



Disclaimer

All of the important aspects of embargo cannot be covered in one hour.



Embargo Authority in North Carolina



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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-80
HOUSE BILL 2200**

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary of Environment and Natural Resources and or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when delegated the authority by the Commissioner of Agriculture, the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to

What is Embargo?

- An order from a public health official requiring a person to detain or hold food that may be adulterated or misbranded
- Once embargoed, must seek condemnation order from court



What is Embargo?

- A detention order - NOT a seizure order
- Once embargoed, no one can remove or dispose of the food or drink without permission from one of the following:
 - Regional EHS or DEH Director (or Director's designee)
 - Local Health Director
 - Dept. of Agriculture and Consumer Services (DACCS)
 - Court
- Only a judge can order the food destroyed



What is Embargo?

- Important statutes
 - G.S. 130A-21: PH embargo authority
 - (a) Food or drink in regulated establishments
 - G.S. 106-125: Embargo process
 - G.S. 106-129: Definition of adulterated
 - G.S. 106-130: Definition of misbranded



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



Adulterated



Castleberry Recall—2007



Castleberry Recall—2007



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Jalapeno Recall—2008



Who May Exercise Embargo Authority?

- Regional EHS
- Local Health Director, after consultation with a Regional EHS
 - What about Consolidated Agency Directors?
- Director of the Division of Environmental Health
- Director's Designee



Who May Exercise Embargo Authority?

- Three key issues:
 - ✓ May not delegate authority to local EHS
 - ✓ Health director must “consult with” Regional EHS
 - ✓ NCDA must be notified whenever an embargo action is taken



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 Public Health but not included in Ch. 130A (e.g., child care centers)
- The subject of a communicable disease investigation under G.S. 130A-144



What Types of Establishments are NOT Subject to Embargo?

- Exempt from regulation under G.S. Chapter 130A (e.g., private clubs)
- Areas/products regulated by NCDA
- Establishments regulated by NCDA



Scenario



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Alternatives to Embargo

- Voluntary disposal
- Permit action
- Abatement of an imminent hazard
- Abatement of a public health nuisance
- Injunction
- Misdemeanor





The Embargo Process

- Identify suspect food or drink
 - EHS will probably be the first one to identify
- Seek voluntary disposal - DOCUMENTATION
- If not, order embargo
 - LHD must consult with Regional EHS 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



The Embargo Process

- Documentation is important
- Photographs?
 - Temperature on the thermometer
 - Product identification (lot #s, brand)
- Size relationships
- Location
- Permission to take photos?



The Embargo Process

- The Health Director needs to see the situation
- If not available the Supervisor, Team Leader, or other EHS is to witness the action



Product Disposition Form

PRODUCT DISPOSITION FORM

1. Establishment Information.

Establishment Name		Address	
☐ Number			
Responsible Person		Date	
Title		Facility Type (if any)	

2. Description of Product(s).

Type of Product(s)	Quantity	Status: <input type="checkbox"/> Fresh <input type="checkbox"/> Frozen <input type="checkbox"/> Cooked <input type="checkbox"/> Raw
Were photographs taken? <input type="checkbox"/> Yes <input type="checkbox"/> No		

3. Description of Product(s) Conditions Requiring Action.

Product(s) was / were suspected of being: (check) **Adulterated** **Misbranded** as noted by the following conditions:

4. Disposition of Product(s) (check box by action taken).

VOLUNTARY DISPOSAL I do hereby agree to dispose of the product(s) specifically described in Section 2 of this form. I will dispose of the product(s) in the following manner:

Signature of Responsible Person: _____ Title: _____
Date: _____

Disposition Observed By: _____ Title: _____
Date: _____

NOTICE OF EMBARGO You will take notice that the items specifically described in Section 2 of this form have been embargoed because the undersigned has probable cause to believe that they have been (check) **Adulterated** **Misbranded** as evidenced by the specific conditions noted in Section 3 of this form. This action is authorized by N.C.G.S. 130A-21. A petition will be filed in district or superior court requesting an order of condemnation in accordance with N.C.G.S. 106-125. The court will review and act on the request in accordance with that law. A tag is affixed to the product(s) embargoed. All persons are warned not to remove or dispose of the product(s) until permission for removal is given by the N.C. Department of Health and Human Services, The N.C. Department of Agriculture and Consumer Services, or by the court in accordance with N.C.G.S. 106-125. It shall be unlawful for any person to remove or dispose of the embargoed product(s) without that permission.

