

## **MIGRANT LABOR; SEASONAL FARM LABOR ACT**

**Field sanitation regulations for farms with 10 or less employees (includes water availability requirements).**

### **New Jersey State Drinking Water and Toilet Facilities Act**

#### **CHAPTER 9A**

Current through April 15, 2002

(See the New Jersey Statutes Annotate, the New Jersey Register and the New Jersey Administrative Code for subsequent statute and rule changes.)

#### MIGRANT LABOR

##### 34:9A-37. Definitions

As used in this act:

(a) "Farm operator" means any individual, corporation, partnership, joint venture, firm, company, or other legal entity, or any officers or agents thereof, in immediate possession of any farm as owner or lessee, and, as such, responsible for its management and condition.

(b) "Seasonal farm worker" means any person who is engaged in seasonal or temporary farm work and is a term that may be used interchangeably with the terms "migrant laborer" and "temporary farm worker."

##### **34:9A-38. Furnishing drinking water and toilet facilities in fields**

**At any farm where seasonal farm workers labor in a field that is an unreasonable distance from central facilities, the farm operator shall provide in the working area a sufficient supply of cool, potable water, and for each sex sufficient, suitable and separate privies or other toilet facilities which shall be properly screened, ventilated and kept clean and suitable facilities for the washing of hands.**

##### **34:9A-39. Commissioner of department of labor and industry; enforcement of act; promulgation of rules and regulations**

The Commissioner of the Department of Labor and Industry is authorized to enforce this act and to promulgate all reasonable rules and regulations which, in his discretion, are necessary to carry out the provisions of this act.

##### **34:9A-40. Violations; penalties; collection; defenses**

Any farm operator who violates any of the provisions of this act or the rules and regulations promulgated hereunder shall be subject to a penalty of not less than \$50.00 nor more than \$500.00 to be collected in a civil action commenced by the commissioner by a summary proceeding under "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.) in the Superior Court or a municipal court, which shall have jurisdiction to enforce said penalty enforcement law in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given by which the violation must be eliminated in accordance with the order of the department shall constitute an additional, separate and distinct offense.

It shall be a complete defense to any action for a penalty pursuant to this section for the defendant to prove that the violation complained of is solely the result of the willful destruction by the occupants of any camp; provided, that proof of such fact shall not alter any duty to correct or terminate said violation as ordered by the commissioner.

## **CHAPTER 102 SEASONAL FARM WORKERS**

### **SUBCHAPTER 1. FIELD SANITATION**

#### 12:102-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide reasonable standards for drinking, toilet and washing facilities for seasonal farm workers when working in a field.

(b) This subchapter shall be applicable to all farms subject to N.J.S.A. 34:9A-37 et seq. when 10 or fewer seasonal farm workers are working in a field.

If, at any time during a one-year period from the date of inspection, more than 10 seasonal farm workers have been employed, the Federal Occupational Safety and Health Act (OSHA) standards pursuant to 29 CFR 1928.110, shall be applicable.

#### 12:102-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Approved" means acceptable to the Commissioner. Any product certified, or classified, or labeled by a nationally recognized testing agency may be deemed to be acceptable, unless specifically banned by order of the Commissioner.

"Central facilities" means drinking, toilet and washing facilities housed at a central location which comply with Federal, State and local regulations and are at least equivalent in all respects to the facilities required by this subchapter.

"Commissioner" means the Commissioner of the Department of Labor and Workforce

Development of the State of New Jersey or his or her designee.

"Cool" means water which is maintained at a temperature of not more than 60 degrees Fahrenheit.

"Farm operator" means any individual, family member, corporation, partnership, joint venture, firm, company, or other legal entity, or any officers or agents thereof, in immediate possession of any farm as owner or lessee, and, as such, responsible for its management and condition.

"Potable water" means water which has been tested and approved for compliance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.

"Seasonal farm worker" means any person who is engaged in seasonal or temporary farm work and is a term that may be used interchangeably with the terms "migrant laborer" and "temporary farm worker".

"Unreasonable distance" means a travel distance from a working area in a field of more than 500 feet for drinking and washing facilities.

#### 12:102-1.3 Availability of water

(a) An adequate supply of fresh, cool, potable water shall be provided for workers in the working area, except when cool potable water facilities are available to the workers:

At a central facility within 500 feet travel distance of the working area in the field; or

At a location, separate from a central facility, within 500 feet travel distance of the working area in the field.

