

NEW OSHA REQUIREMENTS FOR PORTABLE SANITATION

Since the start of the COVID-19 pandemic, speculation and rumors have swirled that the Occupational Safety and Health Administration (OSHA) would be increasing its standards for portable sanitation cleaning, hand washing, and related health activities. To date, the communications that have come out about this topic have been fairly clear if you are fluent in “government-ese” and somewhat less obvious if you are not. Below we share what is currently known and what the future may hold.

OSHA Has Not Issued New Standards about Portable Toilets or Hand Wash Stations Due to COVID-19



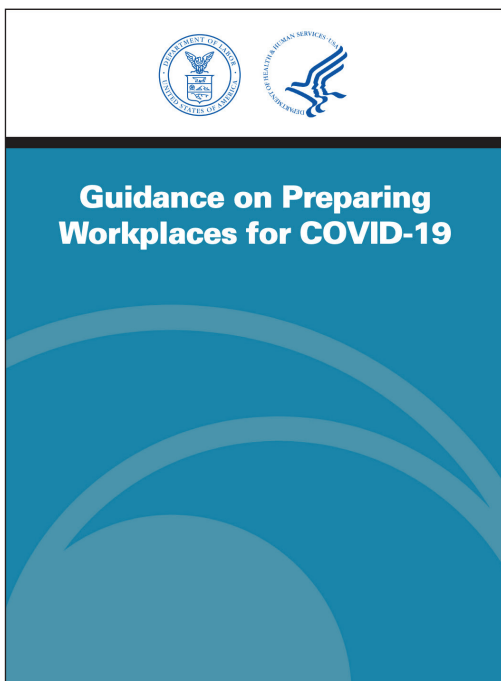
In our [April 1, 2020 Association Insight](#) we covered OSHA’s mandates for hand washing and toilets. Review the requirements in the existing [standards on the PSAI website](#) or check out our Industry Resource Library [summary](#). For decades, long-standing OSHA standards have required portable toilets and hand washing facilities on most job sites where sewered facilities are not available.

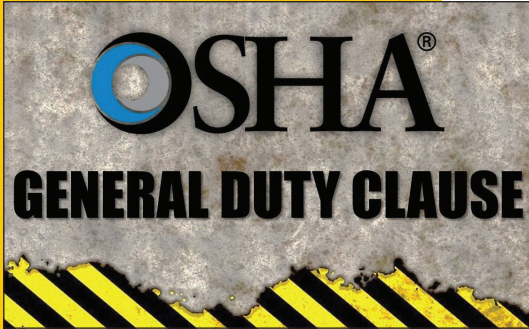
Since February, COVID-19 precautions and directives have been communicated by various levels of government, and portable sanitation operators are hearing about “new” OSHA standards. When someone says this, one or more of the following things is likely true:

- The person making the statement was unaware of the existing standards and thinks they are new.
- The person making the statement is referring to guidance specific to protecting workers from COVID-19 (see next section), is not clear there is a difference between a “standard” and agency “guidance,” and is mistakenly using the words interchangeably.
- The person is trying to make a case for or against a point of view and is offering uniformed or untrue statements to bolster his or her position.

OSHA Has Issued Guidance about Preparing Workplaces for COVID-19

You can find it [here](#) or in the PSAI’s [COVID-19 Resource Center](#). When a government agency like OSHA issues “guidance,” its purpose is to inform the public and provide direction on how to interpret and apply existing standards under a given set of conditions. The guidance doesn’t create new permanent requirements.





In the case of the current guidance on preparing workplaces for COVID-19, OSHA is relying on its “General Duty Clause” as the foundation for its direction—just as it does for every standard OSHA has. The General Duty Clause has the force of law, and it says that employers must furnish to each worker:

“... employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

Because of this language and the unique circumstances presented by COVID-19, OSHA’s guidance goes further than existing standards. For example, the current OSHA standard does not cover tissues, trash cans, or hand sanitizer. The COVID-19 guidance does cover these things because they are an essential part of preventing the spread of the virus.

