



Allegheny County Health Department

Comment/Response Document For Proposed Changes to the ACHD's Rules and Regulations, Article XV ("Plumbing and Building Drainage")

July 18, 2018

INTRODUCTION

Pursuant to the authority granted to it under the Pennsylvania Local Health Administration Law, Sections 12010(f) and 12011(c)¹, on March 12, 2018, the Allegheny County Board of Health published notice for public review and comment in the Pittsburgh Post-Gazette the following proposed regulation changes:

Article XV (“Plumbing and Building Drainage”): Changes to this regulation are proposed to address record retention; to clarify the types of work requiring a plumbing permit; to address delinquent plumbing license renewals; to change the appeal period to 30 days; to add and revise definitions; to establish who must be present for a plumbing inspection; to eliminate outdoor condensate disposal; to clarify the necessary number of urinals; to clarify the number of necessary fixtures at various facilities; to set the minimum size of drains; to change the permissible lead content of pipes, fittings, solder and flux; to ban partial repairs of lead service lines; to require rodding of iron joints; to formalize approval of new plumbing materials and devices; to clarify the authority for requiring connection to a public sewer; to prevent public health hazards from disconnected private common sewer laterals; to require a building controlling trap; to account for building drains located below the building sewer; to require a variance approval for macerating toilets; to require a variance approval for grease interceptors located in food preparation areas; and to account for the amount of local rainfall.

The public comment period closed on April 12, 2018. The Allegheny County Health Department received a total of 7 comments from the public during that time. The comments were submitted in writing and by email.

This Comment and Response Document summarizes the comments submitted during the public comment period and provides ACHD’s responses to those comments. The comments and responses in this document are organized based on the general topic areas discussed in the comments. Where appropriate, the number of times a comment appeared is indicated. A list of the commentators, including names, affiliations (if any), and whether they are Allegheny County residents is also publicly available upon request.

A copy of the Comment and Response Document will be available on the Allegheny County Health Department website. All the commentators who submitted comments by email will be forwarded by email a copy of the Comment and Response Document. The commentators who submitted their comments by mail will be mailed a letter informing them on how to obtain a copy of the Comment and Response Document.

¹ As a county department of health established pursuant to the Local Health Administration Law, the Board of Health and ACHD has the power to make and enforce such laws necessary for the prevention of disease, for the prevention and control of conditions which constitute a menace to health, and for the promotion and preservation of the public health generally. See 16 P.S. §§ 12010(f) and 12011(c).

COMMENTS AND RESPONSES

1. **ON THE BAN ON PARTIAL REPLACEMENT OR REPAIR OF LEAD WATER SERVICE LINES:**

- a. **COMMENT:** Commenter requested clarification that the proposed changes to Section 605.2.1 only apply to privately-owned residential lead water service lines. (1 comment).

RESPONSE: ACHD agrees that the changes to Section 605.2.1 require greater clarity, and ACHD will be proposing that Section 605.2.1 be amended to indicate that the ban on partial replacement or repair of lead water service lines only applies to privately-owned, residential lead water service lines.

- b. **COMMENT:** The ban on partial lead line repairs or replacements should extend to both the private and public sides of a water service line and should be implemented by all municipalities. (1 comment).

RESPONSE: ACHD does not have legal authority over public water providers. Pursuant to the Section 5 of Pennsylvania Safe Drinking Water Act, 35 P.S. § 721.5, that authority rests with Commonwealth of Pennsylvania. Therefore, ACHD cannot extend the ban on partial replacements or repairs on lead water service lines to publicly-owned water service lines. However, the ban will extend to all privately-owned lead water service lines, which will be enforced in all municipalities in Allegheny County.

- c. **COMMENT:** A new definition for the term "Lead Water Service Line" should be added to the regulation. (1 comment).

RESPONSE: ACHD agrees that "Lead Water Service Line" should be defined by the regulation, and has proposed a definition of that term be added to Section 202.

- d. **COMMENT:** Did ACHD contemplate the cost of replacing lead water service lines, and if so, what is the anticipated average costs associated with wholesale line replacement? (1 comment).

RESPONSE: ACHD shares the commenter's concerns about the costs of replacing lead water service lines, however, ACHD has determined that the public health risks associated with repairs to or partial replacements of lead water service lines necessitates a ban on repairs to or partial replacement of privately-owned residential lead water service lines. Also, upon investigation, ACHD believes that service line insurance programs may cover the costs associated with replacing lead water service lines once that replacement is mandated by regulation. Also, whether or not the private lead

water service line replacement is covered by a service line insurance program, the costs for service line replacement have come down significantly over the years due to improved technology allowing replacement of lines without the need to dig up the entire line.

