Enforcement Guidance
For
Food and Bed & Breakfast Establishments

Created by:

Indiana Environmental Health Association
Food Protection Committee

Adopted March 7, 2006
ENFORCEMENT GUIDANCE FOR FOOD AND
BED & BREAKFAST ESTABLISHMENTS

DISCLAIMER

This guidance document, developed by the Indiana Environmental Health Association (IEHA), is not intended to be used as local law in the form of a food ordinance. This document was not created by the Indiana State Department of Health and must not be construed as being promoted as such. It is, however, strongly recommended that this document be used to create local health department policy to assist with enforcement action but must not be adopted into local law. IEHA holds no responsibility and cannot be held liable for any damages from the use of this document.

I. PURPOSE

The purpose of this document is to establish guidelines for consistent, effective, and equitable enforcement methods of the statutes and rules specified in Section III, Food Protection Statutes & Rules, relating to food and bed and breakfast establishments.

II. POLICY OVERVIEW

This policy has been written in support of the IEHA Model Food Ordinance and has been adopted by the IEHA. This policy establishes definitions; provides enforcement options; provides examples for clarification; and suggests procedures for applying progressive levels of enforcement. The local health department will determine the level and type of enforcement by considering the seriousness of the violation as it relates to the degree of harm, or potential for harm to the public health; the existence of an imminent health hazard; the extent of deviation from statutory or regulatory requirements; the degree of willfulness or negligence, as well as, the history of noncompliance. All contemplated enforcement actions should follow established local protocol.

III. FOOD PROTECTION STATUTES & RULES

A. Indiana Code (IC) Title 16, Article 42, Chapters 1, 2, 3, & 4, Food, Drug & Cosmetic Act
B. IC Title 16, Article 42, Chapter 5 – Food: Sanitary Requirements for Food Establishments
C. IC Title 16, Article 42, Chapter 5.2 – Food Handlers
D. IC Title 35, Article 45, Chapter 8 “Consumer Product Tampering”
E. Indiana Administrative Code (IAC) Title 410, Article 7, Rule 5 and 410 IAC 7-6 – Labeling Rules
F. Title 410 IAC 7-15.5 – Bed and Breakfast Establishments
G. Title 410 IAC 7-21 – Wholesale Food Establishment Sanitation Requirements
H. Title 410 IAC 7-22 – Certification of Food Handlers
I. Title 410 IAC 7-23 – Schedule of Civil Penalties
J. Title 410 IAC 7-24 – Retail Food Establishment Sanitation Requirements
IV. DEFINITIONS

A. **Cease and Desist Order** – An order of an administrative agency or court prohibiting a person or business firm from continuing a particular course of conduct. (Black’s Law Dictionary, Sixth Edition)

B. **Consecutive Inspection** - An inspection which occurs directly after another inspection, [e.g., an inspection occurs June 2003 and the next inspection occurs October 2004]. The type of inspection or period of time between inspections is not significant.

C. **Critical Violation** – A violation that is more likely than other violations to significantly contribute to food contamination, illness, or an environmental health hazard.

D. **Enforcement Action** - A documented action taken by the local health department against an establishment based upon the history of noncompliance or an imminent health hazard. Examples include a cease and desist order, notice of violation, permit suspension, and permit revocation.

E. **Establishment** – A retail food establishment, food establishment, or bed & breakfast establishment as defined in the Model Food Ordinance.

F. **Health Officer** - The person, appointed as specified in IC-16-20-2-16, or his/her duly authorized representative, as specified in IC 16-2-1-14, who may conduct inspections and make a final decision on an enforcement action.

G. **History of Non-Compliance** – Two or more inspections for an establishment meeting one of the following:
   1. One (1) or more enforcement actions taken within the previous three (3) years
   2. Two (2) consecutive inspections documenting the same critical violation(s)
   3. Three (3) non-consecutive inspections documenting the same critical violation(s)
   4. Three (3) consecutive inspections documenting the same non-critical violation(s)
   5. Four (4) non-consecutive inspections documenting the same non-critical violation(s).

