

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
POLICY AND PROCEDURES MANUAL**

**FIELD SANITATION AND
AGRICULTURAL SAFETY
AND HEALTH**

P&P C-46

Issue Date:

8/17/92

Revised: 8/1/94,

3/1/02

AUTHORITY: California Labor Code Section 6712, and Title 8, California Code of Regulations, Section 3457.

POLICY: It is the policy of the Division of Occupational Safety and Health to enforce Title 8, California Code of Regulations, Section 3457, pertaining to field sanitation, in accordance with the provisions contained in the Field Sanitation Standard and with applicable sections of the Labor Code. Applicable provisions of Title 8, pertaining to agricultural safety and health, shall also be enforced in agricultural workplaces subject to the Field Sanitation Standard.

PROCEDURES:

A. INSPECTIONS

1. Unprogrammed Inspections

a. Compliance personnel shall determine whether agricultural employers are in compliance with Section 3457 as part of every unprogrammed inspection in the following Standard Industrial Classification Codes (SIC Codes):

0111 - 0119	Cash Grains
0131 - 0139	Field Crops, except Cash Grains
0161	Vegetables and Melons
0171 - 0179	Fruit and Tree Nuts
0181 - 0182	Horticultural Specialties
0191	General Farms, Primarily Crop
0711	Soil Preparation Services
0721 - 0724	Crop Services
0761 - 0762	Farm Labor and Management Services

b. In addition, compliance personnel shall utilize Special Emphasis Programmed Inspections in Field Sanitation to ensure compliance with

Section 3457. Programmed inspections will be performed as a part of the Agricultural Safety and Health Inspection Project (ASHIP) and shall include an evaluation of all aspects of farm sanitation. See Attachment A for Farm Sanitation Checklist.

2. Programmed Inspections

a. All programmed inspections in field sanitation will include an evaluation of safety and health hazards associated with agricultural operations.

b. Checklists have been provided in this P&P to assist compliance personnel in performing a programmed inspection. See Attachment B for Agricultural Safety Checklist and Attachment C for Agricultural Health Checklist.

3. IMIS Coding

a. The Agricultural Safety and Health Inspection Project (ASHIP) has been designated as an Annual Performance Goal in the Division's Strategic Plan.

b. The code SP-ASHIP shall be written in the IMIS Item Optional Information on the Cal/OSHA 1, 7 and 36, but data entered as a Strategic Activity. ASHIP coding is applicable for all enforcement activities, including letter responses, no inspections, and on-site inspections (both programmed and unprogrammed) at establishments within the SIC Major Groups 01, 02 and 07 (SIC Codes 0111 through 0783).

c. In addition to the above coding requirements, if the employer is found to be in compliance with Section 3457, compliance personnel shall so indicate on the Cal/OSHA Form 1A, Item 16 -- "Additional Comments".

4. Coordination

a. The Division shall work cooperatively with all federal, state and local agencies which have jurisdiction over the agricultural industry. Each District Manager will be responsible for contacting his or her counterpart within the Division of Labor Standards Enforcement of the Department of Industrial Relations to coordinate interdivisional field sanitation referrals.

b. In addition, each District Manager will be responsible for making appropriate referrals to the following California state agencies when necessary:

1. Agricultural Commissioner;

2. Department of Health Services;
3. Department of Fair Employment and Housing;
4. Department of Housing and Community Development;

NOTE: See P&P C-90 for Labor Camp Housing Referral Form (Cal/OSHA 90L).

5. Department of Food and Agriculture; and
6. The Environmental Protection Agency.

NOTE: See Attachment D for the Farm Labor Referral Form (Cal/OSHA 46A) and Attachment E for the Pesticide Use Referral Form (Cal/OSHA 46B), which can be used for all referrals not related to pesticide exposure.

B. CITATIONS

1. Potable Drinking Water

An employer's failure to provide potable drinking water to agricultural employees shall be cited under Section 3457(c)(1)(A). If an employer provides potable drinking water, but fails to comply with one or more of the requirements specified in (c)(1)(A) through (D), the appropriate subsection(s) shall be cited.