- e. **COMMENT:** Will lead water service line replacements be covered by service line insurance programs? (1 comment).

RESPONSE: Upon investigation, it is ACHD's belief that lead water service line replacements necessitated by regulation may be covered by specific service line insurance programs. However, without access to the schedule of items covered by specific service line insurance programs, ACHD is not able to state that all service line insurance programs will cover replacement of lead water service lines.

- f. **COMMENT:** If [service line replacement costs will be covered by service line insurance programs], will the Department undertake any efforts to apprise the public of the change, so that those who are able to obtain service line insurance can do so in light of any potential for increased repair costs? (1 comment).

RESPONSE: Once the proposed revisions to Article XV are approved, ACHD agrees that public education on the changes to Article XV is an important undertaking. Towards that end, ACHD will post the regulation changes on its website and publish notice of them in a newspaper of general circulation. Also, ACHD plans to inform all registered licensed plumbers in the county of the regulation change and will produce an information pamphlet on the plumbing permitting requirements.

- g. **COMMENT:** How will a variance request for mandated service line replacements be handled by the Health Department? (1 comment).

RESPONSE: Pursuant to the existing Section 105.1, ACHD must consider requests for "variances" (variances are called "modifications" in the regulation) on a case-by-case basis. Due to the wide variety of circumstances that could lead to a variance request, ACHD believes that an attempt to regulatorily delineate procedures for requesting variances from individual provisions of Article XV will inevitably fail to anticipate all possible scenarios that could lead to a variance. Therefore, ACHD does not believe that adding additional considerations to the variance procedure is practical. Furthermore, ACHD regularly approves variance requests where the variance does not impact public health

2. **ON THE STRUCTURE OF ARTICLE XV:**

- a. **COMMENT:** Why does Allegheny County treat regulation of plumbing as a health issue, rather than a construction issue? (1 comment).

RESPONSE: There are significant health and safety risks associated with improperly installed plumbing systems. Those safety and health risks include, but are not limited to, contaminated potable water; cross connections between water service lines and waste water; the risk of disease from improperly installed and or operated septic systems; scalding of children and the elderly; explosion hazards from improperly installed hot water heaters; and the risk of disease from an inadequate number of restrooms or fixtures in public buildings. Also, the Pennsylvania Construction Code Act, at Section 510(a.1), by mandating that the Allegheny County Health Department retain its plumbing code promulgated under the authority of the Local Health Administration Law, implicitly recognizes that plumbing and building drainage are significant public health issues.

- b. **COMMENT:** Does it make sense to hybridize plumbing regulations? (1 comment).

RESPONSE: Because of the requirements of the Pennsylvania Construction Code Act and the authority granted by the Local Health Administration Law, ACHD believes that it is mandatory to retain the jurisdiction over plumbing and building drainage. Specifically, as noted in the response to Comment 2.a, above, the Pennsylvania Construction Code Act, at Section 510(a.1), states that, “a municipality located in a county of the second class² shall not administer and enforce plumbing code provisions of an ordinance adopting the Uniform Construction Code...” See 35 P.S. § 7210.501(a.1). This insures that there is consistent application of regulations and code across the entire county.

- c. **COMMENT:** What happens when there is a conflict between the UCC and ACHD regulations? (1 comment).

RESPONSE: Pursuant to Section 501(a.1) of the Pennsylvania Construction Code Act, 35 P.S. § 7210.501(a.1), which mandates that the plumbing code of the Allegheny County Health Department be at least as stringent as the state code, when there is a conflict between Pennsylvania’s Uniform Construction Code and ACHD’s Article XV, the more stringent requirement is applied.

² Allegheny County is the only county of the second class in Pennsylvania.

3. **ON LICENSED PLUMBERS PERFORMING SITE WORK:**

- a. **COMMENT:** Installation of privately-owned, site work sanitary sewers should not be exclusive to licensed plumbers. (1 comment).

RESPONSE: ACHD believes that, except for owner-occupied dwellings, the proper installation of all private plumbing work by a licensed plumber is necessary to avoid the public health risks discussed in the response to Comment 2.a, above. The exception applies to owner-occupiers of a residential dwelling because only they are assuming the risks of improper site work installation and not imposing those risks on a third party, such as a tenant.

