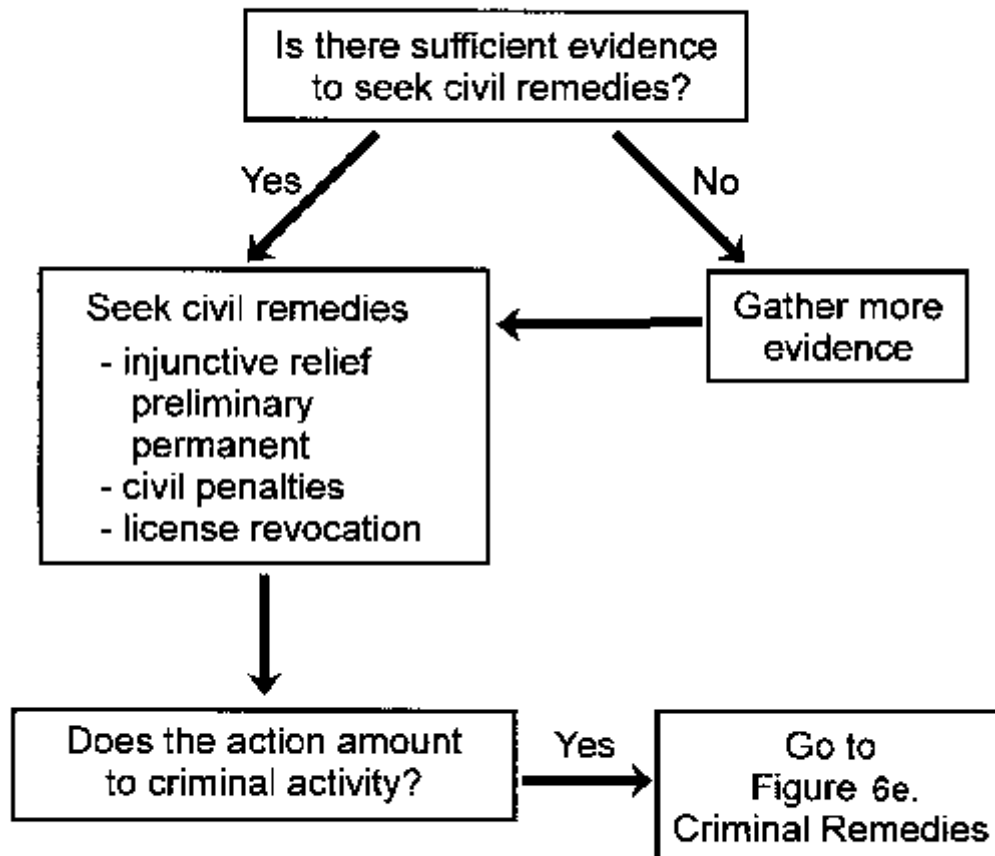


**This is the beginning of Module 6 - Part 2.  
Be sure to also print or view Module 6 - Part 1.**

**Figure 6d. Civil Remedies\***



\* May be parallel to Criminal Remedies

### *Civil enforcement actions and procedures*

Civil courts have the power to enforce.

A civil court action is typically used to deal with more serious public health problems. Civil courts may impose a wider array of sanctions than may public health agencies through their administrative enforcement authority.

Administrative enforcement may be used to order a fine, but the agency can do little if the fine is not paid. In contrast, a civil court has the power to enforce its orders. In the case of an emergency order for injunctive relief, the court may order a party to cease harmful or undesirable conduct or to bring a violation up to code. If the court order is disobeyed, a judge may issue penalties or even impose a jail sentence for *contempt of court*.

The ability to use civil enforcement gives the agency considerable leverage.

The fact that a public health agency has the ability to obtain civil relief from the courts serves as a powerful enforcement tool. This often means that the agency need not resort to this more rigorous option in order to obtain compliance.

Public health officers play an important part in bringing a successful enforcement action. To do so, you must be knowledgeable about the procedural aspects of the enforcement process

Civil litigation follows logical steps to ensure fairness.

Civil enforcement proceedings (also known as civil litigation) are frequently viewed by agency staff as the stuff of lawyers, an incomprehensible series of events which lie beyond the day-to-day concerns of the public health practitioner. In fact, however, enforcement proceedings are guided by a series of clear and logical steps which are designed primarily to ensure that each party has a fair opportunity to be heard and that everyone plays by the same rules. These steps can actually make it easier for the non-lawyer to navigate the system. Understanding the steps, basic principles, and some of the legal rules surrounding enforcement will enable you to work more efficiently and effectively with attorneys to prepare and prosecute enforcement actions.

Stages of litigation

Civil litigation involves the following stages:

- Pleadings
- Discovery
- Motion practice
- Trial or hearing (or negotiated settlement)
- Post-trial motions and appeals

### *Stage 1 - Pleadings*

Pleadings clarify and narrow the issues.

Pleadings are written documents that are filed with the court and “served” on the other party. Their purpose is to crystallize and narrow the issues in controversy. While drafting pleadings is the work and craft of lawyers, they depend on substantive information supplied by the public health staff.

The complaint sets forth the facts of the case.

a. The Complaint: A judicial trial commences with the filing of a complaint, the first pleading filed in a civil enforcement action. The complaint describes the case, including the theory and alleged facts supporting the theory, the legal duty allegedly breached, the resulting harm, and the type of relief or remedy(ies) being sought. Its purpose is to give the defendant and the court information on all material facts upon which the government will support its action.

The defendant’s response to the complaint

b. The Answer: The defendant will then usually respond with an answer setting forth the grounds of his defense, denying allegations of the government's complaint and/or alleging an affirmative defense.

Motions to dismiss for technicalities

c. Alternate Pleadings: Rather than or in addition to filing an answer, the defendant may file one of several types of motions seeking to have the court dismiss the complaint on the basis of legal technicalities.

### *Stage 2 - Discovery*

Exchange of information

Discovery is the phase of litigation where the parties exchange information, revealing to the other side the facts, evidence and theories of their case. The purpose of discovery is to further narrow the issues in controversy and avoid surprise at trial. There are four discovery vehicles:

- Depositions
- Interrogatories
- Requests to Produce
- Requests to Admit

Statements of witnesses under oath

a. Depositions are statements taken of potential witnesses and others familiar with the issues of a case. You may be deposed about your knowledge in a given enforcement action. Like the other forms of discovery, the questions may cover a fairly wide range of topics, limited primarily by the caveat that the questions "pertain to information that is likely to lead to admissible evidence."

During a deposition, a lawyer for one party cross-examines the witness of the other party, asking questions which, if appropriate, the witness is compelled to answer. The statements are taken under oath before a court reporter, outside the presence of the judge. They usually take place in the office of one of the lawyers representing the parties.

It is a good idea for a government lawyer to be present at the deposition of a public health official. While the lawyer's role is very limited during the deposition, his or her presence nevertheless helps ensure that the witness and government's rights are protected, and that questions are properly formed and within the fairly broad but circumscribed range of appropriate lines of questioning.<sup>1</sup>

Questions to be answered by the other party

- b. Interrogatories are written questions asked by one party and served on an adversary who must respond with written answers. The answers must be made under oath. You may be called upon to help respond to written interrogatories concerning your area of agency expertise or information about the enforcement action. You could also help the government attorney formulate interrogatories to serve on an opponent.

Documents and other physical evidence

- c. Requests to Produce are written statements served on an adversary, describing documents and other physical evidence that the requesting party wants. Unless the request is overly broad or unduly burdensome, the adversary must produce the described items within the time period specified in the request.

Have an agency lawyer review requested documents before turning them over.

A typical Request to Produce filed by a defendant is one that requests an agency to produce all documents and other items supporting the factual allegations described in the complaint. Such a request may cover virtually all the information contained in the agency files relating to the case. Before producing the documents, a government lawyer should first review them to make sure that those that are privileged from disclosure are not given to the defendant.<sup>2</sup>

Depending on the size of the case, this phase of discovery may require a substantial time commitment and disruption of normal activities. However, if requested documents and evidence are not produced, your agency may not be allowed to use them to support its case--or the case could even be dismissed.

<sup>1</sup> See also "Testifying as a witness" in Module 9, Communication.

<sup>2</sup> See the section in Module 2 on Confidentiality.

Opponents required to admit or deny each allegation

- d. Requests to Admit is the fourth category of discovery. These are a series of written statements served on an opponent with a demand that he or she either admit or deny the allegations as stated. Each allegation admitted eliminates the need to prove that fact at trial. Requests to Admit are an important tool for limiting the scope of issues, number of witnesses, and length of time of a trial. You may be asked to assist the government attorney in responding to Requests to Admit, and/or developing such requests to serve on the defendant.

### *Stage 3 - Motion practice*

Motions help maintain order and conserve resources in a trial.

Motion practice is a highly legalistic and technical vehicle to maintain order and control throughout the stages of the litigation. It also helps preserve the court's limited resources. Among other things, motions may seek to:

- Obtain a court's ruling on the admissibility of evidence in advance
- Eliminate a defendant's affirmative defenses
- Have the court rule on the case in a summary fashion based on written documents and court briefs, thus eliminating the need for trial or the presentation of witnesses

The government may also file a motion to gain access to property for purposes of gaining additional information to support its case.

Affidavits describe facts that support motions.

To support certain types of motions, attorneys may ask you to sign an affidavit describing facts pertinent to issues of which you have personal knowledge. Affidavits are written statements of fact that are made under oath before a party having the authority to administer such oaths, usually a notary public. Your agency's attorney will usually work with you in drafting the affidavit.

Many cases are settled before they go to trial.

It is common throughout the pre-trial development of a case and even during a trial for the parties simultaneously to prepare for trial *and* attempt to settle the dispute through negotiations. Indeed most cases are settled by negotiation rather than trial. The health official and his or her superiors play an important role in this process by providing essential information and approving the terms of the settlement. The end result of a negotiated settlement is a written agreement signed by the parties and approved by the court. The agreement then becomes a court-enforceable order. The negotiation process and principles are discussed in Module 8, Negotiation.

### *Stage 4 - The trial phase*

When negotiations fail, the parties proceed to the trial phase of civil litigation, the phase where the parties are given the opportunity to present their evidence to the trier-of-fact (either a judge or a jury) through the oral testimony of witnesses and the submission of written documents and other tangible objects. The job of the trier of fact is to hear and weigh the evidence to determine whether the parties have met their burden of proof.

