

**North Carolina Department of Labor
Division of Occupational Safety and Health
Raleigh, NC**

Standards Notice 58A

- A. **Subject:** Sanitation standards. *29 CFR 1910.141 & 29 CFR 1926.51:*
Availability of and access to toilets and hand washing facilities.
- B. **Background:** In 1993, Standards Notice 58 was issued as an interpretation of 29 CFR 1926.51 (c)(4) concerning the availability of toilets for mobile work crews. On April 6, 1998, federal OSHA issued an interpretation of 29 CFR 1910.141 (c)(1)(i) to address the availability of and access to toilets for general industry. In addition, OSHNC has received several internal requests for similar guidance for hand washing. This SN 58A provides guidance for all three topics and replaces SN 58.
- C. **Discussion:** OSHNC enforces the sanitation standards for both construction and general industry. Both standards require the employer to "provide" toilet facilities, the quantity of which is determined by the number of employees. In 29 CFR 1910.141 and 29 CFR 1926.51 there are additional requirements or exceptions to the number of toilets required for mobile work crews, normally unoccupied work sites, and job sites without sanitary sewer systems. In any case, the employer is required to provide either plumbed toilets, temporary toilets, or transportation to nearby toilet facilities for all employees dependent upon the work location.

Along with the requirement to "provide" toilets came the assumption that employees would be able to access toilets as needed or with reasonable restrictions. However, due to increased complaints and requests for clarification on the accessibility of toilets, federal OSHA issued an interpretation of 29 CFR 1910.141 (c)(1)(i) which includes citation policy. This clarification is addressed below along with additional guidance for hand washing facilities and applications to 29 CFR part 1926.

D. **Interpretation:**

1. *Accessibility to toilets:*

The attached Memorandum for: Regional Administrators will be used as guidance for both general industry and construction when accessibility to toilets is an issue. Employers must provide reasonably unrestricted access to toilets to all employees regardless of where they work. Where specific restrictions are imposed (such as on production lines), employers must reasonably accommodate employees who request to use the bathroom.

Employees who are part of mobile work crews or who work temporarily on sites where toilets cannot be provided and who provide their own transportation will be allowed to drive to nearby toilet facilities as necessary or with reasonable restrictions.

2. *Availability of toilet facilities for mobile work crews and normally unoccupied work sites (such as logging sites).*

Per 1910.141(c)(1)(ii) and 1926.51(c)(4), the employer is required to provide immediate or readily available transportation to nearby toilet facilities. In situations where employees are driven to work sites in one vehicle, the vehicle must remain available during the work shift to transport employees to a nearby toilet facility. The toilet facilities will be accessible per paragraph one (1) above.

3. *Washing facilities -*

Per 1910.141(d) and 1926.51(f), employers are required to provide adequate hand washing facilities, with exceptions for mobile work crews. At work sites where running water cannot be provided, employers will provide suitable means for hand washing. Such means could include a potable water tank and appropriate cleansers or prepackaged cleansing towels.

At work sites where the employer is required to make transportation available to toilet facilities, transportation shall also be available to washing facilities unless suitable means for hand washing are provided at the work site. Additionally, where suitable means for hand washing are not provided, the employer shall allow employees reasonably unrestricted access to hand washing facilities.

E. ***Enforcement:***

Employee complaints of restrictions on toilet and hand washing facility access or availability will be evaluated on a case-by-case basis. CSHO's will provide appropriate supporting documentation. In determining whether restrictions on toilet facility access are unreasonable, the CSHO will document the information provided in the Citation Policy section of the attached memo and any other information necessary to support the citation.

Where access or availability issues are associated with "special needs" such as handicapped persons or "reasonableness" of time away from work, the CSHO

shall consult with the OSHNC Assistant Director and others to determine the appropriate course of action.

F. ***Action:***

This SN will become effective in North Carolina on the date that it is signed. It will remain in effect until revised or canceled by the Director.

