

CSI – Ohio
The Common Sense Initiative
Business Regulation Impact Analysis

Ohio Board of Building Standards

Rule Numbers: 4101:1-1-01 and 4101:1-2-01

Introduction

In compliance with Executive Order 2011-01K and Senate Bill 2 of the 129th General Assembly, the Ohio Board of Building Standards (Board) has conducted a Business Regulation Impact Analysis (Analysis) of proposed amendments to Ohio Administrative Code (OAC) Rules 4101:1-1-01 and 4101:1-2-01.

Background

The Board is charged with the duty to formulate and adopt, amend, modify or repeal rules of the Administrative Code governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in section 3781.06 of the Revised Code. Further, the Board of Building Standards certifies building departments to enforce the Ohio Building Code for the types of buildings and subject matters specified by the Board pursuant to Revised Code Section 3781.10. Separately, Ohio Revised Code Section 3791.04 grants authority to the Division of Industrial Compliance to enforce the Ohio Building Code in situations and locations where there is no certified building department with jurisdiction.

The Utica and Marcellus shale formations which exist beneath a significant part of the State have proven to be rich in oil and natural gas, and that natural gas and related products extracted from these formations require fractionation and other processing in specialized facilities. These facilities remove the various hydrocarbons and fluids from raw natural gas to produce pipeline quality dry natural gas as well as other valuable by-products. These processing facilities are unique structures and will be constructed in various political subdivisions and possibly overlapping jurisdictional boundaries in eastern Ohio. The Board has determined that one entity should be responsible for the plan review and inspections of buildings and structures within the scope of the building codes that are a part of these facilities to ensure consistent and efficient handling of these projects.

The Board proposes to amend OAC Rules 4101:1-1-01 and 4101:1-2-01 to grant the Ohio Department of Commerce, Division of Industrial Compliance exclusive jurisdiction to regulate the construction of buildings or structures within the scope of the Ohio Building Code directly related to the operation of all natural gas liquids fractionation or processing facilities in the State.

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March 15, 2012

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.*

4101:1-1-01: The proposed amendment to this rule in Section 102.11(5.3) would provide that certification of a county, township, or municipal building department does not include Ohio Building Code enforcement authority of the construction of buildings or structures directly related to the operation of natural gas liquids fractionation or natural gas processing facilities.

4101:1-2-01: The proposed amendments to this rule would add definitions for National Gas Processing Facilities and Natural Gas Liquids Fractionation Facilities,.

2. *Please list the Ohio statute authorizing the Agency to adopt this regulation.*

Revised Code § 3781.06: <http://codes.ohio.gov/orc/3781.06>

Revised Code § 3781.10: <http://codes.ohio.gov/orc/3781.10>

Revised Code § 3791.04: <http://codes.ohio.gov/orc/3791.04>

3. *Does the regulation implement a federal requirement?*

No.

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?

No.

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

Not applicable.

4. *If the regulation includes provisions not specifically required by the federal government, please explain the rationale for not incorporating the federal counterpart.*

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 Ohio Building Code adopted by the Ohio Board of Building Standards regulates the construction standards of all nonresidential structures in the State of Ohio. Under continuing law, the construction of buildings or structures directly related to the operation of all natural gas liquids fractionation or processing facilities must comply with the Ohio Building Code. These processing facilities are unique structures and will be constructed in various political subdivisions and

possibly overlapping jurisdictional boundaries in eastern Ohio. The Board has determined that one entity should be responsible for the plan review and inspections of these facilities to ensure consistent and efficient handling of these projects. These proposed amendments would clarify that the Ohio Department of Commerce, Division of Industrial Compliance would have exclusive jurisdiction to review plans and make inspections of the buildings and structures directly related to these facilities to ensure compliance with the Ohio Building Code.

