

**FINDING OF EMERGENCY
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
REGARDING THE 2007 and 2010 CALIFORNIA PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5**

The adoption of these regulations or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

In January 2009, the Building Standards Commission (Commission) adopted regulations amending the California Plumbing Code (CPC) to allow the statewide use of cross-linked polyethylene (PEX) tubing, a type of plastic pipe, for potable water uses. The PEX regulations have been the subject of litigation. During the litigation, the court ordered that the PEX regulations must be “vacate[d] and set aside ...” pending the Commission’s preparation and certification of a Second Revised Draft Environmental Impact Report (SRDEIR). In June 2010, the Commission complied with the court’s order by repealing the PEX regulations, and the Commission prepared a SRDEIR that supports the adoption of PEX regulations and, if certified by the Commission, will constitute full compliance with the California Environmental Quality Act (CEQA).

In this regulatory action, the Commission proposes to adopt new PEX regulations and amend other regulations, as necessary, in order to allow the statewide use of PEX tubing. Given the extensive code adoption process, adherence to the schedule of a code adoption cycle would make the proposed building standards effective at the local level in late 2011 or in 2012. Existing law allows the use of PEX as an alternate material on a case-by-case basis, but does not mandate all of the PEX installation standards and mitigation measures identified in the EIR and SRDEIR. Unless statewide PEX standards are adopted on an emergency basis, there will be a delay of nearly 12 months or more in the effective date of these building standards, during which local jurisdictions may not uniformly and timely implement the installation standards and mitigation measures set forth in the EIR and SRDEIR. In light of the fact that the unrestricted use of PEX as an alternate material is currently being permitted in more than 200 local jurisdictions and that the EIR and SRDEIR identified mitigation measures that should be applied in all PEX installations, the Commission finds that:

1. The current published standards do not include the mitigation measures identified in the EIR and SRDEIR;
2. Adoption and approval of the proposed standards will include the mitigation measures and therefore provide for enhanced public health and safety in buildings that use PEX for potable water distribution;
3. Adoption and approval of the proposed changes will establish statewide standards for the use of PEX piping systems for potable water that will include the mitigation measures identified in the EIR and SRDEIR. These measures will avoid any significant environmental impacts that may occur as a result of the use of PEX; and

4. Adoption and approval of the proposed changes will establish conditions and restrictions that will provide additional health and safety measures beyond those identified in the EIR and SRDEIR.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code 18929. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Section 129850. The OSHPD is proposing this regulatory action based on Health and Safety Code Sections 1226, 1275, 129790 and 129850 and Government Code Sections 11346.1 and 11152.5.

INFORMATIVE DIGEST

Summary of Existing Laws

Health and Safety Code Section 1226 authorizes the Office to prescribe, in consultation with the Community Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.

Health and Safety Code Section 1275 authorizes the Office to adopt and enforce building standards for the physical plant of health facilities including hospitals, skilled nursing facilities and correctional treatment centers.

Health and Safety Code Section 129790 authorizes the Office to propose building standards for correctional treatment centers in cooperation with the Department of Corrections, Board of Corrections and Department of Youth Authority.

Health and Safety Code Section 129850 authorizes the Office to propose building standards, as necessary, in order to carry out the requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act. The Office is also authorized to submit to the California Building Standards Commission for approval and adoption of building standards related to the seismic safety of hospital buildings.

Government Code Section 11152.5 authorizes a state department to adopt regulations pursuant to the Government Code. Regulations which are building standards must be adopted pursuant to State Building Standards Law of the Health and Safety Code (commencing with 18901).

Government Code 11346.1(c) requires that building standards that are emergency regulations must be approved by the California Building Standards Commission.

Summary of Existing Regulations

Existing regulations pertaining to this regulatory action are contained in the 2007 and 2010 California Plumbing Code (California Code of Regulations, Title 24, Part 5), which are based upon the 2006 and 2009, respectively, Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials. The regulations being modified by this proposed action are contained in Chapters 6.

Summary of Effect

This regulatory action reestablishes previously repealed mitigation measures, adds new mitigation measures, and includes additional conditions and restrictions to the California Plumbing Code. The mitigation measures are currently identified in the EIR and SRDEIR. The additional conditions and restrictions are identified in the settlement agreement.

Comparable Federal Statute or Regulations

None

Small Business Effect

This regulatory action will not have an effect on small businesses, as the standards for hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers contained in building codes offer designers and owners an optional construction material. Also the size and design of a building has a bearing upon the effect, which is controlled by the designer and owner.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to this proposed action.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. These standards will apply to hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers.

FISCAL IMPACT STATEMENT(attached Form 399)

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**