

PERMA FIX ENVIRONMENTAL SERVICES INC  
Form DEF 14A  
June 20, 2005

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934 (Amendment No. )**

**Filed by the Registrant**   
**Filed by a Party other than the Registrant**

**Check the appropriate box:**

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to 240.14a-12

**Perma-Fix Environmental Services, Inc.**

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**(Name of Registrant as Specified In Its Charter)**

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**(Name of Person(s) Filing Proxy Statement, if other than the Registrant)**

**Payment of Filing Fee (Check the appropriate box):**

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

**1) Title of each class of securities to which transaction applies:**

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**2) Aggregate number of securities to which transaction applies:**

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**3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):**

**4) Proposed maximum aggregate value of transaction:**

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**5) Total fee paid:**

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**o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.**

**1) Amount Previously Paid:**

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**2) Form, Schedule or Registration Statement No.: Def 14A**

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**3) Filing Party: Perma-Fix Environmental Services, Inc.**

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**4) Date Filed: June 20, 2005**

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**PERMA-FIX ENVIRONMENTAL SERVICES, INC.**  
**1940 N.W. 67th Place**  
**Gainesville, Florida 32653**

**NOTICE OF ANNUAL MEETING**  
**To Be Held July 27, 2005**

To the Stockholders of Perma-Fix Environmental Services, Inc.:

Notice is hereby given that the 2005 Annual Meeting of Stockholders (the "Meeting") of Perma-Fix Environmental Services, Inc. (the "Company") will be held at the offices of Perma-Fix Environmental Services, Inc., 1940 N.W. 67th Place, Gainesville, Florida 32653, on Wednesday, July 27, 2005, at 1:00 p.m. (EDST), for the following purposes:

1. To elect seven directors to serve until the next Annual Meeting of Stockholders or until their respective successors are duly elected and qualified;
2. To ratify the appointment of BDO Seidman, LLP as the independent auditors of the Company for the 2005 fiscal year; and
3. To transact such other business as may properly come before the meeting and at any adjournments thereof.

Only stockholders of record at the close of business on June 3, 2005, will be entitled to notice of, and to vote at, the Meeting or at any postponement or adjournment thereof. A complete list of the stockholders entitled to vote at the meeting will be open to the examination of any stockholder for any purposes relevant to the meeting during ordinary business hours for 10 days prior to the meeting at the offices of the Company. The list will also be available at the meeting.

The Company's Annual Report for 2004 is enclosed for your convenience.

By the order of the Board of Directors

/s/ Richard T. Kelecyc

Richard T. Kelecyc  
Secretary

Gainesville, Florida  
June 20, 2005

**It is important that your shares be represented at the meeting. Please complete, date, sign and return the accompanying Proxy whether or not you plan to attend the meeting in person. The enclosed return envelope requires no additional postage if mailed in the United States. If a stockholder decides to attend the meeting, he or she may, if so desired, revoke the Proxy and vote in person.**

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**PERMA-FIX ENVIRONMENTAL SERVICES, INC.**  
**1940 N.W. 67th Place**  
**Gainesville, Florida 32653**

**PROXY STATEMENT**  
**FOR THE**  
**2005 ANNUAL MEETING OF STOCKHOLDERS**

**Solicitation**

This Proxy Statement is furnished to the holders of the common stock, par value \$.001 (the "Common Stock"), of Perma-Fix Environmental Services, Inc. (the "Company") in connection with the solicitation on behalf of the Board of Directors of the Company (the "Board of Directors" or the "Board") of proxies to be used in voting at the 2005 Annual Meeting of Stockholders to be held at the Company's offices, located at 1940 N.W. 67th Place, Gainesville, Florida 32653, on Wednesday, July 27, 2005, at 1:00 p.m. (EDST), and any adjournments thereof (the "Meeting"). The Notice of Annual Meeting of Stockholders, this Proxy Statement and the accompanying Proxy Card were first mailed to stockholders on or about June 20, 2005.