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

Division of Industrial Compliance in the Ohio Department of Commerce will conduct plan review and inspections for all natural gas liquids fractionation or processing facilities as defined in the proposed amendments. Each certified building department is required to submit a Yearly Operational Report which tracks with types of approvals (permits) issued for each calendar year. While the Division of Industrial Compliance does not have a similar reporting requirement, the Division does have database and an electronic tracking system for all approvals (permits). The Yearly Operational Reports and the Division of Industrial Compliance project database will enable the Board to identify projects related to natural gas natural gas liquids fractionation or processing facilities regulated by the Division under these rules and ancillary projects which will remain within the jurisdiction of local certified building departments.

Development of Regulation

7. *Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.*

See attached email list of stakeholders.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On February 29, 2012, each stakeholder was notified of the proposed amendments and informed that they may submit comments on the amendments by March 12, 2012. On February 29, 2012, each stakeholder was notified of a stakeholder meeting scheduled for March 9, 2012 at 10:00 a.m. at 6606 Tussing Rd, Reynoldsburg, Ohio 43068.

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

During initial drafting of the rules, Board Staff consulted with industry experts and conducted technical research of petroleum industry operations to develop accurate definitions and descriptions of natural gas liquids fractionation or processing facilities to ensure that application of these proposed amendments are in accordance with the Board's intent. At its meeting on January 27, 2012, the

Board also heard testimony from Director of Commerce David Goodman requesting the Board to take immediate actions to provide a consistent mechanism for Ohio Building Code enforcement of natural gas liquids fractionation or natural gas processing facilities.

At the March 9, 2012 stakeholder meeting, the following individuals were in attendance: Larry Richcreek, Muskingum and Washington Counties; William Kraft, City of Massillon; Jim Johnson, City of Massillon; Valerie Dahlberg, Mechanical Contractors Association of Ohio; Ron Macala, Attorney East Central Ohio Building Trades; Philip Williams, IBEW; Dave Kirven, Plumbers and Pipefitters Local 94; Tom Rosenberg, Attorney IBEW; Rocco Fana, ACCA/PHCC Ohio; Dennis Duffey, OSBCTC; David Williamson, Division of Industrial Compliance, Geoff Eaton, Division of Industrial Compliance; Matt Mullins, Dept of Commerce; Desiree Blankenship, Dept of Commerce; Matt Close, Dept of Commerce; Matt Peters, Dept of Commerce; Regina Hanshaw, Board of Building Standards; Steve Regoli, Board of Building Standards; and Debbie Ohler, Board of Building Standards.

During the meeting stakeholders raised concerns and asked questions regarding the scope of the proposed rules. Department of Commerce and Board representatives responded to these questions, and clarified that the intent of the proposed rules were to only apply to structures at the processing facility site. Examples were presented by attendees of buildings providing support to a fractionation processing plant including equipment repair and trucking facilities within the City of Canton and the City of Massillon. Agency representatives stated that these types of facilities would not be affected by these proposed amendments.

Separately, representatives from the Department of Commerce and the Board conducted a conference call with City of Canton Mayor Healy and the City of Massillon's Mayor Office on March 9, 2012. The cities of Canton and Massillon were informed of the discussions from the stakeholder meeting and that as a result Board Staff was reviewing the rules to provide further clarification to the scope of the rules.

The proposed amendment to Rule 4101:1-1-01 was modified to provide further clarification as to the scope of the rule. The proposed rules, as revised, now include the phrase "and on the premises of" to clarify that the applicability of the rule is not intended to extend beyond the processing facility site.

On March 12, 2012, Governor Kasich issued an executive order permitting the Board to amend Rules 4101:1-1-01 and 4101:1-2-01 immediately. The Executive Order included a modification to the amendments eliminating the specific reference to natural gas/ethylene cracking facilities.

The Board also received written comments from cities, organizations and concerned citizens while the proposed rules were out for public comment. The written comments revolved around three main concerns: (1) objections to removal of building code enforcement for these facilities from local government control; (2) objections to perceived exemptions for all natural gas operations; and (3) request for clarification of the intended scope of the proposed amendments.

- (1) Objections to the removal of building code enforcement for these facilities from local government control.