*Burden of proof:* In a civil action the government's burden of proof is to persuade the trier-of-fact that the facts as alleged in the complaint are true to a "reasonable degree of certainty" or "more likely true than not." When the defendant asserts an affirmative defense, he or she must assume the burden of proof for that particular issue.

Many people are reluctant to participate and especially to testify in trials. This may arise from fear of the unknown, fueled by television depictions of witnesses being destroyed on the stand under relentless cross-examination. Gaining familiarity with the process and evidentiary rules will help allay your fears. Module 9, Communication describes the basic principles of testifying.

### *Stage 5 - Post-trial motions and appeals*

After a trial is concluded, the focus is on what occurred during the trial, not new evidence.

At the conclusion of a trial, post-trial motions are filed and heard, and appeals may be made by the losing party to the court of next highest jurisdiction. Because our legal system is premised on the opportunity to present and cross-examine witnesses before a trier-of-fact, great deference is given by the appellate court to the fact-finding mission of the lower trial court judge or jury. Post-trial motions and appeals relate solely to issues of law or challenge alleged legal defects that occurred during the trial. The appellate court will not hear new evidence and generally will not re-weigh the facts of the case.

### *Follow-up compliance*

Make sure court orders are carried out.

Often overlooked, follow-up compliance measures are one of the last steps in the civil enforcement process. A court order or negotiated agreement is a waste of limited agency time and resources unless it is implemented. Occasionally a post-trial or post-settlement inspection will reveal non-compliance, requiring agency staff to obtain further judicial relief compelling the defendant to comply with the order and to pay penalties.



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## **Review of terminology...**

adjudicatory hearing

appeals

complaint

deposition

discovery

interrogatories

litigation

motion practice

pleadings

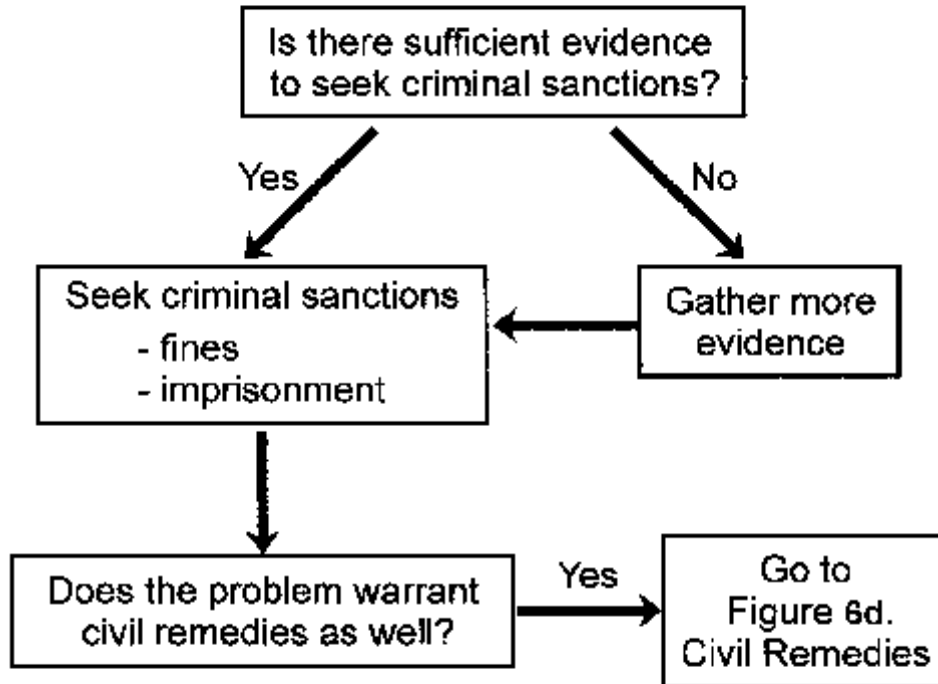
post-trial motions

request to admit

request to produce

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**Figure 6e. Criminal Remedies\***



\* May be parallel to Civil Remedies



### *Criminal enforcement actions and procedures*

Criminal proceedings are very formal and lead to penalties.

Through administrative and civil actions, public health officials may, among other things, obtain corrective relief and prevent future harm. Criminal enforcement proceedings, on the other hand, lead only to penalties—imprisonment and fines. Another difference is the degree of formality required in criminal proceedings to protect the constitutional rights of the accused. You should be aware of steps to take and actions to avoid in the event your investigative efforts reveal potentially criminal activity.

Does the action amount to criminal activity?

What constitutes potentially criminal activity? Except where by statute or code persons may be held strictly liable for their conduct, the law generally requires the government to prove *scienter* that the defendant knowingly and intentionally engaged in criminal conduct, and/or that his or her conduct represented a wilful and wanton disregard for the safety of others. Some examples of potentially criminal conduct in the area of public health include falsified records, violating the rights of nursing home patients, selling adulterated or contaminated food, and dumping pesticides into a waterway.

#### *Special rules for criminal proceedings*

Defendants in criminal enforcement actions are guaranteed legal and procedural rights in the United States Constitution. In addition to due process, those rights are protected by:

- Search warrants
- Miranda warnings
- Rights to exculpatory information

Except under unusual conditions, a search of a residence or business establishment for criminal evidence can only be made pursuant to a warrant issued upon "probable cause that criminal activity has occurred." This standard is significantly more stringent than the proof required to obtain an administrative search warrant. See Module 5, Inspections.

Warrantless criminal searches have been upheld in the following circumstances:

- To prevent the destruction of evidence
- To prevent the escape of a criminal
- To prevent injury to an officer

Stop your investigation if you discover evidence of criminal activity while on an administrative warrant .

The practical effect of this constitutional guarantee means that if you discover evidence of potential criminal activity while conducting a search pursuant to an administrative warrant, you should suspend further investigation of the possible criminal activity until you have obtained the advice of a supervisor and/or agency attorney on how best to proceed. Once you suspect criminal activity has occurred or is occurring, any additional evidence gathered pursuant to the administrative search would not be admissible in a criminal proceeding. (It may or may not be admissible in a civil action. The courts differ on this point.) However, any information gathered up until the time the suspicion was formed was lawfully gathered and may be used in a civil or criminal proceeding. Therefore, you should be sure to document all observations, conversations, and other information carefully, and properly mark all records and samples obtained during the inspection up to that point.

“Fruit of the poisonous tree” is unlawfully gathered evidence.

Constitutional law provides further protections of the accused by prohibiting any subsequent information gathered as a result of leads obtained during an unlawful administrative search from being used in a criminal proceeding. In legal jargon, the latter evidence would be considered "fruit of the poisonous tree."

Get a formal search warrant based on probable cause.

For example, the scene of a fire is routinely inspected by a fire marshal to determine whether the cause is natural forces, negligence, or arson. While the initial entry is usually based upon a legal administrative search warrant, some state courts have held that as soon as the marshal finds evidence of suspicious circumstances, further inspection of the suspected arson site requires a formal search warrant based upon probable cause. If the fire marshal fails to obtain a formal search warrant, any evidence gathered during the subsequent unlawful inspection, including evidence which might lead investigators to the identity of the arsonist, would be considered "tainted fruit." Such evidence could not be used in a criminal proceeding and the suspect's arrest and any conviction would be deemed unconstitutional, unless there was adequate proof of an independent basis to make the arrest.

Similarly, while a routine inspection of a building to ascertain compliance with a municipal safety code might be conducted pursuant to an administrative search warrant, a second or third inspection to find out whether a previously discovered code violation persists may be regarded as a means of gathering evidence for possible use in criminal proceeding. Any subsequent inspections require a formal search warrant based upon probable cause. [*People v. Laverne*, 200 N.E.2d 441 (1964).]

Understanding when an inspection is conducted for administrative health and safety reasons and when it is considered to be conducted to gather possible criminal evidence can be confusing. In the above example, the inspector may have only intended to enforce the building code, even during the second and third inspections. A decision to bring a criminal enforcement action may not have occurred until after the third re-inspection.

The purpose of a search determines the warrant required.

How can you determine whether a search is civil or potentially criminal in nature? Grad offers the following advice: "When, in the course of an inspection, the purpose changes from seeking administrative compliance to seeking evidence to be used in a criminal prosecution, a warrant supported by probable cause becomes necessary."<sup>6</sup>

Miranda warnings

Persons who are "in custody on suspicion of a crime" may not be questioned by the police unless they have first been given their *Miranda* warnings; otherwise any information obtained may not be used in the criminal proceeding. The *Miranda* warnings include:

- A warning about the right to remain silent
- A warning about the right to be represented by counsel
- A warning that any information the accused provides can and will be used against him or her in a criminal proceeding.

Exculpatory information could prove the defendant's innocence.

Federal law grants the criminally accused the right to obtain any exculpatory information in the government's files. Exculpatory information is evidence that tends to prove the defendant's innocence. Federal courts have held that the government's failure to turn over exculpatory information to the defendant violates the defendant's right to a fair trial. The courts have overturned guilty verdicts and released convicted felons in cases where the government has withheld or destroyed such information without disclosing it to the defendant. This means that in any investigative work that might lead to a criminal action, you should not destroy any of your records, notes, or files.

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<sup>3</sup> Grad, p. 143.



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## Review of terminology...

exculpatory information

“fruit of the poisonous tree”

Miranda warnings

probable cause

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**See Group exercise 6.5 at the end of the module.**

# Evidence used in a court of law

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Because the work you perform creates the foundation for an enforcement action, it is important to appreciate how your work could later be used as evidence in an administrative hearing or trial. The term “evidence” is used here to mean that which is offered to the judge or jury as proof, thus enabling the trier-of-fact to decide upon the questions in dispute and whether the allegations are more likely to be true than not.

## **Burden of proof**

In an enforcement action, the agency has the burden of going forward and presenting evidence to prove that a violation or public health threat exists, and that it is an emergency or a criminal offence, or that additional remedies are required. The exception is when the accused is presenting an affirmative defense, in which case he or she has the burden of proving the facts that support the legal defense.

Definition of affirmative defense

An affirmative defense alleges new matters which would prevent the government from winning based on the facts it has alleged. For example, if a company claims that its waste stream is exempt from generally applicable rules governing toxic materials, the company must provide evidence to prove that exemption. Or if the government alleges that the defendant is illegally storing hazardous waste on its property, the defendant may assert and must prove that the material in question is not “waste” but reusable “product” material.

