Void
Where Prohibited
Revisited

The
Trickle-
Down
Effect
of
OSHA's
At-
Will
Bathroom-
Break
Regulation

Marc Linder

Fanpihuà Press
Iowa City
2003
Appendix I

ANSI and OSHA Workplace Toilet Standards
from 1935 to the Present

On April 27, 1971, pursuant to sections 3(9) and 6(a) of OSHA, Secretary of Labor Hodgson designated as “national consensus standards” certain sanitation standards of the American National Standards Institute. The toilet standard promulgated by OSHA was virtually identical with section 6 of the United States of America Standards Institute, USA Standard Requirements for Sanitation in Places of Employment. The principal differences were the exclusion of the advisory (“should” or “may”) provisions and recommendations. For example, OSHA did not adopt this provision (sect. 6.3.3) on the non-split toilet seat: “Integral water-closet seats may be used where specifically permitted by the health authorities having jurisdiction.” Despite the Labor Secretary’s statement that he had adopted only mandatory provisions, the toilet standard did adopt the rule that “[a]s far as practicable, toilet facilities should be located within 200 feet of all locations at which workers are regularly employed” (sect. 6.1.2; 1910.141(c)(1)(ii)). The 1968 standard was, in turn, identical with section 6 of the 1955 American Standards Association, American Standard Minimum Requirements for Sanitation in Places of Employment. In turn, the 1955 version is very closely patterned after sections 3.11-3.14 of the 1935 American Standards Association American Standard Safety Code for Industrial Sanitation in Manufacturing Establishments. Many provisions were identical. Others differed because the earlier version had still been committed to sex and/or sexist differences as well as to a more and less hygienic standard.

Appendix

Set out below are the various standards and amendments discussed above in Chapter 4.


3.11 Toilet Facilities in General

(a) Every place of employment shall be provided with adequate water closets, chemical closets, or privies, separate for each sex. ...

(b) Covered receptacles shall be kept in all toilet rooms used by females.

(c) An adequate supply of toilet paper shall be provided for every toilet facility.

(d) Unless the general washing facilities are on the same floor and in close proximity to the toilet rooms, adequate washing facilities shall be provided in every toilet room or adjacent thereto.

(e) Toilet rooms shall be readily accessible to employees using them. No toilets shall be more than one floor above or below the regular place of work of the persons using them. This rule shall not apply when passenger elevators are available for employees' use in going to and from toilet rooms.

(f) Toilet facilities (closets) shall be provided for each sex according to the following table. The number to be provided for each sex shall in every case be based on the maximum number of persons of that sex employed at any one time at work on the premises for which the facilities are furnished. When persons other than employees are permitted the use of toilet facilities (closets) on the premises, a reasonable allowance shall be made for such other persons in estimating the minimum number of toilet facilities (closets) required.

<table>
<thead>
<tr>
<th>Number of Persons</th>
<th>Minimum number of facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 9</td>
<td>1.</td>
</tr>
<tr>
<td>10 to 24</td>
<td>2.</td>
</tr>
<tr>
<td>25 to 49</td>
<td>3.</td>
</tr>
<tr>
<td>50 to 74</td>
<td>4.</td>
</tr>
<tr>
<td>75 to 100</td>
<td>5.</td>
</tr>
<tr>
<td>Over 100</td>
<td>1 for each additional 30 persons</td>
</tr>
</tbody>
</table>

Whenever urinals are provided, one facility less than the above specified number of facilities may be provided, for males, for each urinal, except that the number of facilities in such cases may not be reduced to less than two-thirds of the number specified above. Two feet of acid-resisting porcelain enamel urinal shall be considered as equivalent to one urinal.

3.12 Construction of Toilet Rooms
Appendix

(a) In toilets for women, each toilet facility (closet) shall occupy a separate compartment. In toilets for use of men, each toilet facility (closet) shall occupy a separate compartment, or fixtures shall be separated by simple partitions extending at least 15 inches in front of the fixture, with such arrangement that the toilets do not face one another.

(b) The walls of compartments or partitions between fixtures may be less than the height of the room walls, but the top shall not be less than 6 feet from the floor and the bottom not more than 1 foot from the floor.

(c) The door to every toilet room shall be fitted with an effective self-closing device and screened so as not to be visible from the workroom. All “compartment” doors shall be supplied with latch.

(d) In all toilet rooms hereinafter installed, the floors and side walls, to a height of 6 inches, shall be water-tight and impervious to moisture, including the angle formed by the floor and side walls.

(e) The floors, walls, and ceilings of all toilet rooms shall be of a finish that can be easily cleaned.

(f) The walls of every toilet room shall be of solid construction and shall extend to the ceiling, or the area shall be independently ceiling over. Above the level of six feet the wall may be provided with glass that is translucent but not transparent. This rule shall not apply to foundries, rolling mills, furnaces, and other places where females are not allowed to enter; in such cases the enforcing authority may specify less rigid rules when requested to do so.

