

Public Health's New Embargo Authority

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April 2007



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Roadmap

- What is embargo?
- Who may exercise embargo authority?
- What types of establishments and situations are subject to embargo authority?
- Under what conditions may food or drink be embargoed?
- What is the process for ordering an embargo?
- What are some alternatives to embargo?



What is embargo?

- An order from a public health official requiring a person to detain or hold food or drink that the official believes is either adulterated or misbranded
- Once embargoed, public health official must seek condemnation order from district or superior court



What is embargo?

- NOT a seizure order – a detention order
- Once embargoed, no one can remove or dispose of the food or drink without permission from one of the following:
 - Regional EHS (REHS), or DEH Director or his designee
 - Local health director
 - Dept. of Agriculture and Consumer Services (DACS)
 - Court



What is embargo?

- Important statutes
 - G.S. 130A-21: PH embargo authority
 - (a) Food or drink in regulated establishments
 - (b) Milk
 - (c) Shellfish, scallops, crustacea
 - G.S. 106-125: Embargo process
 - G.S. 106-129: Def'n of adulterated
 - G.S. 106-130: Def'n of misbranded
- Following discussion limited to food and drink other than milk and shellfish



Who may exercise embargo authority?

- Four choices
 - Regional EHS
 - DEH Director or his designee
 - Local health director, after consultation with an REHS or DEH Director/designee
 - DACS



Who may exercise embargo authority?

- Three key issues
 - (1) May not delegate authority to local EHS
 - EHS will be involved but must not issue order
 - Health director should make every effort to see the food or drink prior to issuing the order
 - If impossible
 - » Ensure that more than one person sees the food or drink (e.g., asst health director, supervisor)
 - » Fax either a signed order or note authorizing someone to sign the order on your behalf
 - » Go see the food or drink ASAP



Who may exercise embargo authority?

- Three key issues
 - (2) Health director must “consult with” REHS, DEH Director/designee prior to issuing an order
 - Intensity of consultation will likely vary
 - In-person
 - Telephone or email
 - DENR’s after hours/weekend embargo on-call number: (800) 385-4786



Who may exercise embargo authority?

- Three key issues (cont.)
 - (3) DACS must be notified whenever an embargo action is taken
 - 24/7 Number: (919) 733-7366
 - Have the following information available:
 - Product embargoed
 - Location of embargo
 - Disposition of food/drink
 - Reason for embargo
 - Source of product
 - DENR staff involved



What types of establishments are subject to embargo?

- Any establishment that is
 - Regulated under G.S. Chapter 130A (e.g., food and lodging, institutions, mass gatherings)
 - Regulated by Commission for Health Services but not included in Ch. 130A (e.g., day care, jails)
 - The subject of a communicable disease investigation under G.S. 130A-144



What types of establishments are NOT subject to embargo?

- Excepted from regulation under G.S. Chapter 130A (e.g., private clubs)
- Areas/products regulated by Dept. of Ag.
- Establishments regulated by Dept. of Ag.



Under what conditions?

- Adulterated (G.S. 106-129): food or drink has been mixed or altered such that it may result in human illness and/or death if consumed
 - Examples: rodent droppings, insects, flooding, obviously spoiled or decomposed



Under what conditions?

- Misbranded (G.S. 106-130)
 - Definition addresses a variety of different labeling and other issues
 - Not likely to be an issue for public health



What process will you follow?

- Identify suspect food or drink
 - EHS will probably be the first one to identify
- Seek voluntary disposal
- If not, order embargo
 - LHD must consult with DENR prior to issuing order
- File petition in district or superior court seeking condemnation order
 - Will need to work with county attorney or AG's office



Alternatives to embargo?

- Voluntary disposal
 - Majority of the time
 - Can explain embargo or other remedies but be careful not to threaten/coerce
- Permit action
 - May immediately revoke or suspend permit if imminent hazard



Alternatives to embargo?

- Abatement of an imminent hazard
 - Last resort only (e.g., if need to immediately seize or destroy)
- Abatement of a public health nuisance
 - Still requires a court process
- Injunction
 - Repeat offender?
- Misdemeanor



Questions?

