

Program        Foodservice Protection

Subject        Foodservice Enforcement Procedures

Objective      The goal of statewide foodservice protection services is the prevention of foodborne illness. When a foodservice operation presents a substantial and imminent health hazard or has flagrant or continuing violations of the regulations the Department has a duty to act to correct or discontinue such operation.

Authority      **Code of Virginia**

- §35.1-2        Enforcement;
- §35.1-6        Orders;
- §3 5.1-7       Penalties, injunctions, civil penalties and charges for violations;
- §35.1-11       Regulations generally;
- §35.1-18       License required...; and,
- §35.1-22       Periodic Inspections,.

**Rules and Regulations of the Board of Health, Commonwealth of Virginia,  
Governing Restaurants**

- §2.4        Application of the Administrative Process Act;
- §2.15        Suspension of a Permit;
- §2.16        Revocation of a Permit;
- §2.19        Periodic Inspection;
- §2.20        Inspection Report;
- §2.21        Correction of Violations; and,
- §2.23        Enforcement of Regulations,

Public Health Rationale: Our mission, of preventing foodborne illnesses achieved through the assurance that foods served to the public are safe. In extreme situations, when a foodservice operator is unwilling or unable to comply with the regulations, the Department must be prepared to exercise its regulatory authority to cause such operations to cease.

Background    The Rules and Regs Governing Restaurants define the responsibilities and duties of the State Board of Health, the State Health Commissioner, and the District Health Director. There is a need to provide updated guidance (to replace memo dated July 24, 1990) on enforcement procedures (tools) available to district food protection programs-

Procedures

Administrative Enforcement Tools

- 1) **Suspension of Permit** should be considered when in the professional judgement of the Environmental Health Specialist (EHS) the continued operation of the foodservice presents a substantial and imminent threat to the public health. Substantial and imminent threats" to the public health include, but are not limited to:
- Sewage backup into the food preparation, food storage, or foodservice areas;
  - Substantial loss of normal operating water pressure, no hot water, or a contaminated water supply;
  - Loss of electrical power, causing the establishment to be operated in an unsafe or unsanitary manner;
  - Communicable disease in foodservice workers which, *in the judgement of the District Director*, poses a serious public health threat;
  - Fire in the food preparation, food storage, or foodservice areas causing the establishment to be operated in an unsafe or unsanitary manner,
  - Loss of refrigeration, which results in unsafe storage of potentially hazardous foods;
  - Infestation of rodents, or other pests, which have contaminated food, food products, and/or food equipment;
  - Continuing foodborne illness which, *in the judgement of the District Director*, is not abated by control measures;
  - Structural damage or flooding in the food preparation, food storage, or foodservice areas causing the establishment to be operated in an unsafe or unsanitary manner;
- and,
- Any other situation which, *in the judgement of the District Director*, represents a substantial or imminent public health threat.

The EHS should:

- fully document the violations observed and necessary corrective actions (FHS-152);
- clearly state, verbally and in writing, the recommendation that the operator voluntarily discontinue foodservice until necessary corrective actions have been confirmed by follow-up inspection;
- document the operator's compliance, or refusal to comply, with the recommendation to discontinue foodservice; and,
- immediately inform the district supervisor, manager, and/or director of the action taken.

If the operator refuses to comply with a recommendation to discontinue foodservice and the District Director concurs that the continued operation represents a substantial or imminent public health threat the District Director may

suspend the permit without a hearing. In this event the Department should notify the operator (and permit holder) in writing of the suspension (see Attachment 1, Notice of Suspension). Such notice should:

- be hand delivered to the operator, with signed receipt;
- sent by certified mail to the permit holder; and,
- include notice of the right to a hearing, if desired, by submitting a written request within ten days of receipt of notice of suspension.

if the operator complies with the suspension and requests a hearing the hearing shall be granted within three working days of the receipt of request.

If the operator complies with the suspension and completes the necessary corrective actions the permit may be reinstated upon verification of corrective actions by follow-up inspection.

If the operator refuses to comply with the suspension the District Director, in consultation with the Office of the Attorney General, may consider criminal or civil enforcement options.

**2) Revocation of Permit** should be considered when in the professional judgement of the Environmental Health Specialist (EHS) the operation of the foodservice presents flagrant and/or continuing violations. Flagrant violations are those of a glaring or conspicuous nature which cannot be condoned. Continuing violations are specific violations which have been cited on previous inspections and either have not been corrected or have been corrected but reoccur upon subsequent inspections.

The EHS should:

- fully document the violations observed, necessary corrective actions, and specified date for completion of corrective action (F-HS- 1 52);
- prepare a notice of violation letter (see Attachment 2, Notice of Violation);
- consult with the district supervisor, manager, and/or director on the need for enforcement action;
- conduct a follow-up inspection after date specified for completion of corrective actions; and,
- fully document the extent to which violations previously observed have been corrected or corrective actions undertaken (EHS-152).