- b. **COMMENT:** Privately owned sewer mains should be designed and constructed to the minimum standards of the sanitary sewer service provider where such service provider is willing to review and approve the design and permit connection of said private sewer to the service provider's system. (1 comment).

RESPONSE: ACHD agrees that privately owned sewer mains should be designed to meet the requirements of the sanitary sewer service provider. However, in order to maintain adequate public protections and to ensure the consistent county-wide application of plumbing rules, ACHD believes that the minimum design standards should be consistent with Article XV. Also, while some sewer authorities in Allegheny County have the ability to inspect private sewer installations, not all sewer authorities have that capacity and they rely on ACHD's rules, and the enforcement thereof, to ensure the installation of sewer systems that are protective of the public health. Therefore, ACHD's regulations should address the needs of all municipalities throughout its jurisdiction, rather than customizing the rules for the few who can manage a permitting and inspection program. Furthermore, mutual maintenance agreements for private sewer mains and laterals are necessary to ensure long-term maintenance of private sewer mains and laterals and ACHD regulations provide for that necessity, while many sewer authorities do not.

4. **ON TOILET ROOM FIXTURE REQUIREMENTS:**

- a. **COMMENT:** Consider allowing urinals to be used, not require them. (1 comment).

RESPONSE: Pursuant to Section 501(a.1), 35 P.S. § 7210.501(a.1), of the Pennsylvania Construction Code Act, ACHD's regulations must be at least as stringent as the state's regulations adopted pursuant to the Construction Code Act. Currently, state code requires that 50% of the fixtures in toilet

rooms to be urinals. Therefore, ACHD cannot make the use of urinals optional.

- b. COMMENT:** Consider acknowledging uni-sex, single occupancy toilets can accommodate an occupant load in medical office settings, or the like. (1 comment).

RESPONSE: Pursuant to Section 501(a.1), 35 P.S. § 7210.501(a.1), of the Pennsylvania Construction Code Act, ACHD's regulations must be at least as stringent as the state's regulations adopted pursuant to the Construction Code Act. Currently, state code requires a specific number of toilet rooms and fixtures, depending on facility use and occupancy. In some instances, multi-use, single occupancy toilet rooms will be appropriate for a facility. Therefore, because the state proscribes the minimum number of toilet rooms and fixtures, ACHD cannot enact a regulation that is less stringent than the state's by permitting the use of uni-sex, single occupancy toilets beyond those circumstances permitted by the state. Also, for some facility uses and occupancy loads, the regulations specifically require separate toilet rooms for each sex. In these circumstances, provided the appropriate number of fixtures are used, a variance may be issued to re-label a men's or women's toilet room as "uni-sex" or "gender neutral".

5. ON CONDENSATE DISPOSAL TO PUBLIC SEWER SYSTEMS:

- a. COMMENT:** All condensate should not be required to discharge to the public sewer without accounting for defining what can be delivered to the public sewer. (1 comment).

RESPONSE: ACHD agrees that discharging condensate to a public sewer system could be problematic for a variety of reasons. Therefore, ACHD will not be proposing a requirement that condensate drain to a public sewer system.

6. ON GENERAL DEFINITIONS:

- a. COMMENT:** The term "plumbing system" should be defined. (1 comment).

RESPONSE: Article XV already contains a definition of "plumbing system":

"PLUMBING SYSTEM. Includes the water supply and distribution pipes; plumbing fixtures and traps; water-treating or water-using equipment; soil, waste and vent pipes; and sanitary and storm sewers and building drains; in addition to their respective connections, devices and appurtenances within a structure or premises." See Article XV § 202.

- b. **COMMENT:** The definition of "Rain Water" should exclude "Storm Water". (1 comment).

RESPONSE: ACHD agrees with this comment and will amend the proposed regulations to clarify that the definition of "Rain Water" excludes "Storm Water".

- c. **COMMENT:** A definition of "privately owned sewer main" should be added to the Article. (1 comment).

RESPONSE: ACHD agrees with this comment and will amend the existing definition of "Private Sewer" to reference both private sewer mains and laterals.

7. **ON PERMITTING:**

- a. **COMMENT:** There should be a more informal approval process for minor repairs or alterations to existing plumbing systems. (1 comment).