Three standards of proof

The standard of proof indicates how much evidence is required for a party to meet its burden of proof. There are three standards of proof:

*“Beyond a reasonable doubt.”* This is the most well-known, and extreme standard of proof, and is required of the government in a criminal case. The government has the burden of proving that a criminal defendant is guilty *beyond a reasonable doubt*.

*“Preponderance of evidence.”* This is a “more likely than not” standard, wherein the scales are tipped in the agency’s favor.

*“Clear and convincing evidence.”* This standard is less easily defined. It requires greater proof than the “preponderance of evidence” standard but certainly far less proof than required by the “beyond a reasonable doubt” standard.

## Types of evidence

There are four basic types of evidence:

- Eyewitness testimony
- Physical evidence
- Demonstrative evidence
- Expert testimony

### *Eyewitness testimony*

Eyewitnesses report on their actual experience, not their opinions.

Eyewitness testimony is offered by persons who have first-hand knowledge of an event. Within the constraints of other rules discussed below, the "fact witness" may testify to anything that he or she has experienced through one of the five senses: that is, what one saw, heard, tasted, smelled, or physically felt. Such witnesses cannot testify as to their opinions. They cannot testify that they speculate, think, believe or suppose that such and such happened. For example, a field inspector testifying before the Housing Board in a condemnation proceeding may offer testimony describing the dilapidated condition of the structure; that she observed garbage, animal droppings, rotting food, and other offal; that the floor boards shook as she crossed the living room floor; and that the home smelled of urine and feces. She may also testify to hearing the raucous barking of several dogs as she approached the house and as neighbors walked past on the public sidewalk. She may not testify that, in her opinion, the home owner was in need of psychiatric treatment.

### *Physical evidence*

Physical evidence includes any concrete objects you may collect on an inspection, such as business records and other documents, a jar of contaminated soil, or the crumpled fender from the scene of an automobile accident.

### Tips for gathering evidence

Is your memory sharp enough to recall the details of an inspection that occurred two years ago? In some jurisdictions an enforcement case may take one to two years or longer to come to trial. If you are like most adults, you will need to rely upon field notes and your inspection report to refresh your memory about an inspection prior to trial. Good field notes will describe your observations during an inspection with sufficient detail to enable you to present graphic testimony of the procedures that you followed during the inspection and of what you observed. Your testimony should paint a colorful picture for the judge and jury describing in detail what you saw, heard, smelled, felt, or even tasted. To do this, your field notes should address the six major "W" questions: who, what, when, where, why, and how.

### *Demonstrative evidence*

Maps, photos, graphs, and charts help explain other evidence.

Demonstrative evidence is created to help the judge or jury better understand other evidence. It includes photographs taken by an inspector during an inspection and maps or other drawings created by the inspector in the field or in the office as preparation for trial. A diagram of an intersection showing the direction cars were moving in an automobile accident case or a map pinpointing where soil samples were collected and their proximity to leaking drums on the site are two examples of demonstrative evidence. It also includes graphs, charts, and other aids which visually summarize eyewitness testimony or physical evidence, e.g., a graph illustrating the blood-lead levels of children over a period of time.

### Tips for gathering evidence

As the old saying goes "one picture is worth a thousand words." Good quality photographs of a hazard make a powerful impact and are the next best thing to taking the judge on a walking tour of the site. While graphs and charts can be prepared by lawyers, paralegals, or other support staff on the eve of trial, photographs usually must be taken during the inspection by the field officer. What measures can you take to ensure that a valuable photo opportunity is not lost during the inspection?

- Be sure all camera equipment is in good working order.
- Take a spare Polaroid camera.
- Take extra fresh batteries.
- Take an extra flash.
- Take more film than you anticipate needing.
- Protect film from improper storage, avoiding extreme temperatures, such as an overheated vehicle.

Document your photos. Your field notes should record the pictures in chronological order, identifying date and time of each photo. Where relevant, you should also indicate the name of the facility and the specific location where the photo was taken, lighting and weather conditions, a brief description of the scene, the number of any corresponding physical samples, and anything unusual about the way the photo was taken (for example, the use of special filters or lenses). This information should also be entered on the back of any Polaroid photographs taken at the site.

*Excerpted from EPA's Basic Inspector Training Manual*

### *Expert testimony*

Expert witnesses do give opinions, based on their specialized knowledge.

The fourth major category of evidence is expert testimony. An "expert" in legal terms is defined as anyone who has specialized knowledge not likely to be possessed by "ordinary lay persons who are inexperienced in the pertinent subject," i.e., the judge or jury. Expert witnesses typically possess scientific, technical, or professional expertise gained through special training, skill, or familiarity with a subject.



In direct contrast to the "fact witness," the primary function of an expert witness is to give opinion testimony about facts that have been proven by other witnesses during the trial. For example, in a housing case involving a child's exposure to lead-based paint, a pediatrician may be called to testify that in his expert opinion the child's blood-lead level will cause permanent damage to her cognitive skills and lower her intelligence quotient (IQ).

### **Admissibility of evidence**

There are three basic legal principles that determine whether a party's "proof" may be admitted into evidence:

- Relevancy
- Credibility
- Authenticity

Once you understand these basic principles, the seemingly arcane rules of evidence will become much clearer.

#### *Relevancy*

Evidence must relate directly to the issues in controversy.

To be considered relevant, evidence taken by itself or in connection with other facts must prove or logically tend to prove a proposition that is in controversy. The pleadings filed in a case determine, for the most part, the propositions or issues that are in controversy. If the evidence offered does not logically tend to prove a proposition, or if the proposition it proves is not in controversy, the judge may exclude the evidence on the basis that it is irrelevant.

For example, in a government action to revoke a nursing home license because the electrical wiring and egress patterns violate the municipal fire safety code, evidence that the nursing home owner had not filed state income tax returns for the preceding three years may be deemed irrelevant and therefore inadmissible. The fact that the owner intentionally or negligently failed to comply with state income tax laws does not logically tend to prove that the structure represents a fire hazard. While the evidence may be relevant to the licensee's character, that is not an issue in the controversy, at least as we have described it.

### *Credibility*

Evidence must be believable.

The second major principle is that of credibility. In order to be admissible, the evidence must be credible, that is, real, correct, true, and/or worthy of belief. A complex, intricate, and seemingly unrelated body of rules governing the admissibility of all types of evidence has grown over the centuries primarily to give effect to this second basic principle. The most significant of these rules for public health professionals is the hearsay rule and its many exceptions.

“Hearsay” evidence is based on statements made out of court.

*The Hearsay Rule:* The term "hearsay" is one of the most frequently and incorrectly used term in the legal lexicon. Hearsay evidence is oral or written testimony offered in court of a statement made out of court, where the purpose of the in-court statement is to show the truth of the out-of-court matter asserted. Hearsay evidence will be excluded unless it falls within one of the numerous exceptions created to soften the harsh results of the rule.

To understand the rule and its many exceptions it is helpful to look at its history. The rule against hearsay evidence was crystallized in the late 1600's to ensure the credibility of testimony in old English law. The rule and its many exceptions are premised on the understanding that witnesses offer the most credible evidence when:

- Testifying, orally or in writing, under the solemnity of a court-administered oath
- The declarant, the person making the statement, is present in court, thus eliminating the danger of incorrectly reporting an out-of-court statement
- An adversary has an opportunity to cross-examine the declarant about the truth of the matter asserted.

This last element is perhaps the most significant. When the declarant of an out-of-court statement is not before the court, and the statement is reported by another witness, the declarant cannot be cross-examined about what he or she has asserted as true.<sup>4</sup>

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<sup>4</sup> McCormick, p. 581.

The following example of hearsay evidence will help clarify this complicated rule:

John Smith, Director of Lincoln Land Health Department testifies in court that Dr. Avery, his employee, told him that she warned the parent of the possible side-effects of the immunization before administering the shot. In this example, Director Smith is testifying about an out-of-court statement made by Dr. Avery to a parent. Dr. Avery was not under oath when she made the statement to Director Smith nor can she be cross-examined about whether in fact she warned the parent of the possible side effects of the shot.

*Pertinent Exceptions to the Hearsay Rule:* The exceptions below are found in the *Federal Rules of Evidence* and govern only federal court proceedings. Many state courts' rules of evidence are patterned after the federal rules, but significant differences may apply. Each of the following exceptions is premised on the belief that the circumstances surrounding the out-of-court declaration tend to support the declarant's veracity, thus overcoming the problem that the declarant was not under oath when the statement was made and is not subject to cross-examination.

1. *Out-of-court admissions of a party-opponent:* Under the Federal rules, by definition the term “hearsay” does not include an out-of-court statement that was made by a party to the lawsuit. According to a leading legal scholar, this is because “A party can hardly object that he had no opportunity to cross-examine himself or that he is unworthy of credence save when speaking under sanction of an oath.”<sup>5</sup> If quoted inaccurately, a party to the lawsuit may offer testimony correcting any untrue characterization of his or her out-of-court statements.

The practical implication of this exception is that any statements made by an individual or corporate representative, either verbally or in writing, may later be used against that person or corporate entity in a legal proceeding. Thus you should carefully record any such statements in your field notes or logbook.

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<sup>5</sup> Wigmore, Section 1364, pp. 15-16

2. *Declarations against interest:* An out-of-court statement made by a nonparty may also be admissible if: a) the declaration states facts that are against the speaker's own pecuniary or proprietary interests, and b) the person making the statement is unavailable to testify at trial. For example, if the co-owner of a restaurant admits to the health officer that a batch of rotting potatoes was used to make a stew which was then served to customers, the health officer can testify to the admission if the declarant cannot be subpoenaed to testify at the trial.
3. *Spontaneous declarations:* Out-of-court declarations of present bodily condition, present mental states and emotions, present sense impressions, and excited utterances are all admissible as exceptions to the hearsay rule under the theory that spontaneity presents a special case for trustworthiness. For example, an inspector may testify about excited utterances or statements of present sense impressions made by witnesses to him while he was investigating the scene of an accident.
4. *Past recollection recorded:* This exception allows written hearsay evidence to be admitted if four conditions are satisfied: a) the witness must have had firsthand knowledge of the event, b) the written statement must be an original memorandum made at or near the time of the event and while the witness had a clear and accurate memory of it, c) the witness must lack a present recollection of the event, and d) the witness must vouch for the accuracy of the written memorandum. Thus if you are called to testify at trial and cannot, even after looking at your notes, recall events of an inspection, it may be possible through the "past recollection recorded" exception to the hearsay rule to permit your field notes to be introduced as evidence at trial. This is true as long as the notes reflect your firsthand observations and were recorded at or near the time of the inspection.