Board Response: The proposed amendments would only grant exclusive jurisdiction to the Division of Industrial Compliance for Ohio Building Code review of natural gas liquids fractionation or processing facilities. Local governments retain all other police and regulatory powers related to these structures. Additionally, as discussed above the proposed rules were revised to address concerns raised by the cities of Canton and Massillon to clarify the scope of the rules. Ancillary structures that are not directly related to or on the premises of the to the operation of natural gas liquids fractionation or natural gas processing facilities will not be affected by these amendments and will remain under the jurisdiction of local certified building departments.

- (2) Objections to perceived exemptions for all natural gas operations

Board Response: The proposed amendments do not provide any exemption from Ohio Building Code or any other local police or regulatory requirements for these structures.

- (3) Request for clarification of the intended

Board Response: As discussed above, the proposed rules were revised to address concerns raised by the City of Canton and other stakeholders to clarify the scope of the rules. Ancillary structures that are not directly related to or on the premises of the to the operation of natural gas liquids fractionation or natural gas processing facilities will not be affected by these amendments and will remain under the jurisdiction of local certified building departments.

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?*

The Board consulted with industry experts and conducted technical research of petroleum industry operations to develop accurate definitions and descriptions of natural gas liquids fractionation or processing facilities to ensure that application of these proposed amendments are in accordance with the Board's intent. Structures that are not related to natural gas liquids fractionation or processing as defined in the proposed amendments are not within the exclusive of the Division of Industrial Compliance in areas that have a certified local building departments.

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?*

The proposed amendment clarifies jurisdictional boundaries for the types of structures that are directly related to natural gas liquids fractionation or processing, and do not include any new or amended substantive changes or regulations. However, if the Board does not enact these proposed amendments, building code regulation of natural gas liquids fractionation or processing facilities would remain with local certified building departments. To be certified as a local building department by the Board, the department must demonstrate it has in its employ or under contract personnel who have the necessary knowledge and experience to enforce the building codes. The Board actively works with local building departments to achieve uniform enforcement of the codes. Despite these efforts, there remains variation from community to community related to department organization and operation, fees, and application processing time. These proposed amendments would eliminate these variations for only these affected facilities due to the State-wide concern for a uniform handling of natural gas liquids fractionation regulation.

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

Not applicable. The proposed amendments do not include any new or amended substantive changes or regulations. The proposed amendment clarifies jurisdictional boundaries for the types of structures that are directly related to natural gas liquids fractionation or processing. However, continuing law permits alternative engineered designs prepared by a registered design professional not to comply strictly with the prescriptive requirements of the Ohio Building Code. To obtain approvals based on alternative engineered designs, the design professional must submit sufficient technical information to demonstrate that the performance meets the intent of the rules.

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

The Ohio Board of Building Standards has exclusive authority to adopt and amend rules of the Administrative Code governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in section 3781.06 of the Revised Code. Further, the Board of Building Standards certifies building departments to enforce the Ohio Building Code for the types of buildings and subject matters specified by the Board pursuant to Revised Code Section 3781.10. Separately, Ohio Revised Code Section 3791.04 grants authority to the Division of Industrial Compliance to enforce the Ohio Building Code in situations and locations where there is no certified building department with jurisdiction. These proposed amendments would clarify that certification by the Board of Building Standards of a building department does not include Ohio Building Code enforcement authority of the construction of

buildings or structures directly related to the operation of natural gas liquids fractionation, natural gas or natural gas processing facilities as defined by the proposed amendments.

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

The role of the Board is to promulgate rules regulating non-residential and residential construction in Ohio. The Board does not have enforcement authority. The Division of Industrial Compliance and local certified building departments enforce the rules adopted by the Board. However, the purpose of the proposed amendments is to promote the enforcement of substantive provisions of the Ohio Building Code in a consistent and predictable manner for structures directly related to the operation of all natural gas liquids fractionation or processing facilities by clarifying that one entity has the responsibility for plan review and inspections.

