

## Building &amp; Development

## 2011 changes to ADA to impact businesses



By **THOMAS J. SCHLEGEL, Esq.**  
Business Journal Columnist

The U.S. Department of Justice revised and expanded regulations under the Americans with Disabilities Act (ADA), effective March 15. The revisions may have far-reaching implications for owners and operators of businesses, developers, lenders, commercial landlords and tenants. Compliance with the new regulations is mandatory by March 15, 2012.

Critically, the revisions change Title III of the ADA, which covers private enterprises and facilities.

Financial institutions, hospitals, doctors offices, restaurants, shopping centers, retail stores, hotels, movie theaters, private schools, convention centers, daycare centers, fitness clubs, sports stadiums and other recreation facilities are covered by Title III.

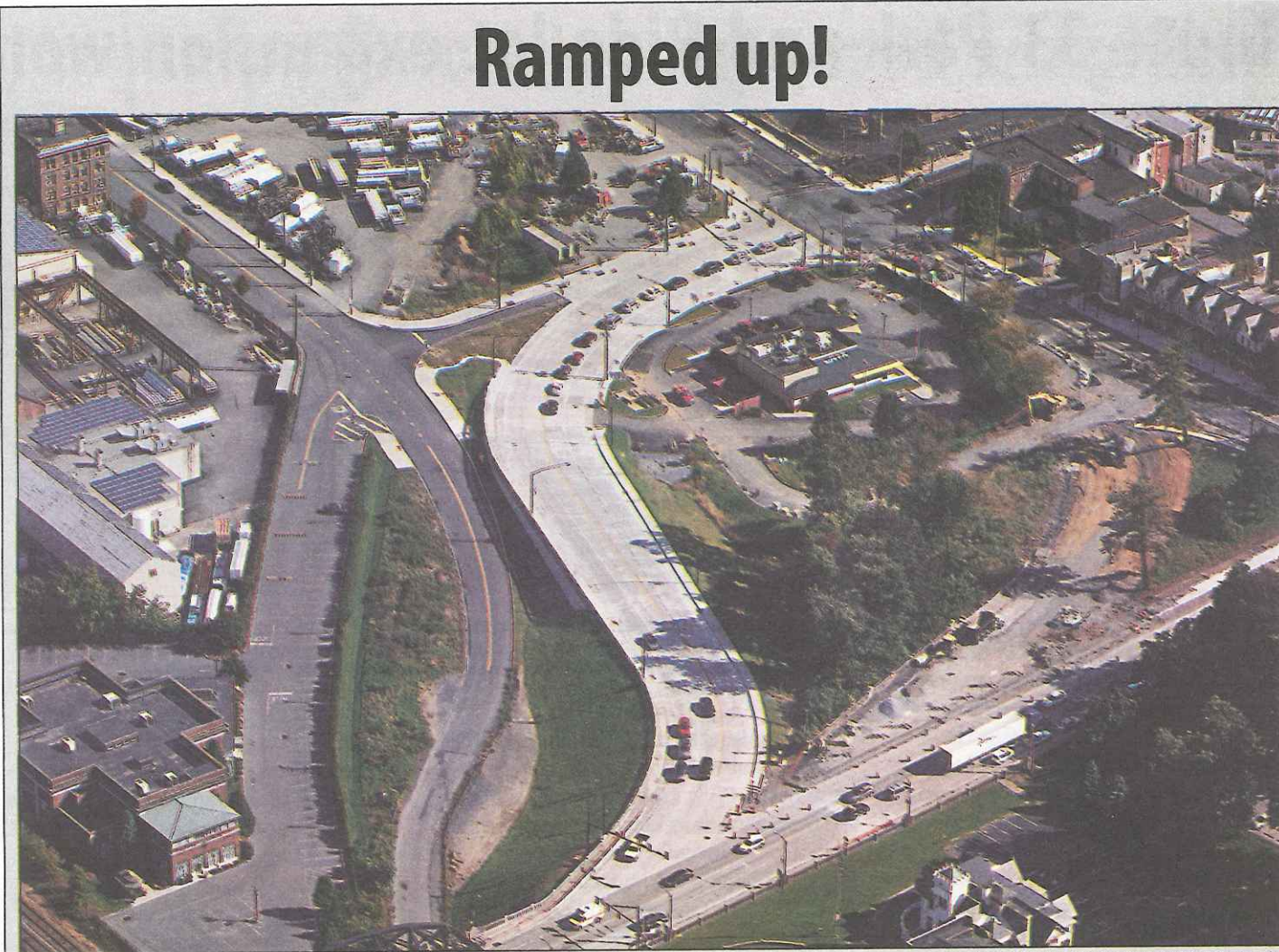
Notably for business owners, the 2011 regulations replace the 1991 ADA Standards for Accessible Design with the 2010 ADA Standards for Accessible Design.