2. Toilet and Handwashing Facilities

An employer's failure to provide agricultural employees with a toilet and/or a handwashing facility shall be cited under Section 3457(c)(2)(A). If an employer provides a toilet or a handwashing facility, but fails to comply with one or more of the requirements specified in (c)(2)(B) through (E), the appropriate subsection(s) shall be cited.

3. Dual Employer Situations

The entity who directs and controls the employees exposed to the hazard is the appropriate employer to cite. At worksites where both a landowner/operator and a farm labor contractor are present, compliance personnel shall determine which employer directs and controls the exposed employee(s). If both of them do, then both are to be cited by following P&P C-1D on Dual Employer Inspections. See P&P C-1D.

4. Multiple Worksites

Individual worksites shall be considered a single location for citation purposes if (1) the employer(s) is/are the same in each worksite, and (2) the individual worksites are geographically contiguous to each other.

5. Required Reports by Cited Employers -- Section 3457(d)

a. An employer cited for any Section 3457 violation, regardless of the violation classification or the amount of the proposed, or assessed, civil penalty, and whose violation has become a Final Order of the Appeals Board, is required to provide the Division annually (as measured in twelve month periods of time commencing on the date the Final Order is filed by the Appeals Board), and for a period of five (5) twelve month (or "annual") periods, a written statement (in whatever format the employer desires), under the penalty of perjury, anytime during the twelve month period, stating the:

- (1) The estimated peak number of employees;
- (2) The toilet, washing and drinking facilities to be provided by the employer; and
- (3) Any rental and maintenance agreements related to the requirements of Section 3457.

b. When issuing any citation based on Section 3457, compliance personnel shall remind the cited employer of the requirements of subsection (d) if the violation does become a Final Order of the Appeals Board. Compliance personnel may attach to the citation the Field Sanitation Compliance Form (Cal/OSHA 46C), as an example of the written statement required by subsection (d) of Section 3457. See Attachment F, Cal/OSHA 46.

c. Any citations for violations of subsection (d) shall only be issued after an inspection of the cited employer is conducted at his or her fixed business location of record.

d. Employers who fail to comply with the annual requirement of Section 3457(d) to complete and return the Field Sanitation Compliance Form during each of the five (5) twelve month periods of time following the date the original violation became a Final Order shall be cited for violating Section 3457(d) and the violation classified as Regulatory.

6. Retention of Field Sanitation Files (See Labor Code Section 6429(c))

The District shall maintain all hard copy records of every inspection, investigation and citation for at least seven (7) years.

7. Labor Camp Permits

An employer, who is required to have a labor camp permit according to the provisions of the California Employee Housing Act, but who does not have posted, or available, a valid and current permit will be cited for a regulatory violation of Section 3350. See P&P C-11 and C-90.

8. Classification of Violations

a. Regulatory, General and Serious

Failure to comply with the requirements of subsection (d) shall be classified as Regulatory, and failure to comply with any of the requirements of subsections (a), (b) or (c) shall be classified as General or Serious, according to the requirements found in P&P C-1B, Section D. pertaining to General and Serious violations.

(1) Medical Unit Assistance in Evaluating the Probability of Death or Serious Physical Harm

When considering a citation alleging a Serious violation of Section 3457(c) for an employer's failure to provide potable drinking water, a toilet, or a handwashing facility (or the employer's provision of potable water, toilet or handwashing facility that is completely unusable by [e.g., in a grossly unsanitary condition], or inaccessible to employees [e.g., locked]), compliance personnel should confer with the Medical Unit about the existence of a substantial probability that death or serious physical harm (e.g., infections of the gastrointestinal or urinary tracts, dehydration, heat-related illnesses, and other medical conditions and disorders) could result from the employer's failure to provide potable drinking water, a toilet or a handwashing facility given the specific evidentiary conditions existing at the time of the violations, especially if it is expected that the Medical Unit will be called upon at a later time to provide expert medical testimony to support the classification of the Serious violation.

(2) Evidentiary Elements to Prove a Serious Violation

Prior to issuing a Citation alleging a Serious violation of Section 3457, compliance personnel shall evaluate the evidentiary issues related to the

Serious classification of a violation: (a) substantial probability of death and serious physical harm; and (2) employer knowledge.

