


Public Health Remedies

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How do you get people to comply with public health laws?



- Usually seek voluntary compliance first—educate, persuade.
- If that doesn't work, NC law provides several public health remedies - that is, legal means for enforcing the public health laws.

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Public Health Remedies

Injunction	Public health nuisance	Imminent hazard	Embargo
Administrative penalties	Permit actions	Misdemeanor charge	Infraction (smoking only)

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Questions about remedies

- What is a particular remedy?
- When *can* it be used?
- How do you use it - what is the procedure?

- When *should* it be used?
- What if it doesn't produce the desired result?

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Imminent Hazard – G.S. 130A-20

Summary

- An imminent hazard is a situation that, if no immediate action is taken, is likely to cause an immediate threat to human life, or an immediate threat of serious physical injury or serious adverse health effects, or a serious risk of irreparable damage to the environment.
- After determining that an imminent hazard exists, a health director may either issue an abatement order, or take direct action to abate the hazard.
- If the director elects to abate rather than order abatement, the health department will incur the costs. Ordinarily the department will have a lien on the property for the costs, but the lien may be defeated in some circumstances.

Procedure

1. Determine and document that an imminent hazard exists, referring to the statutory definition of "imminent hazard": a situation that, if no immediate action is taken, is likely to cause:
 - a. An immediate threat to human life, or
 - b. An immediate threat of serious physical injury, or
 - c. An immediate threat of serious adverse health effects, or
 - d. A serious risk of irreparable damage to the environment.
2. Local health director or state health director decides whether to issue an abatement order or directly abate the imminent hazard.
 - a. **Order:** The order may be issued to the owner, lessee, operator, or other person in charge of the property, and may direct the owner to take the action(s) necessary to abate the hazard.
 - b. **Abate:** If the director chooses to abate instead, he or she must first notify (or make a reasonable attempt to notify) the owner, lessee, operator, or other person in charge of the property. After the notification (or reasonable attempt) is made, the director is authorized to enter the property and take any action necessary to abate the imminent hazard.
3. All actions by the health director should be documented with the date and time noted. If the director chooses to abate, the costs of abatement should be documented.
4. If the health director elects to abate the imminent hazard, rather than ordering abatement, the health department will incur the costs of abatement but ordinarily will have a lien on the property for recovery of the costs. However, the lien may be defeated in either of two circumstances:
 - a. if it is shown that an imminent hazard did not exist at the time of the abatement, or
 - b. Even if an imminent hazard did exist, if the owner, lessee, operator, or any other person against whose property the lien has been filed can demonstrate that he or she was not culpable in the creation of the imminent hazard.

Public health remedies
at a glance

Available at
ncplaw.unc.edu;
Legal information by
topic;
Public health remedies

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Injunction (G.S. 130A-18)

What is it?

- A court order telling a person to stop doing something
- TRO, preliminary injunction, permanent injunction

When can it be used?

- When a person violates a NC public health statute or rule, or a local board of health rule

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Injunction (G.S. 130A-18)

How - what is the procedure?

- Determine and document specific violation
- **Essential!** Work with attorney: Is injunctive relief appropriate? What documentation/evidence do you need to assemble? What else does attorney need from you?
- Attorney files action in Superior Court on behalf of local health director

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Injunction (G.S. 130A-18)

What happens next?

- Types of orders:
 - **TRO:** Attorney seeks this for quick action. If court grants, must be filed with court and served on violator. Good for 10 days.
 - **Preliminary injunction:** short-term order following TRO expiration, for while case is pending.
 - **Permanent injunction:** final order.
- Failure to comply with any of these orders could result in violator being held in contempt of court.

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Misdemeanor (G.S. 130A-25)

What is it?

- Criminal charge for violating public health laws
- Class 1 misdemeanor

When can it be used?

- When a person violates any NC public health statute or rule except those pertaining to smoking in public places

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Misdemeanor (G.S. 130A-25)

How - what is the procedure?

- Determine and document specific violation
- Consult with attorneys (assistant DA, department)
- Initiate charge with magistrate in county where violation occurred
- Magistrate issues criminal summons (arrest warrant possible but less likely)
- Prepare for trial in District Court: assemble documentation/evidence, discuss with DA

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Public health nuisance (G.S. 130A-19)

What is it?

- An order directing a property owner or other person in charge of the property to abate a public health nuisance

When can it be used?

- When the health director determines a public health nuisance exists on the property

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Public health nuisance: Meaning of terms

Public health nuisance	Abate
<ul style="list-style-type: none"> • Not defined in statute • Elements to consider: <ul style="list-style-type: none"> • Situation on property • That interferes with the health of the public • In a way that is both substantial and unreasonable 	<ul style="list-style-type: none"> • Not defined in statute • What to consider: <ul style="list-style-type: none"> • Specific actions • That are necessary • To terminate or reduce the public health problem

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Public health nuisance (G.S. 130A-19)


How - what is the procedure?

