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ENFORCEMENT STRATEGIES/CASE STUDIES

The following situations are actual illegal food sale issues addressed by local health departments. They are offered as case studies to reference when addressing similar issues. However, since each situation is different they should not be used as the definitive method by which to address specific issues.

**Case #1**

<b>Type of Activity:</b>	Non-permitted food sales from a mobile unit
<b>Applicable rule/ statute violations:</b>	§ 130A-248(b)
<b>Description:</b>	A vendor was selling packaged food at a construction site from a truck. Complicating factors included a language barrier.
<b>Enforcement Strategy:</b>	Notice of Violation (NOV); Class 1 Misdemeanor; Misdemeanor Criminal Summons
<b>Documentation:</b>	<p>An EHS from Wake County Environmental Health Services encountered a vendor selling packaged food from a truck at a construction site. The EHS approached the vendor, who claimed to not speak English, and asked the origin of the food. The vendor produced some food receipts from an area restaurant dated three months prior. The EHS advised the vendor to cease selling the food until the source could be verified. The EHS asked the vendor to come with an interpreter to the Wake County Environmental Health Services office for a meeting. At the office, the EHS learned that a NOV for illegal food sales had been issued to the same vendor during the prior year (see Appendix 4.1).</p> <p>At the meeting, the vendor said the food was being purchased from a restaurant in Wake Forest. The EHS provided a list of requirements that must be met in order to sell packaged food. The list was translated into Spanish by the interpreter. The list consisted of the following items:</p> <ul style="list-style-type: none"> <li>• Provide receipts and/or invoices from the restaurant where the food was purchased</li> <li>• Provide the name, address, and telephone number of the restaurant and the date the food was purchased</li> </ul>

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- Package all condiments in individual cups or portions; and
- Do not open the packaged food and/or further prepare/handle the food in any way once it is purchased; the food must be sold as received by the restaurant.

The EHS provided the vendor with a copy of 15A NCAC .2601 and the "Packaged Food" memorandum in Spanish.

The vendor purchased packaged food from the restaurant for several weeks after the meeting. The EHS verified the purchases through conversations with the restaurant operators and by reviewing the vendor's receipts. The EHS did not observe any further handling of the food at this time.

The EHS became aware that the vendor was committing the same violations again in a neighboring county. The EHS spoke with the Wake County attorney and decided to pursue a Class 1 misdemeanor charge. The EHS testified under oath before a magistrate regarding the violations and the magistrate issued a Misdemeanor Criminal Summons (see Appendix 3.1) to the vendor that was delivered to the vendor, ordering the vendor to appear in court (see Appendix 3.1). The vendor appeared in court and claimed that she did not understand when the EHS explained the consequences of her actions. The situation was explained to her again and she was given a new court date. On the second court date, the vendor claimed she did not fully understand the consequences of a guilty plea. The judge appointed an attorney and scheduled a new court date. On the third court date, her attorney was not present. A new court date was scheduled. On the fourth, and last, court date, the judge found her guilty and ordered her to comply with all laws regarding food service, fined the vendor \$100, ordered her to pay \$100 in court costs, gave her a 20 day suspended jail sentence, and one-year supervised probation.

**Contact Information:**

Wake County Environmental Services

**Supporting Materials:**

NOV; Misdemeanor Criminal Summons (See Appendix 3.1)

