAL PROJECT LITIGATION AND NEGOTIATION STRENGTHENS COMMUNITY GROUPS' RIGHT TO MONITOR FACILITIES WHICH THREATEN THE ENVIRONMENT

Beginning in 1979 when it represented a Bridesburg neighborhood group in two cases against industrial polluters in the area, the Environmental Project has gradually widened its reach into neighborhoods threatened by industrial and municipal pollution of the air. The Project's work is based on the fundamental need of every citizen for clean air, and their entitlement to that under a variety of laws. Our task is to help community groups insist that facilities actually are operated in accordance with existing laws and regulations. That has led the Law Center in the past year to be active in a wide range of neighborhoods, serving as counsel to citizens from Roxborough to South Philadelphia.

Lane Taylor, Jr.
Chairman of the Board

W. Jeffrey Garson
Vice-Chairman

Thomas K. Gilhool
Michael Churchill
Chief Counsel

Jerome Balter
Timothy M. Cook
Judith A. Gran
Frank J. Laski
Staff Attorneys

Peter Stevens
Newsletter Editor

Edwin D. Wolf
Executive Director
1974-1976

I. Consent Decree Victory at the Northwest Incinerator

Ever since the City of Philadelphia began operating its Northwest Incinerator facility in 1960 in the Roxborough/Manayunk section, residents have complained bitterly about smoke, odors and flyash problems.



Signing the Northwest Incinerator consent decree: Seated: Rolf Sauer, Chairman, Germany Hill Civic Association Incinerator Committee; Jerome Ralter, PILCOP; Standing, from left: Paul Franzen, Rosemary Schwartz, William Schwartz, Emily Klebon, Ann Netzel.

In 1983, after appeals to elected officials and enforcement agencies failed to bring relief, the Germany Hill Civic Association and five other community groups requested legal and technical help from the Law Center.

The Law Center filed a citizens lawsuit to enjoin operations in violation of local, state and federal regulations and undertook extensive discovery to investigate City operating and maintenance practices.

Our investigation revealed shocking mismanagement of all aspects of the Northwest Incinerator operations. Frequent shutdowns were due to a lack of maintenance; substandard operating procedures resulted in furnace temperatures substantially below licensing requirements; and pollution controls for smoke and flyash were operating at below standard levels.

Faced with these incontestable facts of mismanagement, the City agreed to enter into negotiations for a consent decree and also agreed to make changes in personnel and practices to alleviate the problems.

While negotiations were in progress, our clients compelled EPA to thoroughly test the incinerator's stack emissions for the first time to determine the

Please turn to page 2

Environmental Project

(continued from page 1)

extent of the dioxin problem at the Northwest facility. In January 1986, EPA reported that the maximum cancer risk from 70 years' exposure to the Incinerator's dioxin emissions was estimated at 1 in 20,000; and EPA anticipated one extra cancer every 14 years among the 5,000,000 people living in the area.

In March 1986, the Consent Decree was approved by the court. It contains the following features:

1. The Northwest Incinerator will be closed down as soon as the City begins operations of new resource recovery facilities.
2. New furnace structures are to be installed to improve combustion.
3. New electrostatic precipitators will be installed to reduce smoke and flyash emissions.
4. Furnaces will be operated at 1,750°F. (1,400°F minimum) rather than 1,000°F.
5. Continuous stack emission monitors and recorders to control smoke and flyash 24 hours a day will be installed.
6. Periodic stack tests will be made to determine if dioxin and other toxic emissions are within established standards.

The Consent Decree additionally provides the community organizations with special rights to oversee operations at the Northwest facility in order to guarantee City conformance with required standards:

1. Community right to make unannounced site visits to investigate all aspects of the operation.
2. Community right to inspect installation of Consent Decree-required improvements.
3. Community right to inspect all daily furnace temperature charts to assure City compliance with standards.
4. Community right to cite the Northwest facility for violation of order, smoke or flyash regulations. Three community members became certified smoke readers by attending Smoke Reading School in Dover, Delaware.

These community right provisions represent important philosophical and practical breakthroughs in the ongoing campaign for a clean, healthy environment. Such rights are not included in existing environmental protection legislation and must be developed, at present, through community pressure on facility operators.