(g) In new installations the minimum floor space allotted for toilet facilities (closets), lavatories (wash basins), and urinals shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Minimum Width</th>
<th>Minimum Depth</th>
<th>Minimum total floor space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities</td>
<td>32 in.</td>
<td>3.6 ft</td>
<td>16 sq ft</td>
</tr>
<tr>
<td>Lavatories</td>
<td>24 in.</td>
<td>3.6 ft</td>
<td>12 sq ft</td>
</tr>
<tr>
<td>Urinals</td>
<td>24 in.</td>
<td>3.6 ft</td>
<td>12 sq ft</td>
</tr>
</tbody>
</table>

(h) Natural or artificial means shall be provided to insure a comfortable and healthful atmosphere throughout the premises.

3.13 Construction and Installation of Toilet Facilities

(a) The construction and maintenance of toilet fixtures shall comply with the State building and plumbing codes where such codes exist. In other cases and until such time as national specifications are developed, it is suggested that the requirements of Bulletin B. H. 13, of the U.S. Department of Commerce, be followed.

(b) Every water closet bowl shall be set entirely free and open from all enclosing woodwork, and shall be so installed that the space around the fixture can be easily cleaned.
Appendix

(c) Every water closet except those of integral seat type shall have a hinged open-front seat made of substantial material having a nonabsorbent finish. If absorbent material is used the seat shall be finished to make it impervious to moisture, and shall be preferably light in color.

3.14 Chemical Closets and Privy Vaults

(a) Chemical closets and privies shall not be permitted except where there is no sewer accessible, and no privy shall be permitted where it is impossible to construct and maintain the same without danger of contaminating any source of drinking water.

(b) When chemical closets are permitted they shall be of a type approved by the health authorities having jurisdiction and shall be maintained in a sanitary condition.

(c) The container shall be changed frequently enough that it will not be allowed to become more than two-thirds full, the contents at all times to be disposed of in accordance with the regulations of the health authorities having jurisdiction.

(d) In every establishment employing more than 25 persons, the use of privies is prohibited. In such instances where they are permitted they shall be constructed and maintained in accordance with Specifications for the Sanitary Privy—Z1.3-1935....

(e) No privy shall be located within 100 feet of any room where foodstuffs are stored or handled.

OSHA National Consensus Standard (effective Aug. 27, 1971)6

1910.141 Sanitation

(c)—(1) General. (i) Every place of employment shall be provided with adequate toilet facilities which are separate for each sex. The sewage disposal method shall comply with requirements of the health or other authorities having jurisdiction.

(ii) Toilet facilities shall be provided so as to be readily accessible to all employees. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs to or from them are not considered as readily accessible. As far as practicable, toilet facilities should be located within 200 feet of all locations at which workers are regularly employed.

(iii) Water closets shall be provided for each sex according to the following table. The number to be provided for each sex shall in every case be based on the maximum number of persons of that sex employed at any one time at work on the premises for which the facilities are furnished. When persons other than employees are permitted the use of toilet facilities on the premises, a reasonable allowance shall be made for such other persons in estimating the minimum number of toilet facilities required.

### Appendix

**Number of Persons** | **Minimum number of facilities**
--- | ---
1 to 9 | 1.  
10 to 24 | 2.  
25 to 49 | 3.  
50 to 74 | 4.  
75 to 100 | 5.  
Over 100 | 1 for each additional 30 persons

Where 10 or more are employed, urinals may be provided. One water closet less than the number specified in the foregoing may be provided for each urinal, except that the number of water closets in such cases may not be reduced to less than two-thirds of the number specified in the foregoing. Two feet of trough urinal shall be considered as equivalent to one individual urinal.

(iv) An adequate supply of toilet paper with paper shall be provided for every water closet.

(v) Covered receptacles shall be provided in every toilet room used by women.

(vi) Adequate washing facilities shall be provided in every toilet room or be adjacent thereto.

(2) *Construction of toilet rooms.*

(i) Each toilet facility (closet) shall occupy a separate compartment, which should be equipped with a door, latch, and clothes hanger.

(ii) The walls of compartments or partitions between fixtures may be less than the height of room walls, but the top shall not be less than 6 feet from the floor and the bottom not more than 1 foot from the floor.

(iii) The door to every toilet room shall be fitted with an effective self-closing device, and the entrance to the toilet room shall be so screened that the interior of the toilet room is not visible from the workroom.

(iv) In all toilet rooms installed after July 1, 1971, the floors and side walls, to a height of at least 6 inches, including the angle formed by the floor and side walls, shall be of watertight construction.

(v) The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned. In installations made after July 1, 1971, cove bases shall be provided to facilitate cleaning.

(vi) Toilet rooms, except those in work places accessible to men only, shall be completely enclosed with solid materials that is nontransparent from the outside.

(3) *Construction and installation of toilet facilities.*

(i) Every water closet bowl shall be set entirely free and open from all enclosing structures and shall be so installed that the space around the fixture can be easily cleaned. This provision does not prohibit the use of wall-hung type water closets.

(ii) Every water closet shall have a hinged openfront seat made of substantial material having a nonabsorbent finish.

(4) Chemical closets and privies. Chemical closets and privies shall be constructed and maintained in accordance with §1910.143.
Appendix

Proposed Amendment (July 10, 1972)\(^7\)

1910.141

(c) Toilet facilities—(1) General. (i) Toilet facilities shall be provided in accordance with Table J-1 of this section.