Adverse Impact to Business

14. *Provide a summary of the estimated cost of compliance with the rule.*
The proposed amendments do not include any new or amended substantive changes or regulations which would increase the cost of compliance.

Specifically, please do the following:

- a. *Identify the scope of the impacted business community;*
The proposed amendments do not include any new or amended substantive changes or regulations that would negatively impact the business community. It is the intent of the proposed amendments to foster consistent and predictable enforcement of the Ohio Building Code.
- b. *Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and*
Unlike fees established by certified local building departments, Revised Code Section 3791.07 provides that the Board of Building Standards establishes the fees for plan review and inspections by the Division of Industrial Compliance. Such fees are set forth in OAC 4101:1-1-01 § 115 and the amendments do not propose to modify these fees. Additional information related to these fees can be found on the Division of Industrial Compliance website at the following link:
http://com.ohio.gov/dico/docs/bdcc_NoticeOfFeeChange.pdf
- 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 proposed amendments do not include any new or amended substantive changes or regulations that would adversely impact the regulated population. It is the intent of the proposed amendments to foster consistent and predictable enforcement of the Ohio Building Code.

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

The proposed amendment clarifies jurisdictional boundaries for the types of structures that are directly related to natural gas liquids fractionation or processing, and do not include any new or amended substantive changes or regulations. However, if the Board does not enact these proposed amendments, building code regulation of natural gas liquids fractionation or processing facilities would remain with local certified building departments. To be certified as a local building department by the Board, the department must demonstrate it has in its employ or under contract personnel who have the necessary knowledge and experience to enforce the building codes. The Board actively works with local building departments to achieve uniform enforcement of the codes. Despite these efforts, there remains variation from community to community related to building department organization and responsiveness to the public need. These proposed amendments would eliminate these variations for only these affected facilities due to the State-wide concern for a uniform handling of natural gas liquids fractionation regulation.

Regulatory Flexibility

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

Not applicable. The proposed amendments do not include any new or amended substantive changes or regulations. However, the Ohio Building Code does not have special exemptions or alternative means of compliance specifically for small business. Compliance with the Ohio Building Code is accomplished through construction conforming to the certificate of plan approval (permit) ensuring a building is safe and sanitary.

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?*

Not applicable. The proposed amendments do not include any new or amended substantive changes or regulations.

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

The proposed amendments do not include any new or amended substantive changes or regulations. It is the intent of the proposed amendments to foster consistent and predictable enforcement of the Ohio Building Code. However, the Board's technical staff spends approximately 25% of their time responding to questions on the building codes and educating design professionals, contractors, the public, and code officials of the intent of the Board's rules assisting all parties in compliance. Also, it is the intent of the Board's rules that they be liberally construed. Continuing law provides:

The rules of the board and proceedings shall be liberally construed in order to promote its purpose. When the building official finds that the proposed design is a reasonable interpretation of the provisions of this code, it shall be approved. Materials, equipment and devices approved by the building official pursuant to section 114 shall be constructed and installed in accordance with such approval.