- Determine and document existence of public health nuisance
- Local health director issues abatement order
- If violator does not comply, local health director may ask Superior Court to enforce
- Court may order the violator to abate the nuisance, or it may order the health department to abate the nuisance

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Other considerations

- Is another more precise remedy available?
- Would it make sense for another governmental entity to use its authority to remedy the particular situation?



Is this the right tool for the job?

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Imminent hazard (G.S. 130A-20)

What is it?

- Legal authority to act or order action to abate an imminent hazard

When can it be used?

- When local health director determines a situation constitutes an imminent hazard
- Note: There is also an imminent hazard provision for permit actions. This remedy is for use in other contexts.

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Imminent hazard: Meaning of terms

Imminent Hazard	Abate
<ul style="list-style-type: none"> • Defined in G.S. 130A-2 • A situation that is likely to cause: <ul style="list-style-type: none"> • Immediate threat to human life, or • Immediate threat of serious physical injury, or • Immediate threat of serious adverse health effects, or • Serious risk of irreparable damage to environment 	<ul style="list-style-type: none"> • Not defined in statute • What to consider: <ul style="list-style-type: none"> • Specific actions • That are necessary • To terminate or reduce the threat or risk that the situation creates

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Imminent hazard (G.S. 130A-20)

How - what is the procedure?

- Determine and document existence of imminent hazard
- Local health director may choose: order person in charge of property to abate the imminent hazard, *or* directly abate the imminent hazard

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Imminent hazard: order vs. abate?

Order	Abate
<ul style="list-style-type: none"> • Issue abatement order to person in charge of property • Order should direct person to take specific actions to abate the imminent hazard 	<ul style="list-style-type: none"> • Make reasonable attempt to notify person in charge of property that abatement will occur • Take actions to abate • Health department will incur costs up-front but ordinarily acquires lien on property

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Administrative penalties (G.S. 130A-22)

What	<ul style="list-style-type: none">• Monetary fine imposed for violation of certain public health laws
When	<ul style="list-style-type: none">• Imposed by state agency for violations of <i>state</i> OSWW laws or state lead certification laws• Imposed by local health director for violations of <i>local</i> OSWW rules, or state or local smoking statutes or rules
How	<ul style="list-style-type: none">• Determine and document violation & recommend penalty• Consult relevant state laws for procedures to follow and maximum amounts of penalties (vary by program and violation)

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Smoking law violations



1. Written notice of violation
2. Written notice of violation, notify administrative penalties possible
3. Administrative penalty of up to \$200 per violation

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Permit actions (G.S. 130A-23)

What	<ul style="list-style-type: none"> • Procedure for suspending or revoking a permit
When	<ul style="list-style-type: none"> • Violation of the statutes, regulations, or a condition placed upon a permit; <i>or</i> • Permit was issued based upon incorrect or inadequate information that materially affected the decision to issue it
How	<ul style="list-style-type: none"> • Intent to suspend or revoke: notice, opportunity for hearing • Immediate revocation or suspension: determine violation presents imminent hazard, give notice of immediate revocation or suspension

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Rules of thumb for permit actions

Suspend	• If problem can be fixed
Revoke	• If problem can't be fixed

Sometimes the law dictates immediate suspension or revocation

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Embargo (G.S. 130A-21)

What is it?

- An order to detain food or drink that is adulterated or misbranded

When can it be used?

- Public health's embargo authority applies only to establishments that are regulated by public health laws, or that are the subject of a communicable disease investigation

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Meaning of terms

Adulterated	Misbranded
<ul style="list-style-type: none">• Contains something injurious to health• Diseased, contaminated, filthy, putrid, decomposed, otherwise unfit to be food• Kept in conditions that have allowed it to become contaminated or otherwise unwholesome or injurious to health• Full description in GS 160-129	<ul style="list-style-type: none">• False or misleading label• Missing or incomplete label• Limitation and not labeled as such• "Sell by" date removed, obscured, altered• Full description in GS 160-130

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Embargo (G.S. 130A-21)

How - what is the procedure?

- Identify a public health official with embargo authority: state EH agency (including regionals), local health director in consultation with regional specialist
- Affix tag to embargoed item(s)
- Warn all persons not to remove or dispose of item(s) without permission
- Petition a court for a condemnation order

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Remedies problems

- Is there a violation of a public health statute or rule in the scenario?
- What might be done before pursuing legal remedies?
- Which remedy would be appropriate for the scenario? Why?
- How would the remedy be pursued in your department? Who would be involved?

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