H. **Imminent Health Hazard** – A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials].

I. **Inspection** – A visit conducted by the local health department at the establishment(s) to determine compliance with the food rules and statutes. This includes:
   1. **Complaint Inspection** – An inspection initiated after receipt of a complaint.
   2. **Follow-up Inspection** - An inspection that focuses on the violations documented during the previous inspection.
   3. **Routine Inspection** – An inspection which occurs at a specified time interval based on both the past performance and degree of risk associated with the menu as specified in the IEHA Model Food Ordinance, Section D, Definitions, or any other type of visit to determine compliance with law.

J. **Inspection Report** - The document prepared by the local health department that is completed as a result of the inspection and provided to the operator.
K. **Non-Consecutive Inspection** – An inspection which does not occur directly after another inspection [e.g., inspections are conducted in June 2003, October 2003, March 2004; where June 2003 and March 2004 are non-consecutive inspections]. The type of inspection or period of time between inspections is not significant.

L. **Non-Critical Violation** – A violation of the law not classified as a critical violation, but having the potential to become a critical violation if left uncorrected for a period of time.

M. **Notice of Violation** - A formal document, such as an abatement order, letter, or other written document that provides information of non-compliance and time-frame for correction to the permit holder or other associated interested parties.

N. ** Permit Revocation** – A denial of the right to operate an establishment(s) as specified in the Model Food Ordinance.

O. **Permit Suspension** - The temporary denial of the right to operate an establishment(s) as specified in the Model Food Ordinance.

P. **Risk Factors** – Improper practices or procedures that have been identified by the Centers for Disease Control and Prevention, through epidemiological data, as the most prevalent contributing factors of foodborne illness or injury. Risk factors are critical violations. The risk factors are:

- Inadequate cooking
- Cross-contamination
- Poor personal hygiene
- Food from unsafe sources
- Improper holding temperatures

V. **GUIDELINES FOR PROCEDURES AND EXAMPLES**

When determining the appropriate enforcement action, it is necessary to consider the establishment’s past performance. For each type of violation, criteria have been established to address the establishment’s history of non-compliance as defined in Section IV (G), Definitions.

Additional consideration should be made for the “public health interventions” mentioned in the Indiana State Department of Health Rule 410 IAC 7-24 Retail Food Establishment Sanitation Requirements. This rule addresses controls for the risk factors listed under Section IV (P), Definitions, and further establishes five (5) key public health interventions, which further protect consumer health.

1. Consumer advisory
2. Employee health control
3. Demonstration of knowledge
4. Controlling hands as a vehicle of contamination
5. Time and temperature parameters for controlling pathogens

These public health interventions are important in protecting the public from violations relating to risk factors and can be used as justification in any enforcement action; therefore, these interventions should be utilized during all inspections.

The procedures described may be considered for use when addressing the conditions of non-compliance that exist at an establishment. The enforcement options listed should be applied in a consistent manner. The options available are progressive and based upon the considerations as set
forth in Section II, Policy Overview. These procedures allow for the use of the appropriate enforcement action listed below and the implementation of more severe actions to abate violations if they continue to remain uncorrected.

The options listed within each following subsection may be used in any order desired. No restrictions are set within these guidelines for the initiation of an enforcement action. Furthermore, regardless of when an enforcement action is initiated, the options should be used with the same progression. All contemplated actions are exercised at the discretion of the Health Officer.

It should also be noted that if access for an inspection is ever denied, a search warrant may be obtained from a judge within the jurisdiction.

A. **Critical Violation(s) – Immediate Action**

The following critical violations are examples of violations that warrant immediate action.

a) Vermin activity that results in food adulteration
b) Vermin evidence that indicates current activity that may result in food adulteration
c) Food that contains any filthy, decomposed or putrid substances, unsound food, or food that may be poisonous or deleterious to health or otherwise unsafe
d) Severe environmental conditions causing food contamination such as fire, floods, toxic chemical release, sewage/plumbing disrepair and water contamination
e) Employee hygienic practices or health conditions that may result in gross contamination, such as:
   i) Employee ill, skin lesions or other conditions as in 410 IAC 7-21-35 and 410 IAC 7-24-120, or
   ii) Bare hand contact of ready-to-eat foods or lack of hand washing facilities
f) Misbranded products
g) Potentially hazardous foods not cooked to proper temperature
h) Potentially hazardous foods not held at proper cold/hot temperatures or properly cooled
i) A cutting board used to cut raw meat not cleaned and sanitized prior to being used to cut lettuce for salad preparation
j) Raw meats stored over ready-to-eat foods

