

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ADDENDUM TO THE FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS
TITLE 8: Chapter 4, Subchapter 4, Article 3, Section 1527
of the Construction Safety Orders****Washing Facilities at Construction Jobsites**

There are no modifications to the information contained in the Final Statement of Reasons (FSOR) as a result of the 15-day Notice of Proposed Modifications mailed on September 9, 2002 except for the following nonsubstantive or sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

As a result of public comment one substantive change has been made to the modified proposal. The original proposal, in subsection (a)(1) required one washing station for every twenty employees or fraction thereof. No public comments were received during the 45-day comment period on this proposed minimum ratio. As a result of suggestions received at an advisory committee meeting held subsequent to the 45-day comment period to discuss possible modification of the original proposal, the minimum required ratio was modified to one washing station for every ten employees. As a result of public comment received on the modified proposal, the minimum number of washing stations that would be required on construction jobsites is being returned to the one to twenty ratio.

A nonsubstantive change is made to subsection (a)(1)(F)2. in the interest of clarification so that it reads "Be located outside of the toilet facility and not attached to it" instead of "...so that it is not attached to it."

SUMMARY AND RESPONSE TO WRITTEN COMMENTS**Written Comments****Commenters**

- Barry M. Gump, President, Andy Gump, Inc., by letter dated September 27, 2002
- Ron Holmstadt, Director of Product Engineering, Satellite Industries Inc., by letter dated September 25, 2002
- Tom Konecsni, Chair, Associated General Contractors of California, by letter dated September 27, 2002
- Daniel Prince, Ironworkers Local Union 377, by letter dated September 27, 2002
- Fran Schreiber, Volunteer, Worksafe!, by letter dated September 27, 2002

- Christopher J. Walker, Nossaman, Guthner, Knox & Elliott, LLP on behalf of California Association of Sheet Metal and Air Conditioning Contractors, National Association, by letter dated September 27, 2002

Comment 1. Christopher J. Walker

There are cost-efficient and easily portable waterless cleaners/sanitizers on the market which, with proper use, provide a sufficient means for the cleansing of one's hands. The proposed regulation should not require provision of potable water for washing purposes. Contrary to the estimate of costs for the original and modified proposal as being "insignificant," the cost of providing potable water to a jobsite could be significant. The Board's rejection of alternatives to provision of water and soap at construction jobsites is based upon a 1987 federal OSHA finding related to field sanitation in agriculture. The Board should research contemporary waterless cleaner/sanitizer systems and their effect on cleansing of the hands of construction workers under normal circumstances in today's environment.

Response: This comment addresses the requirement for provision of water for washing which was not modified after similar comments were received following the original 45-day public comment period. This comment is outside the scope of the 15-day Notice of Proposed Modifications, however, the Board will address the essential elements of this comment. With regard to stating that the cost of the proposal is in fact "significant," the comment provides no specific cost information which would provide a basis for the Board to reconsider its original determination or estimates of costs. Similarly, no information is provided in the comment to support the suggestion that waterless cleaner/sanitizer systems have changed significantly since the decision by federal OSHA in 1987 to reject their use as a substitute for field sanitation in agriculture. The Board is not aware of changes in such products since that time that would affect the conclusion reached by federal OSHA in 1987.

The Board thanks Mr. Walker for this comment but has determined that provision of water and soap is the best way to provide basic sanitation facilities for California's construction work force.

Comment 2. Christopher J. Walker

The proposed modification of the original proposal to require one washing station for every ten employees is excessive and costly. The proposed requirement would cause a jobsite of 100 people to have ten "washing facilities."

Response: The essential purpose of this proposal is to assure that a sufficient number of washing stations be provided so that employees will be able to consistently wash for purposes of health, sanitation, and dignity. After reviewing all of the comments, the Board has determined that the ratio of one washing station to 20 employees will be adequate to meet this purpose. The Board expects that the Division will keep track of its experience at construction jobsites with these new provisions and advise the Board should it appear that a different ratio is needed.

Comment 3. Tom Konecsni

The proposal to require a minimum of one washing station for each ten employees is unnecessarily burdensome to employers and unnecessary to employees. The requirement to have one toilet facility for twenty employees is currently mandated. It takes longer to use the restroom than it does to wash one's hands. Therefore, one washing station for each toilet should more than suffice for employees to wash their hands after restroom use.

Response: The substance of this comment is addressed in the response to Comment 2. above. The Board has chosen to return to the provision of the original proposal for a minimum one washing station for every twenty employees or fraction thereof.

Comment 4. Tom Konecsni

An alternative should be considered for employers to provide sanitizing solutions. For example when the jobsite is being set up and facilities have not arrived on site. The skin sanitizing industry has evolved past the use of traditional components and now includes FDA approved sanitizers made up of recently improved and newly discovered components. Hospitals are consumers of these products. The Association of Professionals in Infection Control (APIC) along with the FDA provides approval of these products.