(ii) The sewage disposal method shall not endanger the health of employees.

### TABLE J-1

<table>
<thead>
<tr>
<th>Type of employment</th>
<th>Water closets</th>
<th>Urinals</th>
<th>Lavatories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of employees</td>
<td>No. of fixtures</td>
<td>No. of employees</td>
</tr>
<tr>
<td>Office</td>
<td>1-9</td>
<td>1</td>
<td>1-9</td>
</tr>
<tr>
<td></td>
<td>10-20</td>
<td>2</td>
<td>10-24</td>
</tr>
<tr>
<td></td>
<td>25-49</td>
<td>3</td>
<td>25-49</td>
</tr>
<tr>
<td></td>
<td>50-74</td>
<td>4</td>
<td>50-74</td>
</tr>
<tr>
<td></td>
<td>75-100</td>
<td>5</td>
<td>75-100</td>
</tr>
<tr>
<td>Over 100 One fixture for each 30 employees</td>
<td></td>
<td></td>
<td>Over 100 One fixture for each 30 employees</td>
</tr>
<tr>
<td>All other Same schedule as for offices</td>
<td>Same schedule as for offices</td>
<td></td>
<td>1-100 employees: 1 fixture for each 10 employees. Over 100 employees: 1 fixture for each additional 15 employees.</td>
</tr>
</tbody>
</table>

(iii) Toilet facilities shall be readily accessible to all employees, and in no case more than one floor-to-floor flight of stairs, or no more than 200 feet from any place where employees regularly work.

(iv) When persons other than employees are permitted the use of toilet facilities on the premises, the number of such facilities shall be appropriately increased in accordance with Table J-1 of this section in determining the minimum number of toilet facilities required.

(v) Toilet paper with holder shall be provided for every water closet.

(vi) Covered receptacles shall be kept in all toilet rooms used by women.

\(^7\)Federal Register 37:13997-98 (July 15, 1972).
(vii) For each required toilet facility at least one lavatory shall be provided either in the toilet room or adjacent thereto.

(2) Construction of toilet rooms. (i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(ii) In all toilet rooms installed on or after August 31, 1971, the floors and sidewalls, to a height of at least 6 inches, including the angle formed by the floor and sidewalls, shall be of watertight construction.

(iii) The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned. In installations made after August 31, 1971, cove bases shall be provided to facilitate cleaning.

(3) Construction and installation of toilet facilities. (i) Every water carriage toilet facility shall be set entirely free and open from all enclosing structures and shall be so installed that the space around the fixture can be easily cleaned. This provision does not prohibit the use of wall-hung type water closets or urinals.

(ii) Every water closet shall have a hinged seat made of substantial material having a nonabsorbent finish. Seats installed or replaced after (effective date of this provision) shall be of the open-front type.

(iii) Nonwater carriage toilet facilities and disposal systems shall be in accordance with § 1910.143.

Amended Standard (effective June 4, 1973)\(^8\)

1910.141

(c) Toilet facilities.—(1) General.—(i) Except as otherwise indicated in this subdivision (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. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purpose of table J-1.

Appendix

Tables [sic] J-1

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Minimum number of water closets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-15</td>
<td>1.</td>
</tr>
<tr>
<td>16-35</td>
<td>2.</td>
</tr>
<tr>
<td>36-55</td>
<td>3.</td>
</tr>
<tr>
<td>56-80</td>
<td>4.</td>
</tr>
<tr>
<td>81-110</td>
<td>5.</td>
</tr>
<tr>
<td>111-150</td>
<td>6.</td>
</tr>
<tr>
<td>Over 150</td>
<td>1 additional fixture for each additional 40 employees</td>
</tr>
</tbody>
</table>

Where toilet facilities will not be used by women, urinals may be provided instead of water closets, except that the number of water closets in such cases shall not be reduced to less than 2/3 of the minimum specified.

(ii) The requirements of subdivision (i) of this subparagraph do not apply to mobile crews or to normally unattended work locations so long as employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements of this subparagraph.

(iii) The sewage disposal method shall not endanger the health of employees.

(iv) When persons other than employees are permitted the use of toilet facilities on the premise [sic], the number of such facilities shall be appropriately increased in accordance with table J-1 of this section in determining the minimum number of toilet facilities required.

(v) Toilet paper with holder shall be provided for every water closet.

(vi) Covered receptacles shall be kept in all toilet rooms used by women.

(vii) For each three required toilet facilities at least one lavatory shall be located either in the toilet room or adjacent thereto. Where only one or two toilet facilities are provided at least one lavatory so located shall be provided.

(2) Construction of toilet rooms.—(i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(ii) In all toilet rooms installed on or after August 31, 1971, the floors and sidewalls, including the angle formed by the floor and sidewalls, and excluding doorways and entrances, shall be watertight. The sidewalls shall be watertight to a height of at least 5 inches.

(iii) The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned. In installations made after August 31, 1971, cove bases shall be provided to facilitate cleaning.

(3) Construction and installation of toilet facilities. (i) Every water carriage toilet facility shall be set entirely free and open from all enclosing structures and shall be so installed that the space around the fixture can be easily cleaned. This provision does not prohibit the use of wall-hung type water closets or urinals.

