



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation</b>	16VAC25-160-10, Construction Industry Standard for Sanitation; in General 16VAC25-180-10, Field Sanitation Standard
<b>Regulation title</b>	Construction Industry Standard for Sanitation; in General; and Field Sanitation Standard
<b>Action title</b>	Correcting Amendments to the Construction Industry Standard for Sanitation; in General; and Field Sanitation Standard
<b>Final agency action date</b>	May 24, 2012
<b>Document preparation date</b>	June 5, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

On June 8, 2011, federal OSHA published the Standards Improvement Project – Phase III (SIP III) Final Rule (76 FR 33590). On October 13, 2011, the Safety and Health Codes Board adopted the majority of the revisions to these various standards with an effective date of January 15, 2012. However, because Virginia has its own unique versions of these standards, the Board did not adopt the two changes in SIP III related to federal OSHA’s standards, §§1926.51, Sanitation, and 1928.110, Field Sanitation.

As Federal OSHA has done with SIP III, the VOSH Program seeks to correct a reference in the definition of “Potable water” which appears in two of the Virginia unique regulations: Construction Industry Standard for Sanitation; in General, 16 VAC25-160-10 (b)(i)(2), and the Field Sanitation Standard, 16 VAC25-180-10 (b). The correction would delete the single word “Interim” from the reference “U.S. Environmental Protection Agency’s Interim Primary

Drinking Water Regulations, published in 40 CFR Part 141". Also, in 16 VAC25-160-10 (b)(i)(2), VOSH seeks to insert the word "National" before "Primary" to more accurately reflect the title of the referenced regulations in that subparagraph to now read as follows: "Potable water"... standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations, published in 40 CFR Part 141".

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On May 24, 2012, the Safety and Health Codes Board adopted changes to correct a reference that appeared in two VOSH unique regulations, 16VAC25-160-10 and in 16VAC25-180-10, to "the U.S. Environmental Protection Agency's *Interim* National Primary Drinking Water Regulations, published in 40 CFR Part 141" (emphasis added). The Board approved the removal of the word "interim" in both VOSH regulations and the insertion of the word "National" in 16VAC25-160-10 (b)(i)(2) to accurately reflect the correct title of the EPA's regulations which appear in both of federal OSHA's standards upon which the VOSH standards are based. The effective date of these corrections is September 15, 2012.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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This regulatory action will have no impact on the institution of the family and family stability.

**Correcting Amendments for:  
Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and  
Field Sanitation Standard, 16VAC25-180-10**

As Adopted by the  
Safety and Health Codes Board

Date: May 24, 2012



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: September 15, 2012

16VAC25-160-10, Construction Industry Sanitation Standard; in General  
16VAC25-180-10, Field Sanitation Standard

Virginia Administrative Code

TITLE 16 – LABOR AND EMPLOYMENT  
AGENCY 25 – SAFETY AND HEALTH CODES BOARD

CHAPTER 160

**16VAC25-160-10. Construction industry sanitation standard; in general (29 CFR 1926.51).**

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Water supply.

(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 the common drinking cup is prohibited.

(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. Water shall not be dipped from containers.

(4) 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 cups shall be provided.

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

(i) Drinking water containers shall be constructed of materials that maintain water quality;

(ii) Drinking water containers shall be refilled daily and shall be covered; and

(iii) Drinking water containers shall be regularly cleaned.

(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 ([16VAC25-175-1926.200](#) et seq.), 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) Toilet and handwashing facilities.

(1) One toilet and one handwashing facility shall be provided for each 20 employees or fraction thereof.

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

(3) Toilet and handwashing facilities shall be readily accessible to all employees, accessibly located and in close proximity to each other.

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

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

(d) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(e) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(f) Washing facilities. Hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply of potable water, soap and single use towels.

(g) Revoked

(h) Waste disposal. (1) Disposal of wastes from facilities shall not cause unsanitary conditions.

(i) Definitions.

(1) "Handwashing" facility means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single use towels.

(2) "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.

(3) "Toilet facility" means a fixed or portable facility designed for the containment of the products of both defecation and urination which is supplied with toilet paper adequate to meet employee needs. Toilet facilities include biological, chemical, flush and combustion toilets and sanitary privies.

16VAC25-160-20. General industry standards applicable to construction sanitation (29 CFR 1910.141).

The following requirements from 29 CFR Part 1910 (General Industry) have been identified as applicable to construction (29 CFR 1926.51, Sanitation), in accordance with their respective scope and definitions.

§ 1910.141 Sanitation

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

(2) NOTE: Virginia does not adopt 29 CFR 1910.141(a)(2)(i)-(xi), which sets out definitions applicable to 29 CFR 1910.141. 29 CFR 1910.141(a)(2)(v) has been rescinded.

(v) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard for potable water ([16VAC25-160-10](#)).

NOTE: Virginia does not adopt 29 CFR 1910.141(a)(3) and (4).

(5). 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.

NOTE: Virginia does not adopt 29 CFR 1910.141(b) through (g)(1).

(g)(2) Eating and drinking areas. No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

NOTE: Virginia does not adopt 29 CFR 1910.141(g)(3) and (g)(4).

(h) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

16VAC25-160-30. Medical services and first aid (29 CFR 1910.151).

NOTE: Virginia does not adopt 29 CFR 1910.151(a) and (b).

(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

**Virginia Administrative Code**

TITLE 16 – LABOR AND EMPLOYMENT  
AGENCY 25 – SAFETY AND HEALTH CODES BOARD

CHAPTER 180

16VAC25-180-10. Field sanitation (29 CFR 1928.110).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Scope. This section shall apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. 16VAC25-180-10 (c)(1) shall apply to all agricultural establishments regardless of the number of employees.

(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 of 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 chapter, "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 of 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 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 chapter.

(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 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.

(d) Dates

(1) Effective Date. This chapter 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
- (iv) Paragraph (c)(4), to assure reasonable use, by July 30, 1987.