The Company will pay the cost of preparing, printing, assembling and mailing this Proxy Statement and the Proxy Card. In addition to solicitation by use of the mail, certain of the Company's officers and employees may, without receiving additional compensation therefore, solicit the return of proxies by telephone, telegram or personal interview. The Company will reimburse brokerage houses and custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses in forwarding soliciting materials to their principals, the beneficial owners of Common Stock.

**Revocation of Proxy**

The enclosed proxy is for use at the Meeting if the stockholder will not be able to attend in person. Any stockholder who executes a proxy may revoke it at any time before it is voted by delivering to the Company's Secretary either an instrument revoking the proxy or a duly executed proxy bearing a later date. Any stockholder present at the Meeting who expresses a desire to vote his shares in person may also revoke a proxy.

**Record Date and Voting Shares**

Only the holders of Common Stock of record at the close of business on June 3, 2005 (the "Record Date"), will have the right to receive notice of, and be entitled to vote at, the Meeting. At the close of business on the Record Date, 41,805,267 shares (excluding 988,000 treasury shares) of Common Stock were issued and outstanding. Each stockholder of record, as of the Record Date, is entitled to one vote for each share of Common Stock that the stockholder owned as of the Record Date on each matter to be voted upon at the Meeting. A majority of all of the outstanding shares of Common Stock entitled to notice of, and to vote at, the Meeting, represented in person or by proxy, will constitute a quorum for the holding of the Meeting. The failure of a quorum to be represented at the Meeting will necessitate adjournment and will subject the Company to additional expense.

Pursuant to the General Corporation Law of the State of Delaware, only votes cast "FOR" a matter constitute affirmative votes, except proxies in which the stockholder fails to make a specification as to whether the stockholder votes "FOR," "AGAINST," "ABSTAIN" or "WITH-HOLD" as to a particular matter shall be considered as a vote "FOR" that matter. Votes in which the stockholder specifies "WITHHOLD" or "ABSTAIN" are counted for quorum purposes. Abstentions and broker non-votes are not considered as votes "FOR" a particular matter. An inspector of election appointed by the Board of Directors will tabulate votes.

**PROPOSAL 1 - ELECTION OF DIRECTORS**

The Company's Certificate of Incorporation, as amended, provides that each member of the Board of Directors shall hold office until the next annual meeting of stockholders and their successors have been elected and qualified or until

their earlier resignation or removal. Suc-cessors to those Directors whose terms have expired are required to be elected by stockholder vote. The existing Board of Directors fills vacancies for an unexpired term and any additional positions created by the Board of Directors' action.

The Company's Bylaws provide that the number of the Company's directors (the "Directors") shall be at least three, and that the number of Directors may be increased or decreased by action of the Board. The Board of Directors currently has determined that the number of Directors shall be seven.

The seven Directors named below have been recommended by the Corporate Governance and Nominating Committee ("Nominating Committee") to the Board of Directors for election at the Meeting to serve until the next annual meeting of the stockholders and until their respective successors are elected and qualified. All nominees are incumbent Directors. Shares represented by the enclosed proxy will be voted "FOR" the election as Directors of the seven nominees named below unless authority is withheld. Except as described below, if any nominee named below becomes unavailable for election, the proxies in the form solicited will be voted for a person who is recommended by the Nominating Committee and who the Board of Directors proposes to replace such nominee. Approval of each nominee for election to the Board of Directors will require the affirmative vote of a plurality of the votes cast by the holders of the Company's Common Stock.

**Nominees for Directors**

The following sets forth information concerning the seven nominees for election as Directors:

