

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

AVALON BAY COMMUNITIES, INC.
4440 Von Karman Ave., Ste. 300
Newport Beach, CA 92660

Employer

Docket No. 15-R3D2-0751

**DENIAL OF PETITION FOR
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Avalon Bay Communities, Inc. (Employer).

JURISDICTION

Commencing on September 23, 2014, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On January 25, 2015, the Division issued a citation to Employer alleging a violation of the occupational safety and health standard codified in California Code of Regulations, title 8, section 1527, subdivision (a)(1)(C).¹

Employer timely appealed.

Subsequently, administrative proceedings were held before an administrative law judge (ALJ) of the Board, including a duly-noticed contested evidentiary hearing.

On April 18, 2016, the ALJ issued a Decision which sustained the alleged violation and imposed a civil penalty of \$560.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

Under the circumstances presented, was Employer in violation of section 1527, subdivision (a)(1)(C)?

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition contends the Decision was issued in excess of the ALJ's authority, the evidence does not justify the findings of fact and the findings of fact do not support the Decision.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. The Board has taken no new evidence. Based on our independent review of the record, we find that the Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Employer was the general contractor at an apartment construction project covering approximately seven acres in Vista, California. During an inspection of the ongoing work, a Division inspector observed that one of five dual hand washing stations at the site was not supplied with soap, and cited Employer for a violation of section 1527, subdivision (a)(1)(C) because that washing station did not have a "readily available supply of soap or other suitable cleansing agent." (Section 1527, subdivision (a)(1)(C).)

FINDINGS OF FACT

Employer was the general contractor on the project.

Some of Employer's own employees were present during the time of the inspection.

Employees of other employers, such as subcontractors, were also present at the site during the inspection.

A maximum of 70 employees of all employers worked at the site.

Employer furnished five “dual” hand washing units for the site. Since each dual unit consisted of two complete hand washing stations, there were 10 such stations at the site.

Neither station of the dual hand washing unit closest to the leasing office was supplied with soap at the time of the inspection; all the other units had soap.

DISCUSSION

We begin with the language of section 1527, subdivision (a)(1)(C):

(a)Washing Facilities.

(1) General. Washing facilities shall be provided as follows: A minimum of one washing station shall be provided for each twenty employees of fraction thereof. Washing stations provided to comply with this requirement shall at all times:

(C) Have a readily available supply of soap or other suitable cleansing agent.

It is not disputed that one of the dual hand washing units did not have soap, or that the other four dual units did. It is also not disputed that the safety order required there be at least four washing stations at the site, and that Employer had furnished an adequate number of fully functioning stations. The issue is whether the presence of one such dual station without soap violated section 1527, subdivision (a)(1)(C), in light of the safety order’s requirement that soap be “readily available.”

When a statute or regulation defines a term, that definition is used in interpreting and applying the language of the enactment. (See *Naegele v. RJ Reynolds Tobacco Co.* (2000) 81 Cal.App.4th 503, 512 [definition in statute ordinarily binding on court].) Section 1504 provides a definition of “readily available” applicable to section 1527:² “Readily Available. Means in a location with no obstacles to prevent immediate acquisition for use.”

The washing station near the leasing office was not so close to the other washing stations on site to allow “immediate acquisition” of soap to be used to wash one’s hands. Although it is not clear from the record what the distance was between the station at issue and the nearest

² Section 1527 is a “construction safety order.” Section 1504 is a section containing definitions applicable to California’s construction safety orders (section 1502 and following).

other(s) which had soap, we infer there was a non-trivial distance involved. Had the distance been a matter of a few steps, we expect Employer would have introduced evidence so showing, and we think the ALJ would have decided differently. Employer's failure to do so suggests the evidence would not have been helpful to its case, and we infer that soap was not available at an adjacent washing station. (Evid. Code §§ 412, 413.)

A situation such as this which would require an employee to walk from the vicinity of the leasing office some distance to another location where there was a washing station with soap exposes employees to the hazard the safety order seeks to protect against. It is reasonable to expect that an employee who needs to wash his or her hands with soap and finds none available will not walk to another station to do so. And while that employee may rinse with water, the safety order intends and requires that soap as well as water be available for hand washing; had the Standards Board intended to provide that rinse water was adequate to cleanse one's hands, it could have so provided or omitted the requirement to have soap available.

The Board has addressed similar issues of distance to sanitary facilities. Toilet facilities more than 200 feet from a work location were held too far to satisfy the requirement to make such facilities available. (*Guardsmark, LLC*, Cal/OSHA App. 12-0056, Denial of Petition for Reconsideration (Apr. 22, 2013).) Washing facilities five minutes or more travel time from a toilet facility was a violation of sanitation requirements. (*Solarcity Corp.*, Cal/OSHA App. 14-3707, Denial of Petition for Reconsideration (Apr. 14, 2016).) We apply our reasoning in those matters here, and hold that given the language of section 1527, subdivision (a)(1)(C) and the definition of "readily available" in section 1504, having no soap at washing station at issue was a violation. It defeats the purpose of the safety order to require employees to walk more than a few steps to wash their hands with soap and water.

Employer argues that since it had furnished more than the required minimum of washing stations, it was in compliance. We disagree. We understand the intent of section 1527, subdivision (a)(1)(C) to be that all washing stations furnished must have soap, as well as providing for the minimum number of stations needed at a particular worksite. To hold otherwise would open the door to absurd results; such interpretations are disfavored. (See *National Steel and Shipbuilding Company (NASSCO)*, Cal/OSHA App. 10-3793, Denial of Petition for Reconsideration (Sep. 20, 2012), citing *Barnes v. Chamberlain* (1983) 147 Cal. App. 3d 762.)

Employer also argues it had no knowledge that the washing station lacked soap and had no opportunity to learn of that fact. Be that as it may, an employer's lack of knowledge of a violative condition is not a defense to a general violation. (Labor Code § 6432; *Andersen Tile Company*, Cal/OSHA App. 94-3076 Decision After Reconsideration (February 16, 2000).)

DECISION

For the reasons stated above, the petition for reconsideration is denied.

ART R. CARTER, Chairman
ED LOWRY, Member
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: July 22, 2016