

Cortland County Environmental Health Policy & Procedure Manual

PROGRAM	Food Program
SUBJECT	Enforcement and Penalties
BOH APPROVAL DATE	February 19, 2008
AMENDED DATE	May 19, 2009
AMENDED DATE	December 18, 2012

Purpose

To provide guidance regarding enforcement of Part 14 of the New York State Sanitary Code (NYSSC) and Article IV of the Cortland County Sanitary Code. This document is designed to augment Technical Reference ADM 2 - 3 March 2003 - Enforcement and Sanitary Compliance at Regulated Facilities, most current edition, published by the NYSDOH Center for Environmental Health.

Policy

It is the responsibility of the owner/operator of a food service establishment to maintain and operate the facility under his or her control in compliance with the requirements of Subpart 14-1 of the State Sanitary Code, the Sanitary Code of the Cortland County Health Department, and other applicable laws, rules and regulations. All violations of these requirements found at the time of inspection by a Health Department inspector shall be corrected.

Definitions:

- Public Health Hazard: Violations of Part 14 of the New York State Sanitary Code and Article IV of the Cortland County Sanitary Code are categorized based on whether the violation poses a public health hazard (PHH). A public health hazard is defined as any condition that poses an imminent threat to the health or safety of the public. These public health hazards also include hazards found with onsite public water systems.
- Category 1 (red or critical) violations: Public Health Hazards and the minimum standards for safe and sanitary occupancy are typically designated as category 1 violations and are indicated as red items on the inspection form.
- Category 2 (blue) violations: Sanitation, design, and maintenance violations. These violations do not pose imminent health risks, but if persistent and uncorrected they may lead to a red violation.

Enforcement Procedure

As specified in Part 14-1, an owner/operator of a regulated facility must correct all category 1 (red) violations or take action to prevent public exposure to the hazard before an inspector leaves the facility. When red violations have been corrected or mitigated, action to assure future compliance must be initiated so that the hazard does not recur.

Category 2 (blue) violations do not pose an imminent health hazard; however, repeat and/or uncorrected blue violations may eventually contribute to a red violation and shall be corrected by next inspection or in a reasonable time frame agreed upon by operator and health department staff. A history of repeat and/or uncorrected blue violations may move into formal enforcement procedures based on professional judgment of health department staff.

Enforcement criteria

Criteria which will trigger an enforcement action may include some or all of the following:

- **Failed inspection.** Cortland County has initiated a point system. A total of 16 points is considered a failed inspection. Points are assessed as follows:
 - ◆ 4 points – imminent public health hazards (red item)
 - ◆ 3 points - all other critical public health hazards (red item)
 - ◆ 1 points –sanitation, design, and maintenance violations (blue items)

- **Serious, repeated and/or uncorrected violations** of any of the requirements of Subpart 14-1 (blue and red violations)
- **Operation of a food service establishment without a permit.** The permit-issuing official or his designated representative may order any food service establishment or operation in his jurisdiction, operating without a valid permit, to close and cease all food operations immediately, and to remain closed until the establishment or operation has obtained and displays a valid permit. Cortland County Health Department reserves the right to charge up to \$100 per day for operating without a permit.
- **For those facilities which are also a Public Water Supply,** failure to meet monitoring and/ or analytical requirements.
- Interference with the permit-issuing official or his designated representative in the performance of his duties.

Enforcement Methods:

1. Education to provide knowledge of the Code Requirements. This may include attendance at Serve Safe courses.
2. Re-inspection in 10 days to 2 weeks
3. Negotiation of a Voluntary Compliance Schedule to correct outstanding violations through informal office conferences or other means of communication; or,
4. Formal Enforcement, especially when necessary to gain correction of the hazard or in response to repetitive and/or uncorrected violations. Formal enforcement can include any or all of the following:
 - Penalties (fines per violation)
 - Formal stipulations
 - Administrative hearings
 - Revocation of permit, court actions and/or closures

When formal enforcement is required, the respondent shall be served with a Notice of Violation within 30 days of the violation. The notice may include a stipulation offer, consent order, or equivalent offer to settle, that gives the respondent an opportunity to admit to the charges and agree to a settlement.

If a facility owner/operator shows non-compliance with above methods, enforcement will be pursued with higher fines and/or legal procedures imposed.

Penalties for Admit-Stipulation Agreements:

- ◆ As approved by the Board of Health.
- ◆ Penalties are assessed at the discretion of the Permit Issuing Official.
- ◆ Penalties may be doubled with each subsequent violation.