In practice, employers should meet or exceed the guidelines laid out in OSHA’s COVID-19 guidance. Although it is not a “standard,” the guidance document provides a pathway to satisfying the minimum requirements of the law as expressed in the General Duty Clause. If someone should get sick or hurt and an employer was not following OSHA’s guidance, the burden would be on the employer to prove that the firm had met the requirements of the General Duty Clause some other way. Following only the pre-existing standard may not be enough.

OSHA Standards Versus OSHA Guidance

If both a standard and guidance essentially have to be followed, you might wonder if it isn’t just a game of semantics. It is more than that.

At least in theory, guidance applies to unusual circumstances. It can easily be ignored when the situation that prompted the guidance changes. As things now stand, the guidance requiring additional hand washing measures and increased cleaning of surfaces and applies only to the COVID-19 pandemic. If, by some miracle, the COVID-19 threat is suddenly gone, the guidance could simply cease to apply.

The process for making something an OSHA standard, which would then be a minimum requirement regardless of circumstances, is complicated. An [overview of the process](#) shows how many steps are involved, and it can take years to make a change.

Buy-in from relevant stakeholders is needed for this to happen. Up to now there has been little interest from groups like the homebuilders’ associations, construction firms, and the like to sign on to higher sanitation standards on job sites. As most portable sanitation companies are all too aware, it has been very challenging to get some customers in these groups to adhere to the lower

standards that already exist.



While the COVID-19 pandemic has been highly disruptive, the guidance that OSHA has put out is actually helping to raise awareness on job sites regarding OSHA standards. That is a positive by-product of this difficult time. You can be sure that the PSAI, on behalf of portable sanitation industry and workers everywhere, will try to build on the new awareness as well as OSHA's guidance document. The goal would be to have these reasonable requirements for sanitation and hand washing remain in place even when the threat of COVID-19 no longer needs to be managed as actively.

Existing Standards Require an Undefined "Sanitary Condition"

Although existing OSHA standards require a "sanitary condition," (see, for example [29CFR 1910.141\(a\)\(4\)\(i\)](#)), they do not define that term. The new COVID-19 guidance doesn't either.

The closest OSHA comes to defining the term "sanitary condition" is in an OSHA guidance letter from 2006. In the letter, an OSHA administrator with expertise in construction explained that a restroom on a construction site that is not sanitary is not considered "available" and therefore cannot be counted toward the OSHA-required minimums. Within the letter, OSHA references the PSAI's ANSI-compliant standard Z4.3-1995 and notes:

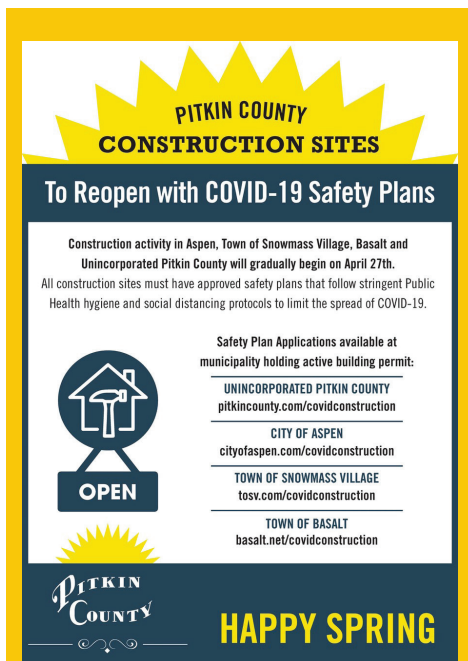
"Under...the OSHA standard, if there were 20 employees, the employer would need to provide at least one toilet. Applying the ANSI [Z4.3] servicing schedule to a situation where one toilet has been provided for 20 employees, an employer that had the toilet serviced twice per week would likely be providing a toilet in a sanitary condition. Similarly, a toilet for 10 employees, if serviced once per week, would likely be provided in a sanitary condition."

Given this precedent and the current COVID-19 guidance, we believe portable sanitation companies would be correct in telling customers that service is needed more often than once a week to attain "sanitary condition" during the pandemic. This is based on the length of time the COVID-19 virus lives on surfaces, the capacity of most hand wash or sanitizer units, and CDC guidance promoting "[more frequent cleaning and disinfection](#)" of toilets and other high touch surfaces as well as [toilets at parks](#).

