

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Jeffrey Jones, Chief, Water and Sewer Section
(V) Phone: 614/466-0463 (F) 614/728-8373
jeff.jones@puc.state.oh.us

Regulation/Package Title: Waterworks Companies and Sewage Disposal System
Companies -- Case No. 11-5605-WS-ORD

Rule Number(s):

4901:1-15-01, 4901:1-15-02, 4901:1-15-03, 4901:1-15-04, 4901:1-15-05, 4901:1-15-06, 4901:1-15-07, 4901:1-15-08, 4901:1-15-09, 4901:1-15-10, 4901:1-15-11, 4901:1-15-12, 4901:1-15-13, 4901:1-15-14, 4901:1-15-15, 4901:1-15-16, 4901:1-15-17, 4901:1-15-18, 4901:1-15-19, 4901:1-15-20, 4901:1-15-21, 4901:1-15-22, 4901:1-15-23, 4901:1-15-24, 4901:1-15-25, 4901:1-15-26, 4901:1-15-27, 4901:1-15-28, 4901:1-15-29, 4901:1-15-30, 4901:1-15-31, 4901:1-15-32, 4901:1-15-33, 4901:1-15-34, and 4901:1-15-35

Date: 7/13/2012

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |
| | <input checked="" type="checkbox"/> No Change |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

- 1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

Chapter 4901:1-15, Ohio Administrative Code (O.A.C.), governs the furnishing of water and sewage disposal service and facilities to the public by any such companies subject to the Public Utilities Commission of Ohio's (PUCO) jurisdiction. Specifically, this chapter, inter alia, sets forth the requirements for obtaining a certificate of public convenience and necessity, notification of changes to a company's operating authority, notification of outages and planned flushings, emergency operations, notification of customer rights, meter reading, quality and adequacy of service, customer bill format, payment responsibilities, disconnection procedures, reconnection of service, main extensions, and subsequent service connections and tap-ins.

The proposed changes to this chapter include non-substantive amendments, addition of definitions in Rule 4901:1-15-01, modifications involving what planned events trigger PUCO notification in Rule 4901:1-15-10, supplementation of notification of unplanned outages in Rule 4901:1-15-12, authorized agent fees in Rule 4901:1-15-17, unaccounted-for-water and introduction of the infrastructure leak index in Rule 4901:1-15-20, modification of the medical certification provisions of Rule 4901:1-15-27, and the water conservation restriction regulations of Rule 4901:1-15-34, O.A.C.

- 2. Please list the Ohio statute authorizing the Agency to adopt this regulation. Sections 4901.13 and 4905.04, Revised Code.**
- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rules in this chapter establish standards to be met by companies that provide water and/or sewage service to Ohio residential and business consumers.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Commission can monitor complaints about water/sewer service that are made to the Commission's hotline (toll free number) and which are filed by companies pursuant to OAC 4901:1-15-33.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.***

On November 9, 2011, in Case No. 11-5605-WS-ORD, the Commission sent by US Mail and e-mail a copy of staff's proposed changes for OAC 4901:1-15 to (a) all regulated waterworks and sewage disposal companies, (b) the Office of the Ohio Consumers' Counsel (OCC), (c) the Ohio Environmental Protection Agency, (OEPA) and (d) any other interested persons of record. On that same date, the rules were posted to the Commission's website. Stakeholders then filed comments to staff's proposals and also made their own proposals concerning rules in this O.A.C. chapter. Comments and reply comments were submitted by OCC and Aqua Ohio. Finally, stakeholders who objected to the rules approved in the Commission's February 1, 2012, Finding and Order had thirty days, ending March 2, 2012, to express their objections in an application for rehearing. The Commission observes that no such objections were filed.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

OCC suggested revisions to Rules 4901:1-15-01, 4901:1-15-12, 4901:1-15-14, 4901:1-15-16, 4901:1-15-17, 4901:1-15-19, 4901:15-20, 4901:1-15-23, and

