The Embargo Process

Food Protection Program
EHS/DPH/NCDHHS

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History

- Pre-2006 -- G.S. 130A-21
  - DENR authority for milk and shellfish
  - NCDA&CS authority for all other food and drink

- Study committee recommended expanding DENR and LHD authority

- S.L. 2006-80 -- Expands authority significantly

- 2011 Reorganization:
  - G.S. 130A-21: DHHS Authority for the Embargo of Food and Drink
  - Milk embargo transferred to NCD&A-CS
  - Shellfish embargo remained with DENR
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 (EHRS), or EHS Chief or his designee
  - Local health director
  - N.C. Dept. of Agriculture and Consumer Services (NCDA&CS)
  - Court
What is Embargo?

- Important statutes
  - G.S. 130A-21: DPH/NCDHHS embargo authority
    - Food or drink in regulated establishments
  - G.S. 106-125: Embargo process
  - G.S. 106-129: Def’n of adulterated
  - G.S. 106-130: Def’n of misbranded
Who may exercise embargo authority?

- Four choices
  - EH Regional Specialist (EHRS)
  - EHS Chief or designee
  - Local health director, after consultation with an EHRS or EHS Chief/designee
  - NCDA&CS
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
Who may exercise embargo authority?

- Three key issues (cont.)
  2) Health director must “consult with” EHRS, EHS Chief/designee prior to issuing an order
    - Intensity of consultation will likely vary
      - In-person
      - Telephone or email
Who may exercise embargo authority?

- Three key issues (cont.)
  3) NCDA & CS must be notified whenever an embargo action is taken
  - Have the following information available:
    - Product embargoed
    - Location of embargo
    - Disposition of food/drink
    - Reason for embargo
    - Source of product
    - EHS 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 Public Health but not included in Ch. 130A (e.g., child 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)
- NCDA&CS jurisdiction
  - Areas/products regulated by NCDA&CS
  - Establishments regulated by NCDA&CS
What criteria must a food meet to be eligible for embargo action?

- **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
Discovery

- The Environmental Health Specialist will discover situations requiring embargo
  - Complaints
  - Outbreak Investigations
  - Inspections
  - Intentional Contamination
  - Illegal Operations
Adulterated or Misbranded Food or Drink

• What are the options?
  • Voluntary Disposal
  • Embargo
  • Imminent hazard
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
  - Longevity
- Misdemeanor
  - Repeat Offender
Selling Points for Voluntary Disposal

- Increased liability if food is sold or served
- Voluntary action will be recorded on the inspection form
  - Demonstrates responsible action by the operator
Selling Points for Voluntary Disposal

- Subject to public records law
  - Could become public knowledge

- In their best long-term interest
Voluntary Disposal

• Do’s
  • If the responsible person agrees to voluntary disposal, then document on the inspection form

• Don’ts
  • Do not assist with the disposal
    • Do not carry to the dumpster
    • Do not pour chlorine solution on it
  • Do not take the food with you
Voluntary Disposal

- Acceptable Methods
  - “Substances for Denaturing Adulterated Food Products”
    - Chlorine solution
  - Other suitable methods
Operator Refuses to Voluntarily Dispose—then Embargo

- **Contact**
  - Health Director (or Acting Health Director)
    - Must consult with the EHRS, EHS Chief or designee
  - Health Director not available?
    - Contact the EHRS, EHS Chief or designee
  - If unable to contact or after hours, call (910) 840-4607
  - NCDA & CS
Highly Recommended

- The Health Director needs to see the situation
  - If not available, the Supervisor, Team Leader, or other EHS is to witness the action
  - As soon as HD is available, HD goes
Take Photographs

- What to photograph?
  - Temperature on the thermometer
  - Product identifying info (lot #, brand)
- Size relationships
- Location
- Right to take pictures?
Contact

- Who else should be contacted?
  - In each case NCD\(\text{A}&\)CS
    - Food & Drug 24-hour on-call number
      - 919-733-7366
  - In the case of intentional contamination
    - Local Law Enforcement
    - FBI
    - EHS Food Defense Coordinator
The Embargo Process

- Explain the Embargo process to the responsible person
  - Offer a last opportunity to voluntarily destroy, no?
- Issue Embargo
  - Owner may decide now to destroy voluntarily--allow
- Detention
  - Food and/or drink cannot be moved
  - Explain that appeal is through the court
The Embargo Process

- Affix Embargo tag
- Complete “Product Disposition” form
Signing the Forms

- Health Director, EHRS (or EHS Chief or designee)
- Last resort
  - Have health director or EHRS fax a signed letter or note authorizing someone to sign on his or her behalf
  - Have EHS sign form and write “pursuant to oral order of ___ (name/title)” and have health director or EHRS sign ASAP
The Embargo Process

- Food remains in establishment or in a location acceptable to the health authority
  - Food is not seized
  - Establishment may not destroy the food
- Document
  - location
  - quantity
  - type
  - brand
  - lot #
  - other identifying information
Food may be relocated provided that it is protected from contamination
  - The responsible person must handle relocation; health department should not store
  - EHS, EHRS, and/or health director should be informed prior to relocation
    - EHS should document new location
    - EHS should check quantity, type, etc.
Embargo

- If food cannot be stored without risk to public health
  - Food could be considered an imminent hazard
  - Possible solutions in lieu of embargo
    - Permit action
    - Abate the hazard
Sampling the Food

- When to sample
  - Outbreak investigation
  - Intentional contamination
  - To determine adulteration

- Where is it sent?
  - SLPH, Ag, SBI

- What if the establishment wants to test?
  - Does EHS need to be present? YES!
Sampling the Food

- Chain of custody
- Testing takes time—check on the food during this time—same quantity, location, etc.
Sampling the Food

- Test results are good—Lift Embargo
  - Affix Lab results to “Notice of Termination of Embargo”
  - Affix any notes on visits to check on integrity of the food
- Their results are negative; ours are positive
  - Use our results
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
Termination of Embargo

- Health Director
- EHRS
- EHS Chief or designee
- NCDA&CS
- Court
Embargo and Voluntary Disposal

- Preparation
- Standard Procedures
- Response time
- Communication
- Documentation
Questions?

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