II. Widening Community Rights to Protect Against Air Pollution

The Northwest Incinerator Consent Decree (March 1986) has served as a model in two other neighborhoods



Bridesburg 1980

for developing industry/community contractual relations empowering citizens to enforce environmental standards to prevent health and environmental risk.

In April 1986, a company seeking to locate in the Juniata-Hunting Park section agreed to a series of community demands regarding the operation of a new facility for detoxifying PCB contaminated oils. City Council member Pat Hughes was deeply involved in these negotiations and the Law Center provided technical and legal assistance. Under the agreement, the company, PPM, Inc. agreed to have 24-hour guard service, automatic fire fighting systems, complete labelling of all containers, and limited trucking hours. Residents will be able to make unannounced site visits and to examine operating logs.

Presbyterian Hospital in June 1986 entered into environmental contractual relations with two community groups, Saunders Park Neighbors and Powelton Village Civic Association, with respect to a small incinerator to be installed at the hospital. Under the agreement, residents can enforce all air pollution standards and Presbyterian Hospital must pay to train community residents to become certified smoke readers.

III. Bridesburg Residents Win Lawsuit Against Northeast Sewage Plant

Late in 1984, residents of the Bridesburg/Richmond area reached the end of the line with the City's Northeast Sewage Treatment facility. After years of promises, the odor problems were getting worse. In 1984 alone,

Environmental Project

(continued from page 2)

the sewage facility received 55 odor violations from the Philadelphia Health Department; community residents will tell you there were more than double that number.

More than 175 local residents asked the Law Center to take legal action to make the City operate the facility in compliance with regulations. In response, the Law Center filed a citizens lawsuit in January 1985 and requested the City Water Department to negotiate a settlement aimed at overcoming the severe odor problem. The City refused to negotiate and did nothing to overcome the problem. In 1985, the Northeast Sewage plant received more than 100 odors violations from the Health Department.

What the City did do, however, was to support an EPA proposal to remove the odor regulations from enforcement under federal law, hoping to cause dismissal of the lawsuit.

These odor regulations have proven to be the principal means through which citizens have enforced air pollution laws in the past and have effected substantial reductions in polluting air emissions.

Opposition to EPA's proposal was immediate and extensive. Philadelphia City Council and the Pennsylvania House of Representatives both passed resolutions against EPA's proposal and more than 1,000 residents signed petitions. EPA's only support was from industry associations and the City of Philadelphia.

Trial of the case was completed on May 9 and while judgment was pending, EPA published a final rule deleting the odor regulations from federal enforcement. That rule is being challenged in the Court of Appeals for the Third Circuit.

In late July, U.S. District Judge Van Artsdalen ruled in favor of the Law Center's clients. He barred the City and the the Water Department from operating the plant in violation of the state Air Pollution Control Act and the city Air Management Code, and ordered the Water Department to "take all reasonable actions" eliminate the odor problems.

IV. Coyne Industrial Laundries, Inc.

Coyne Industrial Laundries operates an unusual laundry. It launders rags from the printing trades and from other industrial sources. These rags are soaked with a variety of strong chemical solvents, many of which are carcinogenic. When the rags are laundered, some of the solvents are exhausted into the air and some are discharged into the sewers.

In the sewers, the chemicals volatilize, escape through cracks in the sewer lines and seep through the ground into the basements of people's homes.

The City has been aware of this serious health hazard

situation for more than six years but has not taken any meaningful action to stop the problem.

Early in 1986, some 50 residents of the Richmond/Kensington area around the Coyne plant requested assistance from the Law Center. When the Law Center sought emission information from it about Coyne, the City reacted in two ways: first, the City refused to provide information because the City was "investigating" the matter; but second, the City suddenly began to find odor violations from the Coyne facility. (In 1985, the City found only one violation in 55 investigations; in 1986, the City found more than 20 violations within two months of the Law Center's inquiry.)

When the Law Center filed a 60-day notice of intent to sue, the City instituted its own lawsuit on the fiftieth day to keep the case out of federal court.

Continued pressure from the community, with the assistance of the Law Center, has resulted in an excellent consent agreement between the City and Coyne which provides that Coyne will permanently terminate laudering of the solvent-laden rags by September 30, 1986.

