



Concurrent Session I: Public Health
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Game plan



- Public Health Concurrent
 - Regulatory Process
 - Public Health Remedies
- Hot Topics Concurrent
 - HIPAA Highlights for Administrators
 - Governance Issues



**REGULATORY
PROCESS**



Administrative Law: Rules

- Made by administrative bodies that have been authorized by legislature to make rules
- Due process: public notice and opportunity to comment
- Rule-making body adopts
- Rules Review Commission approves or objects
- Legislature may disapprove (reject) the rule
- If rule takes effect, it has "force of law"



NC Public Health Statewide Rules

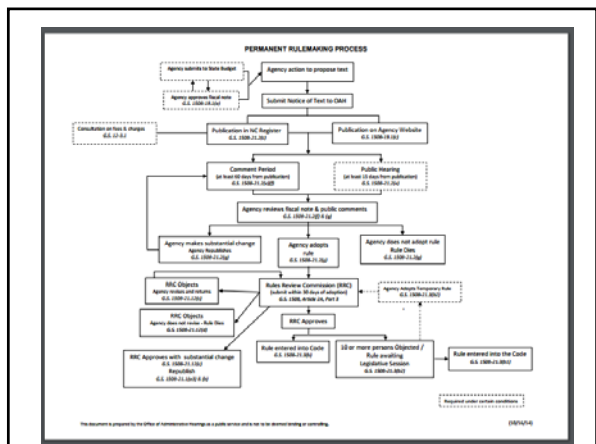
- Adopted by NC Commission for Public Health
- NC Administrative Code (NCAC)
 - Environmental health rules: Title 15A, Subchapter 18A
 - Other public health rules: Title 10A
 - Citation example: 15A NCAC 18A. 2650

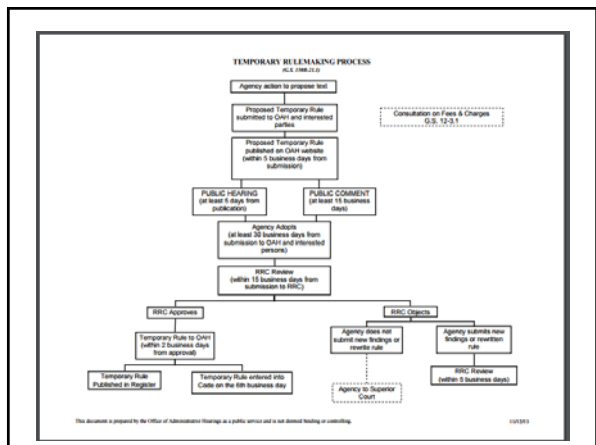


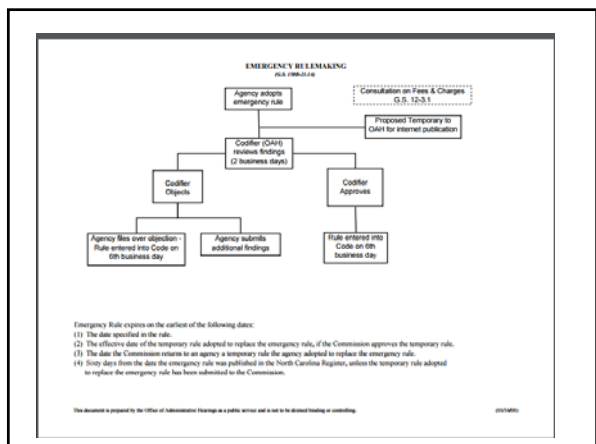
On-line at <http://reports.oah.state.nc.us/ncac.asp>

Let's take a look!









Emergency Rule expires on the earliest of the following dates:
(1) The date specified in the rule.
(2) The effective date of the temporary rule adopted to replace the emergency rule, if the Commission approves the temporary rule.
(3) The date the Commission returns to an agency a temporary rule the agency adopted to replace the emergency rule.
(4) Sixty days from the date the emergency rule was published in the North Carolina Register, unless the temporary rule adopted to replace the emergency rule has been submitted to the Commission.

State Tort Claims Act (STCA)

- Claim against local employee can be brought under STCA if:
 - Local employee authorized to enforce state rules
 - Claim of negligence arises out of enforcement of state rules
 - Local employee acting within scope of role as state agent when negligence occurred
- AG’s office defends claims
 - Only if state rules involved
 - Local rules → local attorney
- State pays damages if state rules involved
 - Issue: No budget line item;
 - Expect local government to be asked to contribute



PUBLIC HEALTH REMEDIES

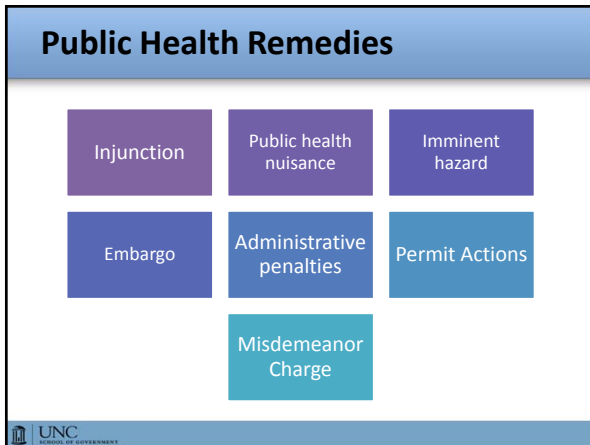


How do you get people to comply with public health laws?