<b>Director/Nominee</b>	<b>Principal Occupation and Other Information</b>
<p>Dr. Louis F. Centofanti Chairman of the Board and Director since 1991, Age: 61</p>	<p>Dr. Centofanti has served as Chairman of the Board of the Company since he joined the Company in February 1991. Dr. Centofanti also served as President and Chief Executive Officer of the Company from February 1991 until September 1995, and again in March 1996 was elected to serve as President and Chief Executive Officer of the Company and is still serving in that capacity. From 1985 until joining the Company, Dr. Centofanti served as Senior Vice President of USPCI, Inc. (“USPCI”), a large hazardous waste management company, where he was responsible for managing the treatment, reclamation and technical groups within USPCI. In 1981, he founded PPM, Inc. a hazardous waste management company specializing in the treatment of PCB contaminated oils, which was subsequently sold to USPCI. From 1978 to 1981, Dr. Centofanti served as Regional Administrator of the Department of Energy for the southeastern region of the United States. Dr. Centofanti has a Ph.D and a M.S. in Chemistry from the University of Michigan, and a B.S. in Chemistry from Youngstown State University.</p>
<p>Jon Colin Director since 1996, Age: 49</p>	<p>Mr. Colin has served as a Director of the Company since December 1996 and is a member of the Audit Committee and the Compensation and Stock Option Committee. Mr. Colin is currently Chief Executive Officer of Lifestar Response Corporation, a position he has held since April 2002. Mr. Colin served as Chief Operating Officer of Lifestar Response Corporation from October 2000 to April 2002, and a consultant for Lifestar Response Corporation from September 1997 to October 2000. From 1990 to 1996, Mr. Colin served as President and Chief Executive Officer for Environmental Services of America, Inc., a publicly traded environmental services company. Mr. Colin has a B.S. in Accounting from the University of Maryland.</p>
<p>Jack Lahav Director since 2001, Age: 56</p>	<p>Jack Lahav has served as a Director of the Company since September 2001 and is a member of the Corporate Governance and Nominating Committee and the Compensation and Stock Option Committee. Mr. Lahav is a private investor, specializing in launching and growing businesses. Previously, Mr. Lahav founded Remarkable Products, Inc. and served as its president from 1980 to 1993; Mr. Lahav was also co-founder of Lamar Signal Processing, Inc.; president of Advanced Technologies, Inc., a robotics company; and Director of Vocaltech Communications, Inc.</p>
<p>Joe R. Reeder Director since April 2003, Age: 57</p>	<p>Mr. Reeder has served as a Director since April 2003, and is a member of the Corporate Governance and Nominating Committee and the Compensation and Stock Option Committee. Mr. Reeder also serves as Shareholder in Charge of the Mid-Atlantic Region for Greenberg Traurig LLP, an international law firm with 18 offices and 950 attorneys. Previously, Mr. Reeder served as Litigation Chair of Patton</p>

Boggs LLP. His clientele has included countries, international corporations, and law firms throughout the United States. Mr. Reeder served for four years as the 14<sup>th</sup> Under Secretary of the Army and for three years as Chairman of the Panama Canal Commission's Board of Directors where he oversaw a multibillion-dollar infrastructure program. He is a trustee of the Association of the United States Army and frequent television commentator on military issues. Mr. Reeder has a L.L.M. from Georgetown University, J.D. from the University of Texas and a B.S. from the U.S. Military Academy at West Point.

Alfred C. Warrington, IV  
 Director since 2002,  
 Age: 69

Mr. Warrington has served as a Director of the Company since March 2002, and is a member of the Audit Committee and the Corporate Governance and Nominating Committee. Mr. Warrington was the founding chairman, co-chief executive officer and chief financial officer of Sanifill, Inc., a solid waste company that was merged with Waste Management, Inc. He currently serves as vice-chairman of HC Industries, Inc., a manufacturer of health and beauty aids. He has also been very active in community affairs and higher education. Mr. Warrington served as co-chairman of the MARTA referendum that brought rapid transit to the city of Atlanta and has been a strong supporter of the University of Florida, where he was instrumental in starting the School of Accounting. In recognition of his efforts and a significant contribution, the University of Florida has renamed the College of Business as the Warrington College of Business. In 2001 Governor Jeb Bush appointed Mr. Warrington to the newly formed University of Florida Board of Trustees. Prior to joining Sanifill, Mr. Warrington was a practicing CPA and a partner with Arthur Andersen & Co. Mr. Warrington holds a B.S.B.A. from the University of Florida.