V. Philadelphia's Trash Problem

Everyone in the Delaware Valley is intimately aware of Philadelphia's trash problem. If the three-year struggle over possible solutions to the problem (trash/steam in South Philadelphia; refuse-derived fuel in four unknown locations in Philadelphia; Berks County incineration; and back to trash/steam at the Navy Yard) had not previously caught your attention, then the mass pile-up of smelly trash during the AFSCME 33 strike most certainly imposed itself on your senses.

The Law Center, along with the Clean Air Council and the Delaware Valley Toxics Coalition, has attempted to work with affected community groups, City Council and the City Administration to achieve an environmentally protective, health protective solution to this urgent, complex problem.

The recent action of the City Administration in supporting EPA's odor deregulation and the refusal of the City's law department to provide information about toxic emissions indicates that the Administration is insensitive to the need for independent enforcement to meet the health and environmental needs of its citizens. The City must reverse these policies before the City can have any credibility with communities concerned about health risks and quality of life. As the history of the Northwest Incinerator and the Northeast Sewage Treatment Plant demonstrate, merely because a plant can be run safely does not mean that it will be, unless community groups have the independent right to make it run safely in accordance with agreed standards. Such a change in policy is a prerequisite to a solution to Philadelphia's trash problem.

Legal Update

DISABILITIES The Law Center and ACLU represented Marjory Scott, a mildly retarded woman living in Chester County, after the County Children and Youth Agency had taken away two of her children and was petitioning to take away two more on the grounds that she was unable to take care of them adequately. The Law Center retained experts to show that the family could care for the children with adequate home-care services. After two days of testimony the Judge urged the County to settle and develop a program with the Law Center. The development of that program is now under way, with the Law Center's work being handled by Judith Gran.

In January the Law Center filed a class action complaint in federal district court against the Pennsylvania Office of Vocational Rehabilitation (OVR) challenging the practice of sending handicapped persons needing post-secondary education to the Andrews Center in Johnstown, PA, a residential employment training facility for handicapped persons. The Law Center's complaint describes Andrews as unnecessarily segregated and unaccredited, and as having policies and regulations that severely restrict students' rights and liberties. The complaint also states that Andrews fails to provide services which prepare its students for gainful employment to the extent of their capabilities. PILCOP has filed for class certification...the defendants have challenged venue, but have not answered the complaint.

The Law Center has monitored and objected to proposed placements recommended in the Pennhurst implementation plan for 44 persons whom the state wished to transfer to other institutions, rather than to small-scale community facilities. Because of this work, the number on the transfer list has been reduced to 10 persons.

450 persons attended a one-day conference in May co-sponsored by the Law Center and Speaking for Ourselves, an organization of and for persons with developmental disabilities. Participants included supported work professionals, job placement experts, employers and handicapped persons. The keynote address was given by Frank Laski of the Law Center staff.

The Law Center is representing Disabled in Action and 9 Temple University students in a class action against the City of Philadelphia, alleging that the extensive renovations of subway and elevated stations have not made these stations accessible to disabled people, in violation of a number of federal statutes. The suit seeks changes in an already-completed station at Columbia Avenue, which serves Temple University where there are over 100 mobility-disabled undergraduate and graduate students. In addition the suit seeks to insure that all SEPTA renovations in the future include wheelchair accessibility.

In May, faced with a suit by the Law Center on behalf of Mr. Thompson, an epileptic, the U.S. Department of Labor initiated the first administrative enforcement action in the region on behalf of a handicapped person who had been discriminated against by a government contractor. The plaintiff originally filed his complaint against the DOL in 1979, alleging that his employer, a defense contractor, had discriminated against him because of his epilepsy. The Law Center filed suit in 1985 to force the Department of Labor to initiate a hearing in this case, which is one of hundreds it has been sitting on.

Although the Law Center's motion for a preliminary injunction was denied in *Ward v. Bucks County*, the County and the Commonwealth agreed to provide services to a quadraplegic child in order to meet his medical and developmental needs. The Law Center's suit was designed to demonstrate that there is a right to such services under the state MH/MR Act, and that there are appropriated funds available.

A suit, *Davis v. Webster*, was filed in April against the F.B.I. for violating Section 501 of the Rehabilitation Act of 1973 by refusing to consider any person with diabetes for employment as an agent.