If you cannot recall details yourself, your notes can be used as evidence.

Business records can be used as evidence if they are trustworthy.

5. *Regularly kept business records:* Business records that are kept in the regular course of business will be admissible, if: a) they were made by a person knowledgeable about the events or by someone reporting to him; and b) they were made at or near the time of the transaction. The records may be in the form of a memorandum, report, record, or data compilation, and may record acts, events, conditions, opinions, or diagnosis. This exception will not apply if the source of the information or other circumstances indicate a lack of trustworthiness. Public health agency records, including a field officer's inspection notes, and records of licensed and/or otherwise regulated entities, all may fall within this exception.<sup>6</sup> The practical implication of this exception is that you should take the opportunity to inspect and copy business records which may later be of evidentiary value.
6. *Official written statements and certificates:* An exception to the hearsay rule also exists for written statements of public officials that are made by officials with a duty to make them, and are based upon firsthand knowledge of the facts. Such records have a special trustworthiness and a high probability that the official has fulfilled her duty to make an accurate report.

Given that the hearsay rule is riddled with exceptions, you should not let concerns about potential evidentiary difficulties prevent you from gathering all potentially relevant material. The best practice is to thoroughly record and document all potentially relevant conversations in detail. Your field notes should indicate:

- Date, time, and place of the conversation
- Full identification of all persons who were present during the conversation, including the full name, address, and telephone number where possible
- What was said by whom

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<sup>6</sup> These records may be admissible under other exceptions as well; for example, the records of a business may be admitted as an "admission of a party-opponent."

### *Authenticity*

Tangible items offered as evidence must be authenticated through testimony or certification.

A third concept, closely related to the concepts of relevancy and credibility, is the authenticity of documents and other tangible items. In lay terms, authentication refers simply to offering proof that a document, writing, or other sample item *is* what the party offering the proof says that it is. Proof of authentication is made through witness testimony, orally or through written certification. The person testifying must be someone who can demonstrate personal knowledge as to the authenticity of the item. For example, if a field report you have written is offered as testimony, you may be called to testify that the report is yours. If you are not available to testify, witnesses familiar with your handwriting or signature, or a person who received the report as part of official business may be called to authenticate the document.

To authenticate business records obtained from a site during an inspection, you may be called to testify that you inspected the facility on X date, that during the inspection you collected the company's business records from the place where such records are normally kept, and that the records in the courtroom are the same ones you collected during the field inspection. Carefully documenting and initialing records obtained during an inspection will enable you to authenticate the evidence in court.

Authenticity can be established by following chain of custody rules.

A more complicated problem of authentication presents itself when the government is required to authenticate samples and analytic results of samples collected in the field. To solve this problem, most public health agency programs have devised elaborate field procedures, called chain of custody rules, which must be followed whenever you obtain a sample in the field. Chain of custody rules are designed to ensure that when the sample, or analytic results of the tests performed on the sample, is offered into a court of law the agency can prove that the sample offered (or analyzed) is *the* sample which was collected during the inspection and further *that the condition of the sample is substantially unchanged*. The agency does this by offering testimony that chain-of-custody procedures were followed making it highly improbable that the original item has been exchanged with another, or contaminated or tampered with in any way. If the agency cannot prove this because there was a gap in documenting who had custody or control of the sample for a period of time, the sample and any analytic results of the sample will not be admitted into evidence.



---

## Bringing it home...

1. Does your agency have chain-of-custody protocol?
  2. Is a quality audit conducted to ensure that chain-of-custody procedures are followed?
- 



**See Group exercise 6.6 at the end of the module.**

### **In conclusion**

Public health officers play a crucial role in achieving a successful enforcement action. Their responsibilities begin with the collection of admissible evidence and continue throughout the stages of the enforcement process.

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### **Stop and think...**

As a quick, general review of the issues covered in this module, assume you are a food sanitation inspector. You discover a restaurant selling contaminated hamburgers. What action(s) can you take to protect the public's health?

Which enforcement options are available in your jurisdiction to handle this situation?

What authority do you have to act immediately to prevent continued sale of the spoiled meat?

What rights does the restaurant owner have? Can he challenge (and delay) your actions?



If so, in what kind of proceeding?

If challenged, what evidence would you need to prevail?

[Hint: If this is a first incident, you might consider an informal request to close operations until the problems have been corrected. If it is a repeat offender, you might - in addition to taking emergency action - initiate a license revocation proceeding.]





## **Review of terminology...**

affirmative defense

authenticity

burden of proof

chain of custody

credibility

demonstrative evidence

expert testimony

eyewitness testimony

hearsay rule

physical evidence

relevancy

standards of proof

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# Self-check review

---

Check your knowledge of the preceding material by answering the questions below.

1. A private nuisance is one that
  - A. Is continuous and repeated
  - B. Is in a place where the public is likely to go
  - C. Destroys or damages property of a few persons
  - D. Is inherently immoral or indecent
  - E. Constitutes a breach of public order
  
2. A temporary restraining order
  - A. Requires a notice of an emergency hearing
  - B. Prevents further harm from occurring until the matter can be brought to trial
  - C. Requires proof that irreparable harm will occur if it is not granted
  - D. Allows destruction of property that might cause harm to the public's health
  
3. Property can be embargoed, seized or condemned
  - A. If it is believed to be spoiled, dangerous or misbranded
  - B. Only after a civil court proceeding
  - C. At the expense of the owner
  - D. Unless the owner files a protest
  
4. Health officials have full authority to summarily destroy dangerous property
  - A. Without giving the owner notice
  - B. Only after sampling and analyzing
  - C. After harm has been temporarily abated
  - D. Only when less extreme measures will not mitigate the threat

5. Individuals may be detained in isolation or quarantine
  - A. Without prior due process if they pose a danger to themselves or others
  - B. Only when they are infectious
  - C. In order to force them to take medication
  - D. Without the right to request release
  
6. Formal enforcement often includes
  - A. Warnings
  - B. Tickets
  - C. Notice
  - D. Education and training
  - E. License revocation
  
7. Due process includes all of the following except
  - A. The right to a prior hearing in emergency cases
  - B. Notice about the time and place of a hearing
  - C. Access to agency files and records
  - D. The right to a transcription of the hearing
  
8. The discovery phase of litigation is where
  - A. The court rules on admissibility of evidence
  - B. Lawyers take statements from potential witnesses
  - C. The government must prove a complaint is true to a reasonable degree of certainty
  - D. Witnesses testify and are cross-examined before a judge.
  
9. Motions may be made to
  - A. Eliminate an affirmative defense
  - B. Have the court dismiss a case based on evidence in written documents
  - C. Gain access to evidence.
  - D. All of the above

10. When you suspect criminal activity during a routine health investigation, you should
- A. Get a search warrant
  - B. Read the violator his Miranda warnings
  - C. Document all pertinent information gathered after criminal activity is suspected
  - D. Stop the investigation and inform your superiors of your suspicions
11. The government has the burden of proving its case “beyond a reasonable doubt” in
- A. An affirmative defense
  - B. A criminal case
  - C. An appeal
  - D. An administrative hearing
12. Opinions may be presented in a trial
- A. As part of an expert witness’s testimony
  - B. As long as it is not based on hearsay evidence
  - C. Only by eyewitnesses
  - D. When backed up by physical evidence
13. Hearsay evidence is admissible in a trial
- A. As long as it is relevant
  - B. If authenticity can be proven
  - C. If the declarant can be cross-examined about the truth of the assertion
  - D. All of the above.

Answers:

1.C, 2.C, 3.A, 4.D, 5.A, 6.E, 7.A,  
8.B, 9.D, 10.D, 11.B, 14.A, 13.C

# References

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Federal Rules of Evidence, Title 28, United States Code

Gellhorn, W. & Byse, C. *Administrative Law Cases and Comments*, Foundation Press (1974)

Grad, F. *The Public Health Law Manual*, 2nd ed., American Public Health Association (1990)

McCormick, Cleary, et. al., *Text on Evidence*, 2<sup>nd</sup> Ed., West Publishing Company (1972)

U.S. Environmental Protection Agency's Basic Inspector Training Course Manual, *Fundamentals of Environmental Compliance Inspections* (1989)

# Group exercises

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## Exercise 6.1

Assume your agency received a complaint of an abandoned apartment building located in a residential area that was used unlawfully by squatters for shelter. The building was not maintained and represented a substantial fire hazard. In addition, garbage was strewn throughout the site creating a haven for rodents and other varmints. The building was generally unsanitary and a foul odor exuded from the broken windows. Neighbors complained that the building was used as a crack house by local drug dealers.

1. In your jurisdiction would this constitute a public or private nuisance?
2. What, if any, enforcement options might you have?
3. What, if any remedies, would you seek?
4. What kind of evidence would you gather to support an abatement action?  
How would this evidence be used in court?

Now assume the public health officer in a small county agency received an anonymous call from a neighborhood resident that a family of fourteen was living in a two bedroom home. Upon inspecting the home, the officer found the house to be small, but relatively well-kept.

1. Is this a public nuisance?
2. What if the dwelling were home to twenty-five cats and dogs?
3. Do the facts as suggested provide adequate basis for the court's issuing a temporary restraining order? Why not?

**Exercise 6.2      Emergency orders**

The Utah Administrative Code provides:

**63-46b-20. Emergency adjudicative proceedings.**

1. An agency may issue an order on an emergency basis without complying with the requirements of [the Chapter on Administrative Procedure] if:
  - a. the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
  - b. the threat requires immediate action by the agency.
2. In issuing its emergency order, the agency shall:
  - a. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare
  - b. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
  - c. give immediate notice to the persons who are required to comply with the order.
3. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

Enacted by Chapter 161, 1987 General Session

Questions:

1. How does this process differ from the non-emergency situation?
2. What are the procedural requirements in your jurisdiction for:
  - a) an emergency situation
  - b) a non-emergency situation?



**Exercise 6.3**

Inspector Tracey, a food sanitation inspector for the Lake Wobegone County Health Department, received a call from the county hospital warning of a possible *Salmonella* outbreak which seems to be connected to milk from a certain dairy.