Dr. Charles E. Young  
 Director since July 2003,  
 Age: 73

Dr. Young has served as a Director since July 2003, and is a member of the Corporate Governance and Nominating Committee and the Compensation and Stock Option Committee. Dr. Young is currently residing in Qatar and is serving as president of the Qatar Foundation for Education, Science and Community Development, a position he assumed in April 2004. Dr. Young previously served as president of the University of Florida, from November 1999 to December 2003. Dr. Young also served as chancellor of the University of California at Los Angeles (UCLA) for 29 years until his retirement in November 1997. Dr. Young was formerly the chairman of the Association of American Universities and served on numerous commissions including the American Council on Education, the National Association of State Universities and Land-Grant Colleges, and the Business-Higher Education Forum. Dr. Young serves on the board of directors of I-MARK, Inc., a software and professional services company. He previously served on the boards of directors of Intel Corp., Nicholas-Applegate Growth Equity Fund, Inc., Fiberspace, Inc., and Student Advantage, Inc. Dr. Young has a Ph.D. and M.A. in political science from UCLA and a B.A. from the University of California at Riverside.

Mark A. Zwecker  
 Director since 1991,  
 Age: 54

Mr. Zwecker has served as a Director of the Company since its inception in January 1991 and is a member of the Audit Committee, and the Compensation and Stock Option Committee. Mr. Zwecker is currently chief financial officer of Intrusec Inc., a position he has held since September 2003, and president of ACI Technology, LLC, a position he has held since 1997. Previously, Mr. Zwecker was Vice President of Finance and Administration for American Combustion, Inc., a position he held from 1986 until 1998. In 1983, Mr. Zwecker participated as a founder with Dr. Centofanti in the start up of PPM,



Inc. He remained with PPM, Inc. until its acquisition in 1985 by USPCI. Mr. Zwecker has a B.S. in Industrial and Systems Engineering from the Georgia Institute of Technology and an M.B.A. from Harvard University.

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE “FOR” THE ELECTION OF THE SEVEN NOMINEES AS THE COMPANY’S DIRECTORS.**

**Board Independence**

The Board of Directors has determined that each of Messrs. Zwecker, Colin, Lahav, Warrington, Reeder, and Young is an “independent director” under the current listing standards of the Nasdaq Stock Market, Inc. (“NASDAQ”). Dr. Centofanti is not considered to be an “independent director” because of his employment as a senior executive of the Company.

**Meetings and Committees of the Board of Directors**

During 2004, the Board of Directors held nine meetings. No Director attended fewer than 75% of the aggregate number of meetings held by the Board of Directors and the committees on which he served during 2004, except Dr. Young was only able to attend 44% of the Board meetings and committee meetings on which he serves. The Board of Directors has an Audit Committee, Compensation and Stock Option Committee and a Corporate Governance and Nominating Committee.

*Audit Committee:*

The Audit Committee assists the Board of Directors in monitoring the integrity of the financial statements of the Company, the independent auditor's qualifications and independence, the performance of the Company's internal audit function and independent auditor, and the Company's compliance with legal and regulatory requirements. In carrying out these purposes, the Audit Committee, among other things:

- appoints, evaluates, and approves the compensation of, the Company's independent auditor;
  - pre-approves all auditing services and permitted non-audit services;
  - annually considers the qualifications and independence of the independent auditors;
- reviews recommendations of independent auditors concerning the Company's accounting principles, internal controls and accounting procedures and practices;
  - reviews and approves the scope of the annual audit;
- reviews and discusses with the independent auditors the audited financial statements; and
  - performs such other duties as set forth in the Audit Committee Charter.

The Audit Committee acts under an Audit Committee Charter that was adopted by the Board of Directors on February 27, 2003, which replaced its previous charter. A copy of the Audit Committee Charter is available on the website at [www.perma-fix.com](http://www.perma-fix.com). The Audit Committee has established procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of the Company of concerns regarding accounting or auditing matters.

The Audit Committee members during 2004 were Al Warrington (Chairperson), Jon Colin and Mark Zwecker. The Board of Directors has determined that each of the three members of the Audit Committee is an "audit committee financial expert." The Audit Committee meets at least quarterly and at such additional times as necessary or advisable and held nine meetings in 2004. The Board of Directors has determined that each member of the Audit Committee is "independent" as that term is defined by the current NASDAQ listing standards and as specified in Rule 10A-3 under the Securities Exchange Act of 1934, as amended.