Suit seeks to reunite Chester County family and provide home-care services

Johnstown, Pa. employment training facility provides inadequate services to handicapped

Pennhurst implementation nears completion

Real work is focus of conference for disabled

SEPTA subway stations inaccessible to disabled people

Thompson v. Brock suit results in enforcement by U.S. Department of Labor

Quadraplegic child will receive medical services

Suit against F.B.I. concerns discrimination against diabetics

Legal Update

(continued)

Timothy Cook of the Law Center staff is one of a team of attorneys representing a coalition of 12 disability organizations in the case *ADAPT v. U.S. Department of Transportation*. Recently-issued federal regulations for making the nation's transportation systems accessible to 20 million handicapped persons are, according to the complaint, woefully inadequate, and constitute an "arbitrary, capricious and illegal application of federal civil rights laws." In effect, the federal government is now saying that transit systems can continue to exclude disabled persons, as long as they spend a small proportion of their federal funds on improvements to aid the disabled, whether or not those expenditures result in accessibility.

When two of the four private carriers that provide SEPTA's Paratransit service for the handicapped and elderly were unable to renew their liability insurance policies in early July, SEPTA slashed 70% of the Paratransit service, leaving many riders with no way to get to jobs, medical appointments or stores. Representing Disabled in Action, the Law Center brought suit in federal district court, to force SEPTA to provide alternative transportation until full service could be restored.

Law Center joins suit to show that nation's transit systems exclude disabled.

Paratransit services for handicapped and elderly restored by Law Center suit

(continued on page 6)

Trash-to-Steam Subject of Next Quarterly Luncheon

The Law Center will sponsor a luncheon on the subject of the trash-to-steam plant proposed for the Navy Yard. Three speakers are being invited, including community and city officials knowledgeable about the issue. This is the third in a series of luncheons organized by the Law Center to allow the public to join in discussions of public issues of current concern. For more detailed information, please call Pete Stevens at the Law Center, (215) 735-7200.

Police Practices, Accountability Subjects of Public Issues Luncheon in May

One hundred citizens heard Patrick Murphy, former New York Police Commissioner, and Kevin Tucker, current Philadelphia Police Commissioner, address the issue of police department organization and practices, and the reforms needed to reduce street crime, at a recent luncheon held by the Law Center.

In introducing the speakers, Michael Churchill of the Law Center staff traced the Law Center's long involvement in citizen efforts to bring public attention to the need for appropriate police practices. He cited the courageous work of the Guardian Civic League, the Black police officers association, for recognizing and calling attention to the destructive impact of police abuse, not only in its potential for personal injury, but in its effect on police-community cooperation necessary to reduce crime. He pointed out that minority enrollment in the police department has declined continuously from 1967 to 1984, so that today there are only 7 minorities among the top 134 commanders. This is one of the tough problems still waiting to be addressed, despite strong community advocacy for fairer hiring and promotion

practices. Patrick Murphy and Churchill both noted that the unnecessary use of deadly force had been reduced by changes in police practices. In Philadelphia, for example, there has been a steady decline from the 1977-79 level of about 60 shootings and 20 deaths a year. Now the number killed is in the range of 6 to 8 per year. Commissioner Murphy called for a commitment on the part of both citizens and the police force, to work together for constructive changes in police practices, and for an improved cooperative relationship between citizens and police.

Commissioner Kevin Tucker's theme was also the need for building cooperation between citizens and police as essential to police reforms. He stressed the importance of accountability as the surest way to control internal police corruption and abuse of citizens. Mr. Tucker described the newly-appointed citizen Management and Review Commission, to look into every aspect of Philadelphia's police practices. He pledged a new accountability, and stated that he had already tightened discipline of officers for violations of regulations. He promised a vigorous review of every citizen complaint to ensure that appropriate action is taken to weed out officers shown to be incompetent.

Legal Update

(continued from page 5)

EMPLOYMENT AND CIVIL RIGHTS The Law Center filed suit against the Trustees of the University of Pennsylvania on behalf of five individual students and four student organizations interested in promoting divestment in South Africa, to set aside the actions taken by the trustees at their meeting on January 17, 1986. The petition alleges violation of the Pennsylvania Public Meeting Law by failing to give proper notice, and violation of the Pennsylvania conflict of interest laws because trustees who are directors of companies doing business in South Africa voted on the matter of divestment without disclosing those interests. At their June meeting the trustees acted to correct those deficiencies and amended their policy to more clearly define the action to be taken towards divestment, if there is not sufficient progress towards dismantling apartheid by June 1987.