(a) Substantial Probability of Death or Serious Physical Harm

i. Duration of Non-Provision

Compliance personnel shall consider the time interval that potable drinking water, a toilet and/or a handwashing facility (and the required supplies, e.g., toilet paper, cups, soap and others) were not provided to employees. The longer the duration of non-provision of potable drinking water, a toilet or a handwashing facility -- and their required supplies -- the more probable it is that serious physical harm can occur.

ii. Environmental Conditions

In the case of an employer's failure to provide potable drinking water, compliance personnel shall consider the ambient air temperature to which employees were exposed during the time that water was not provided. The greater the ambient air temperature, and longer the employee's exposure to it, the greater is the probability that serious physical harm can occur from dehydration and heat illnesses.

iii. Workload Demands

In the case of an employer's failure to provide potable drinking water, compliance personnel shall describe, as quantitatively as possible, the workload demands that exposed workers are required to meet during the time that the water was not provided, e.g., moving heavy irrigation equipment by hand and other similar types of heavy demand work. The greater the workload demands, and the longer work at a high demand level is performed, the greater is the probability that serious physical harm can occur from dehydration and heat illness.

iv. Adverse Health Effects

In the case of an employer's failure to provide potable drinking water, a toilet and/or a handwashing facility (and the required supplies, e.g., toilet paper, cups, soap and others), compliance personnel, with the assistance of the Medical Unit, when necessary, shall determine if any exposed workers have suffered any adverse health effects as a result of exposure to the violative conditions, e.g., symptoms associated with dehydration, heat illness, skin or

systemic symptoms (from exposure to chemicals in the workplace), or gastrointestinal or urinary tract infections.

(b) Employer Knowledge or Reasonable Diligence

i. Temporary Lapse -- Procedures for Resupplying

As stated in P&P C-1B, Section D., Labor Code Section 6432(b) states that a Serious violation shall be deemed not to exist if the employer can demonstrate that it could not, with the exercise of reasonable diligence, know of the presence of the violation. Compliance personnel shall determine, based on evidence of employer knowledge gathered during the inspection, whether the employer can meet this burden. If the employer can, then the violation cannot be classified as Serious. See P&P C-1B, Section D.3.c.(4)(c)ii. on Constructive Knowledge.

The evidentiary issue of reasonable diligence is particularly important when the employer has provided drinking water, a toilet or a handwashing facility, together with their required supplies, but in the course of time, the required water and supplies have not been replenished or the facility has become unusable.

Therefore, when compliance personnel observe that the supplies required by Section 3457(a), (b) and (c) have been exhausted, they shall collect evidence of the employer's procedures or program for maintaining constant supplies and being promptly informed in the event of replenishment failures. Collecting such evidence will facilitate evaluating the potential for serious physical harm, as well as making a determination as to whether the employer exercised reasonable diligence in discovering and preventing violations of Section 3457.

(3) General vs. Serious

If the evidence shows that there is a substantial probability that death or serious physical harm could result from the employer's failure to provide potable drinking water, a toilet or a handwashing facility, as outlined above, compliance personnel shall classify the violation as Serious and compute the proposed penalty in accordance with P&P C-10. If insufficient evidence exists to prove a substantial probability that death or serious physical harm will occur, then compliance personnel shall classify the violation as General and propose, at the least, the minimum statutory \$750 civil penalty for those specific violations set forth in the Table.

b. Willful

(1) Past Violations as Evidence of Willfulness

Labor Code Section 6712(c) requires that "past violations of field sanitation requirements established pursuant to Chapter 6.5 (commencing with Section 5474.20) of Part 3 of the Division 5 of the Health and Safety Code, Chapter 1 (commencing with Section 3700) of Part 1 of Division 5 of the Health and Safety Code, and Section 2441 of the Labor Code occurring within the previous five years, shall constitute evidence of willfulness pursuant to Section 6429."

(2) Actual Knowledge

Evidence of actual knowledge shall be considered in determining whether a Repeat violation, or a violation which has not been abated, should be classified as Willful.