1. What should Inspector Tracey do?
2. What is the proper protocol for your health department?
3. In your jurisdiction, what legal authority would the inspector have?
4. Would he have authority to:
  - seize or embargo all milk sold in the county from that dairy?
  - summarily destroy the milk?

Assume the contamination can be traced to certain lots of milk that are stamped with two particular dates and lot numbers.

5. Given this information, would it be reasonable for the agency to seize all milk from the dairy in question or should it seize only those lots of known threat?
6. What if the article of concern were merely misbranded rather than contaminated?
7. What should Inspector Tracey do then?
8. What if the articles were non-perishable?
9. Would this alter your decision about whether or not to summarily destroy the seized goods? Why or why not?

**Exercise 6.4**

(This exercise is also found in Module 10.)

Read the case study below and decide how to answer the questions that follow the case study. After your study group has discussed the answers to these questions, look at the summary of the court's opinion in this case, to be found at the end of this module.

In July, the Atlantis township health and building departments were called to inspect a six-family tenement house. According to the inspection reports of Tom Eaton from the Atlantis Health Department and Veronica Wand of the township's Building Department, many children lived in the tenement house. On the front stoop a wooden post holding up the roof was so deteriorated that if anyone were to lean against it, the post would fall down, perhaps striking people on the sidewalk below.

The basement apartment smelled of human and animal waste. A young girl was eating at a table on which cockroaches crawled. The toilet was covered with human excrement. Rat droppings were observed under the kitchen stove. The apartment was adjacent to the boiler room, which was filled with pieces of furniture, debris and wooden boxes. A metal fire door was jammed open and was not operable. In a "filthy" bed the mother of the family lay ill. The basement and its apartment were described as squalid. This statement was corroborated by the inspectors' photographs.

In the first floor apartment, there was a leak over the kitchen sink and paint and paper were peeling off the wall over the stove and sink. The bedroom floor was rotted around the radiator. The toilet was "covered with excreta," and the smell from the basement permeated to this floor.

In the stairway leading from the first to the second floor, the handrail of the bannister was broken and would fall if weight were put upon it. In the second floor apartment, a section of the ceiling had fallen down over the kitchen sink. The ceiling was still wet and part of it had "bellied."

An electrical inspector found that the electrical circuit was overloaded. "Zip cord" outlets were used. They were frayed and in some instances the insulation was broken. Each apartment showed more appliance load than the wiring could carry on an overloaded fuse. The cellar steps contained an open outlet box, accessible to children playing in the area.

Following the inspection, township officials conferred with the owner, ordering him orally to make building, health, and safety code corrections. On a return inspection four months later, the inspectors found that conditions had deteriorated further. Nothing had been improved and the weather was getting cold. The heating system was not working and the tenants were using their gas stoves to provide heat. Based on the emergency condition of the building, the township issued a summary notice to all tenants to vacate their apartments. The owner is suing Atlantis Township and inspectors Eaton and Wand.

\*\*\*\*

1. Were the owner's rights to due process violated when the township issued a summary notice to vacate? Would your answer change if the township had not only issued a summary order to vacate but also demolished the structure?
2. Under what circumstances may a public health agency engage in a summary proceeding?
3. Is the owner entitled to damages for the loss of use of his property?

**Exercise 6.5      Is a criminal search warrant required?****Scenario One**

Your state code prohibits the sale of cigarettes and other tobacco-related objects to minors. Any person who violates this section of the code is guilty of a misdemeanor (that is, a criminal offense). As part of a routine investigation, last week a team of under-aged adolescents, working in conjunction with your department, went into a neighborhood grocery store and successfully purchased two packs of cigarettes. To make sure the violation is well-documented, you decide to repeat the investigation. Is a criminal search warrant required this time? Why or why not?

*Hint:* Think about the purpose of a criminal warrant.

**Scenario Two**

While routinely inspecting operations at a swimming pool resort, you observe workers at the resort illegally dumping hazardous chemicals into a nearby river. You want to take photographs of their activities and collect samples of the material they are dumping. Do you need a criminal search warrant to do so?

**Scenario Three**

Your office referred a civil case to the Attorney General for prosecution. You are seeking civil penalties and injunctive relief against a nursing home owner who has violated numerous provisions of the state code. You have strong reason to believe the owner and operator of the home are also engaging in activities of a criminal nature. The Attorney General's office requests that you re-inspect the nursing home to gather additional evidence to support your civil action. Do you need a criminal search warrant to re-inspect the facility? Why or why not?

**Exercise 6.6**

Jane Dow is an inspector for the State Health Department, Environmental Health Programs, Division of Radiation Protection. She inspects over two hundred facilities a year, including hospitals and private medical practices which use mammography machines. She is looking for compliance with standards based on the Mammography Quality Standards Act (MQSA), a law passed by the United States Congress in 1992, and she finds regulatory violations in approximately 40% of the facilities she visits. The inspection of mammography machines is pursuant to a contract with the U.S. Food & Drug Administration.

The federal standards require facilities to be certified by the American College of Radiology. They must demonstrate credentialing of physicians, technologists and medical physicists, and must adhere to quality assurance/quality control measures, patient dose maximums and film image quality minimums. The standards also impose detailed record-keeping requirements for quality assurance.

In early January Jane Dow conducted a routine inspection of the mammography facility at Good Fellow Hospital. As part of her inspection, Ms. Dow spoke with Mr. Lyme, the medical physicist responsible for performing equipment-related quality assurance performance surveys and mammography equipment evaluations, and with Sally Tree, the quality control technologist who is responsible for the over-all quality assurance duties not specifically assigned to Mr. Lyme. Ms. Dow also tested the mammography equipment herself and performed an audit of the hospital's quality assurance records.

Ms. Dow's test results showed that the equipment was not maintained to standard. There appeared to be problems with fog density on the x-ray film which adversely affected the image and could cause a misdiagnosis, i.e., a false negative finding. In addition, there appeared to be light leaks and problems with safelight conditions in the darkroom. Finally, the quantity of residual fixer on film that was processed during the day of the inspection was greater than permitted by the standards.

During her exit interview, Ms. Dow raised her concerns with Ms. Tree and Mr. Lyme. Each of them expressed surprise. Both said the problems were new and nothing like this had been detected during their routine quality assurance audits. Indeed, Ms. Dow's record audit verified that the required daily, weekly, quarterly and semi-annual quality control tests had all been conducted and, except for one documented problem which was corrected within twenty-four hours, the equipment and film processing operations all appeared within normal operating limits.

One week later, Ms. Dow received a call from Ms. Tree who had just been terminated from Good Fellow Hospital. Ms. Tree confessed that the quality assurance records were falsified and that it had been months since the required tests were performed.

Inspector Dow forwarded an inspection report to the FDA, including a memo about her telephone conversation with Ms. Tree. An FDA lawyer has now contacted Ms. Dow requesting her help in developing a civil action against Good Fellow Hospital. The FDA wants to seek a court order revoking the hospital's certification based on fraudulent activity and requiring it to pay penalties. The FDA also plans to ask the court for injunctive relief compelling the hospital to pay for the re-examination of patients who may have received questionable x-ray results during the period in question.

### Questions for Discussion

1. What, if any, *eyewitness testimony*, might the FDA expect from Ms. Dow?
2. What if the case does not go to trial for eighteen months, and Ms. Dow can no longer recall what she observed during the inspection? How might the case proceed?
3. Could Ms. Dow testify about what Mr. Lyme and Ms. Tree told her during the inspection? Is this *hearsay*? Does it fall within one (or more) exceptions to the hearsay rule? Which one(s)?
4. Could Inspector Dow testify about what Ms. Tree told her on the telephone following the inspection? Is this hearsay? Does it fall within one (or more) exceptions to the hearsay rule? Which one(s)?
5. Identify all *physical evidence* that the FDA might hope to use from Inspector Dow's inspection?
6. How could Inspector Dow *authenticate* such evidence at trial?
7. Would any of this evidence be hearsay? If so, does it fall within one or more exceptions to the hearsay rule? Which one(s)?
8. What, if any, *documentary evidence* might be prepared for the trial?
9. What, if any, *expert testimony*, might be presented at the trial?

NO. \_\_\_\_\_

THE STATE OF TEXAS' IN THE \_\_\_\_\_ JUDICIAL

VS.' DISTRICT COUNTY OF \_\_\_\_\_

PRODUCTS'  
OF TEXAS, INC.' DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT;

NOW COMES Bowen Weems, Assistant District Attorney of Dallas County, Texas, and files this case in compliance with Art. 4476-5, Vernon's ANN.CIV.STAT., Sec. 3, ' a,b,h, Sec. 10, ' a,2,c,a,4, Sec. 11, ' a,h,i, and Sec. 28 ' a, complaining of \_\_\_\_\_ Products, of Texas, Inc. and Mr. Steve \_\_\_\_\_, individually, and is Vice-President of the above referenced corporation, and for such cause of action would show the following:

I.

That \_\_\_\_\_ Product of Texas, Inc., is a Texas Corporation operated by Mr. Steve \_\_\_\_\_, Vice-President, such corporation's address is recorded within the State of Texas as \_\_\_\_\_ Street, City of Dallas, County of \_\_\_\_\_ Dallas, State of Texas. Mr. Steve \_\_\_\_\_ is the registered agent for service of said corporation and service is requested upon Mr. \_\_\_\_\_ at \_\_\_\_\_, City of Fort Worth, County of Tarrant, Texas 76148 and at \_\_\_\_\_ Street, City of Dallas, County of Dallas, State of Texas.

II.

Defendant Corporation is engaged in the business of manufacturing food stuffs and re-selling same and/or introducing same into the

general stream of commerce for ultimate consumption of the general public.

That on or about the dates of September 25, 1985, September 27, 1985, and

October 10, 1985, that the subject premises located at

Street, City of Dallas, County of Dallas, State of Texas, was

inspected by agents of the Texas Department of Health, Food and Drug Division, and was found that Defendant was manufacturing, holding for sale, offering for

sale, and delivering food that is or may become adulterated and was

misbranded, a violation of the Texas Food, Drug and Causmatic Act, Vernon's

ANN.CIV. STAT. Art. 4476, Sec.3,(a)(b)(h). Further, that Defendant by the

lack of sanitary conditions is hereinafter described by affidavit was causing

or the adulteration of or providing for the adulteration of the food in

violation of Art. 4476-5, Sec. 10, ' a, (2)(c)(a)(4). Further, that Defendant

was introducing into the stream of commerce manufactured food items which were

misbranded in violation of Sec. 11, ' (a)(h)(i). Further, that Defendant was

operating in the State of Texas in the manufacturing

of food or food stuffs for introduction into the stream of commerce for

consumption by the general public without the required license

as required by Art. 4476-5, Sec. 28 ' (a) of Vernon's ANN. CIV.STAT.

