Embargo Authority

Cris Harrelson
DPH/EH Section
Embargo – Roadmap

- A brief history of embargo authority
- 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?
Embargo

- History
  - Pre-2006 -- G.S. 130A-21
    - DENR authority for milk and shellfish
    - DACS authority for all other food and drink
  - Study committee recommended expanding DENR and LHD authority
  - S.L. 2006-80 -- Expands authority significantly
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
Who may exercise embargo authority?

- Three key issues (cont.)
  (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
Who may exercise embargo authority?

- Three key issues (cont.)
  - DACS must be notified whenever an embargo action is taken
    - Have the following information available:
      - Product embargoed - Reason for embargo
      - Location of embargo - Source of product
      - Disposition of - DENR staff involved
        food/drink
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)
- Dept. of Agriculture jurisdiction
  - Areas/products regulated by DACS
  - Establishments regulated by DACS
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 or Misbranded Food or Drink

- What are the options?
  - Voluntary Disposal
  - Embargo
  - Imminent hazard
  - Others
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

- Demonstrates responsible action by the operator
- Subject to public records law
- In their best long-term interest
Voluntary Disposal—Do’s

- If the responsible person agrees to voluntary disposal AND if embargo would be used otherwise, then complete the Voluntary Disposal portion of “Product Disposition” form
- Don’t rely on the responsible person to sign
  - Need owner/operator
Voluntary Disposal—Don’ts

- Do not assist with the disposal
  - Do not carry to the dumpster
  - Do not pour bleach on it
- Do not take the food with you
PIC Refuses to Voluntarily Dispose--then Embargo

- **Contact**
  - Health Director (or Acting Health Director)
    - Consult with the REHS, Director DEH/Director’s Designee
  - Health Director not available?
    - Contact the REHS, DEH Director/Designee
  - If unable to contact or after hours, call the EHSS Embargo on-call number:
    - (910) 840-4607
Highly Recommended !!!

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

• Who else should be contacted?
  ◦ In each case DACS
    • Food & Drug 24-hour on-call number
      • 919-733-7366

• If intentional contamination is suspected
  • Local Law Enforcement (Always first)
  • Food Defense Coordinator
    • (910) 840-4607
Embargo

- Explain embargo process
- Affix Embargo tag
- Complete “Product Disposition” form
Product Disposition Form

- Signed by Health Director, REHS, Director DEH/Desigee
- Last resort
  - Have health director or REHS 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, REHS, Director/Designee sign ASAP
Embargo

- Food remains in establishment or in a location acceptable to the health authority
  - Food is not seized
  - Establishment may not destroy the food
Take Photographs

- **What to photograph**
  - Temperature on the thermometer
  - Product identifying info (lot #, brand)

- **Size relationships**

- **Location**

- **Right to take pictures?**
Condemnation--
Destroying the Food

- 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
Disposal of Adulterated Food
Termination of Embargo

- Health Director
- REHS
- Director DEH/Designee
- DACS
- Court
Keys to Success

- Preparation
- Standard procedures
- Response time
- Communication
- Documentation