If the operator has failed to correct the violations previously observed, or to have corrective actions underway, the District Director may revoke the permit. In this event the Department should notify the operator (and permit holder) in writing of the revocation (see Attachment 3, Notice of Revocation). Such notice should:

- be hand delivered to the operator, with signed receipt;
- sent by certified mail to the permit holder; and,
- include notice of the right to a hearing, if desired, by submitting a written request

within ten days of receipt of notice of revocation,

The Environmental Health Manager or Health Director may choose to invite the operator to an informal conference at any point in this procedure. The purpose of such a conference would be to assure that the operator understands the nature and significance of the violations and to negotiate a compliance schedule. A verbatim record of such a conference need not be taken, but a written summary of the issues and conclusions should be prepared.

3) **Decision Not to Revalidate Permit** is addressed in PIM #95-06,

#### Professional Judgement

The decision to employ these procedures, to suspend, revoke, or decline to revalidate permits, should reflect a consensus among EHS, EH Manager, and Health Director that the operator has proved unwilling, or unable, to bring the operation into compliance.

Responsibility: The Health Director is responsible for the exercise of the authority delegated to him/her by the regulations and the Commissioner.

- The district Environmental Health Manager is responsible for the implementation of these procedures by the district foodservice protection program.
- The local Environmental Health Specialist/Senior is responsible for the assessment and maintenance of compliance in specific foodservice establishments.

Effective Date: February 1, 1996

Approved by

Interim Director  
Division of Food and Environmental Services

Endorsed by.

Director  
Office of Environmental Health Services

Attachment 1: Notice of Suspension

[Date]

**Notice of Suspension of Permit**

CERTIFIED MAIL

[Foodservice Operator]  
[Address]  
[City, State, Zip]

Re [XYZ Restaurant)  
[Street Address]

Dear [Foodservice Operator]:

An inspection, conducted by the [lhd] Health Department on [date of inspection], reveals that [XYZ Restaurant] is in violation of the Rules and Regulations of the Board of Health, Commonwealth of Virginia, Governing Restaurants and the continued operation constitutes a substantial and imminent threat to the public health.

Upon receipt of this notice your permit to operate is suspended without a hearing and all foodservice operations shall cease immediately. The restaurant shall remain closed until the [lhd] Health Department grants permission to re-open. This permission shall be forthcoming when the public health threat has been corrected and verified by a re-inspection of the restaurant.

The violations watch require complete corrective action are the following:  
[cite regs, describe violations,]

Former permit holders have a right to a hearing after the suspension of their permit. If you desire to request a hearing the request must be made in writing within ten days of receipt of this notice.

If you have any questions you may call [EH Manager] at [EH phone no.]

Sincerely,

[Name of Health Director]  
Director of Health

cc Office of Attorney General

Attachment 2: Notice of Violation

[Date]

**Notice of Violation**

CERTEFMD MAIL

[Foodservice Operator]  
[Address]  
[City, State, Zip]

Re: [XYZ Restaurant]  
[Street Address]

Dear [Foodservice Operator]:

An inspection, conducted by the [lhd] Health Department on [date of inspection], reveals that [XYZ Restaurant] appears to have flagrant or continuing violations of the Rules and Regulations of the Board of Health, Commonwealth of Virginia, Governing Restaurants.

This letter serves to notify you of the conditions noted during that inspection and requires corrective action within the time limits specified. Failure to make corrections may result in the relocation of the permit to operate this establishment.

The violations which require complete corrective action are the following:  
[cite regs, describe violations, give correction dates]

Your prompt attention to these conditions is essential to the continued operation of your establishment in compliance with the Rules and Regulations of the Board of Health, Commonwealth of Virginia, Governing Restaurants.

A follow-up inspection will be conducted by this department within thirty (30) days. An opportunity for a hearing on the inspection findings, a correction time limit, or both, shall be granted provided a written request is filed with the [lhd] Health Department within ten (10) days following the receipt of this notice. If you have any questions you may call [EH Manager] at [EH phone no.]

Sincerely,

[Name of EH Manager]  
Environmental Health Manager

cc: (Name of Health Director)  
Director of Health

Attachment 3: Notice of Revocation

[Date]

**Notice of Revocation of Permit**

CERTIFIED MAIL

[Foodservice Operator]  
[Address]  
[City, State, Zip]

Re [X'YZ Restaurant]  
[Street Address)

Dear [Foodservice Operator]:

This letter is to inform you that in accordance with §35.1-22 of the **Code of Virginia, §2.16 of the Rules and Regulations of the Board of Health, Commonwealth of Virginia, Governing Restaurants**, and the Notice of Violation letter dated [date of NOV] your permit to operate a restaurant [permit no.] will be revoked in thirty (30) days following service of this notice.

The compliance reinspection, conducted by the [lhd] Health Department on [date of inspection], Documented a continued failure to correct the violation noted within the time periods specified. The revocation of your permit is based upon the following areas of non-compliance:

[cite regs, describe violations,]

The permit will be revoked in thirty (30) days unless a written request for a hearing is made in writing within ten days of receipt of this notice.

If you have any questions you may call [EH Manager]. at [EH phone no.].

Sincerely,

[Name of Health Director]  
Director of Health

cc: Office of Attorney General