### III.

Such food stuffs is deemed adulterated because it has been prepared, packaged and held for sale or offered for sale under unsanitary conditions

whereby it has or may become contaminated, or whereby it may have been

rendered injurious to health. Such unsanitary consist of the following

particulars which were discovered on the inspections held on the following

dates.



(a) That on September 25, 1985, an inspection by an Agent of the State Department of Health, Food, Drug and Cosmetic Division, it was determined that the label on the products did not contain any notification of the inclusion of yellow dye No. 5, which has been determined to be highly allergic to certain individuals who may consume same in the mainstream of commerce if in fact such labeling does not contain such information.

All products which by previous laboratory analysis had indicated contained said yellow dye No. 5 was detained by such agents to prevent its introduction in the stream of commerce to be consumed by the general public.

(b) On September 27, 1985, a subsequent inspection was made of the premises of the property and the following conditions were found:

- (1) Several containers of toxic type items (HTH and glass cleaners and lubricants, were found stored in the production area with raw materials and products. Other non-food items were also found of a non-toxic nature.
- (2) Four cases of swollen no.10 size cans of fruit mix, a concentrate were observed in the warehouse area. Such swollen cans indicates the probability of the induction of micro-organisms in such product.
- (3) An inspection of the tanks which are used to mix the products indicated that the valves on both the product mixer product and the mixer tanks were leaking on to the

floor. Both valves on each tank needed caps for the open valve connections.

- (4) Open boxes of empty 16 oz. bottles into which the final mix of food products is to be packaged prior to introduction into the mainstream of commerce was observed in the production room exposed to the elements and any possibility of rodent and/or insect infestation.
- (5) The employees observed handling of the equipment, products, and other items failed to maintain proper sanitary methods of cleaning hands, and/or their skin allowing the possible introduction of bacterial items into the product prior to packaging.
- (6) The concentration of hand-dipped solution and equipment rinse solution which is a mixture of water and chlorine was analyzed and found to be at a higher than recommended concentrate. Such percentage of concentrate for chlorine is such that the chlorine may as a residue be found in the food product rendering injurious or possibly injurious to health.
- (7) The inspector was unable to determine the raw material, micro-biological chemicals, or weights volume of the products prior to the introduction into the mainstream of commerce because no records were available as to these items and an on sight inspection produced no firm or corporate procedures for main-

taining such elements on he production line or to record same. That on October 10, 1985 the subsequent inspection was made where it was ascertained that the following conditions existed:

- (1) That the orange juice produced on October 9, 1985, for packaging on October 10, 1985, was held at a temperature which promotes microbial spoilage for several hours. The product temperature had filters was measured at 74 degrees at the time of packaging. This has the opportunity to encourage the growth of micro- biological organisms which could in fact cause a product to become spoiled.
- (2) Observed a black, mold like build up on the agitator shaft in a 600 gallon tank used to mix the product.
- (3) Noted mold black mold like build up inside red plastic cap used as a cover on threaded pipe connection on top of 500 gallon tank used to mix product. The plastic cap on the 600 gallon mix tank was cracked and in poor condition to the point that it could not be removed for further inspection.
- (4) A plastic sheet used to cover pipe connections on a 1,000 gallon tank was not adequately protected. Such plastic cover contained condensation

and provided excellent environment for a micro-bial growth.

- (5) There was a use of a no-pest strip containing possible insecticides, was found being used in the production area. The valves on the mix tanks were leaking product on both the 500 and 600 gallon tanks.
- (6) Five gallon containers of concentrate in the production area, observed to be dirty with build up on the lids around the pour spout.
- (7) Firm has started using batch records, but still has no published production schedule or shipping records to check up records against.

No other process control or checks had been initiated since the last inspection when such information was given to them that it was required. No production checks were observed during this inspection at all to determine either the quality or the quantity of the food stuffs being produced.

- (8) General house-keeping and sanitary conditions were considered poor in the warehouse area.

That information has been given and promises made as to the items to be withdrawn from the commerce and no such activity has been shown. That unless immediately restrained from the production and introduction into commerce of such food items, Defendant herein shall continue to sell and

deliver such food that is or may become adulterated, is misbranded, and may continue to do business in the State of Texas without a license in violation of the Texas Food, Drug, and Causmatic Act. All to the detriment of the general public of the State of Texas for which there is no adequate remedy at law.

V.

Under such conditions there exists a real danger that irreparable injury will result if such production and sale of food stuffs continues to be placed in the stream of commerce to be consumed by the general public which would be a danger to the health of such public and that this Court should grant a temporary restraining order that Products of Texas, Inc. and Mr. Steve                      cease production, manufacturing, holding, selling, offering for sale, or delivering any food item prepared under the above listed conditions and without a license. That such order should ripen into a temporary injunction and that upon hearing and upon final determination of this cause, that such temporary injunction be made permanent, and that all products, raw materials, and other items held by such Defendant, that are adulterated or may become adulterated, contaminated or may become contaminated, misbranded, should be ordered condemned and destroyed upon order of this Honorable Court and further that this company not be allowed to further do business in the State of Texas without a valid license issued by the Texas Department of Health under all terms and conditions therein. All of the above is particularly true in that an inspection of the records of such company indicates that a large majority of the products produced therein is being sold under the

federal lunch program and being consumed by minor children of this State, who should be fully protected.

WHEREBY PREMISES CONSIDERED the State of Texas prays that these defendants be cited to answer this cause of action, that a temporary restraining order be immediately issued to both defendants as pled for hereinabove, that upon a hearing such restraining order ripen into a temporary injunction and upon final hearing hereof, that such temporary injunction become a permanent injunction and that this Court condemn under the State Health Laws the products which are or may become adulterated contaminated in order that they may be destroyed, that such corporation and its registered agents be herein further enjoined from doing business in the State of Texas until such time as compliance is found with the licensing requirement of the Texas Department of Health, for costs of court, for attorney's fees, and such other and further relief at law and in equity to which the State of Texas may be unjustly entitled.

Respectfully submitted,

Henry Wade  
Criminal District Attorney  
Dallas County, Texas

---

Bowen Weems  
Assistant District Attorney  
State Bar No. 21073000

Third Floor, Services Building  
601 Elm Street  
Dallas County, Texas 75202  
(214) 749-8358

STATE OF TEXAS            '  
                                  '  
COUNTY OF DALLAS       '

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND INJUNCTION

BEFORE ME, the undersigned authority personally appeared Ms. Brenda Holman, Food and Drug Inspector for the State Department of Health, Food, Drug and Cosmetic Division, of the State of Texas and by me duly sworn on her oath as follows:

That such Food and Drug Inspector has personally examined the premises and conditions of the Products of Texas, Inc., located at Street, City of Dallas, County of Dallas, State of Texas, and has personally taken photographs and samples, which are now in the custody of said inspector, and that certain samples have been submitted to the laboratory for the United States Federal Drug and Food Administration, and that based upon their personal knowledge, education, experience, and the In- formation provided by the Federal Food and Drug Laboratories, state that such food stuffs as produced and located on the premises of Products of Texas, Inc., are being processed under conditions where they are or may become adulterated and unfit for human consumption, that such is operating without a license under the law of the State of Texas, and further that articles being placed in the mainstream of commerce are misbranded or improperly labeled.

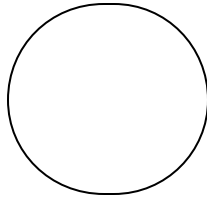
\_\_\_\_\_  
Brenda Holman

SWORN TO AND SUBSCRIBED to before me this \_\_\_\_\_ day of October, 1985.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

My commission expires: \_\_\_\_\_

STATE OF ILLINOIS  
Department of Public  
Health  
Office of Health  
Regulation



State Seal

DIVISION OF FOOD, DRUGS,  
AND, DAIRIES  
525 West Jefferson  
Street  
Springfield, Illinois  
62761  
Phone: (217) 782-7532

**NOTICE OF DETENTION OR EMBARGO**

To \_\_\_\_\_  
NAME  
\_\_\_\_\_  
ADDRESS

No. 1395

Having this day found in your possession the following described articles of food:

- \_\_\_\_\_
- 59 X 10 LB(INTACT) CASES IQF ALASKAN POLLOCK FILLETS
- 161.5 LBS (5 GAL PAILS) UNLABELED IQF ALASKAN POLLOCK FILLETS
- \_\_\_\_\_
- TOTAL: 751.5 LBS
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

which are suspected of being adulterated or misbranded within the meaning of the Illinois Food Drug and Cosmetic Act and the same having been detained or embargoed and tagged "Suspected," and an inventory having been made of the said articles of food, a copy of which is herewith delivered to you.

You are hereby notified, pursuant to Section 506, of the Illinois Food Drug and Cosmetic Act not to offer the said articles for sale, or sell, or otherwise dispose of the same until further notice in writing from the Department of Public Health, under penalty of the law.

You are further notified as the person, firm or organization found in possession of the above named products under detention or embargo, that the duty to preserve, protect and maintain these products remains with you and neither the Department of Public Health nor any of its employees assumes any liability whatsoever to any person, firm or organization for the preservation, protection or maintenance of same.

\_\_\_\_\_  
Robert L. Flentge, D.V.M., M.S., Chief

By \_\_\_\_\_  
FOOD, DRUGS AND DIARIES SANITARIAN

A copy of the above notice of detention or embargo and inventory has been received this 20<sup>TH</sup> day of MAY, 1992.