(ii) Every water closet shall have a hinged seat made of substantial material having a nonabsorbent finish. Seats installed or replaced after June 4, 1973, shall be of the open-front type.

(iii) Nonwater carriage toilet facilities and disposal systems shall be in accordance with § 1910.143.
Appendix

Proposed Revocation/Revision (1977)9

(c) Toilet Facilities.— Toilet facilities shall be provided in all places of employment.

The sewage disposal method shall not endanger the health of employees.

Revised Standard (1978)10

(c) Toilet Facilities.— (1) General.— (i) Except as otherwise indicated in this subdivision (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. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purpose of table J-1.

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Minimum number of water closets1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-15</td>
<td>1</td>
</tr>
<tr>
<td>16-35</td>
<td>2</td>
</tr>
<tr>
<td>36-55</td>
<td>3</td>
</tr>
<tr>
<td>56-80</td>
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</tr>
<tr>
<td>Over 150</td>
<td>1 additional fixture for each additional 40 employees</td>
</tr>
</tbody>
</table>

1Where toilet facilities will not be used by women, urinals may be provided instead of water closets, except that the number of water closets in such cases shall not be reduced to less than 2/3 of the minimum specified.

(ii) The requirements of paragraph (c)(1)(i) of this section do not apply to mobile crews or to normally unattended work locations so long as employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements of this subparagraph.

(iii) The sewage disposal method shall not endanger the health of employees.

(2) Construction of toilet rooms.— (i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

Appendix

Since the major revocation project of 1978, section 1910.141(c) has remained unchanged and thus still reads:


1910.141 Sanitation.

(a) General—

(1) Scope. This section applies to permanent places of employment.

(2) Definitions applicable to this section.

... Number of employees means, unless otherwise specified, the maximum number of employees present at any one time on a regular shift.

... Toilet facility, means a fixture maintained within a toilet room for the purpose of defecation or urination, or both.

Toilet room, means a room maintained within or on the premises of any place of employment, containing toilet facilities for use by employees.

... Urinal means a toilet facility maintained within a toilet room for the sole purpose of urination.

Water closet means a toilet facility maintained within a toilet room for the purpose of both defecation and urination and which is flushed with water.

... (c) Toilet facilities—(1) General. (i) 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. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purpose of table J-1.

Table J-1

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Minimum number of water closets¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 15</td>
<td>1</td>
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<tr>
<td>16 to 35</td>
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</tr>
<tr>
<td>36 to 55</td>
<td>3</td>
</tr>
<tr>
<td>56 to 80</td>
<td>4</td>
</tr>
<tr>
<td>81 to 110</td>
<td>5</td>
</tr>
<tr>
<td>111 to 150</td>
<td>6</td>
</tr>
<tr>
<td>Over 150</td>
<td>(²)</td>
</tr>
</tbody>
</table>

¹Original from UNIVERSITY OF MICHIGAN

²Digitized by Google
Appendix

Where toilet facilities will not be used by women, urinals may be provided in stead of water closets, except that the number of water closets in such cases shall not be reduced to less than 2/3 of the minimum specified.

1 additional fixture for each additional 40 employees.

(ii) The requirements of paragraph (c)(1)(i) of this section do not apply to mobile crews or to normally unattended work locations so long as employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements of this subparagraph.

(iii) The sewage disposal method shall not endanger the health of employees.

(2) Construction of toilet rooms. (i) Each water closet shall occupy a separate compartment with a door and walls or partitions between fixtures sufficiently high to assure privacy.

(ii) [Reserved]

Despite the revocations that OSHA has undertaken, ANSI, in its 1995 revised American National Standard for Sanitation in Places of Employment—Minimum Requirements, has not only, like Cal/OSHA,\(^1\) retained several of the provisions deleted by OSHA, but also added others. It has, for example, retained the 200-foot rule, the mandate that toilets “shall be provided so as to be readily accessible to all employees,” and the requirement of receptacles for sanitary napkins. It has also introduced new rules that the adequate supply of toilet paper “shall be maintained at all times” and that grab bars be installed.\(^2\)

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Appendix II

OSHA’s Interpretive Memorandum of April 6, 1998

April 6, 1998

MEMORANDUM
FOR: REGIONAL ADMINISTRATORS
STATE DESIGNEES

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


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 [sic] 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


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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. [sic; should be Walter, S.], "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 [sic; should be Excessive] Rates of Perinatal Mortality and the [sic] Prematurity in Pregnancies Complicated by Maternity [sic; should be Maternal] 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 (NJH) 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 to [sic] 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 [sic] 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.

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 cita-
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 stan-
dard 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 com-
pliance with the standard. (NOTE: See 08/11/00 Memorandum to RAs attached be-
low.)—Added this note

State Plan States are not required to issue their own interpretation in response to this poli-
cy, 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 Com-
pliance at (202) 219-8031/41 x106.

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 em-
ployer must pay for what it provides and must require it to be used. Those broader mean-
ings 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.

August 11, 2000—Added this memo

MEMORANDUM: REGIONAL ADMINISTRATORS

FOR:

FROM: RICHARD E. FAIRFAX, Director
Directorate of Compliance Programs


On April 6, 1998 we issued an interpretation of 1910.141(c)(1)(i), which requires employ-
ers to make toilet facilities available so that employees can use them when they need to do so. A copy of that memorandum is attached.