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

4901:1-15-26, O.A.C. Aqua Ohio proposed revisions to Rules 4901:1-15-24 and 4901:1-15-27, O.A.C. OCC and Aqua Ohio disputed many of the proposals made by the other stakeholder. The PUCO did not adopt any of the stakeholders' suggested revisions.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Rule 4901:1-15-19(B)(1) and 4901:1-15-20(C)(5)(b) are based on standards established by the American Water Works Association. Standards set forth in Rules 4901:1-15-10(B)(3-7) and 4901:1-15-20(C)(3-4) are developed from the Standards for Water Works, 2007 Edition. No other proposed rules in this chapter were based on scientific data. The American Water Works Association is nationally recognized as a standards setting body for water and sewage disposal companies.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternative regulations were considered as the provision of water and sewer service is a capital intensive industry. Therefore, more stringent regulation is appropriate in order to provide safe drinking water and sewage disposal to the public. Accordingly, the Commission adopted rules that it considers best suited to meet these goals.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No performance-based regulations were considered as the provision of water and sewer service is a capital intensive industry. Therefore, more stringent regulation is appropriate in order to provide safe drinking water and sewage disposal to the public. Accordingly, the Commission adopted rules that it considers best suited to meet these goals.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Although it is unlikely that OAC 4901:1-15 duplicates the rules of other state entities, OCC and OEPA were included on the US Mail list of stakeholders that were notified by the Commission of proposed rules changes. Neither OCC nor OEPA has indicated that OAC 4901:1-15 duplicates the rules of these two entities.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rule changes made in Chapter 4901:1-15, O.A.C., were attached to the PUCO's finding and order issued February 1, 2012, and served on all regulated water and sewer companies, OCC, Ohio EPA, and any other interested person of record. The PUCO only has two field investigators who cover all of Ohio and both investigators work off of inspection forms to ensure consistency in the inspection and evaluation approach. Those field investigators report to one supervisor at the PUCO's offices. Those three employees all collaborate and share input regarding whether an activity rises to the level of an actionable violation to further pursue. This procedure ensures that the regulations outlined in Chapter 4901:1-15, O.A.C., will be consistently applied across the state and across all regulated entities.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Rules in OAC 4901:1-15 apply to waterworks and/or sewage disposal companies that are subject to Commission jurisdiction.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rules impact the identified business community in that there is a cost of compliance with the filing and tariff requirements, record-keeping provisions, and the ensuring that the impacted business operates its water and sewage disposal business in a safe high quality manner.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The impact in terms of time will, in most instances, be small. For example, only when there is a planned outage or a planned main flushing must a company contact the Commission, and such occurrences which would not be frequent. As another example, the percentage of unaccounted-for water must be reported to the Commission only quarterly, and routine testing of all meters would not occur simultaneously. The most time-consuming tasks would be compiling information needed to submit an application for a certificate of convenience, and an application seeking approval for an infrastructure improvement surcharge; however, it must be noted that the application for a certificate is only submitted once, and an application for infrastructure improvement is only submitted when a company believes that a need for such an improvement has arisen. Additionally, since the water and sewage disposal industry is regulated on a rate-base, rate-or-return basis, any costs associated with compliance with the standards set forth in this Chapter are recoverable from ratepayers as a business expense.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission is the only state agency charged with ensuring that regulated companies provide adequate, safe, and reliable potable water and sewage disposal services at a fair price.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The rules address the services needed to provide safe drinking water and sewage disposal service, which clearly are essential matters. Thus, any alternative means of compliance would not be appropriate.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The focus of PUCO regulation is ensuring that all regulated water and sewage disposal companies provide safe and adequate water and sewage disposal service at just and reasonable rates. The focus is not on seeking penalties for first-time paperwork offenses. To that end, the PUCO will fully comply with Section 119.14, Revised Code, and would not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

18. What resources are available to assist small businesses with compliance of the regulation?

Commission staff works with small regulated water and sewage disposal companies to assist such companies with compliance.