Government Agencies and Trade Groups Are Establishing Job Site Guidance

Some state- and local-level agencies and trade groups are already being more specific about what they expect on job sites. This week some construction sites in Washington state were allowed to reopen as part of a three-phase plan. Leading up to this change, groups including labor unions, general contractors, and builders came together to work with Governor Jay Inslee to provide Washington's health officials with ideas about how to make job sites safe during this time of COVID-19.





They documented their thoughts in [this letter](#) and these [proposed re-start requirements](#). While much of what they say follows language from the CDC, it is notable in several ways.

- The groups involved are some of the key players whose support would be needed to change OSHA’s permanent standards for portable sanitation.
- The groups support OSHA/CDC’s guidance for access to hand washing/ hand sanitizing on job sites and frequent toilet cleaning.
- The groups support shutting down job sites if these conditions are not met.
- The state of Washington subsequently used the same language in its published [Phase I Construction Restart COVID-19 Job Site Requirements](#).

While it is true this is just one state’s reaction, it is significant in that it is the first time in history that the groups in question have gone on record supporting access to hand washing, hand sanitizing, and more frequent toilet cleaning. This is something people will get used to and come to accept as necessary. As an industry, we can build on it. The more states that embrace these types of requirements, the easier that will be.

PSAI Recommendations

The PSAI has made several recommendations to the portable sanitation industry to increase the likelihood of safety and compliance with relevant laws, standards, and guidance. While no one knows when the COVID-19 situation will be over, we can be sure that things will not stand still. Our industry has a responsibility to its workers both morally and legally under OSHA’s General Duty Clause. Therefore, the PSAI has proposed that portable sanitation operators up their game during this time to protect workers and build on the higher standards inspired by COVID-19 guidance. Ideally, these necessities will be recognized as a “new normal.”

Proposals include:

- **Upgrading equipment placement, service frequency and procedures.** To ensure that job sites are sanitary for workers using them:
 - ◇ Each job site should have adequate hand washing facilities. Specifically, each site needs enough sinks and/or hand sanitizing equipment to support one hand wash per portable toilet use (approximately 200 per standard portable toilet unit).
 - ◇ Servicing of portable toilets and hand wash stations should be increased to no less than twice a week wherever practicable.
 - ◇ Cleaners and deodorizers should contain ingredients on the EPA’s “List N: Disinfectants for Use Against SARS-CoV-2.”
 - ◇ Service technicians should use the cleaning durations required by List N to ensure pathogens have been removed from surfaces.





- **Adhering to Portable Sanitation Universal Precautions for Worker Safety.** Due to the fact that viruses such as hepatitis, COVID-19, and others live a long time on surfaces outside the human body, and due to the fact that a portable sanitation service technician can never know exactly what pathogens are in a portable restroom, it is suggested that the PSAI's Standards and Guidance Committee consider adopting recommended precautions for safety that would be in place at all times. These include:
 - ◇ Requirements for workers' hand hygiene remain in place.
 - ◇ Standard personal protective equipment (PPE) should continue to include the wearing of hard hats, waterproof boots with steel or composite toes, and waterproof gloves that are changed between cleaning toilet units and hand washing equipment.
 - ◇ Standard PPE should also include either protective goggles with masks or face shields to protect the worker against inhaling aerosolized droplets or ingesting pathogens through the mouth or eyes.
 - ◇ Service technicians should daily sanitize their equipment and the storage compartments on their trucks where the equipment resides at the close of their shifts.
 - ◇ Service technicians should use laundry precautions when changing their work clothes at home.

It is difficult to say exactly how the portable sanitation industry will be altered in the long run. There is no doubt that changes have begun and been significant in just the past six weeks. As an industry, we recognize that whether OSHA standards change or not, expectations and needs on job sites will never be the same.

The PSAI is working hard to make sure that we are at the table where important decisions are being made, and we are advocating for better practices, more awareness, and—ideally—more buy-in for what we know makes sense for workers. If you would like to be involved in our projects, contact Executive Director [Karleen Kos](#) or Standards and Guidance Committee Chair [Jason Perry](#).