*Compensation and Stock Option Committee:*

The Compensation and Stock Option Committee reviews and recommends to the Board of Directors the compensation and benefits of all of the Company's officers and reviews general policy matters relating to compensation and benefits of the Company's employees. The Compensation and Stock Option Committee also administers the Company's stock option plans, and its 2003 Employee Stock Purchase Plan. The members of the Compensation and Stock Option Committee during 2004 were Mark Zwecker (Chairperson), Jack Lahav, Joe Reeder, Dr. Charles Young and Jon Colin. The Compensation and Stock Option Committee held four meetings in 2004.

*Corporate Governance and Nominating Committee:*

The Corporate Governance and Nominating Committee recommends to the Board of Directors candidates to fill vacancies on the Board, as well as, the nominees for election as the Company's directors by the stockholders at each annual meeting of stockholders. Members of the Nominating Committee during 2004 were Jack Lahav (Chairperson), Joe Reeder, Dr. Charles Young and Al Warrington. The Corporate Governance and Nominating Committee held one meeting in 2004. Effective after the second quarter of 2005, the Corporate Governance and Nominating Committee will meet not less than quarterly. The Corporate Governance and Nominating Committee adopted a Corporate Governance and Nominating Committee Charter, which is available on our website at [www.perma-fix.com](http://www.perma-fix.com). All

members of the Corporate Governance and Nominating Committee are "independent" as that term is defined by the current NASDAQ listing standards.

The Corporate Governance and Nominating Committee does not have a formal policy with regard to the consideration of any director candidate recommended by security holders, because our Board of Directors believes that our by-laws and the procedures noted below provide sufficient guidance for the consideration of such persons so recommended. Although there is no formal procedure for stockholders to recommend nominees for the Board of Directors, the Nominating Committee will consider such recommendations if received in writing, together with all of the information described below as to the person so recommended, 120 days in advance of the annual meeting of stockholders. The Committee will consider appropriate factors such as experience with other organizations, skills, diversity, integrity, judgment and independence. Recommendations should be made in compliance with the Company's by-laws and be addressed to the Nominating Committee at the Company's address and provide all information relating to such person that the stockholder desires to nominate that is required to be disclosed in solicitation of proxies for the election of such nominee, including the nominee's written consent to serve as a director if so elected. If the chairman of the Meeting determines that a person is not nominated in accordance with the nomination procedure, such nomination will be disregarded.

### **Code of Ethics**

The Company has adopted a Code of Ethics that applies to all executive officers. The Code of Ethics is available on our website at [www.perma-fix.com](http://www.perma-fix.com). If any amendments are made to the Code of Ethics or any grants of waivers are made to any provisions of the Code of Ethics to any of its executive officers, the Company will promptly disclose the amendment or waiver and nature of such amendment or waiver on the Company's website.

### **Compensation of Directors**

In 2004, we paid our outside directors fees of \$1,500 for each month of service, resulting in the six outside directors earning annual director's fees in the total amount of \$108,000. As a member of the Board of Directors, each director elects to receive either 65% or 100% of the director's fee in shares of our Common Stock based on 75% of the fair market value of the Common Stock determined on the business day immediately preceding the date that the fee is due. The balance of each director's fee, if any, is payable in cash. The aggregate amount of accrued directors' fees at December 31, 2004, to be paid during 2005 to the six outside directors (Messrs. Colin, Lahav, Reeder, Warrington, Young and Zwecker) was \$54,000. Reimbursement of expenses for attending meetings of the Board are paid in cash at the time of the applicable Board meeting. The outside directors do not receive additional compensation for committee participation or special assignments, except for reimbursement of expenses. We do not compensate the directors that also serve as our officers or employees of our subsidiaries for their service as directors. Although Dr. Centofanti is not compensated for his services provided as a director, Dr. Centofanti is compensated for his services rendered as an officer of the Company. See "EXECUTIVE COMPENSATION — Summary Compensation Table."