NOTE: The term "actual knowledge" refers to whether the employer was conscious of violating a health or safety requirement or, even though the employer was not conscious of such a violation, whether the employer was aware that an unsafe or unhealthy condition existed and made no reasonable effort to eliminate the condition.

(3) History of Past Violations

(a) Violations which have become a Final Order of the Appeals Board within the previous five (5) year period are subject to this special statutory rule for field sanitation violations.

(b) A history of past field sanitation violations should be determined by accessing information on previous field sanitation violations issued by the Division.

(4) Citation

Information pertaining to an employer's past violations shall be accessed by compliance personnel before issuance of any citation referencing any Section 3457 violation. See P&P C-2.

c. Repeat or Failure-to-Abate Violation

When a violation does not meet the requirements to be classified as Willful, refer to 8 CCR Section 334 to determine whether a violation should be classified as Repeat or Failure-to-Abate.

NOTE: Whenever a violation of Section 3457 is issued, compliance personnel shall first access the IMIS database to determine if the employer has a history of previous Section 3457 violations.

9. Multiple Violations

a. Situations in which employers fail to provide potable drinking water, a toilet or handwashing facility are to be distinguished from situations in which these items are provided, but the water, toilet or handwashing facility fail to meet each and every requirement of Section 3457(c).

b. For example, if an employer provides no toilets, a violation of Section 3457(c)(2)(A) will be alleged. An employer who does provide toilets, but one or more of the toilets do not meet the detailed requirements of Section 3457(c)(2)(A) through (E), shall be cited separately for each requirement violated.

c. However, if the violations are general or regulatory, penalties not subject to the minimum \$750 civil penalty shall be reduced pursuant to Section 336(k) so that employers are not assessed greater penalties for providing inadequate facilities than for providing no facilities at all. Penalty reductions are not permissible when the employer lacks an operative Injury and Illness Prevention (IIP) Program according to 8 CCR Section 3203.

10. Special Statutory Abatement Period for Section 3457

The abatement period for all violations of Section 3457 shall be limited to one working day, as required by Labor Code Section 6712(d)(2). Compliance personnel may modify the statutory abatement period and allow additional abatement time only when an employer is able to demonstrate a good faith effort to comply with the abatement requirements. The filing of an appeal with the Appeals Board, pursuant to Labor Code Sections 6319 and 6600, does not stay the abatement period. See Labor Code Section 6712(d)(2).

C. PENALTIES

Civil penalties for violations of Section 3457 shall be assessed in accordance with Section 336. For failure to meet the requirements of Section 3457 listed in the Table below, a minimum penalty of \$750, regardless of the classification

of the violation, will be assessed against the employer, pursuant to Labor Code Section 6712(d)(1).

NOTE: The violations listed in the Table are subject to a minimum civil penalty of \$750. Higher penalty amounts for these violations are possible. Adherence to penalty calculation procedures outlined in P&P C-10 is required.

TABLE

3457 VIOLATIONS SUBJECT TO THE MINIMUM \$750 STATUTORY CIVIL PENALTY

No Potable Drinking Water	(c)(1)(A)
Not Suitably Cool	(c)(1)(B)
No Single-Use Drinking Cup or Fountain	(c)(1)(C)
No Toilet or Inadequate Toilet	(c)(2)(A)
Not Sufficient Number of Toilet Facilities	(c)(2)(A)
Unusable Toilet Facility	(c)(3)(B)*
No Toilet Paper	(c)(3)(C)
No Handwashing Facility	(c)(2)(B)
No Potable Handwashing Water	(c)(3)(G)(1)
Inadequate Supply of Potable Handwashing Water	(c)(3)(G)(2)
No Soap or Hand Towels	(c)(3)(G)(3)

*The minimum penalty would not apply to the failure to maintain written service and maintenance records.

Attachments:

- A -- [Farm Sanitation Checklist](#)
- B -- [Agricultural Safety Checklist](#)
- C -- [Agricultural Health Checklist](#)
- D -- [Cal/OSHA 46A](#)
- E -- [Cal/OSHA 46B](#)
- F -- Cal/OSHA 46C (under revision)