The Third Circuit Court of Appeals reversed Judge Kelly and upheld the standard proposed by the Law Center for pleading employment discrimination cases in a class action race discrimination and sexual harassment case against SEPTA. Discovery is now underway.

Negotiations continue regarding City Council Bill 649, "Minority, Female, and Resident Employment Participation on City Construction Projects," with the Law Center joining in discussions with City and State officials and community groups to explain the purpose of and the need for the ordinance.

ENVIRONMENT The Supreme Court took 3 actions which will affect plaintiffs' rights to attorneys' fees in their review of Judge Bechtel's award of \$210,000 to the Law Center and the Clean Air Council against the Commonwealth in the automobile emission inspection case:

- (1) The award for time spent in administrative proceedings to advance compliance with the consent decree was upheld unanimously.
- (2) Doubling the award in certain parts because of Judge Bechtel's finding that the lawyering was superior and above what could normally be expected, was reversed on the grounds that there was not adequate justification in Judge Bechtel's opinion for such an enhancement. Three Judges dissented.
- (3) The Court set down for re-argument on October 15th the issue of whether a court may take into account in setting the fee the fact that receipt of any fee is contingent upon winning. Judge Bechtel had doubled the award for certain parts of the case based on that factor.

Divestment of South African holdings issue in suit against University of Pennsylvania

Frazier v. SEPTA employment discrimination case

Lengthy negotiations continue on City Council Bill 649

U.S. Supreme Court rules on attorneys' fees in Auto Emission Case

Supreme Court Rules in Two Affirmative Action Cases

In early July, the U.S. Supreme Court provided its answer to the question: "Can affirmative action programs be used in the workplace to remedy past discrimination against blacks and other minorities?" In two cases, in Cleveland and New York City, the court endorsed the use of affirmative action, encouraging federal judges to set goals and timetables requiring employers who have discriminated to hire or promote specific numbers of minorities, and giving states and citizens even broader discretion to agree to similar racial goals for their work forces without court orders.

The two rulings rejected the administration's arguments that federal civil rights laws and the Constitution prohibit the use of these broad hiring and promotion goals. The court also dismissed the administration's rationale for those arguments: that only the individual victims of discrimination should benefit from affirmative action.

In the Cleveland case, the justices upheld by a 6-3 vote a court-approved settlement between the City of Cleveland and minority firefighters, that called initially for promotion of one minority for every white. In the New York case, the justices upheld 5-4 a federal court order requiring a local sheetmetal workers union to meet specific minority hiring targets of 29.23 percent.

Writing for the majorities in both cases, Justice William J. Brennan, Jr. said: "We hold that (federal law) does not prohibit a federal court from ordering, in appropriate circumstances, affirmative race-conscious relief as a remedy for past discrimination. Justice Lewis F. Powell, Jr. wrote that "innocent whites may be called upon to bear some of the burden of the remedy."

Benjamin L. Hooks, Executive Director of the NAACP, commented that the decisions were "a significant rebuke to the Reagan administration's pernicious efforts to destroy affirmative action."

Police Accountability Coalition Report

The Law Center is an active member of the Coalition for Police Accountability, an organization of 26 community and public interest groups recently organized to examine the police problem and make constructive recommendations for change.

The Coalition prepared a 17-page report in three sections: Policy and Procedure, Personnel, and Remedial Procedures and Discipline. In addition there is a 20-page appendix entitled "A Brief History of Police Abuse and Community Efforts to Combat It." The Report was

issued in April 1986. Copies have been sent to Commissioner Kevin Tucker and to City Council members.

The recommendations have as their objective summarizing effective steps to reduce police abuse and establish public accountability of the police department. They draw on the recent history of police misconduct, and on the history of community efforts to combat abuse and promote accountability, which are described in detail in the appendix.

Copies of the Report may be obtained by writing or telephoning Pete Stevens at the Law Center. There is a charge of \$5.00 per copy.