If **immediate action is required at the time of inspection**, one or more of the following options may be utilized:

a) Destruction or denaturing of adulterated product(s) (See IC 16-42-2-6)
b) Voluntary disposition by removing the affected food from sale and the local health department witnessing the disposition
c) Embargo the food(s) by placing a completed *Public Notice of Embargo* form on designated products to hold products for five (5) days. (See IC 16-42-1-
18) Embargoing may be used when a firm refuses to discard adulterated or misbranded products. If appropriate, food samples can be collected for analysis.

d) Reconditioning or salvaging of food may be appropriate, such as relabeled, reheated or converted to animal feed.

e) Cease and Desist Order(s) may be issued when violation(s) constitute an imminent health hazard or when a firm operates without a valid permit.

f) Suspension of the permit(s) to operate the establishment(s) until the imminent health hazard is abated.

A follow-up inspection may be conducted when deemed necessary and new violations may be documented as observed.

**B. Critical Violations – Consecutive Inspections**

The enforcement options listed in this section may be used if the same critical violation is documented on consecutive inspections, whether corrected or uncorrected at the time of the visit. For example, rodent droppings are found in the SW corner on a routine inspection; then rodent droppings are found in the NE corner on the next inspection. A history of noncompliance is established when there are two (2) consecutive inspections documenting the same critical violation(s).

(1) After a **first or second follow-up inspection** has been conducted, one or more of the following options may be utilized:

a) Letter of warning
b) Telephone conference
c) Informal meeting at the local health department
d) A follow-up inspection within thirty (30) days in which new violations may be documented as observed
e) A ticketing system, incorporating civil penalties, as specified in 410 IAC 7-23

(2) In addition to the options listed in B(1), after the **third or more follow-up inspection**, one or more of the following options may be utilized:

a) Issue a notice of violation from the Health Officer
b) Issue a notice of hearing with the Health Officer provided by certified and regular mail; the hearing may result in the following:

(i) Levying civil penalties as provided in Indiana Code (IC) 16-19-3-4, IC16-42-5-28, 410 IAC 7-22 and 410 IAC 7-23, and/or

(ii) Developing an agreement (consent decree) between the two (2) parties involved as part of the action. The agreement may include but is not limited to:

(AA) Training provided by the local health department, food safety consulting firm or the Indiana State Department of Health

(BB) Mandatory in-service training provided by management

(CC) Development and implementation of a Hazard Analysis Critical Control Point (HACCP) or Risk Control plan
(DD) Maintaining a cleaning schedule and have available for review
(EE) Maintaining pest control records and have available for review
(FF) Correction of all violations within a specified period of time
(GG) A follow-up inspection of the establishment(s), in which the action has been initiated, may be scheduled within thirty (30) days of adoption of the agreement (consent decree). New violations may be documented as observed.
c) Issue a notice of permit revocation hearing with the Health Officer provided by certified and regular mail

C. Critical Violations – Non-Consecutive Inspections

The enforcement options listed in Sections B(1) and B(2) may be used if the same critical violation is documented on non-consecutive inspections, which is corrected after each documentation. For example, a hand washing sink is blocked by storage racks on the first inspection; is not in violation on the second inspection; then is in violation on the third inspection. A history of noncompliance is established when there are three (3) non-consecutive inspections documenting the same critical violation(s).

D. Non-Critical Violations – Consecutive Inspections

The enforcement options listed in this section may be used if the same non-critical violation is documented on consecutive inspections, whether corrected or uncorrected at the time of the visit. For example, an employee is not wearing a hair restraint on a routine inspection and then a different employee is not wearing a hair restraint on next inspection. A history of noncompliance is established when there are three (3) consecutive inspections documenting the same non-critical violation(s). The enforcement options listed in Sections B(1) and B(2) should also be considered if, in the opinion of the Health Officer, such action is warranted.

