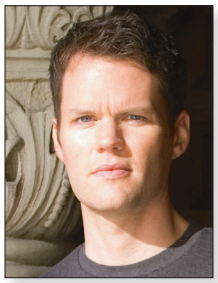
LEGAL BRIEFS



Colin B. Caywood, JD

The Rights of Environmental Health Specialists to Conduct On-Site Inspections

Editor's Note: **The *Journal* recognizes the importance of providing readers with practical and relevant legal information and is pleased to bring back the popular Legal Briefs column. In every other issue of the *Journal* this information will be presented by the attorneys at Seattle-based Marler Clark, LLP, PS (www.marlerclark.com). Marler Clark has developed a nationally known practice in the field of food safety. They represent people who have been seriously injured or the families of those who have died after becoming ill with foodborne illness during outbreaks traced to restaurants, grocery chains, and other food suppliers.**

Colin Caywood received his BA from the University of Washington. He worked at a number of Seattle-area law firms before joining Marler Clark as a paralegal and has worked extensively on cases involving foodborne illness litigation. He received his JD from Seattle University's School of Law.

On one fine, spring morning, Environmental Health Specialist Jill Jones was preparing for a busy work day. Before walking to her county-issued work vehicle, she grabbed her badge, clipboard, inspection checklist forms, and still-steaming cup of coffee. As she readied to pull out of the parking garage, she confirmed the address of the first of six local restaurants she was scheduled to inspect that day. After a short drive, she pulled up at an establishment new to her, Bob's BBQ Palace.

Jill gathered her things and walked into the restaurant. She politely asked to speak with the person in charge to introduce herself. She was eager to begin the inspection to confirm the restaurant's compliance with her state's local and state health rules governing restaurant operations. But before she could begin, the manager came rushing from the kitchen doorway, yelling as he walked, "No, no, no! I was just inspected a few weeks ago by your people after some folks complained they got sick from eating at my restaurant and I am NOT in the mood to go through another inspection. You can just turn right around and go back to your car."

Ever the professional, Jill politely indicated that she understood the manager's concerns, explained who she was and why she was there that day (a routine biannual inspection), and provided her government-issued badge detailing her credentials. After quickly glancing at the badge, the manager again stated he was refusing her access to any part of his restaurant. He then walked her to the doorway and demanded that she leave.

As she stood outside assessing what had just occurred, Jill was at a loss. She had never been refused entry at an inspection and was frankly unsure what to do next.

Could the restaurant manager effectively prevent her from carrying out her duties? What right did Jill really have to inspect the restaurant in the first place? And what right did the restaurant manager have to forbid her access?

It may sound like an improbable fiction, but for many environmental health specialists this scenario highlights an all-too-real concern. Over the past several years I have presented to a large variety of environmental health groups around the country. A question pertaining to the subject of inspectors' rights to carry out their job duties has been asked nearly every time.

The idea may seem odd that people hired to inspect food establishments, child care facilities, wastewater treatment facilities, and the like could be prevented from carrying out their mandated duties by noncooperation, refusal of access to an inspection site, or outright hostility from those entities they are legally required to inspect. Nonetheless, as any seasoned environmental health specialist will attest, the concern is very real.

Thankfully most, if not all, states have enacted statutes and promulgated regulations to provide environmental health specialists with the legal framework necessary to fulfill their duties of inspection and enforcement.

Every state has an agency tasked with the responsibility for promoting and protecting the health, safety, and well-being of the public through the prevention of the spread of disease through food. In order to carry out this mandate, lawmakers have recognized the need for certain legal protections.

For example, in Washington State, the Revised Code of Washington 43.20.050 outlines the delegation of authority granted to the Washington State Board of Health to carry out its

mandate of disease prevention throughout the state. The board achieves this mandate through its rule making and enforcement authority.

The authority of an environmental health specialist to inspect a restaurant is granted by the following language[1]:

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, **the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this Code by allowing access to the establishment**, allowing inspection, and providing information and records specified in this Code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

If the environmental health specialist is still refused access after providing notice to the entity to be inspected, then the specialist must

(A) inform the person that

(1) the **permit holder is required to allow access** to the regulatory authority as specified under § 8-402.11 of this Code; and

(2) **access is a condition of the acceptance and retention of a food establishment permit** to operate as specified under ¶ 8-304.11(F) [Amended by WAC 246-215-181(7)]; and

(B) make a final request for access.[2]

If after following this process, the permit holder continues to deny the specialist access to conduct the inspection, the specialist's health agency has the authority to suspend the permit, thereby effectively stopping the restaurant from legally operating its business.[3] If the food establishment continues to operate after its license has been suspended, it is operating without a valid permit, which is a criminal offense under Washington law.

The steps outlined under Washington's laws provide a good, universal framework for dealing with a scenario like the one confronted by Jill Jones. While every state law is different, environmental health specialists should feel comfortable in carrying out their job duties knowing that they have legal authority to perform their inspections and that refusal of access by a regulated entity has firm legal consequences.

1 *See* Washington Food Code Working Document at 8-402.11.

2 *See also* Washington Food Code Working Document at 8-402.20.

3 WAC 246-215-181(7) makes clear that "[t]he regulatory authority may suspend a person's permit to operate a food establishment if a representative of the regulatory authority, after showing proper credentials, is denied access to conduct an inspection of the food establishment."

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