Signature \_\_\_\_\_

Firm \_\_\_\_\_



Illinois Department of Public Health Division of Food, Drugs and Diaries 535 West Jefferson Street, Springfield, IL 62761 Phone: (217) 782-7532		Illinois Department of Public Health Division of Food, Drugs and Diaries 4212 North St. Charles Road, Bellwood, IL 60104 Phone: (312) 544-5300	
Name of individual to whom report issued <b>TO:</b>		<b>DATE OF INSPECTION</b> 05-20-92	<b>C.F. NUMBER</b>
<b>TITLE OF INDIVIDUAL</b> President		<b>TYPE ESTABLISHMENT INSPECTED</b> Fish Processor	
<b>FIRM NAME</b> SHRIMP & FISH CO. INC.		<b>NAME OF FIRM, BRANCH OR UNIT INSPECTED</b> (same)	
<b>STREETADDRESS</b>		<b>STREET ADDRESS OF PREMISES INSPECTED</b> (same)	
<b>CITY AND STATE</b> Grove Village, IL		<b>CITY AND STATE</b> (same)	

**DURING AN INSPECTION OF YOUR FIRM (I) (WE) OBSERVED:**

RE: Joint Investigation with FDA  
Placement of Embargo #1395

On 05-20-92, 09:45am, State Embargo #1395 was placed on approximately 751.5 pounds of IQF Alaskan Pollock Fillets at the firm known as:

SHRIMP & FISH CO. INC.

Grove Village, IL

According to FDA Investigator, Norman Brown, preliminary test results from the Seattle DO, found samples decomposed, and product misbranded (labeled as Pollock Fillets, but actually composed of 3 other species of fish) but, being sold as Pollock Fillets.

Upon my arrival at the facility, Mr. \_\_\_\_\_, President of the Firm, immediately requested a Voluntary Destruction of the suspect product. Request was denied and suspect product was placed under State Embargo #1395. Mr. \_\_\_\_\_ then informed the State Investigator, Sylvia Redschlag, that she was breaking the law and abusing her authority, and that he would be calling the Secretary of State's Office immediately to report said infraction.

The incident was reported immediately upon my return to the Bellwood Regional Office to Mr. Bill Beatty, Acting Chief FD&D, Central Office FD&D in Springfield, IL.

**Report received and understood by me**

\_\_\_\_\_  
**Owner or representative**

**Inspected by**\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	
	)	
	)	
Articles of food identified in Attachment	)	COMPLAINT FOR FORFEITURE
A which are in the possession of	)	
Shrimp and Fish Company, Inc.,	)	
Grove Village, Illinois	)	
	)	
Defendants,	)	

The United States of America by Fred Foreman, United States Attorney for the Northern District of Illinois, shows to the Court:

1. That this complaint is filed by the United States of America, and requests seizure and condemnation of articles of food, as described in Attachment A, in accordance with the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. 301 et seq.

2. That this Court has jurisdiction under 28 U.S.C. 1345 and 21 U.S.C. 334.

3. There are at Grove Village, Illinois, in the possession of Shrimp and Fish Company, Inc., or elsewhere within the jurisdiction of the Court, articles of food as described in Attachment A, which articles were shipped in interstate commerce from outside the State of Illinois.

4. That the articles are adulterated while held for sale after shipment in interstate commerce within the meaning of the Act, 21 U.S.C. 342(a)(3), in that they consist in whole or in part of decomposed seafood, or they are otherwise unfit for food because they are rancid, freezer burned, or dehydrated.

5. That by reason of the foregoing, the articles are held illegally within the jurisdiction of the Court and are liable to seizure and condemnation.

We request that process issue against the articles; that all persons having any interest in the articles be cited to appear herein and answer the allegations of the Complaint; that this Court decree the condemnation of the articles and grant plaintiff the costs of this proceeding against the claimant of the articles; that the articles be disposed of as this Court may direct pursuant to the provisions of the Act; and that the plaintiff have such other and further relief as the case may require.

Respectfully submitted,

FRED FOREMAN  
United States Attorney

BY:

Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 886-0974

ATTACHMENT A

433/50 pound cases, more or less, of an article of food, blue whiting fillets, labeled in part:

- (case) "\*\*\*\*BLUE WHITING FILLETS \*\*\* NET WEIGHT: 50 lbs \*\*\* ROBERT WHOLE & CO., INC., PITTSBURGH, PA \*\*\* PRODUCT OF CHILE \*\*\*\*"

24/10 pound cases, more or less, of an article of food, labeled in part:

- (case) "\*\*\*\* PACKED BY SOSSA Les Cayes Haiti Tel. 60983 and 60670 \*\*\* ROCK LOBSTER TAILS INDIVIDUALLY FROZEN \*\*\* IMPORTED BY: SOUTHWEST OCEAN SUPPLIES, INC. MIAMI, FL 33166 \*\*\* 10 LBS NET WEIGHT \*\*\*\*"

15 bags, more or less, of an article of food identified as Monk Fish, labeled in part:

- (bag) "\*\*\*\*FRESH SEAFOOD"

1 unlabeled case, more or less, of an article of food, identified as frozen Halibut

130/10 pound cases, more or less, of an article of food, labeled in part:

- (case) "\*\*\*\* CANADIAN SEAS \*\*\* OCEAN PERCH FILLETS \*\*\* PRODUCT OF CANADA \*\*\* 4 OZ. NET WEIGHT 10 LBS. \*\*\* PACKED BY CANADIAN SEAFOOD 17 JUNEWAY STREET TORONTO, CANADA \*\*\*\*"

35/25 pound cases, more or less, of an article of food, labeled in part:

- (case) "\*\*\*\* CENTRAL BEEF CO. NEEDHAM, MA 8-10 SNAPPER FILLETS 25 LBS. NET WT. 75 \*\*\* J.S. McMILLAN FISHERIES LTD VANCOUVER B.C. CANADA \*\*\* PRODUCT OF CANADA"

60 cases, more or less, of an article of food, each case containing 12/5 pound boxes, labeled in part:

- (case) "\*\*\*\* 50 LBS. NET DEEP STAR FRESH FROZEN PRODUCED AND PACKED BY MarinaPac. Inc. PRODUCT OF PANAMA \*\*\* 41/50 \*\*\* 4320"

- (box) DEEP STAR SHRIMP FRESH FROZEN HEADLESS \*\*\* Net weight 5 lbs. Product of Panama, Packed by IMPERIAL SEAFOOD CORP. Panama, R.P. \*\*\*\*"

98 cases, more or less, of an article of food, each case containing 10/16 ounce cans, labeled in part:

- (case) "\*\*\*\* IMPORTED AND DISTRIBUTED BY AMPAK SEAFOODS CORP. 5 SCIENCE PARK NEWHAVEN, CT 06511 \*\*\* Net wt. 30 lbs. \*\*\* PRODUCT OF PAKISTAN \*\*\* (box 1 lb)"

- (can) "\*\*\*\* Crabmeat \*\*\* PASTEURIZED \*\*\* NET WT. 16 OZ \*\*\* IMPORTED & DISTRIBUTED BY AMPAK SEAFOODS CORPORATION, NEW HAVEN, CT 06511 \*\*\*\*"

75/ 40 pound cases, more or less, of an article of food identified as shrimp, labeled in part:

- (case) "\*\*\*\* 26/30 \*\*\*\* PACKED BY DEED SEA FOODS, INC. 688 SHELL BELT ROA BAYOULA BATRE, AL. 36509 \*\*\*\* NET WEIGHT: 40 LBS \*\*\*\*"

97/10 pound cases, more or less, of an article of food, labeled in part:

- (case) "\*\*\*\* JOY FOOD QUICK FROZEN H&G CATFISH PRODUCT OF U.S.A. PACKED BY: JOY FOOD SERVICE INC. 8884 W. MCNAB ROAD SUITE 310 NORTH LAUDERDALE, FL 33068 \*\*\*\* 8-10 OZ NET WEIGHT: 10 LBS. \*\*\*\*"

500 cases, more or less, of an article of food, each case containing 10/2 pound-3.3 ounce plastic bags, labeled in part:

- (case) "\*\*\*\* INDEPENDENT FISHERIES LTD. CHRISTCHURCH, NEW ZEALAND SQUID FLAVORED RINGS CHOICE FISH PRODUCTS \*\*\*\* PRODUCT OF NEW ZEALAND \*\*\*\* USE BY NOV 88 THYRSITES ATUN NOTOTODARUS SLOANH \*\*\*\* CHOICE FISH PRODUCTS \*\*\*\*"

- (bag) "\*\*\*\* IMITATION SQUID RINGS BREADED FISH AND SQUID (CALAMARI) BLEND \*\*\*\* INGREDIENTS barracouta, Hoki and Squid, Breadcrumb \*\*\*\* Manufactured for LA CONNER SEAFOODS, P.O. Box 679 La Conner, W.A. \*\*\*\* Packed by INDEPENDENT FISHERIES LTD., FOR LA CONNER SEAFOODS (2 lb 3.3 oz.) \*\*\*\*"

25 cases, more or less, of an article of food, each containing 6/6 pound-4 ounce boxes, labeled in part:

- (case) "\*\*\*\* PACKER'S PRIDE INDIVIDUALLY QUICK FROZEN UNBREADED WHITING PORTIONS \*\*\*\* PACKED BY: K 7 K STORAGE CO 2500 LUNT AVENUE ELK GROVE VILLAGE, IL 60007 \*\*\*\*"

- (box) "\*\*\*\* PACKER'S PRIDE INDIVIDUALLY QUICK FROZEN UNBREADED WHITING PORTIONS \*\*\*\* KEEP FROZEN \*\*\*\* PRODUCT OF U.S.A. PACKED BY K & K STORAGE CO 2500 LUNT AVENUE ELK GROVE VILLAGE, IL 60007 NET WEIGHT; 6 LBS. \*\*\*\* 4 OZ."