Response: This comment addresses a requirement that was not modified from the original language of the proposal. However, see the response to Comment 1. above, which responds to the same issue.

Comment 5. Fran Schreiber, Daniel Prince

The modifications to the original proposal to amend Section 1527 are appropriate and should be adopted to take effect as soon as possible.

Response: The Board appreciates the commenters' support for the language of the proposed modifications. As noted in the response to Comment 8. below, the Board has determined that the 30-day delay between filing of the regulation with the Secretary of State and its taking effect is sufficient to allow employers to come into compliance with the regulation.

Comment 6. Fran Schreiber

In the interest of clarity, the language of proposed subsection (a)(1)(F)2. should be modified to read, "Be located outside of the toilet facility and not attached to it."

Response: The suggestion is for a nonsubstantive change that improves the clarity of the requirement and has been incorporated into the proposal.

Comment 7. Barry Gump, Ron Holmstadt

The Exception to proposed subsection (a)(1)(F)2. should be expanded to allow for provision of washing facilities inside of non-water carriage toilet facilities on construction jobsites with up to ten employees in order to reduce the financial burden at small construction jobsites and in the interests of practicality.

Response: The Board recognizes that the subject of this comment was an item of discussion upon which it was not possible to reach a full consensus among representatives of labor, employers, and sanitation vendors at the advisory meeting held to discuss the originally proposed regulation on May 13, 2002. The minutes of that meeting do reflect a general consensus among those present that from the standpoints of consistency of cleanliness, availability, and likelihood of use, it is desirable in most cases for washing stations to be located outside of non-water carriage toilet facilities. The Board believes it is appropriate that washing stations be allowed inside of non-water carriage toilet facilities only on the smallest construction jobsites where, with less usage pressure, both the toilet facility and the washing station are reasonably likely to remain consistently clean, and therefore be more likely to be used. With respect to the commenters' concerns with financial and practical considerations, the Board notes that the proposal does not require that sanitation rental vendors provide, or construction employers use, the free-standing portable sinks that have become available for rental in the last few years and are now commonly seen at public events and at some construction jobsites. An employer with a construction jobsite with five or more employees and relying on non-water carriage toilet facilities could satisfy the requirement of subsection (a)(1)(F)2., that the washing station be located outside of such facilities, by providing the required water from a portable container similar to, but separate from, that used to provide drinking water. Consistent with proposed subsection (a)(1)(F)1., such containers would be required to be equipped with a sign or other equivalent method of notice to indicate that the water in the container is intended for washing.

Comment 8. Barry Gump, Ron Holmstadt

A phase-in period for this proposed regulation should be provided to allow manufacturers and suppliers to gear up for demand. A one-year period of delay in implementation of the proposal after adoption was recommended by Mr. Gump.

Response: The Board notes that the petition that led to this rulemaking was adopted in October 2000, a public hearing on the original proposal was held in February 2002, and an advisory meeting to discuss the proposal further was held on May 13, 2002. This process provided notice starting two years ago that a regulation was under consideration to require washing facilities at construction jobsites. In addition, the 30-working day period of OAL review coupled with the traditional period of thirty days for the regulation to take effect after filing with the Secretary of State should provide adequate time for preparation to comply.

Comment 9. Tom Konecsni

The phrase "sanitary condition" is subjective. We recommend substitution of the phrase "The washing station shall be cleaned according to manufacturer's recommendations or as conditions warrant as determined by employer."

Response: This comment addresses a requirement which was not modified from the original language of the proposal. This comment is outside the scope of the 15-day Notice of Proposed Modifications, however, the Board will address this comment. The Board believes that the burden imposed by the second part of the commenter's suggested language, requiring cleaning of the washing station "...as conditions warrant" is essentially similar in its nature to maintaining the washing station in a "sanitary condition" as the proposal now requires. The suggestion that

compliance could be achieved by cleaning of the facility “according to manufacturer’s recommendations” cannot be taken because it would imply that an employer could be in compliance even if there were no steps taken to assure a washing facility’s cleanliness between, for example, periodic (usually weekly) servicing by a portable sanitation vendor.

Comment 10. Tom Konecsni

In subsection (a)(2) of the proposal the phrase “hazardous substances” is not defined. We request a definition or reference to a specific list of hazardous substances.

Response: The substance of subsection (a)(2) is unchanged from the original proposal heard at public hearing on February 21, 2002. That proposal did not include any substantive change to this paragraph from the language already in Title 8. Thus the requested definition of “hazardous substances” is not a subject of this particular rulemaking.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested parties to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.