Embargo Tag(s) Number(s): _____

Signature of Official: _____ Title: _____
Date: _____

DHHS 1002
Revised 0/0

VOLUNTARY DISPOSAL

NOTICE OF EMBARGO

Embargo

- Operator refuses to voluntarily discard product
- Affix Embargo tag
- Complete the "Product Disposition" form



Signing the Forms

- Health Director or Regional EHS
- If not immediately available:
 - Health director or Regional EHS may fax a signed letter or note allowing an authorized agent to sign on his or her behalf
 - Have authorized agent sign form and write “pursuant to oral order of ____ (name/title).”
- *Health director or Regional EHS sign ASAP

PRODUCT DISPOSITION FORM

1. Establishment Information:

Establishment Name		Address	
Establisher Person		Date	
Title		Facility Type (if any)	

2. Description of Product(s):

Quantity	Status: <input type="checkbox"/> Fresh <input type="checkbox"/> Frozen <input type="checkbox"/> Cooked <input type="checkbox"/> Other
Virus photograph taken? <input type="checkbox"/> Yes <input type="checkbox"/> No	

3. Description of Product(s) Conditions Requiring Action:

Product(s) was/were suspected of being: Spoiled Adulterated Misbranded as noted by the following conditions:

4. Disposition of Product(s) (check box by action taken):

VOLUNTARY DISPOSAL - I do hereby agree to dispose of the product(s) specifically described in Section 3 of this form and dispose of the product(s) in the following manner:

Signature of Disposition Person: _____ Title: _____ Date: _____

Checked/Obtained By: _____ Title: _____ Date: _____

NOTICE OF EMBARGO - You will agree before that the items specifically described in Section 3 of this form have been embargoed pursuant to the embargo and the embargo order is hereby that they have been embargoed.

Adulterated (SPOILED) - as defined by the specific conditions noted in Section 3 of this form. This action is authorized by 16 C.F.R. § 319.120. The food will be stored or segregated and embargoed as order of establishment in accordance with 16 C.F.R. § 319.120. The food will not be sold or otherwise distributed with the lot.

A tag is affixed to the product(s) embargoed. All persons are warned not to remove or dispose of the product(s) with permission for removal is given by the U.S. Department of Health and Human Services, The U.S. Department of Agriculture and Consumer Services, or its staff in accordance with 16 C.F.R. 319.120. It shall be unlawful for any person to remove or dispose of the embargoed product(s) without that permission.

Embargo Tag(s) Number(s): _____

Signature of Officer: _____ Title: _____ Date: _____



Embargo

- Food remains in establishment or in a location acceptable to the regulatory authority
 - Food is not seized
 - Establishment may not destroy the food
 - Document
 - location quantity
 - type brand
 - lot # other identifying information



Condemnation-- Destroying the Food

- County Attorney—Procedures will be different in each county—ASK NOW!
- Court—District or Superior
 - Show the law
 - Present your paperwork
 - Make your case
- Judge will decide—destroy or delay to allow establishment to present a case



Destroying Adulterated Food

- Where does it go?
 - Landfill
 - Dumpster
- Observe...do not assist with the disposal
- Denaturing



Destroying Adulterated Food

- Acceptable Methods
 - “Substances for Denaturing Adulterated Food Products”
 - Chlorine solution
 - Other suitable methods





Termination of Embargo

NOTICE OF TERMINATION OF EMBARGO

The embargo of product(s) at the following establishment: _____ on (date) _____, particularly described on the accompanying Product Disposition Form and affixed with the following tag(s) number(s): _____, is hereby terminated for the reason(s) indicated below:

1. Reason(s) for terminating embargo (check all that apply):

- Voluntary disposal.
- Disposed of as directed by a district or superior court judge in accordance with N.C.G.S. 106-125.
- Returned to establishment as directed by a district or superior court judge in accordance with N.C.G.S. 106-125.
- Other (Specify):

2. Description of disposition of product(s):

3. Official terminating embargo:

Signature:	Date:	Time:
Title:		

4. Embargo tag(s) / Product(s) disposition:

Tag(s) Removed by / Disposition witnessed by:	Date:	Time:
Title:		

EHS (Revised 7/12)

Hurricane Matthew Embargo



Hurricane Matthew Embargo

- Embargoed Food Items
 - Shredded Cheeses
 - Shell Eggs
 - Whole Milk
 - Expired Buttermilk
 - Vacuum sealed hamburger patties
 - Vacuum sealed pork chops
 - Bulk ground hamburger



Filing the Petition

STATE OF NORTH CAROLINA
 Plaintiff: Health Department
 Defendant: County Health Department
 Date: 6/2/17
SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT
 Sworn and Subscribed to before me on 6/2/17 by Linda Smadlin, County Attorney.