- Usually seek voluntary compliance first—educate, persuade.
- If that doesn’t work, NC law provides several public health remedies – that is, legal means for enforcing the public health laws.







Questions about remedies

- What is a particular remedy?
- When *may* it be used?
- What is the process for using it?
- When *should* it be used?
- What if it doesn't produce the desired result?

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| Imminent Hazard – G.S. 130A-20 | Procedure |
|---|--|
| Summary | |
| <ul style="list-style-type: none"> An imminent hazard is a situation that, if no immediate action is taken, is likely to cause: <ul style="list-style-type: none"> An immediate threat to human life, An immediate threat of serious physical injury or serious adverse health effects, or A serious risk of irreparable damage to the environment. Either the state health director or a local health director may determine that an imminent hazard exists on private property and either issue an abatement order, or take direct action to abate the hazard. If the director elects to abate rather than order abatement, the health department will incur the costs. Ordinarily the department will have a lien on the property for the costs, but the lien may be defeated in some circumstances. In considering this remedy, it is important to keep in mind the key word immediate. The remedy should be used only if immediate action is necessary to protect human life, safety, or health, or to avoid irreparable damage to the environment. | <ol style="list-style-type: none"> Determine and document that an imminent hazard exists, referring to the statutory definition of "imminent hazard": a situation that, if no immediate action is taken, is likely to cause: <ol style="list-style-type: none"> An immediate threat to human life, An immediate threat of serious physical injury or serious adverse health effects, or A serious risk of irreparable damage to the environment. Local health director or state health director decides whether to issue an abatement order or directly abate the imminent hazard. <ol style="list-style-type: none"> Order: The order may be issued to the owner, lessee, operator, or other person in charge of the property, and may direct the owner to take the action(s) necessary to abate the hazard. Abate: If the director chooses to abate instead, he or she must first notify (or make a reasonable attempt to notify) the owner, lessee, operator, or other person in charge of the property. After the notification (or reasonable attempt) is made, the director is authorized to enter the property and take any action necessary to abate the imminent hazard. All actions by the health director should be documented with the date and time noted. If the director chooses to abate, the costs of abatement should be documented. If the health director elects to abate the imminent hazard, rather than ordering abatement, the health department will incur the costs of abatement but ordinarily will have a lien on the property for recovery of the costs. However, the lien may be defeated in either of two circumstances: <ol style="list-style-type: none"> If it is shown that an imminent hazard did not exist at the time of the abatement, or Even if an imminent hazard did exist, if the owner, lessee, operator, or any other person against whose property the lien has been filed can demonstrate that he or she was not culpable in the creation of the imminent hazard. |

Injunction (G.S. 130A-18)

Remedy

- A court order telling a person to stop doing something
- TRO, preliminary injunction, permanent injunction

May be used

- When a person violates a public health statute (GS Ch. 130A), a state public health rule, or a local board of health rule

Process

- Determine and document specific violation
- Work with department attorney or AG
- Local health director seeks injunction in Superior Court

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Public health nuisance (G.S. 130A-19)

Remedy

- An order directing a property owner or other person in charge of the property to abate a public health nuisance

May be used

- When the health director determines a **public health nuisance** exists on the property

Process

- Determine and document existence of public health nuisance
- Local health director issues abatement order
- If person does not comply, ask Superior Court to enforce

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What do those terms mean?

| Public health nuisance | Abate |
|--|--|
| <ul style="list-style-type: none">• Not defined in statute• Elements to consider:<ul style="list-style-type: none">• Situation on property• That interferes with the health of the public• In a way that is both substantial and unreasonable | <ul style="list-style-type: none">• Not defined in statute• What to consider:<ul style="list-style-type: none">• Specific actions• That are necessary• To terminate or reduce the public health problem |

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Imminent hazard (G.S. 130A-20)

Remedy

- Legal authority to act or order action to abate an imminent hazard

May be used

- When health director determines there is a situation that requires immediate action to avoid an immediate threat to human life, an immediate threat of serious physical injury, or a serious risk of irreparable damage to environment

Process

- Determine and document existence of imminent hazard
- Local health director may choose: order person in charge of property to abate, or directly abate the imminent hazard

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What do those terms mean?

| Imminent Hazard | Abate |
|--|--|
| <ul style="list-style-type: none">• Defined in G.S. 130A-2• A situation that is likely to cause:<ul style="list-style-type: none">• Immediate threat to human life, or• Immediate threat of serious physical injury, or• Immediate threat of serious adverse health effects, or• Serious risk of irreparable damage to environment | <ul style="list-style-type: none">• Not defined in statute• What to consider:<ul style="list-style-type: none">• Specific actions• That are necessary• To terminate or reduce the threat or risk that the situation creates |

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Imminent hazard: order vs. abate?