280 pieces, more or less, of unlabeled frozen blocks of an article of food identified as whiting fish

102/3.75 pound cases, more or less, of an article of food, labeled in part:

- (case) "\*\*\*\* 057-916 \*\*\*\* K & P 4/10/1.5 OZ. SHRIMP DEL REY NET WT. 3.75 LBS. KEEP AT 0 OR BELOW AT ALL TIMES \*\*\*\* PRODUCT BY KING & PRINCE SEAFOOD CORPORATION BRUNSWICK, GA \*\*\*\* 31520"

88 cases, more or less, of an article of food, each case containing 8/10 pound plastic tubs, labeled in part:

(case) "1852087 \*\*\* CONPAK SEAFOODS INC. ST. JOHN'S NEWFOUNDLANDA1B PROUCT OF CANADA 8x10 LB"

(tub) "\*\*\* CSI CONPAK SEAFOODS INC. Fresh FILLETS \*\*\* 10 lb NET WEIGHT \*\*\* OCEAN PERCH \*\*\* CSI 33 Pippy Place St. John's \*\*\* PRODUCT OF CANADA \*\*\* FRESH SEAFOOD \*\*\* 185208728 \*\*\*"

20/10 pound cases, more or less, of an article of food, labeled in part:

(case) 2x5 LBS - 10 LBS LOBSTER LOAF #55: HOLDEN'S"

73/10 pound cases, more or less, of an article of food, labeled in part:

(case) "\*\*\* SWORDFISH STEAKS VAC. PAC. NET WT. 10 LBS 4097 \*\*\*"

15/33 pound cases, more or less, of an article of food, labeled in part:

(case) "\*\*\* RF FROZEN CLEANED GUTTED SQUID WITH HEAD PACKED; N.W: 15 KGS. (33 LBS) PRODUCT OF CHINA \*\*\* SIZE: 200/300 \*\*\* 80539"

35 cases, more or less, of an article of food, each case containing 8/8 ounce trays, labeled in part:

(case) "\*\*\* MOO & OINK \*\*\* BREADED SHRIMP IN THE BASKET \*\*\* 12 x 8 oz. NET WT. 6 LBS \*\*\* DISTRIBUTED BY: MOO & OINK 8200 SOUTH RACINE AVE. CHICAGO, ILL 60620"

(tray) "MOO & OINK \*\*\* BREADED SHRIMP IN THE BASKET \*\*\* INGREDIENTS: SHRIMP, BLEACHED WHEAT FLOUR \*\*\* NET WT.: 8 OZ. DISTRIBUTED BY: MOO & OINK 8201 SOUTH RACINE AVE. CHICAGO, ILL \*\*\*"

40/10 pound cases, more or less, of an article of food, labeled in part:

(case) "\*\*\* PRODUCTS POLO SUR IMPORTED BY HONDUBEST Trading Corp SMELTS (WHOLE) PEJERREY (Enterro) PRODUCT CHILENO \*\*\* PRODUCT OF CHILE \*\*\* size 5 x 1 NET WEIGHT 22.5 BLOCK - 10 lbs. \*\*\* COOPERALGAS LTDA \*\*\*"

46 cases, more or less, of an article of food, labeled in part:

(case) "\*\*\* SINTRA BRAND FROZEN SHRIMP NET WT: 6 x 2 KGS \*\*\* SINTRA MARINE INTERNATIONAL PTE LTD. 456 ALEXANDRIA ROAD, #14 -00 NCL BUILDING SINGAPORE \*\*\*"

# To register for continuing education credit and to evaluate this module

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## Registering for Continuing Education Credit

To receive credit for this module you must submit course enrollment forms and the answers to the **Evaluation and Test** (located on the following pages) to CDC. There are several ways to complete this registration process:

### ***Complete the forms online.***

- U** Go to the PHTN website [www.cdc.gov/phtn](http://www.cdc.gov/phtn) and complete the registration and evaluation online. Directions will be given at the website.

### ***Complete the forms on paper. There are two ways to obtain the forms from CDC. (If you plan to study additional modules, you may want to request enrollment materials for those modules also at this time.)***

- U** Request the enrollment materials online by going to the following URL at the PHTN website <http://www.cdc.gov/phtn/legal-basis/req-form.htm> and completing the online request form. After the online form is submitted, an enrollment packet will be mailed to you with instructions.
- U** Request the enrollment materials by calling **1-800-41-TRAIN** (1-800-418-7246). At the prompts, press 1, then 3. Please clearly speak your name, mailing address, daytime phone number, and the correct module name and number. The enrollment materials will be mailed to you with instructions.

If you are unable to register online, you will have to wait several weeks until your course enrollment materials arrive in the mail. If this is the case, you might want to complete the Evaluation and Test immediately after you finish the module by marking your answers directly on the following pages (or make a photocopy) and then, when the enrollment materials arrive, transfer your answers to the answer sheet included with the materials.

## Evaluating the Module

**If you are registering for continuing education credit**, you will be asked to complete an evaluation as part of that process.

**If you are not interested in receiving continuing education credit, we ask that you please take time to evaluate the module.** Follow the procedure specified above for getting continuing education credit, but indicate in the first question on the **Evaluation and Test** that you do not wish to receive continuing education credit. Although this is not required, your opinion of the module is important to us. By letting us know if this module was effective for you, we can improve future editions, as well as other PHTN courses.



**Evaluation and Test**  
***The Legal Basis of Public Health***  
***Module 6, Enforcement***  
**COURSE #SS0006**

**Objectives for *Module 6, Enforcement***

- g** Describe the three basic legal principles that determine whether a party's "proof" may be admitted into evidence.
- g** Describe the stages of the development of a legal enforcement action.
- g** Describe the array of legal remedies available to public health agencies for use against public health law violators.
- g** Distinguish between conduct appropriate for a civil enforcement investigation and conduct appropriate for a criminal enforcement matter.

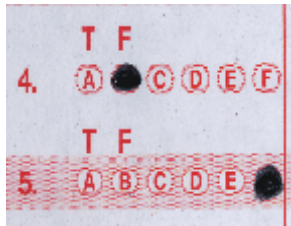
**N**Please use the red *CDC Answer Sheet* included in the enrollment materials to complete the following questions.

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***Tell us about yourself...***

- 1. What type of continuing education credit do you wish to receive?**
  - A. (CME) *Not Available for this Course*
  - B. Continuing Nursing Education (CNE)
  - C. Continuing Education Units (CEU)
  - D. do not want continuing education credit
  
- 2. Have you previously completed *Module 1, Introduction*?**  
***(Completion of Module 1 is required before taking any of the other modules.)***
  - A. yes
  - B. no
  - C. I have just completed ***Module 1, Introduction***.
  
- 3. Are you a**
  - A. Nurse
  - B. Physician
  - C. None of the above

**Please note:** Question 5 is a continuation of question 4. Please answer each question, but choose only **ONE** occupation. Your answer to one of these questions will be **F. None of the above**. For example, a Health Educator would answer as follows:



- 4. Which of the following best describes your current occupation?**
- A. Epidemiologist
  - B. Health Educator
  - C. Laboratorian
  - D. Pharmacist
  - E. Physician Assistant
  - F. None of the above
- 5. Which of the following best describes your current occupation?**
- A. Field Inspector (nursing homes, restaurants, etc.)
  - B. Manager/Supervisor
  - C. Environmental Health Worker/Sanitarian
  - D. Lawyer/Attorney
  - E. Other public health professional
  - F. None of the above
- 6. Which of the following best describes the organization in which you work?**
- A. Academic
  - B. Private health care setting
  - C. Federal government
  - D. State government
  - E. Local government
  - F. Other organization

### ***Tell us about the module...***

- 7. How did you first learn about this module**
- A. State publication (or other state-sponsored communication)
  - B. MMWR
  - C. CDC website (not including PHTN website)
  - D. PHTN source (PHTN website, catalog, e-mail, or fax announcement)
  - E. Colleague
  - F. Other

- 8. How did you obtain this module?**
- A. Purchased from the Public Health Foundation
  - B. Downloaded from the PHTN website
  - C. Borrowed or copied materials from someone else
  - D. Other
- 9. What was the most important factor in your decision to obtain this module?**
- A. Content
  - B. Continuing education credit
  - C. Request from supervisor
  - D. Previous participation in PHTN training(s)
  - E. Ability to take the course at my convenience
  - F. Other
- 10. I completed this module**
- A. As an individual learner
  - B. As part of a learning group that organized itself
  - C. As part of a learning group that was organized by someone outside of the group
- 11. My completion of this module included interaction(s) with an expert(s) (or reasonably experienced person) on the topic?**
- A. Yes
  - B. No
- 12. My interaction(s) with the expert(s) on this topic could be described as follows**
- A. I had no interactions with an expert
  - B. One or more sessions organized by someone outside of the group
  - C. One or more sessions organized by someone within my group
  - D. One or more informal consultations that I initiated on my own
- 13. How long did it take you to complete this module?**
- A. 1 - 2 hours
  - B. 3 - 4 hours
  - C. 5 hours or more
- 14. How many of the ten modules comprising the *Legal Basis of Public Health* have you completed?**
- A. 1 or 2 modules
  - B. 3 to 5 modules
  - C. 6 to 9 modules
  - D. All 10 modules

15. **How many of the ten modules comprising *The Legal Basis of Public Health* do you plan to complete?**  
A. 1 or 2 modules  
B. 3 to 5 modules  
C. 6 to 9 modules  
D. All 10 modules
16. **Please rate your level of knowledge prior to completing this module.**  
A. Had a great deal of knowledge about the content  
B. Had a fair amount of knowledge about the content  
C. Had limited knowledge about the content  
D. Had no prior knowledge about the content  
E. No opinion
17. **Please estimate your knowledge gain due to completing this module.**  
A. Gained a great deal of knowledge about the content  
B. Gained a fair amount of knowledge about the content  
C. Gained a limited amount of knowledge about the content  
D. Did not gain any knowledge about the content  
E. No opinion
18. **If this module is further evaluated through the use of focus groups or other methods (e.g., follow up questionnaires) would you be willing to participate?**  
A. Yes  
B. No

Please use the scale below to rate your level of agreement with the following statements about this module.

- A. **Agree**  
B. **No opinion**  
C. **Disagree**  
D. **Not applicable**

19. **The objectives were relevant to the purpose of the course.**
20. **I would recommend this module to my colleagues.**
21. **I believe completing this module will enhance my professional effectiveness.**
22. **The content in this module was appropriate for my training needs.**
23. **Reading the text on my own was an effective way for me to learn this content.**
24. **The self-study questions contributed to my understanding of the content.**

25. The group exercises contributed to my understanding of the content.
26. The Coordinator Guide contributed to my ability to have a learning experience appropriate to my (or my group's) needs.
27. Downloading the materials from the PHTN website was user-friendly.
28. Ordering the materials through the Public Health Foundation was user-friendly.
29. Ordering the materials through the 1-800-41-TRAIN phone number was user-friendly.
30. I am confident I can describe the three basic legal principles that determine whether a party's "proof" may be admitted into evidence.
31. I am confident I can describe the stages of the development of a legal enforcement action.
32. I am confident I can describe the array of legal remedies available to public health agencies for use against public health law violators.
33. I am confident that I can distinguish between conduct appropriate for a civil enforcement investigation and conduct appropriate for a criminal enforcement matter.