**Case #2**

<b>Type of Activity:</b>	Food sales exceeding the criteria allowed within §130A 250 (7)
<b>Applicable rule/ statute violations:</b>	§130A 250 (7)- <i>non-profit entity selling prepared food once a month for a period not to exceed two consecutive days.</i>
<b>Description:</b>	A church was selling food for a period that exceeded the criteria allowed by §130A 250 (7) at locations throughout Wilson County.
<b>Enforcement Strategy:</b>	Use of the N.C. Secretary of State website; Injunction (§130A-18)
<b>Documentation:</b>	<p>It came to the attention of the Wilson County Environmental Health Services (WCEHS) via complaints from a local restaurant that a church was selling prepared food near the restaurant and enticing customers to buy their food. The WCEHS investigated the complaint and explained to the minister the criteria of §130A 250(7). The minister was informed that the church could not sell food again within the same month. A letter was also sent to the minister.</p> <p>The WCEHS received additional complaints the following week. Its staff investigated and found that the same church was selling food again. The WCEHS again informed the minister that they could not sell food for the remainder of the month. The following week, more complaints were received. Staff investigated and found the same group of people selling food with the same equipment. They stated that the proceeds from the sales were going to the House of Refuge, a shelter that housed recovering drug addicts. It was suspected that the church and the House of Refuge were the same entity.</p> <p>The WCEHS contacted the office of the N.C. Secretary of State to find out if the church and the shelter had separate non-profit charters, thus making them two entities eligible for separate exemptions under §130A 250(7). The WCEHS found that only the church possessed a non-profit status. Therefore, the church was in violation of §130A 250(7) by exceeding the number of food sale exemptions within a month.</p> <p>After consultation with the Wilson County attorney, the WCEHS staff began to gather information to establish who was conducting the illegal food sales and how often the food sales were occurring. Staff were sent to the site of the illegal food sales. As they purchased food, the staff members documented conversations with the church members that explained that the proceeds of the food sales were for the church.</p>

## Case #2 - continued

To prove that the church and shelter were the same entity, the staff contacted a local meat packing company where the church purchased ribs for the sales. The packing company stated that the ribs were sold every week to the church. The shelter did not purchase any ribs. The WCEHS also contacted a customer who had purchased food from the church on two separate weekends within the same month. The customer had written checks for both purchases. The checks were stamped with the name of the church when processed, not the shelter.

With this evidence, WCEHS consulted with the Wilson County Health Director and Wilson County attorney. A decision was made to seek an injunction in Superior Court to stop the food sales. The Wilson County attorney, along with staff members of the WCEHS, presented the evidence collected to a superior court judge. The judge issued an injunction that ordered the church not to operate once a month for a period not to exceed two consecutive days.

**Contact Information:**

Wilson County Environmental Health Services

**Supporting Materials:**

Verification for Injunction (See Appendix 3.2)



## Case #3

<b>Type of Activity:</b>	Non-permitted food sales within agricultural fields
<b>Applicable rule/ statute violations:</b>	§ 130A-248(b)
<b>Description:</b>	Migrant workers hired to harvest blueberries were purchasing meals prepared and served illegally from trunks of cars and backs of vans while in the fields. Complicating factors for enforcement included language barriers, geographical conditions, and lack of understanding concerning the potential dangers from illegal food sales from the migrant workers and blueberry farmers.
<b>Enforcement Strategy:</b>	<ul style="list-style-type: none"> <li>• Use of the N.C. Blueberry Grower’s Association to emphasize the potential public health impact on the agricultural products</li> <li>• Use of joint surveillance activities with local law enforcement agents and enforcement of §130A-248(b)</li> <li>• Use of Spanish language materials to gain understanding with illegal food vendors and migrant workers; and</li> <li>• Education on alternate means of providing meals to workers while in the field</li> </ul>
<b>Contact Information:</b>	Bladen County Health Department, Environmental Health Program
<b>Documentation:</b>	<p>In the summer of 2003, the Bladen County Health Department (BCHD), Environmental Health Program was made aware of illegal food sales occurring within privately owned blueberry fields during the harvesting season. Migrant workers were purchasing food from non-permitted food vendors while in the blueberry fields. The food vendors prepared the food either at home or within the fields. Sanitation conditions, lack of adequate refrigeration, lack of food safety knowledge, and many other factors created a high potential for foodborne illness occurrences. Thus, with minimal handwashing stations available in the field, the potential for cross contamination of the blueberries was high.</p> <p>The EHS visited the fields several times and witnessed the sale of illegally prepared food. However, several factors complicated the documentation and enforcement of §130A-248(b). First, the geography of the region itself presented the illegal food vendors with many different means of avoiding detection during surveillance activities. The fields were inundated with small farm roads that provided the</p>

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vendors with the means of avoiding the EHS. Second, the vast majority of the migrant workers and illegal food vendors spoke only Spanish, presenting a communication barrier that was not easily overcome initially. Third, the farmers were unaware of the potential public health impact that could result from workers contracting foodborne illnesses from illegal food sales. Thus, they were uncooperative with the efforts of the EHS.