Order

- Issue abatement order to person in charge of property
- Order should direct person to take specific actions to abate the imminent hazard

Abate

- Make reasonable attempt to notify person in charge of property that abatement will occur
- Take actions to abate
- Health department will incur costs up-front but ordinarily acquires lien on property

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Is a condition on property ...

| | |
|--|---|
| <p>A public health nuisance?</p> <ul style="list-style-type: none">▪ No legal definition, but:<ul style="list-style-type: none">– “Nuisance” is a substantial and unreasonable interference with enjoyment of property– “Public nuisance” is an unreasonable interference with rights of the general public▪ Key terms: health, public, unreasonable, substantial | <p>An imminent hazard?</p> <ul style="list-style-type: none">▪ If no immediate action is taken, is likely to cause:<ul style="list-style-type: none">– An immediate threat to human life,– An immediate threat of serious physical injury,– An immediate threat of serious adverse health effects, or– A serious risk of irreparable damage to the environment. |
|--|---|

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Embargo (G.S. 130A-21)

Remedy

- An order to detain food or drink that is adulterated or misbranded
- Public health officials with embargo authority: state EH agency, local health director in consultation with regional specialist

May be used

- Public health's embargo authority applies only to establishments that are regulated by public health laws, or that are the subject of a communicable disease investigation

Process

- Affix tag to embargoed item(s)
- Warn all persons not to remove or dispose of item(s) without permission
- Petition a court for a condemnation order

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Administrative penalties (G.S. 130A-22)

Remedy

- Monetary fine imposed for violation of certain public health laws

May be used

- By state agency: violations of *state* OSWW laws, or state lead certification laws
- By local health director: violations of *local* OSWW rules, or state or local smoking statutes or rules

Process

- Determine and document violation & recommend penalty to be imposed
- Consult relevant state laws for procedures to follow and maximum amounts of penalties (vary by program and violation)

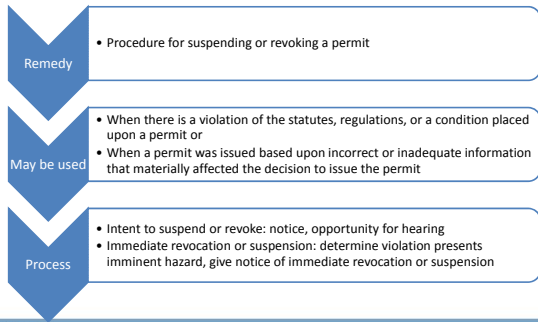
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Smoking law violations



1. Written notice of violation
2. Written notice of violation, notify administrative penalties possible
3. Administrative penalty of up to \$200 per violation

Permit actions (G.S. 130A-22)



What do those terms mean?

| Due process | Imminent hazard |
|---|---|
| <ul style="list-style-type: none"> • Notice & opportunity to be heard • Intent to suspend or revoke: <ul style="list-style-type: none"> • Advance notice of intent • Administrative hearing on request • Immediate suspension or revocation allowed if imminent hazard <ul style="list-style-type: none"> • No advance notice • After-the-fact opportunity to appeal | <ul style="list-style-type: none"> • A situation which, if no immediate action is taken, is likely to cause: <ul style="list-style-type: none"> • immediate threat to human life • immediate threat of serious physical injury • immediate threat of serious adverse health effects; or • serious risk of irreparable damage to the environment |




Rules of thumb for permit actions

Suspend → If problem can be fixed

Revoke → If problem can't be fixed

Sometimes the law dictates immediate suspension or revocation



Suspend? Revoke?



Misdemeanor (G.S. 130A-25)

Remedy


- Criminal charge for violating public health laws
- Class 1 misdemeanor (see G.S. 14-3)

May be used

- When a person violates any public health law or rule except those pertaining to smoking in public places

Process

- Determine and document specific violation
- Consult with attorneys (assistant DA, department)
- Initiate charge with magistrate in county where violation occurred
- Prepare for trial in District Court



Remedies problems

- Was there a violation of a public health statute or rule?
- What might be done before pursuing legal remedies?
- Which remedy would be appropriate for the situation? Why?
- How would the remedy be pursued in your department? Who would be involved? What would the roles of the different people be?



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