The 1998 memorandum states that proposed citations for violations of this standard are to be forwarded to the Directorate of Compliance Programs (DCP) for review and approval. Shortly after the interpretation was issued, it was decided that the review and approval was to be at the Regional Office level, but that copies of any citations issued based on the April 6, 1998 interpretation should still be sent to DCP.

This topic continues to generate interest from the public. Early this year we had a Freedom of Information Act (FOIA) request for copies of citations issued. Therefore, please continue to send copies of any citations issued pursuant to the 1998 interpretation to the National Office. If you have any questions, please contact Helen Rogers at (202) 693-1850. The copies should be sent to the following address:

Richard E. Fairfax, Director
Directorate of Compliance Programs
U.S. Department of Labor - OSHA
200 Constitution Avenue, NW Room N-3603
Washington, DC 20210
Appendix III

OSHA's Agricultural Sanitation Standard\textsuperscript{1}

(a) Scope. This section shall apply to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.

(b) Definitions. Agricultural employer means any person, corporation, association, or other legal entity that:

(i) Owns or operates an agricultural establishment;

(ii) Contracts with the owner or operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or

(iii) Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

Agricultural establishment is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

Hand-labor operations means agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of paragraph (c)(2)(iii) of this section, hand-labor operations also include other activities or operations performed in conjunction with hand labor in the field. Some examples of hand-labor operations are the hand-cultivation, hand-weeding, hand-planting and hand-harvesting of vegetables, nuts, fruits, seedlings or other crops, including mushrooms, and the hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field. Hand-labor does not include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

Handwashing facility means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels. Potable water means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR part 141. Toilet facility means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is supplied with toilet paper adequate to employee needs. Toilet fa-

\textsuperscript{1}29 CFR 1928.110 (2002).
facility includes biological, chemical, flush and combustion toilets and sanitary privies.

(c) Requirements. Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

1) Potable drinking water. (i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

2) Toilet and handwashing facilities. (i) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in paragraph (c)(2)(v) of this section.

(ii) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(iii) Toilet and handwashing facilities shall be accessibly located and in close proximity to each other. The facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field.

(iv) Where due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at the point of closest vehicular access.

(v) Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

3) Maintenance. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(iii) Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

4) Reasonable use. The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.
Appendix

(d) Dates--(1) Effective Date. This standard shall take effect on May 30, 1987.

(2) Startup Dates. Employers must comply with the requirements of paragraphs:

(i) Paragraph (c)(1), to provide potable drinking water, by May 30, 1987;

(ii) Paragraph (c)(2), to provide handwashing and toilet facilities, by July 30, 1987;

(iii) Paragraph (c)(3), to provide maintenance for toilet and handwashing facilities, by July 30, 1987; and

Appendix IV

OSHA's Construction Sanitation Standard

(a) Potable water. (1) An adequate supply of potable water shall be provided in all places of employment.

(2) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(3) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(4) The common drinking cup is prohibited.

(5) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(6) Potable water means water which meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published in 42 CFR part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction.

(b) Nonpotable water. (1) Outlets for nonpotable water, such as water for industrial or firefighting purposes only, shall be identified by signs meeting the requirements of subpart G of this part, to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(2) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(c) Toilets at construction jobsites. (1) Toilets shall be provided for employees according to the following table:

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<tr>
<td>20 or less</td>
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<tr>
<td>20 or more</td>
<td>1 toilet seat and 1 urinal per 40 workers.</td>
</tr>
<tr>
<td>200 or more</td>
<td>1 toilet seat and 1 urinal per 50 workers.</td>
</tr>
</tbody>
</table>

Appendix

(2) Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.

(3) Job sites, not provided with a sanitary sewer, shall be provided with one of the following toilet facilities unless prohibited by local codes:
   (i) Privies (where their use will not contaminate ground or surface water);
   (ii) Chemical toilets;
   (iii) Recirculating toilets;
   (iv) Combustion toilets.

(4) The requirements of this paragraph (c) for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(d) Food handling. (1) All employees' food service facilities and operations shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

   (2) All employee food service facilities and operations shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination.

   (e) Temporary sleeping quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

   (f) Washing facilities. (1) The employer shall provide adequate washing facilities for employees engaged in the application of paints, coating, herbicides, or insecticides, or in other operations where contaminants may be harmful to the employees. Such facilities shall be in near proximity to the worksite and shall be so equipped as to enable employees to remove such substances.

   (2) General. Washing facilities shall be maintained in a sanitary condition.

   (3) Lavatories. (i) Lavatories shall be made available in all places of employment. The requirements of this subdivision do not apply to mobile crews or to normally unattended work locations if employees working at these locations have transportation readily available to nearby washing facilities which meet the other requirements of this paragraph.

   (ii) Each lavatory shall be provided with hot and cold running water, or tepid running water.

   (iii) Hand soap or similar cleansing agents shall be provided.

   (iv) Individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

   (4) Showers. (i) Whenever showers are required by a particular standard, the showers shall be provided in accordance with paragraphs (f)(4)(ii) through (v) of this section.