To address these issues, BCHD used a strategy that encompassed the cooperation of the farmers, education of the migrant workers, surveillance and enforcement of illegal food sales, and use of alternative (legal) means for providing meals to workers while in the fields.

- The blueberry growers and the N.C. Blueberry Association were contacted through the cooperation of the Agricultural Extension office. The environmental health coordinator spoke at an associational meeting and explained the potential problems that could result from the illegal sale of prepared food, with an emphasis on the financial impact to the grower. It was explained that foodborne illnesses in the field could lead to tainted blueberries being shipped to General Mills and other buyers. The meeting was followed up by inviting the president of the Association to solicit input from the growers. Through ongoing contact with the president, BCHD crafted a strategy with the growers input that would keep the illegal vendors out of the field. The Bladen County Health Department staff sent a letter to each grower approximately one-two months before the start of the next season re-emphasizing the public health impact and outlining steps that the grower can take to better control the illegal sale of prepared food in the fields.
- The BCHD offered alternate suggestions for the feeding of the migrant workers by locating permitted establishments that were willing to supply meals to the workers in the fields through the use of mobile food units, pushcarts, or "cambro-style" insulated units.
- The BCHD spoke with local law enforcement officials and gained support in ceasing illegal sales.
- The BCHD performed unannounced inspections of the agricultural fields to document and cease any illegal food sales. The threat of local health department personnel randomly patrolling the fields deterred some activity, especially when the patrols were done in conjunction with local law enforcement personnel.

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- The BCHD developed and used Spanish language materials, such as the Spanish version of the .2600 rules, NOVs, legal documents, and informational documents. The BCHD also brought a Spanish-English interpreter on several of the surveillance trips.
- The BCHD documented all observed activity. A digital camera was especially useful in documenting vehicles, license tag numbers, and identifying the food sellers. The BCHD ensured that illegal food sales were ceased immediately.
- The BCHD spoke with the county District attorney concerning the General Statute violations and the threat to public health. Bladen ensured that the district attorney was aware of pertinent statutes, such as 130A-25 and 130A-248(a). By making them aware of the issue and the upcoming enforcement efforts, the district attorney was more cooperative in preparing for the prosecution of offenders.

### Supporting Materials:

The complete strategy used by the Bladen County Environmental Health Program was summarized within a memorandum released by the NCDENR on July 28, 2004 (Appendix 3.3)



## Case #4

<b>Type of Activity:</b>	Illegal caterer preparing food in a private residence
<b>Applicable rule/ statute violations:</b>	§130A 248
<b>Description:</b>	An individual was operating a restaurant and catering service from his home
<b>Enforcement Strategy:</b>	Notice of Violation (NOV), Civil Summons
<b>Documentation:</b>	<p>The Davidson County Environmental Health Services (DCEHS) received complaints from neighbors and area restaurants regarding an individual operating a restaurant and catering service within his private residence. The individual was also leasing utensils and cooking equipment and returning them to the residence for cleaning. The individual advertised his catering service within the local newspaper.</p> <p>The health department received a contract showing the menu, with eating and drinking utensil options and charges, for a local event being catered by the individual. The DCEHS sent a NOV letter stating that compliance with 15A NCAC 18A .2600 is required in order to cater (see Appendix 3.3). After this letter was sent to the individual, an additional complaint was received by the DCEHS regarding another illegally catered event.</p> <p>The Davidson County Health Director filed a complaint against the individual for operating in violation of §130A 248 and a civil summons was issued (see Appendix 3.3). The summons ordered the individual to appear in district court to answer the complaint. The defendant was found guilty and a Consent Judgment was issued that ordered the individual from preparing and selling from his residence and leasing utensils and cooking equipment and returning them to the residence for cleaning (see Appendix 3.3). However, the Consent Judgment allowed the individual to provide services as a personal chef. To do so, the individual must provide the DCEHS a written agreement made between the individual and the party for which he will provide his services. The individual must obtain approval from the DCEHS prior to providing personal chef services.</p>
<b>Enforcement Strategy:</b>	Davidson County Notice of Violation, Civil Action
<b>Supporting Materials:</b>	NOV Letter; Civil Summons; Consent Judgment (See Appendix 3.4)
<b>Submitted by:</b>	Davidson County Environmental Health Services