

October 18, 2024

Record of Cleaning Consultation
Health, Safety and Insurance Policy Branch
Ministry of Labour, Immigration, Training and Skills Development
400 University Avenue, 14th Floor
Toronto, ON
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Submitted by email to: webhspolicy@ontario.ca

RE: 24-MLITSD016 Proposal for New Regulation for Posting Records of Washroom Cleaning

The Ontario Federation of Agriculture (OFA) is pleased to provide comments to the Ministry of Labour, Immigration, Training, and Skills Development (MLITSD) regarding the Proposal for a New Regulation for Posting Records of Washroom Cleaning. OFA is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations administered by all levels of government. We are passionate and dedicated to ensuring that the agri-food sector and rural communities are considered and consulted with for any new or changing legislation that would impact the sustainability and growth of our farm businesses.

OFA represents the interests of Ontario's farm businesses – the employers of farm labour. In that role, we take our obligations to farm workers seriously and believe that all farm workers, from both Canada and abroad, should be treated with dignity and respect, and be provided with a safe, fair and rewarding work environment.

OFA responses to MLITSD consultation questions:

1. Do you support the Ministry's proposed new regulation for posting of records of washroom facility cleaning?

If passed, Schedule 4 of Bill 190, Working for Workers Five Act, 2024 is proposing new duties applicable to employers the agriculture sector that would include:

- Ensuring that the washroom facilities, if any, that are provided by the employer for the use of workers located in the workplace are maintained in a clean and sanitary condition [proposed new subsection 25.3(1)].
- Keeping, maintaining and making available records of the cleaning of washroom facilities as prescribed [proposed new section 25.3 (3)].

We understand the purpose of this proposal is to provide a regulatory interpretation of “*making available*” to mean that records of cleaning are ‘posted’ in workplaces where washroom facilities are provided for the use of workers by employers.

In general, we agree with the intention of this proposed legislation to ensure that washroom facilities provided by an employer for the use of workers are maintained in a clean and sanitary condition. While we agree that all employees should have access to clean washrooms, OFA recommends that to achieve its intended goal, the scope and application of this new regulation, and the interpretation of “*making available records of cleaning*” is flexible, not overly prescriptive, and administratively simple to accommodate the variety of workplace washroom facilities provided to workers in the agricultural sector.

When considering the application of this proposed regulation, a potential conflict arises where employer provided washroom facilities are located in residences belonging to the employer, or in employer-provided accommodations (bunkhouses) supplied to Temporary Foreign Workers as part of their bilateral employment contract. For example, farm workplaces with smaller numbers of employees may simply use the washroom facilities in the farmhouse, which are not under the jurisdiction of the OHS (Part 1; Section 3 (1); Part VIII; Section 54(2)). Furthermore, washrooms in employer-provided accommodations are considered a private residence of the TFW employees who, according to Section 2.4 of the Canada-Mexico SAWP contract, are responsible for maintaining these facilities in a safe, hygienic, and functional state. Transferring responsibility to maintenance washroom areas in worker accommodations to employers can create conflict with these internationally negotiated contracts.

To avoid conflict between existing OHS limitations and employer-provided washrooms facilities located in residences, **OFA recommends that MLITSD bring certainty to the legal wording of the proposed regulation by ensuring that it only applies to washroom facilities located in the workplace.**

Furthermore, MLITSD should consider the size of workforce serviced by a washroom facility when applying this proposed new regulation. To accommodate the needs of small farm businesses and not impose unreasonable burden, **OFA recommends that MLITSD consider scaling the application of the proposed regulatory requirements for records of cleaning to workplaces according to workforce size.** Options include applying the regulation according to:

- Total number of workers – where the regulation does not apply to workplaces in which five or fewer workers are regularly employed, or;
- Number of workers serviced by a washroom facility – where the regulation does not apply to workplaces where five or less regularly employed workers are serviced by a washroom facility.

2. What do you estimate the financial impact will be, if any, to post records of cleaning for the washroom facilities at your workplace?

Financial impact is difficult to assess given the wide variety agricultural operations, workforce needs, and washroom cleaning arrangements. It is reasonable to assume that the financial impact will be modest, however, any financial impact will disproportionately affect smaller employers. Applying a size threshold for number of employees in a workplace or serviced by a washroom facility should be considered for this proposed regulation.

3. If your workplace does not currently post records of cleaning, how long do you estimate it would take your workplace to set up systems to ensure that records of cleaning are posted?

Farm operations with contracted cleaning of washroom facilities will not likely require significant time to adopt systems to record cleaning. Where employers have provided potable toilets for workers out in the field to avoid the need to travel to washroom facilities, the common record keeping practices of commercial service providers should be considered as acceptable record keeping for the purpose of compliance with the proposed new regulation.

Small and medium-sized farm workplaces that are not already posting records of cleaning will need time to develop compliance systems. Ideally, should Bill 190 pass and this proposed regulation is enacted, MLITSD will provide an education and support period of 3 to 6 months to allow employers to learn about the new requirements, and develop systems that are effective, efficient, and achieve compliance.

4. In your opinion, should there be new regulatory requirements setting out a minimum frequency of cleaning washroom facilities in workplaces? If so, what frequency do you recommend and why?

Farm workplaces are highly season and weather dependent. This seasonality of farm work means that the number of workers on a farm will vary dramatically over the course of the growing season and harvest. A washroom facility in one area of a farm (for example, near a field or orchard) may be completely unused for months during the off-season when there is no crop maintenance or harvesting work to do at that location. Other areas of the farm (for example, the packing area) may be busy even past harvest season, meaning that the washroom facilities there could be used even while the other washroom facilities on the farm are no longer being used for the season.

OFA recommends that the regulation should not set out a prescriptive minimum frequency of cleaning washroom facilities in workplaces. Duty to clean the washroom facilities should be dependent on frequency of use or need for cleaning and not a prescriptive timeline. Some washroom facilities are used more than others and require more frequent cleaning, while others are less used and do not need to be cleaned when they are not dirty. Given the variety of operations and arrangements for employer provided washroom facilities in farm workplaces, setting a minimum frequency of cleaning could become burdensome and costly with no added benefit for workers.

We understand that MLITSD is attempting to standardize regulations across all workplaces rather than having individual, sector-based regulations. While applying the standard of posting of washroom cleaning records across all workplaces may seem simple, without a sufficiently flexible approach, it may become administratively burdensome given the wide variety workplace arrangements, or unenforceable without expending significant inspection resources.

OFA appreciates the opportunity to comment on this proposed regulation for posting records of washroom cleaning should Schedule 4 of Bill 190, Working for Workers Five Act, 2024 pass.

Sincerely,

Drew Spoelstra

Drew Spoelstra
President

cc: OFA Board of Directors