Our Day in Court

- Health Department filed petition
- Court Date Set
- Civil Court
- County Attorney, EH Supervisor, Health Director, EHS who conducted inspection, EH Regional Specialist



Evidence

- E-mail from City Power company stating the exact times this location was without power.
- Copies of General Statutes previously discussed.
- Reference to 15A NCAC 18A.2653(16)
- Reference to 3-501.15 of Food Code “Time as a Public Health Control”
- Copy of Beaufort County Loss of Power Policy



Results

- Judge ruled in our favor
- Order drafted by county attorney was signed by the judge.
- Food was destroyed in presence of EH Supervisor, EHS and EH Regional Specialist



COPY

NORTH CAROLINA
BEAUFORT COUNTY

FILED FILE NO: 16-CVD-739

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

BEAUFORT COUNTY HEALTH DEPARTMENT,)
Petitioner)
vs.)
ROGER M. MEYLAND D/B/A)
GRUB BROTHERS RESTAURANT,)
Respondent)

ORDER OF CONDEMNATION

THIS MATTER came on for hearing before the undersigned District Court judge presiding over the November 7, 2016 session of the Beaufort County District Court and the Court having heard the evidence finds and concludes:

- Respondent Roger M. Meyland operates and does business as Grub Brothers Restaurant located at 156 W. Main Street in the City of Washington, Beaufort County, North Carolina.
- Respondent's restaurant has refrigerators and freezers holding food used for preparation and serving the public.
- On October 8, 2016 Hurricane Matthew caused electric power to be lost to Respondent's business and it was not restored until October 10, 2016, a period of approximately 44 hours. Respondent's said refrigerators and freezer holding said food was without power for approximately 44 hours.
- Such food includes cheeses, shell eggs, buttermilk, whole milk, sandwich slices, beef patties, pork chops and hamburger meat.

NOTICE OF TERMINATION OF EMBARGO

The embargo of product(s) at the following establishment: Grub Brothers on (date) 11-7-16, particularly described on the accompanying Product Disposition Form and affixed with the following tag(s) number(s): 4200, is hereby terminated for the reason(s) indicated below:

1. Reason(s) for terminating embargo (check all that apply):

Voluntary disposal.
 Disposed of as directed by a district or superior court judge in accordance with N.C.G.S. 106-125.
 Returned to establishment as directed by a district or superior court judge in accordance with N.C.G.S. 106-125.
 Other (Specify): _____

2. Description of disposition of product(s):

Premium sandwich slices 10 lbs
 Angus Beef Patties 6 Boxes of 14 lbs
 Pork chops 10 lbs
 hamburger 2 chubs

3. Official terminating embargo:

Signature: Cheryl Jeff, R.E.H.S. Date: 11/7/16 Time: 11:20am
 Title: Environmental Health Regional Specialist

4. Embargo tag(s) / Product(s) disposition:

Tag(s) Removed by / Disposition witnessed by: Cheryl J. Jeff, R.E.H.S. Date: 11/7/16 Time: 11:20am
 Title: Environmental Health Specialist

EHS (Revised 7/17)

Important Contacts

- EH Food Defense Coordinator –
Veronica Bryant - **919-218-6943**
(EHS Embargo on-call number)
- NCDA&CS
 - Food & Drug 24-hour on-call
number: **919-270-2544**
- Intentional contamination
 - Local Law Enforcement
 - FBI



Environmental Health Section

Embargo Forms:

<http://ehs.ncpublichealth.com/forms.htm>

Larry Michael, State Environmental Health Director
larry.michael@dhhs.nc.gov
919-707-5855

Cindy Callahan, Head, Food Protection & Facilities Branch
cindy.Callahan@dhhs.nc.gov
919-707-5872



Thank You!