Board of Building Standards Stakeholder List For eNotification

American Council of Engineering Companies of
Ohio

American Institute of Architects

Associated Builders and Contractors

Associated General Contractors of Ohio

Building Owners and Managers Association

Federal Emergency Management Agency

Insurance Services Offices

International Association of Electrical Inspectors
Ohio Chapters

International Code Council

Mechanical Contractors Association of Central
Ohio

Midwest Energy Alliance

National Fire Protection Association

National Fire Sprinkler Association

National Institute of Building Sciences

National Institute of Standards and Technology

Ohio Association of Consulting Engineers

Ohio Association of Plumbing Inspectors

Ohio Building Officials Association

Ohio Fire Chiefs Association

Ohio Home Builders Association

Ohio Hotel and Lodging Association

Ohio Manufactured Homes Association

Ohio Manufacturers Association

Ohio Petroleum Marketers and Convenience Store
Association

Ohio Society of Professional Engineers

Ohio Statewide Independent Living Council

Ohio Township Association

Pacific Northwest National Laboratories

Plumbing Heating Cooling Contractors of Ohio

US Department of Justice

Commercial and Residential Departments

Addyston

Mason

Amherst

Massillon

Amherst Township

Massillon

Ashtabula County

Maumee

Ashville

Mayfield Heights

Aurora

Mayfield Village

Avon

Medina

Avon Lake

Medina County

Barberton

Mentor

Bay Village

Miami County

Bay Village

Miamisburg

Beachwood

Middleburg Heights

Bedford

Middletown

Bedford Heights

Mid-East Ohio

Berea	Milford
Bexley	Montgomery County
Bloom Township	Moraine
Brecksville	Munroe Falls
Broadview Heights & Alliance	Napoleon
Brook Park	National Inspection Corp
Brook Park	National Inspection Corp
Brooklyn	New Albany
Brooklyn Heights	New Russia Township
Brown County	Newburgh Heights
Brownhelm Township	Newtown
Brunswick	Niles
Brunswick	North Canton
Butler County	North Olmsted
Carroll	North Randall
Canal Winchester London Baltimore	North Ridgeville
Canton	North Royalton
Centerville	Norton
Cheviot	Norwood Deer Park
Chillicothe	Oakwood Villiage
Cincinnati	Oberlin
Clark County	Oberlin
Clermont County	Obetz
Cleveland	Obetz
Cleveland Heights	Olmsted Falls

Clinton County	Olmsted Township & East Cleveland
Columbia Township	Oregon
Columbus	Ottawa
Crestline	Ottawa County
Cuyahoga Heights	Painesville
Dayton	Parma
Defiance	Parma Heights
Delaware	Pepper Pike
Delaware County	Perkins Township
Doylestown	Pickaway County
Dublin	Pickerington
Eastlake	Portage County
Eaton	Portsmouth
Eaton Township	Powell
Elyria	Prairie Township
Englewood	Preble County
Euclid	Ravenna
Euclid	Reminderville
Fairborn	Reynoldsburg
Fairfield	Richland County
Fairfield County	Richland County
Fairlawn	Richmond Heights
Fairview Park	Rocky River
Fayette County	Rocky River
Franklin County	Ross County

Franklin Township	Sandusky
Gahanna	Scioto County
Galion	Seven Hills
Garfield Heights	Seven Hills
Gates Mills	Shaker Heights
Geauga County	Sharonville
Georgetown	Sheffield Lake
Girard	Sidney
Girard	Solon
Glendale	South Amherst Township
Glenwillow	South Bloomfield
Grafton	South Euclid
Grandview Heights	South Russell Village
Greene County	Springboro & Carlisle
Greenhills	Springdale
Grove City	Springfield
Groveport	Springfield
Hamilton	St. Bernard
Hamilton County	Stark County
Harrison	Steubenville
Hartville	Stow
Harveysburg	Streetsboro
Highland Heights	Strongsville
Highland Hills Orange Village Woodmere	Summit County
Hilliard	Toledo

Huron Township	Trenton
Independence	Trotwood
Jefferson Township	Trumbull County
Kent	Tuscarawas County
Kettering	Twinsburg
Lagrange Township	Union
Lagrange Village	Union County
Lake County	University Heights
Lake County	Upper Arlington
Lakewood	Vandalia
Lancaster	Vermilion City & Vermilion Township
Lawrence County	Violet Township
Licking County	Wadsworth
Lima / Allen County	Walton Hills
Lithopolis	Warren
Logan County	Warren County
London	Warrensville Heights
Lorain	Warrensville Heights
Louisville	Washington County
Loveland	Washington County
Lucas County	Washington Court House
Lyndhurst	Wauseon
Macedonia	Wayne County
Madeira	Wayne County
Madeira	Wellington

Mahoning County

Mansfield

Maple Heights

Mariemont

Marietta

Wellington

West Carrollton

West Jefferson

Westerville

Westlake

Wickliffe

Willoughby

Willoughby Hills

Whitehall

Wood County

Wooster

Worthington

Youngstown

Youngstown

Zanesville