

**FINDING OF EMERGENCY  
FOR  
PROPOSED BUILDING STANDARDS  
OF THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
REGARDING THE 2007 CALIFORNIA PLUMBING CODE (CPC)  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5  
(GRAYWATER STANDARDS)**

---

Government Code Section 11346.1 requires that any finding of emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subsection (a) of Section 11346.5 and a description of the specific facts demonstrating the need for immediate action.

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

On June 4, 2008, Governor Schwarzenegger signed Executive Order S-06-08 proclaiming that a statewide drought condition existed and directed the Department of Water Resources (DWR) to take specific actions to counter the drought.

In 2008, Senate Bill 1258 (Ch. 172, Stats. of 2008) was signed by the Governor enacting new statutes in the Health and Safety Code (Sections 17922.12 and 18941.7) and amending existing statute in the Water Code (Section 14877.1). These statutes, effective January 1, 2009, included requirements that directed the Department of Housing and Community Development (HCD) to propose to the California Building Standards Commission (CBSC) building standards for the construction, installation, and alteration of graywater systems for residential indoor and outdoor uses.

On February 27, 2009, Governor Schwarzenegger issued a proclamation declaring a drought to be in existence and a state of emergency to exist within California. This proclamation was based upon the circumstance of severe drought conditions that by reason of their magnitude is beyond the control of the services, personnel, equipment and facilities of any one local entity and requires the combined forces of a mutual aid region or regions to combat. The Governor found that a condition of extreme peril to the safety of persons and property exist in California caused by the current and continuing severe drought conditions and water delivery restrictions. The proclamation directed, to the extent allowed by applicable law, state agencies within his administration to prioritize and streamline permitting and regulatory compliance actions for desalination, water conservation and recycling projects to provide drought relief.

Existing graywater standards contained in the California Code of Regulations (CCR), Title 24, California Plumbing Code, Part 5, Appendix G are based upon requirements for private sewage disposal. These standards have been found to be overly prescriptive and antiquated, and not readily usable by persons seeking to install graywater systems for the purpose of water conservation.

The direction provided by the enactment of SB 1258 requires that HCD propose for adoption graywater standards during the next triennial code adoption cycle of the California Building Standards Commission (CBSC). The CBSC established the next adoption cycle effective January 1, 2009, and HCD has been developing its rulemaking, including graywater systems, in order to meet the schedule established by the CBSC.

Given the extensive code adoption process, adherence to the current triennial code adoption cycle schedule would make the proposed building standards effective at the local level on January 1, 2011, as estimated by the CBSC. A delay of nearly 18 months in the effective date of graywater building standards does not address the Governor's declared emergency for the effective conservation of California's water resources. In view of the urgency to conserve California's water resources, as deemed essential by the Governor's proclamation, and the desire of the Governor and the Legislature through enacted legislation, HCD proposes the adoption of these building standards through the emergency adoption process. HCD finds that:

1. *The executive order and proclamation issued by the Governor and the new provisions of law enacted by the Legislature have clearly indicated direction for the conservation of California's water resources as being essential and critical and that there be no undue delay in enacting measures to achieve this goal.*
2. *HCD has received significant comment from all stakeholders relative to the usage of graywater non-potable water reuse systems; mitigation of health related concerns; that current building standards addressing usage of graywater are not usable; and that the building standards developed through the HCD's focus group meetings are usable and represent a good beginning in this conservation effort. The potential of the public's ability to conserve water by the reuse of graywater is estimated to be 50% of a household's daily water use depending on the system type, locale and the number of occupants.*
3. *These proposed building standards offer a number of alternatives which have the added benefit of encouraging the development and installation of graywater systems that manufacturers, installers, contractors and homeowners would find usable and would when required be more likely to obtain permits and necessary approval(s). Testimony offered during HCD's focus group meetings suggested there are thousands of unpermitted graywater systems in usage principally due to the current poorly designed unusable building standards. While conservation of water resources is critical, so is the protection of human health. Unapproved, unregulated, and uncontrolled graywater systems could represent a hazard to human health.*
4. *Also, cities and counties that have previously experienced severe drought conditions and are allowing graywater systems, support the development and need for usable graywater building standards in order to standardize and enforce consistent statewide requirements. Additionally, building standards which promote usage and statewide uniformity generally have a higher acceptance from one locale to another and, consequently, would promote usage of such water conservation measures.*

#### **AUTHORITY AND REFERENCE**

The Department of Housing and Community Development proposes to adopt these building standards under the authority granted by Health and Safety Code Sections 17040, 17921, 17922 and 19990. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17922.12 and 18941.7.