The Tulsa Tribune

TULSA, OKLAHOMA, WEDNESDAY, JULY 30, 1986

Judge to oversee Hissom care

Ellison rules for plan to create group homes, programs

By JOYCE PETERSON
Tribune Writer

U.S. District Judge James Ellison has ruled he will oversee a plan to create group homes and other community programs for the mentally retarded in Oklahoma.

With Ellison's ruling late Tuesday, Oklahoma joins about two dozen states in which deinstitutionalization of the mentally retarded is or has been shepherded by federal judges.

Earlier in the day, a small group of parents gathered in the Tulsa federal courtroom, shaking their heads in dismay as witnesses testified they do not know who is responsible for educating mentally retarded children in Oklahoma.

Their dismay turned to pleasure as Ellison ruled that—at least temporarily—he will be responsible.

"The court's view is that all seem to agree the best interests of society and the best interests of children will be served by community homes," he told the courtroom.

The parents smiled more broadly and one of their attorneys, Louis Bullock, gave a "thumbs-up" sign to his colleagues.

Ellison also declared the lawsuit filed by about half a dozen parents against Hissom Memorial Center of Sand Springs will become a class action.

Rulings now will affect all mentally re-

tarded residents of Oklahoma, not just the children of the plaintiffs.

"One of the exciting things to me is we made a commitment to change things not just for our children, but all children," said Mary Ann Becker Duncan, one of the plaintiffs. "Today we found out we will get that done."

Earlier in the hearing, parents of some children who live at Hissom testified they did not want their children to be part of the lawsuit.

Asked if those parents would be allowed to drop from the class action, Bullock said that has not yet been decided.

"That is an emotionally fought battle and ultimately will have little result on the final outcome," he said.

"Whatever plan is finally approved will apply to the whole system."

The plaintiffs and their organization, Homeward Bound, had asked the judge to force the state to set a schedule for moving residents who are able out of Hissom into group homes.

There will be a full trial on the suit in October, but Ellison said he wanted each side to give him a plan by late September for moving residents out of school.

Although the judge said he would prefer the two sides come up with a plan both could agree on, "my experience states it will be doubtful you will work that out."

The judge said he wanted plans that will be carried out "in a studied, ordered manner with the best professional help that can be obtained."

The parents also had asked for a full-time monitor to stay at the school to prevent physical and emotional abuse. The judge did not grant that request.

He did order the recommendations of several outside experts be carried out and that the experts continue to be used as consultants to the school.

Ellison ordered the school last month to hire the experts—a doctor, a physical therapist, a sanitation expert and others—to help Hissom staff make changes at the school.

Ellison allowed the state Department of Education to be dropped as a defendant in the suit.

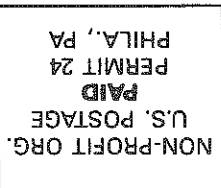
He kept the Sand Springs School District in the suit, saying he was not sure the district is fulfilling its obligations to Hissom residents.

Federal law states all handicapped children must be educated "to the extent possible" with non-handicapped students.

Almost all Hissom residents are schooled on the campus rather than attending nearby Sand Springs schools.

The story in the Tulsa newspaper reports on a ruling by the federal district judge in a suit to close a large institution for the mentally disabled and to replace it with group homes. The Law Center is co-counsel in the case, modelled on Pennhurst. The ruling came after eighteen days of trial, which was conducted by Tom Gilhool, Tim Cook and Judy Gran.

etternewsletternewsletternewsletternewsletternewslet



PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
1315 Walnut Street, Suite 1632
Philadelphia, PA 19107

Become a Law Center Contributor

We welcome your gift in support of the Law Center's operations. Please complete this form and mail it in. Your gift, added to those of many other friends, helps us to expand our work as counsel to community and neighborhood organizations protecting the rights of Philadelphia citizens.

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
1315 Walnut Street—Suite 1632
Philadelphia, PA 19107

_____ I/we wish to make a gift to the Law Center, and enclose my check payable to PILCOP in the amount of
\$ _____

_____ Please continue to send me the newsletters.

_____ Please send me more detailed information about Law Center projects and programs. I am particularly interested in:

☐ Handicapped

☐ Minority Unemployed

☐ Environment

☐ Schools

☐ Affirmative Action

☐ Neighborhoods

_____ Please add to your Newsletter mailing list the following name(s):

Your Name: _____

Preferred address for Law Center mail: _____

newsletternewsletternewsletternewsletternewsletter