Signed on Original

Susan Haritos
Health Standards Officer

5/4/98

Date of Signature

**U.S. Department of Labor
Occupational Safety and Health Administration**

Toilet Facilities

1. Record Type: Interpretation
2. Standard Number: 1910.141
3. Subject: Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities
4. Information Date: 04/06/1998

April 6, 1998

MEMORANDUM FOR: REGIONAL ADMININSTRATORS STATE
DESIGNEES

FROM: JOHN B. MILES, JR., Director/Directorate of Compliance Programs

SUBJECT: Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities

OSHA's sanitation standard for general industry, 29 CFR 1910.141(c)(1)(i), requires employers to provide their employees with toilet facilities:

Except as otherwise indicated in this paragraph (c)(1)(i), toilet facilities, in toilet rooms separate for each sex shall be provided in all places of employment in accordance with Table J-1 of this section [emphasis added]

This memorandum explains OSHA's interpretation that this standard requires employers to make toilet facilities available so that employees can use them

when they need to do so. The employer may not impose unreasonable restrictions on employee use of the facilities. OSHA believes this requirement is implicit in the language of the standard and has not previously seen a need to address it more explicitly. Recently, however, OSHA has received requests for clarification of this point and has decided to issue this memorandum to explain its position clearly.

Background

The sanitation standard is intended to ensure that employers provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. Individuals vary significantly in the frequency with which they need to urinate and defecate, with pregnant women, women with stress incontinence, and men with prostatic hypertrophy needing to urinate more frequently. Increased frequency of voiding may also be caused by various medications, by environmental factors such as cold, and by high fluid intake, which may be necessary for individuals working in a hot environment. Diet, medication use, and medical condition are among the factors that can affect the frequency of defecation.

Medical studies show the importance of regular urination, with women generally needing to void more frequently than men. Adverse health effects that may result from voluntary urinary retention include increased frequency of urinary tract infections (UTIs), which can lead to more serious infections and, in rare situations, renal damage (see, e.g., Nielsen, A. Waite, W., "Epidemiology of Infrequent Voiding and Associated Symptoms," *Scand J Urol Nephrol Supplement* 157). UTIs during pregnancy have been associated with low birthweight babies, who are at risk for additional health problems compared to normal weight infants (see, Naeye, R.L., "Causes of the Excess Rates of Perinatal Mortality and the Prematurity in Pregnancies Complicated by Maternity Urinary Tract Infections," *New England J. Medicine* 1979; 300(15); 819-823). Medical evidence also shows that health problems, including constipation, abdominal pain, diverticuli, and hemorrhoids, can result if individuals delay defecation (see National Institutes of Health (NIH) Publication No. 95-2754, July 1995).

OSHA's field sanitation standard for Agriculture, 29 CFR 1928. 110, based its requirement that toilets for farmworkers be located no more than a quarter mile from the location where employees are working on similar findings. This is particularly significant because the field sanitation standard arose out of the

only OSHA rulemaking to address explicitly the question of worker need for prompt access to toilet facilities.

The Sanitation Standard

The language and structure of the general industry sanitation standard reflect the Agency's intent that employees be able to use toilet facilities promptly. The standard requires that toilet facilities be "provided" in every workplace. The most basic meaning of "provide" is "make available." See Webster's New World Dictionary, Third College Edition, 1988, defining "provide" as "to make available; to supply (someone with something);" *Borton Inc. V. OSHRC*, 734 F.2d 508, 510 (10th Cir. 1984) (usual meaning of provide is "to furnish, supply, or make available"); *Usery v. Kennecott Copper Corp.*, 577 F.2d 1113, 1119 (10th Cir. 1978) (same); *Secretary v. Baker Concrete Constr. Co.*, 17 OSH Cas. (BNA) 1236, 1239 (concurring opinion; collecting cases); *Contractors Welding of Western New York, Inc.*, 15 OSH Cas. (BNA) 1249, 1250 (same).! Toilets that employees are not allowed to use for extended periods cannot be said to be "available" to those employees. Similarly, a clear intent of the requirement in Table J-1 that adequate numbers of toilets be provided for the size of the workforce is to assure that employees will not have to wait in long lines to use those facilities. Timely access is the goal of the standard.