Effective May 1, 2005, the Board of Directors approved an increase in the director fee paid to the chairman of our Audit Committee to \$3,750 for each month of service, which represents an increase of \$2,250 from the previous \$1,500 monthly director fee. The increase is a result of the additional time and responsibilities placed on this board position.

We believe that it is important for our directors to have a personal interest in our success and growth and for their interests to be aligned with those of our stockholders. Therefore, under our 1992 Outside Directors Stock Option and Incentive Plan ("1992 Directors Plan"), each outside director was granted a 10 year option to purchase up to 15,000 shares of Common Stock on the date such director was initially elected to the Board of Directors and received on each reelection date an option to purchase up to another 5,000 shares of Common Stock, with the exercise price being the fair market value of the Common Stock on the date that the option is granted. No option granted under the 1992 Directors Plan is exercisable until after the expiration of six months from the date the option is granted and no option shall be exercisable after the expiration of ten years from the date the option is granted. In 2003, our stockholders approved the 2003 Outside Directors Stock Plan ("2003 Directors Plan"). The 2003 Directors Plan is substantially similar to the 1992 Directors Plan (which terminated in 2003), with the exception that each outside director is granted a 10 year option to purchase 30,000 shares of Common Stock when initially elected, and granted a 10 year option to purchase 12,000 shares of Common Stock on each reelection date. As of December 31, 2004, options to purchase 220,000 shares of Common Stock had been granted and are outstanding under the 1992 Directors Plan and options to purchase 162,000 shares of Common Stock were granted and are outstanding under the 2003 Directors Plan. During 2004, 45,000 option shares expired under the 1992 Directors' Plan.

As of the date of this report, we have issued 226,550 shares of our Common Stock in payment of director fees under the 1992 Directors Plan, covering the period January 1, 1995 through December 31, 2003. No new shares may be issued under the 1992 Directors Plan, except for the exercise of options already granted. We have also issued 140,035 shares of our Common Stock in payment of director fees under the 2003 Directors Plan, covering the period October 1, 2003, through December 31, 2004.

### **Communications with the Board**

The Company's Board of Directors believes that it is important for the Company to have a process that enables stockholders to send communications to the Board. Accordingly, stockholders who wish to communicate with the Board of Directors or a particular director may do so by sending a letter to the Secretary of the Corporation, at 1940 N.W. 67th Place, Gainesville, Florida 32653. The mailing envelope must clearly indicate that the enclosed letter is a "Stockholder-Board Communication" or "Stockholder-Director Communication." All such letters must identify the author as a stockholder and clearly state whether the intended recipients are all members of the Board of Directors or only certain specified individual directors. The Secretary of the Corporation will make copies of all such letters and circulate them to the appropriate director or directors.

### **Compensation Committee Interlocks and Insider Participation**

During 2004, the Compensation and Stock Option Committee for the Company's Board of Directors was composed of Mark Zwecker, Jack Lahav, Joe Reeder, Dr. Charles Young and Jon Colin. Messrs. Zwecker, Lahav, Reeder, Young and Colin were neither officers nor employees of the Company or any subsidiaries during 2004.

### **Certain Relationships**

There are no family relationships between any of the Company's existing Directors, executive officers, or persons nominated or chosen to become a Director or executive officer. Dr. Centofanti is the only Director who is the Company's employee.

### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the regulations promulgated thereunder require our executive officers and directors and beneficial owners of more than ten percent (10%) of any class of our equity security registered pursuant to Section 12 of the Exchange Act to file reports of ownership and changes of ownership of our equity securities with the Securities and Exchange Commission, and to furnish us with copies of all such reports. Based solely on a review of the copies of such reports furnished to us and information provided to us, we believe that during 2004 none of our executive officers and directors failed to timely file reports under Section 16(a).