The 2010 Standards provide new specifications for a wide range of architectural access features, including public stairwells, elevators, restrooms, parking spaces and signs. For example, restrooms were required to be configured with a "front" method of allowing a disabled person to transfer from a wheelchair to a toilet under the 1991 ADA Standards. Under the 2010 ADA Standards, a bathroom stall must provide clearance for an individual to access the toilet both from the front and the side.

**Federal law dictates that regardless of contrary terms in a lease, both the landlord and the tenant are liable for non-compliance with Title III of the ADA.**

Although there are some "safe harbor" provisions for construction or alterations made under the 1991 standards, owners and operators of facilities covered by the ADA should inspect their premises to verify compliance.

Alteration may be required depending on the unique facts for each owner or operator. Likewise, developers should obtain assurances from design and construction contractors that plans for new projects account for the amended regulations. Financial institutions making loans for such projects should make similar design requirements, as well as appropriate operational requirements, of their borrowers.



Taken earlier this month, the photo shows traffic moving along the recently opened approach ramp to the Hill-to-Hill Bridge over the Lehigh River in Bethlehem's South Side. The span is part of Route 378. In the right foreground, construction crews are removing the old ramp that formerly connected 378 with West Third Street. State Department of Transportation spokesman Ron Young said minor finishing work still needs to be completed. The project had a \$7.6 million price tag.

Both commercial landlords and tenants should also take note of the new regulations.

Federal law dictates that regardless of contrary terms in a lease, both the landlord and the tenant are liable for non-compliance with Title III of the ADA.

Thus, even if a commercial lease states that the tenant is responsible for ADA compliance, a disabled individual may sue both the landlord and the tenant for non-compliance with the ADA.

The U.S. Department of Justice enforces ADA compliance through audits, voluntary compliance programs and, in some cases, through lawsuits.

Accessibility advocates and plaintiff's lawyers have brought ADA lawsuits against Pennsylvania businesses since the ADA's inception.

Business owners can expect that the compliance issues surrounding implementation of the new regulations will lead to a new wave of enforcement actions and suits. An eye for compliance is the best way to ensure this does not happen to you.

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## Ramped up!

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November 15, 2011

**Drop-off Event at Advanced Green Solutions**  
40 3rd St., Walnutport, PA 18088  
(next to Diamond Fire Hall)

Tuesday, November 15th from 9:00 am to 6:00 pm  
Saturday, November 19th from 9:00 am to 12:00 pm

Recycle Your Electronics and Universal Waste  
Celebrate with discounted recycling rates for 2 Days Only!

**Items Accepted  
Free of Charge**  
(Nov 15th & 19th only)

Desktop/Laptop Computers  
LCD Monitors  
Printers & Fax Machine  
Cables & Cords  
Keyboards/Mice  
Stereos & Speakers  
Telephones & Cell Phones  
DVD Players/VCR's  
UPS Battery Backups  
Microwaves/Sm Appliances  
Gaming Systems  
Bundled Cardboard

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**Special  
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(Nov 15th & 19th only)

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Dishwashers \$5.00  
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Contact Terri for more information  
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