



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 NCDA&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 NCDA&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

- INAT URAFI

Front

Back

NO. 000001 This stub is to be retained by official and attached to Product Disposition Form.

Product(s) Tagged:	Quantity of Product(s):
N.C. EMBARGOED	(SEE REVERSE)

N.C. EMBARGOED

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

Embargo -- Relocation

- 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

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):

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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: _____		

Instructions for Completing the "Notice of Termination of Embargo"

At the top of the form blank spaces are provided for the name of the establishment and the date the embargo action was originally initiated. Record the serial number(s) of the tag(s) placed on the product(s) at the time of embargo. Note: this information must be recorded exactly as it appears on the applicable Product Disposition Form.

Complete the following:

Section 1. Check the reason(s) for terminating the embargo. In the case of "Other" describe the reason(s).

Section 2. Describe the disposition of the product(s).

Section 3. The official (NCDENR or NCDA&CS) terminating the embargo shall sign; indicate his/her title, the date, and the time the embargo was terminated.

Section 4. The witness (environmental health specialist, regional environmental health specialist, or health director) that remove the tag(s) and/or observe the product(s) disposition shall sign; indicate his/her title, the date, and the time. Note: the termination date may be the same date or a date prior to the removal of the embargo tag(s).

Embargo and Voluntary Disposal

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



Questions?

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