The quoted provision of the standard is followed immediately by a paragraph stating that the toilet provision does not apply to -mobile work crews or to locations that are normally unattended, "provided the employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements" of the standard (29 CFR 1910.141(c)(1)(ii) (emphasis supplied). Thus employees who are members of mobile crews, or who work at normally unattended locations must be able to leave their work location "immediately" for a "nearby" toilet facility. This provision was obviously intended to provide these employees with protection equivalent to that the general provision provides to employees at fixed worksites. Read together, the two provisions make clear that all employees must have prompt access to toilet facilities.

OSHA has also made this point clear in a number of letters it has issued since the standard was promulgated. For example, in March 1976, OSHA explained to Aeroil Products Company that it would not necessarily violate the standard by having a small single-story building with no toilet facilities separated by 90 feet of pavement from a building that had the required facilities, so long as the employees in the smaller building had "unobstructed free access to the toilet facilities." Later that year, it explained again, in response to a question about

toilet facilities at a U-Haul site, "reasonableness in evaluating the availability of sanitary facilities will be the rule." Again in 1983, OSHA responded to a request for a clarification of the standard by stating, "[i]f an employer provides the required toilet facilities ... and provides unobstructed free access to them, it appears the intent of the standard would be met."

In light of the standard's purpose of protecting employees from the hazards created when toilets are not available, it is clear that the standard requires employers to allow employees prompt access to sanitary facilities. Restrictions on access must be reasonable, and may not cause extended delays. For example, a number of employers have instituted signal or relief worker systems for employees working on assembly lines or in other jobs where any employee's absence, even for the brief time it takes to go to the bathroom, would be disruptive. Under these systems, an employee who needs to use the bathroom gives some sort of a signal so that another employee may provide relief while the first employee is away from the work station. As long as there are sufficient relief workers to assure that employees need not wait an unreasonably long time to use the bathroom, OSHA believes that these systems comply with the standard.

Citation Policy

Employee complaints of restrictions on toilet facility use should be evaluated on a case-by-case basis to determine whether the restrictions are reasonable. Careful consideration must be given to the nature of the restriction, including the length of time that employees are required to delay bathroom use, and the employer's explanation for the restriction. In addition, the investigation should examine whether restrictions are general policy or arise only in particular circumstances or with particular supervisors, whether the employer policy recognizes individual medical needs, whether employees have reported adverse health effects, and the frequency with which employees are denied permission to use the toilet facilities. Knowledge of these factors is important not only to determine whether a citation will be issued, but also to decide how any violation will be characterized.

It is important that a uniform approach be taken by all OSHA offices with respect to the interpretation of OSHA's general industry sanitation standard, specifically with regard to the issue of employee use of toilet facilities. Proposed citations for violations of this standard must be forwarded to the Directorate of Compliance Programs (DCP) for review and approval. DCP will consult with the Office of Occupational Medicine. DCP will approve citations

if the employer's restrictions are clearly unreasonable, or otherwise not in compliance with the standard.

State Plan States are not required to issue their own interpretation in response to this policy, however they must ensure that State standards and their interpretations remain "at least as effective" as the Federal standard. Regional Administrators shall offer assistance to the States on this issue, including consultation with the Directorate of Compliance programs, at the State's request.

If you have any questions, contact Helen Rogers in the Office of General Industry Compliance at (202)219-8031/41 x 106.

Footnote(1) This decision was later vacated pursuant to a settlement, but the Commission has continued to cite it. See *Secretary v. Baker Concrete Constr. Co.*, supra. The issue in *Contractors Welding* and the other cited cases has been whether the meaning of the term "provide," in various standards requiring employers to provide certain equipment or other materials, is not limited to making something available, but may also mean that the employer must pay for what it provides and must require it to be used. Those broader meanings are not relevant to this issue. However, where the sanitary facilities the employer is required to provide are a physical part of its workplace, and the question is not whether employees must be required to use those facilities, but whether they will be allowed to do so.