(b) Upon request of the Commissioner, a farm operator shall provide evidence of the quality of drinking water provided from a non-public water supply system for compliance with (a) above.

#### 12:102-1.4 Water containers

(a) Portable containers used to dispense drinking water shall be capable of being tightly closed, and shall be equipped with a tap.

(b) Water shall not be dipped from containers.

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

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

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

Single service cups shall not be used more than once.

## 12:102-1.5 Toilet facilities

(a) Toilet facilities shall be provided for workers in the working area, except when toilet facilities:

Are available to the workers at a central facility within 500 feet travel distance or a five-minute walking time of the working area in the field;

Are available to the workers at a location, separate from a central facility, within 500 feet travel distance or a five-minute walking time of the working area in the field; or  
Are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Toilet facilities required in (a) above shall be separate for each sex and provided in accordance with Table 1.5(b) below:

### TABLE 1.5(b)

1-20 males 1 seat

1-20 females 1 seat

(c) Toilet facilities shall be a suitable type acceptable for the elimination of bodily wastes and may consist of the following types:

Chemical toilets (fixed or portable);

Combustion toilets;

Composting toilets;

Recirculating toilets; or  
Other generally accepted facilities.

(d) Toilet facilities shall be equipped with an adequate supply of toilet paper.

(e) Toilet facilities shall be maintained in a clean and sanitary condition, and in good

working order.

(f) Toilet facilities shall be so constructed and designed so as to afford reasonable privacy to the user. Where applicable, doors with inside locking capability shall be provided.

#### 12:102-1.6 Handwashing facilities

(a) Adequate handwashing facilities shall be provided for workers in the working area and in the vicinity of toilet facilities required by this subchapter, except when handwashing facilities:

Are available to the workers at a central facility within 500 feet travel distance of the working area in the field and in the vicinity of toilet facilities required by this subchapter;

Are available to the workers at a location, separate from a central facility and in the vicinity of toilet facilities, within 500 feet travel distance or five minutes walking time of the working area in the field; or

In the vicinity of toilet facilities are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Washing facilities shall provide potable water, soap or other cleansing agent and individual towels.

(c) Waste water shall be disposed of in a sanitary and safe manner.

#### 12:102-1.7 Penalties

Failure to comply with the provisions of this subchapter shall subject the farm operator to a fine pursuant to N.J.S.A. 34:9A-40.

- 34:9A-40. Violations; penalties; collection; defenses
- Any farm operator who violates any of the provisions of this act or the rules and regulations promulgated hereunder shall be subject to a penalty of not less than \$50.00 nor more than \$500.00 to be collected in a civil action commenced by the commissioner by a summary proceeding under "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.) in the Superior Court or a municipal court, which shall have jurisdiction to enforce said penalty enforcement law in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given by which the violation must be eliminated in accordance with the order of the department shall constitute an additional, separate and distinct offense.

It shall be a complete defense to any action for a penalty pursuant to this section for the defendant to prove that the violation complained of is solely the result of the willful destruction by the occupants of any camp; provided, that proof of such fact shall not alter any duty to correct or terminate said violation as ordered by the commissioner.

- 34:9A-41. Violations of act; injunction; parties
- Upon a violation of this act or of any rules and regulations promulgated hereunder, any aggrieved seasonal farm worker and the Commissioner of the Department of Labor and Industry shall be entitled to institute a civil action in a court of competent jurisdiction for injunctive relief to restrain such violation and for such other relief as the court shall deem proper, and the court may proceed in a summary manner in such action. Neither the institution of such action, nor any of the proceedings therein shall relieve any party to such proceedings from the penalty proscribed for a violation of this act.

#### 12:102-1.8 Exceptions

(a) The Commissioner may grant exceptions from this subchapter, provided that it shall be clearly evident that such exception will provide for conditions that are equal to or better than the literal requirements set forth in this subchapter.

(b) Toilet facilities are not required where workers operate mobile equipment, as such workers can carry an adequate supply of potable water on the equipment and are able to travel to toilet and handwashing facilities in accordance with the timeframes set forth at N.J.A.C. 12:102-1.5 and 1.6.