   (ii) One shower shall be provided for each 10 employees of each sex, or numerical fraction thereof, who are required to shower during the same shift.

   (iii) Body soap or other appropriate cleansing agents convenient to the showers shall be provided as specified in paragraph (f)(3)(iii) of this section.

   (iv) Showers shall be provided with hot and cold water feeding a common discharge line.

   (v) Employees who use showers shall be provided with individual clean towels.

   (g) Eating and drinking areas. No employee shall be allowed to consume food or
Appendix

beverages in a toilet room nor in any area exposed to a toxic material.

(h) Vermin control. Every enclosed workplace shall be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, and other vermin. A continuing and effective extermination program shall be instituted where their presence is detected.

(i) Change rooms. Whenever employees are required by a particular standard to wear protective clothing because of the possibility of contamination with toxic materials, change rooms equipped with storage facilities for street clothes and separate storage facilities for the protective clothing shall be provided.
Appendix V

Data Methodology and Sources:
OSHA Inspection Reports and Citations

Part V's empirical discussion of OSHA's enforcement of employers' obligation to "make toilet facilities available so that employees can use them when they need to do so," is based in part on OSHA's inspection reports, which are public records. They are available on the OSHA website and also on Lexis-Nexis. The OSHA website reports include some data (for example, the number of employees exposed to the violation and the number of instances of exposure) not available on the Lexis database, but the usefulness of the former is radically undermined by the fact that it is impossible to search for individual employers by standard number; consequently, it is impossible to search for the citations issued under section 1910.141(c)(1)(i). Since such standard searches are possible on Lexis, it is necessary to identify all the employers to which OSHA issued citations and then go back to the OSHA website (which is searchable by employer name). An example of an inspection report from each of these databases is reproduced at end of Appendix V. These OSHA inspector reports, however, do not reveal in what way the employer violated the standard.

Since most citations issued by OSHA under section 1910.141(c)(1)(i) after April 6, 1998 have been triggered by a failure to provide the required number of toilets and only a very few by a denial of access, it was necessary to make Freedom of Information Act requests to the Federal OSHA area offices and state public or open records act requests to the state-plan programs that issued the citations for a copy of the Citation and Notification of Penalty, which includes an alleged violation description (AVD) and becomes a public record as soon as the employer

1A version is also available on Westlaw, but it is less complete.
2The searches on the OSHA website that are possible by standard number are confined to the immediately preceding fiscal year and generate only summary data on the number of citations and inspections and the total dollar amount of penalties disaggregated by SIC-code and establishment size; searches can also not be performed by subsections—that is, sect. 1910.141 can be searched, but not sect. 1910.141(c)(1)(i).
has received it. The AVD is usually quite brief (often one sentence) and states the specific way in which the employer violated the standard.

The process of collecting all the citations was delayed and made much more difficult by the incompetence of several Federal OSHA officials in the National Office. After several employees lost the author’s Freedom of Information Act request and another stated that he was in the process of forwarding the requests to the individual OSHA area offices, Richard Fairfax, the Director of the Directorate of Enforcement Programs, informed the author: “Your Freedom of Information Act (FOIA) request dated September 9, was referred to this office for a direct response. You requested information for files in cases pertaining to citations and settlement agreements based on the April 6, 1998 interpretation of 20 [sic; should be 29] CFR 1910.141(c)(1)(i), which requires employers to make toilet facilities available so that employees can use them when they need to use them. We have enclosed the information that you requested. The data on the computer report contains the pertinent information for the period January 1, 2000 until September 22, 2002, the date of the data search.” In fact, however, these data were merely public access data available on OSHA’s website (which the author had already collected on his own) and lacked the one crucial piece of information that exists only in OSHA’s paper files and that constituted all that the author wanted—namely, the aforementioned alleged violation description, which explains what the employer did or did not do that triggered the violation. The data that OSHA sent did not distinguish between cases in which employers were cited for not having provided the proper number of toilets and those in which the employer denied workers access to toilets. They were thus totally superfluous, irrelevant, and useless.

This nonresponsiveness somehow dawned on someone at OSHA, prompting Fairfax to write again a week later: “Please be aware that the National Office of the Occupational Safety and Health Administration (OSHA) does not maintain records that are responsive to your request. We previously provided you with the citation history for the requested standard, but we do not have the abstracts in which you are interested. To facilitate your request, we are providing a computer data report of the cited cases, with the issuing area offices identified in the left hand column, along with a list of the addresses of all the OSHA area offices.” In fact, Fairfax himself, continuing a policy established in the Memorandum itself, had informed OSHA offices in 2000 that “copies of any citations issued based on the April 6, 1998 interpretation should still be sent to DCP [the Directorate of Compliance Programs was the former title of Fairfax’s office]. This topic continues to generate interest from the public. Early this year we had a Free-

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1Letter from Richard Fairfax to Marc Linder (Oct. 21, 2002).
4Letter from Richard Fairfax to Marc Linder (Oct. 29, 2002).
dom of Information Act (FOIA) request for copies of citations issued. Therefore, please continue to send copies of any citations issued pursuant to the 1998 interpretation to the National Office.\textsuperscript{5} The author then spent six weeks gathering the AVD pages for these citations from the 43 (of a total of 85) Federal OSHA area offices that had issued them.