RESPONSE: ACHD does have a permitting system that accounts for minor repairs or alterations to a plumbing system. ACHD's "Level One" permits were instituted to reduce the permit fee and the paperwork for minor repairs. For example, with a bathtub replacement, under the "Level One" permit, the fee would only be \$20.00 and no abstract drawing would need to be submitted with the permit application. Under a standard permit, the fee would be \$85.00 and an abstract drawing would need to be submitted.

- b. **COMMENT:** Owners who reside in multi-family properties should be able to pull permits for all units in the multi-family property. (1 comment).

RESPONSE: As discussed in the response to Comment 2.a, above, there are significant health and safety associated with the improper installation of plumbing systems. Also, an owner-occupier of a building only has the ability to "pull" permits for the dwelling that they reside in because the risks of an improperly installed plumbing system should not be assumed by other residents in a multi-family building, who will likely not have any input on the installation of plumbing systems that they do not own.

- c. **COMMENT:** Except for instances of whole-house renovations, licensed contractors should be able to pull permits for plumbing work so long as there are no health or safety concerns. (1 comment).

RESPONSE: As discussed in the response to Comment 2.a, above, there are significant health and safety associated with the improper installation of plumbing systems. Due to those health and safety risks, only licensed

plumbers may apply for a permit and perform plumbing work. The only exception to the required use of a licensed plumber is when an owner-occupier, i.e., the property owner who resides at the property, performs the plumbing work themselves. The reason for this exception is that an owner-occupier is the one assuming the risk of an improperly installed plumbing system, not a third party such as a prospective buyer or tenant. While owner-occupiers may perform the work, they are still required to apply for and receive a permit to ensure the use of code-compliant materials and proper installation to protect neighbors and future owners from public health hazards such as sewage back-ups, cross connections, and the installation of lead water service lines.

- d. **COMMENT:** In the case of plumbing "emergencies", where repairs need to be done immediately, pulling permits "after-the-fact" should be allowed without penalty. (1 comment).

RESPONSE: ACHD has a long-standing policy of permitting the pulling of permits within 24 hours of when an emergency repair was made. However, ACHD agrees with the comment that Article XV should specifically allow for after-the-fact permitting in emergency situations. Therefore, ACHD will amend the proposed regulation to explicitly allow for after-the-fact permitting in emergency situations.

8. **ON THE PERMISSIBLE LEAD CONTENT OF PIPES AND FITTINGS:**

- a. **COMMENT:** Commenters expressed support for the changing the permissible content of lead pipe and fitting to be consistent with Pennsylvania and federal law. (2 comments).

RESPONSE: ACHD appreciates support for this important change.

9. **ON CIVIL AND CRIMINAL PENALTIES**

- a. **COMMENT:** There should be an exemption from penalties for owners who rely on hired plumber. (1 comment).

RESPONSE: ACHD believes, based on years of experience enforcing the plumbing code, that determining whether the owner or their hired plumber is responsible for a violation is very fact specific and must be conducted on a case-by-case basis.

- b. **COMMENT:** The regulations should be written to prevent an unreasonably disproportionate civil penalty. (1 comment).

RESPONSE: Article XVI, Section 1605.C, of ACHD's Rules and Regulations requires that when assessing a civil penalty for environmental health

violations, which includes plumbing code violations, that ACHD consider, “...the economic benefit gained by such person by failing to comply with the Article, the willfulness of the violation, the actual and potential harm to the public health, safety and welfare and to the environment, the nature, frequency and magnitude of the violation, and any other relevant factors. Under this rule, ACHD cannot legally impose “unreasonably disproportionate civil penalties”.

- c. **COMMENT:** It should be made clear that the authority for grading repeat offenses of health department regulations as a misdemeanor is derived from the Local Health Administration Law. (1 comment).

RESPONSE: ACHD agrees that the authority for criminal violations should clearly be stated as the Local Health Administration Law, and the proposed regulation will be redrafted accordingly.

10. **ON RAINFALL RATES:**

- a. **COMMENT:** Why was there a reduction in equivalent drainage area values in Sections 1108 and 1109? (1 comment).

RESPONSE: The reduction in equivalent drainage area values in Section 1108 and 1109 were done to reflect the area’s historical rain fall totals. ACHD agrees that the appropriate rain fall rate is 4 inches per hour, and retention of the 1 inch per hour rainfall rate in the proposed changes to Article XV was in error. Therefore, ACHD will be amending Sections 1108 and 1109 to reflect a rainfall rate of 4 inches per hour.