Capital Bank-Grawe Gruppe AG ("Capital Bank") has advised us that it is a banking institution regulated by the banking regulations of Austria, which holds shares of our Common Stock as agent on behalf of numerous investors. Capital Bank has represented that all of its investors are accredited investors under Rule 501 of Regulation D promulgated under the Act. In addition, Capital Bank has advised us that none of its investors beneficially own more than 4.9% of our Common Stock. Capital Bank has further informed us that its clients (and not Capital Bank) maintain full voting and dispositive power over such shares. Consequently, Capital Bank has advised us that it believes it is not the beneficial owner, as such term is defined in Rule 13d-3 of the Exchange Act, of the shares of our Common Stock registered in the name of Capital Bank because it has neither voting nor investment power, as such terms are defined in Rule 13d-3, over such shares. Capital Bank has informed us that it does not believe that it is required (a) to file, and has not filed, reports under Section 16(a) or (b) to file either Schedule 13D or Schedule 13G in connection with the shares of our Common Stock registered in the name of Capital Bank.

If the representations, or information provided, by Capital Bank are incorrect or Capital Bank was historically acting on behalf of its investors as a group, rather than on behalf of each investor independent of other investors, then Capital Bank and/or the investor group would have become a beneficial owner of more than 10% of our Common Stock on February 9, 1996, as a result of the acquisition of 1,100 shares of Series 1 Preferred Stock that were convertible into a maximum of 1,282,798 shares of our Common Stock commencing 45 days after issuance of the Series 1 Preferred. If either Capital Bank or a group of Capital Bank's investors became a beneficial owner of more than 10% of our Common Stock on February 9, 1996, and thereby required to file reports under Section 16(a) of the Exchange Act, then Capital Bank has failed to file a Form 3 or any Forms 4 or 5 for period from February 9, 1996, until the present.

### **Audit Committee Report**

The Audit Committee is responsible for providing independent objective oversight of the Company's accounting functions and internal controls. In accordance with rules adopted by the Commission, the Audit Committee of the Company states that:

- The Audit Committee has reviewed and discussed with management the Company's audited financial statements for the fiscal year ended December 31, 2004.
- The Audit Committee has discussed with BDO Seidman, LLP, the Company's independent auditors, the matters required to be discussed by Statement on Auditing Standards No. 61 ("Communications with Audit Committees"), as modified or supplemented.

The Audit Committee has received the written disclosures and the letter from BDO Seidman, LLP, required by Independence Standards Board Standard No. 1 (“Independence Discussions with Audit Committees”), as modified or supplemented, and has discussed with BDO Seidman, LLP, the independent accountant’s independence.

In connection with the Audit Committee’s discussion with BDO Seidman, LLP, as described above, the Audit Committee discussed and considered (a) that approximately 60% of the total hours spent on audit services for the Company for the year ended December 31, 2004, were spent by Gallogly, Fernandez & Riley, LLP (“GFR”), members of the BDO Seidman, LLP alliance network of firms, and (b) the nature and scope of the non-audit services performed by GFR, and determined that the audit and non-audit services provided by BDO Seidman, LLP and GFR were compatible with maintaining the independence of BDO Seidman, LLP.

Based upon the review and discussions referred to above, the Audit Committee recommended to the Board of Directors that the Company’s audited financial statements be included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2004, for filing with the Securities and Exchange Commission. The Audit Committee also appointed BDO Seidman, LLP as the Company’s independent auditor for 2005.

This report is submitted on behalf of the members of the Audit Committee:

Alfred C. Warrington, IV  
(Chairperson)  
Jon Colin  
Mark Zwecker

The Report of the Audit Committee shall not be deemed to be “soliciting material” or to be “filed” with the Securities and Exchange Commission, nor shall it be incorporated by any general statement incorporating by reference this proxy statement into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates this information by reference and shall not otherwise be deemed filed under such Acts.

## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth certain information with respect to the compensation of our Chairman and Chief Executive Officer and the Company’s other executive officers whose compensation and bonus, as so determined, exceeded \$100,000 during 2004.

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation		All Other Compensation (\$) <sup>(2)</sup>
		Salary (\$)	Bonus (\$) <sup>(1)</sup>	Other Annual Compensation (\$)	Restricted Stock Award(s) (\$)	Securities Underlying Options/SARs (#)	
Dr. Louis F. Centofanti	2004	190,000	50,000	¾	¾	¾	11,695
Chairman of the Board,	2003	183,069	40,000	—	—	100,000	11,503
President and Chief Executive Officer	2002	149,500	—	—	—	—	11,214