The sources and methodology for compiling the information in tables 1, 2, and 3\textsuperscript{6} were as follows. The author searched the Lexis-Nexis OSHAIR file with the search term "19100141 c01 i," which is the form in which this standard number is entered\textsuperscript{7} and a date limitation of "after April 5, 1998." This search was conducted in the early fall of 2002; because of the dilatory and uncooperative responses of some OSHA agencies to requests for information, inducing them to repeat the searches later to update for new citations was precluded; therefore the end date for the searches is also fall 2002. The search proved to be somewhat overinclusive because the date limitation identified cases that included any actions recorded on dates after April 5, 1998, whereas in fact the information sought was cases that had been opened after that date on the assumption that OSHA's new interpretation was not applied retroactively. In order to segregate out the cases that had been opened after that date, the author examined the contents of each individual report. The initial search was also underinclusive because three states renumbered the Federal OSHA standards to fit their own regulatory codes: California adopted section 3364(b), Michigan R4201(3)(a)(i), and Washington 296-24-12007(1)(a) (which was recodified as 296-800-23020 in 2001). After all these adjustments, a total of 84 Federal OSHA cases (for 2000, 2001, and 2002) and 329 state OSHA cases (from April 6, 1998 through the fall of 2002) were identified, in which employers were cited for violating 29 CFR 1910.141(c)(1)(i) (or its state equivalent). No search was conducted for Federal OSHA cases for the period from April 6, 1998 through December 31, 1999, because the OSHA National Office had already identified such cases pursuant to FOIA requests by the author in 1998 and another lawyer in 2000.\textsuperscript{8}

The author also furnished the 21 state-plan OSHA agencies plus New York (whose program covers only public employees) with a list of the employers and inspection numbers identified on Lexis-Nexis and the agencies then conducted their own searches of their own internal databases, which also permit searches by standard number; with a few quirky exceptions, the lists matched. With respect to those five states (Hawaii, New Mexico, Utah, Vermont, and Wyoming) which had not issued a single citation for any violation of section 1910.141(c)(1)(i) for

\textsuperscript{5}See above Appendix II.
\textsuperscript{6}See above ch. 11.
\textsuperscript{7}One case from Indiana was erroneously entered as "19100141 c01i."
\textsuperscript{8}See above ch. 11.
any reason since April 5, 1998, the author confirmed this finding and its plausibility with the relevant officials, thus ending that part of the search. For the other seventeen states (with the exception of California) the author then requested the alleged violation description page from the Citation and Notification of Penalty for all citations of the standard. The extent of cooperation extended by the state OSHA agencies varied widely, depending in part on the officials' own interest in the question. In Oregon, for example, Chris Ottoson, Health Analyst, Enforcement Policy Section, Oregon OSHA, reviewed all the inspections and "found that none involved denial of access. ... In one unusual case, a female employee was killed while using the portable toilet; a truck offloading bark dust hit a concrete barrier serving as a retaining wall for the bark dust (the toilet was located between a service building and the retaining wall), causing the concrete wall to topple onto the toilet, which crushed the employee. To summarize, denial of access wasn't an issue in these inspections." But, on request, Ottoson also later sent the violation descriptions. In Minnesota, where only one citation was issued, the OSHA official read the AVD to the author on the telephone indicating that the citation was for the lack of a latch. In Arizona, the official "researched those employers who have been cited under standard number 1910.141(c) beginning on 4/6/98 to present time. Of the 6 employers who were cited, only 1 employer was actually cited for preventing employees['] unrestricted use of the toilet facilities." She then faxed that one narrative report. In Utah, an uncooperative official, after much prodding, reviewed the two citations and stated that neither was for denial of access, adding that there has never been such a citation in Utah. He did not send the narratives. In Tennessee, Mike Maenza, Manager for Standards and Procedures, reviewed the files and stated that none was for denial of access, and later sent the narratives on request. Officials in all the other states sent all the narratives.

The aforementioned exception was Cal/OSHA, which issued far more citations (181 excluding two that were spuriously classified as sect. 3364, but had in fact been issued under sect. 3664 dealing with forklifts) under this standard than all other states combined. Although the author was eager to study all the citations and narratives reports, officials in many Cal/OSHA offices were not eager to search for any of them. As an initial compromise, the author identified eight

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9Email from Chris Ottoson to Marc Linder (Sept. 25, 2002).
10Telephone interview with Kelly Taylor (Oct. 1, 2002).
11Fax from Dianne Marks, Industrial Commission of Arizona, Div. of OSH, to Marc Linder (Sept. 25, 2002).
12Fax from William W. Adams, Jr., UOSH Technical Adviser, to Marc Linder (Sept. 20, 2002); telephone interview with William Adams (Oct. 9, 2002).
13Telephone interview with Mike Maenza (Sept. 23, 2002).
cited employers, the nature of whose businesses appeared to offer the greatest probability of restriction of access. Over many weeks the staff located them, determining that none was for access. Dissatisfied with this process and result, the author then requested copies of the citations from 20 individual Cal/OSHA offices. After several months of cajoling, the author finally received all of the citations (including two that lacked an alleged violation description)—except 20 that had been lost or purged. Ultimately it turned out that none of the citations had been issued for restricting access because in fact Cal/OSHA refuses to enforce the Federal OSHA interpretive Memorandum.