#### **INFORMATIVE DIGEST**

##### Summary of Existing Laws

Existing state law governs the erection, reconstruction, movement, enlargement, conversion, alteration, repair, removal, demolition or arrangement of apartment houses, hotels and dwellings, including accessory buildings, facilities and uses thereto.

The existing Health and Safety Code 17922.12 directs HCD to adopt and submit for approval at the next triennial code adoption cycle, building standards for the construction, installation, and alteration of graywater systems for indoor and outdoor uses.

Additionally, current state law requires the building department of every city, county and city and county to enforce regulations published in the California Building Standards Code, as well as other rules and regulations promulgated by HCD.

##### Summary of Existing Regulations

Existing building standards pertaining to this regulatory action are contained in the 2007 California Plumbing Code (California Code of Regulations, Title 24, Part 5). The regulations being modified by this action are contained in Appendix G which governs "Gray Water Systems". To correlate with the format of the 2009 model Plumbing Code, HCD is proposing a new Chapter 16A, Part I "Nonpotable Water Reuse Systems" for adoption as emergency standards. Current standards applicable to the construction, installation or alteration of graywater systems for subsurface irrigation and other safe uses, are not practical and the Legislature has directed HCD to develop and modernize the graywater standards.

### Summary of Effect

This regulatory action makes critically needed changes to California building standards pertaining to graywater systems for residential dwellings. Specifically, this action will clarify and make specific the provisions of SB 1258 requiring HCD to develop within this triennial code adoption cycle, graywater building standards for statewide application to residential structures. Because SB 1258 was signed into law by the Governor and is currently in effect, these regulations will clarify the requirements of these new provisions of law for the affected public.

### Comparable Federal Statutes or Regulations

There are no comparable federal statutes or regulations.

### Small Business Effect

This regulatory action may have an effect on small businesses as the building standards contained in this proposal will require, in certain instances, installers, contractors and homeowners to obtain permits, provide design specifications and inspection of the graywater system, and properly install these systems using the correct materials which may result in some additional parts and labor.

## **POLICY STATEMENT OVERVIEW**

The broad objective of these proposed building standards is to comply with the Governor's executive order, proclamation and the purpose of SB 1258 (Ch. 172, Stats. of 2008). HCD proposes to revise the existing provisions of the California Plumbing Code (CCR, Title 24, Part 5):

- This bill charged HCD with developing building standards for the construction, installation, and alteration of graywater systems for residential application. The requirements of the bill specified that HCD:
  1. Convene and consult a stakeholder's group that includes members with expertise in public health, water quality, geology or soils, residential plumbing, home building, and environmental stewardship.
  2. Ensure protection of water quality in accordance with applicable provisions of state and federal water quality law.
  3. Consider existing research available on the environmental consequences to soil and groundwater of short-term and long-term graywater use for irrigation purposes, including, but not limited to, research sponsored by the Water Environment Research Foundation.
  4. Consider how graywater use impacts human health.
  5. Consider the circumstances under which the use of in-home graywater treatment systems is recommended.
  6. Consider the use and regulation of graywater in other jurisdictions within the United States and in other nations.
- This bill specifies that a city, county or other local agency may adopt after public hearing and enactment of an ordinance or resolution, building standards that prohibit entirely the use of graywater, or building standards that are more restrictive than the graywater standards adopted by the CBSC.
- The proclamation directed state agencies to prioritize and streamline permitting and regulatory compliance actions for desalination, water conservation and recycling projects to provide drought relief.
- Upon adoption of graywater building standards, the provisions in the Water Code, specifically Section 14877.1, terminate the authority of the Department of Water Resources to adopt and update standards for the installation, construction, and alteration of graywater systems in residential occupancies.

Therefore, the specific objectives of these proposed regulations are to:

- Develop and propose the emergency adoption of graywater building standards;
- Implement the provisions of the Governor's executive order, proclamation-and SB 1258;

Therefore, building standards must be adopted and effective immediately within the 2007 California Plumbing Code to ensure that California has clear and usable standards regarding the installation of graywater systems.

**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. (See above discussion).

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

**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: **YES, Energy and water savings due to a reduction in the amount of water needed to satisfy residential demand.**
- E. Cost or savings in federal funding to the state: **NO**

Estimate: The proposed regulatory changes may impose costs on manufacturers, installers, contractors and homeowners involved with the construction, installation or alteration of graywater systems. The extent of these costs is dependent on the use and type of system or features which have been designed into the system. The cost or savings of this regulatory action is unknown because the application of the building standards provides manufacturers, installers, contractors and homeowners specific requirements when designing and constructing graywater systems for residential occupancies. These proposed building standards have both prescriptive and performance criteria.