(1) After a first or second follow-up inspection has been conducted, one or more of the following options may be utilized:

   a) Letter of warning
   b) Telephone conference

(2) In addition to the options listed in Section D(1), after the third or more follow-up inspection, one or more of the following options may be utilized:

   a) Issuing a notice of violation from the Health Officer
   b) Informal meeting at the health department
   c) A follow-up inspection within thirty (30) days in which new violations may be documented as observed
   d) A ticketing system, incorporating civil penalties, as specified in 410 IAC 7-23
(3) In addition to the options listed in Sections D(1) and D(2), **after the fourth follow-up inspection**, one or more of the following options may be utilized:

a) Issuing a notice of violation from the Health Officer
b) Issuing a notice of hearing with the Health Officer provided by certified and regular mail; the hearing may result in:
   (i) Levying civil penalties as provided in Indiana Code (IC) 16-19-3-4, IC16-42-5-28, 410 IAC 7-22 and 410 IAC 7-23, and/or
   (ii) Developing an agreement (consent decree) between the two (2) parties involved as part of the action. The agreement may include but is not limited to:
      (AA) Training provided by the local health department, food safety consulting firm or the Indiana State Department of Health
      (BB) Mandatory in-service training provided by management
      (CC) Development and implementation of a Hazard Analysis Critical Control Point (HACCP) or Risk Control plan(s)
      (DD) Maintaining a cleaning schedule and have available for review
      (EE) Maintaining pest control records and have available for review
      (FF) Correcting all violations within a specified period of time
      (GG) A follow-up inspection of the establishment(s), in which the action has been initiated, may be scheduled within thirty (30) days of adoption of the agreement (consent decree). New violations may be documented as observed.

(4) In addition to the options listed in Sections D(1), D(2), and D(3), **after the fifth or more follow-up inspection** has been conducted, issue a notice of permit revocation hearing with the Health Officer that is provided by certified and regular mail.

E. **Non-Critical Violations – Non-Consecutive Inspections**

The enforcement options listed in Sections D(1), D(2), D(3), and D(4) may be used if the same non-critical violation is documented on non-consecutive inspections, which is corrected after each documentation. For example, soiled linens are piled in the corner of a clean equipment storage room on the first inspection; is not in violation on the second inspection; and then is in violation on the third inspection. A history of noncompliance is established when there are **four (4) non-consecutive inspections documenting the same non-critical violation(s)**. The enforcement options listed in Sections B(1) and B(2) should also be considered if, in the opinion of the Health Officer, such action is warranted.

VI. **COUNTY ATTORNEY**

See paragraph (4) of the “Enforcement Options” under Section E “Compliance and Enforcement” in the Model Food Ordinance.

VII. **CIVIL PENALTY RECOMMENDATIONS**
Civil penalties that will be levied either through a system of ticketing or an administrative process should follow the process below. A monetary penalty typically should not be levied at the maximum of the range for the initial repeat violation. As with the rest of the document, it must be a progressive system of enforcement.

The following examples can be used in determining the point at which civil penalties can be assessed.

(A) Two (2) consecutive inspections documenting the same critical or risk factor violation(s)

(B) Three (3) consecutive inspections documenting the same non-critical violation(s)

It should be noted that civil penalties cannot be assessed when based on repeat violations during non-consecutive inspections. In this instance, other than the actual day(s) that the violation(s) was observed, it is not possible to determine the length of time between inspections that the establishment was out of compliance.

It is recommended that if a civil monetary penalty is to be assessed, the amount should be set somewhere between the specified ranges to allow for the consideration of a higher or lower penalty for situations in which negotiations may occur as part of the enforcement proceedings. Such a proceeding should result in the demonstration of an even degree of fairness toward industry without sacrificing public health protection. The following are recommended guidelines when contemplating the use of civil penalties:

1st monetary penalty should be no higher than 25% of the range
2nd monetary penalty should be no higher than 50% of the range
3rd and subsequent monetary penalties can be anywhere within the range

VIII. APPEALS PROCEDURES

See Section F “Appeals Section” in the Model Food Ordinance.

(Examples of enforcement letters that are used by local health departments and by the Indiana State Department of Health are available upon request. Contact your Food Protection Chapter Representative or the Food Protection Committee Chair/Co-Chair.)