14 Fax from Robert Hayes, Cal/OSHA, to Marc Linder (Sept. 23, 2002); telephone interview with Robert Hayes, Cal/OSHA (Oct. 11, 18, and 29, 2002).

15 See above ch. 15.
Appendix

[Lexis-Nexis]

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA)
OSHA Inspection Reports

CONVERGYS CORPORATION
4501 ROY J. SMITH DR
KILLEEN, TEXAS 76543

County: BELL
Reporting Office ID: 0625400
Activity Number: 0304389711
Unique Establishment Identifier: N122 000019420
SIC: 7389 (BUSINESS SERVICES, NEC)
Owner Type: PRIVATE
Unionized: NO

••••••••• INSPECTION INFORMATION ••••••••

Inspection Type: COMPLAINT
Category: HEALTH
Scope: PARTIAL
Inspector: HEALTH OFFICER
Open Inspection Date: 04/12/2002
Closed Inspection Date: 04/12/2002
Closed Activity Date: 05/09/2002
Advance Notice: NO
Employee Rep Present: YES
Employee(s) Interviewed: YES
Inspection Hours: PREP 10 HRS.; TRAVEL 25 HRS.; ON-SITE 40 HRS.; RESEARCH 20 HRS.; CONFERENCES 10 HRS.
Total Inspection Time: 105 HRS.

••••••••• CITATION INFORMATION ••••••••

ID  Citation  Issuance
Number Std/Subsection Type Date
01001  19100141 C01 I  SERIOUS  04/17/2002

ID  Abate  Abatement
Number Contested Date Complete
01001  NO  04/25/2002  ABATEMENT, PPE, REPORT COMPLETED

••••••••• PENALTY INFORMATION ••••••••

ID Initial Current Failure to FTA Issue
Number Penalty Penalty Abate Penalty Date
01001  $ 1,125.00
Establishment Search Inspection Detail-- Public View

Definitions

**Inspection: 304389711 - Convergys Corporation**

**Inspection Information - Office: Austin**

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Convergys Corporation
4501 Roy J. Smith Dr
Killeen, TX 76543

SIC: 7389/Business Services, Nec
Mailing: 4501 Roy J. Smith Dr., Killeen, TX 76543

Union Status: NonUnion

**Inspection Type: Complaint**

Scope: Partial
Ownership: Private
Safety/Health: Health
Close Conference: 04/12/2002
Close Case: 05/09/2002

Related Activity:
- **Type ID Date Safety Health**
  - Complaint 203901780 04/10/2002 Yes

**Violation Summary**

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<td>04/25/2002</td>
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**Violation - Convergys Corporation**

**Standard Cited:** 19100141 C01 I Sanitation

**Violation Information**

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<th>Citation: 01001</th>
<th>Issuance: 04/17/2002</th>
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Viol Type: Serious
Nr Instances: 2
Abatement Date: 04/25/2002 X
Initial Penalty: 1125.00
Current Penalty: |

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Even before it appeared at the end of 1997, *Void Where Prohibited: Rest Breaks and the Right to Urinate on Company Time* had mobilized public opinion to pressure the Occupational Safety and Health Administration to abandon its preposterous position that its industrial sanitation standard, which requires employers to provide toilets, did not obligate them to let workers use those toilets. On April 6, 1998, OSHA finally issued a Memorandum declaring that the “standard requires employers to make toilet facilities available so that employees can use them when they need to do so.” Thus with a few keystrokes, OSHA had created a right for tens of millions of workers to stop work when they need to void.

Or had it? Was this establishment of at-will bathroom breaks worth the cyberspace it was posted in? How do labor-protective regulations get enforced in a world of: powerful employers opposed to government interference with their control of employees’ time; workers—90 percent of whom in the private-sector are nonunion—afraid to assert their rights or file a complaint; and an understaffed OSHA that fails to pursue complaints vigorously (or, in the unique case of California OSHA, refuses even to comply with its obligation to insure that its standard and interpretation are “at least as effective” as the Federal standard)?

Five years on, *Void Where Prohibited Revisited: The Trickle-Down Effect of OSHA’s At-Will Bathroom-Break Regulation* answers these questions by analyzing all the citations that OSHA has issued to employers for violating their obligation to let workers go to the bathroom and by interviewing OSHA officials, labor union officers, workers, and employers.

Since many who are free to go to the bathroom doubt stories about workers who have been forced to void on themselves or been disciplined for using the toilet without permission, OSHA reports documenting these practices are quoted in detail. Special attention is devoted to the dispute at the Jim Beam bourbon plant in Kentucky, which, thanks to the employer’s appeal of a (non-monetary) citation for denying workers access to the bathroom, sparked an illuminating hearing, whose high point was testimony by the employer’s urologist that even if workers wound up defecating on themselves, “it’s a social problem, not a medical problem.”

Marc Linder, a labor law professor at the University of Iowa who also worked at Texas Rural Legal Aid representing farmworkers, has written widely on labor law, labor economics, labor relations, and labor history.

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ISBN 0-9719594-0-4