

# Interpretation of Broome County Health Department's Food Service Inspection and Enforcement

Under New York State Public Health Law, the Division of Environmental Health is charged with the permitting and regulation of food service establishments in Broome County. Enforcement actions taken against local food establishments are a rarity. The vast majority of local food service establishments are proactive in maintaining a facility in compliance with New York State Public Health Law, and those facilities that do have violations often promptly correct them.

In those facilities where a blatant or negligent imminent public health hazard(s) are found, or where multiple violations are found on repeated inspections, the Division of Environmental Health is required to take enforcement actions.

Staff members from the Division of Environmental health work with facility owners/operators in an attempt to avoid going to enforcement when at all possible. To aid in accomplishing this, the Division of Environmental Health provides a free, food safety training class once per month at the Broome County Health Department at 225 Front Street in Binghamton. This training is available to all local food service establishments. In addition, a free online course at [go.broomecounty.com/eh](http://go.broomecounty.com/eh) is offered for those individuals interested in serving or preparing food items at temporary events. In order to understand Broome County Health Department enforcement process, please take a moment to read the following information:

## INSPECTIONS

Food service establishments in Broome County include restaurants, diners, bars, school cafeterias, college dining halls and any type of food concession. There are approximately 900 permitted food service establishments in Broome County. The frequency with which these facilities are inspected is primarily based on their risk factors which are determined by the complexity of foods being prepared including hot hold and cold hold requirements, reheating and food preparation techniques. The Division of Environmental Health makes approximately 1,200 visits to these facilities each year. These visits include inspections, field visits, re-inspections, pre-operational inspections and complaint and illness investigations.

It is common for our food inspectors to find some type of violation at a facility, but not all violations require enforcement action to ensure public health and safety. The majority of food service establishments in Broome County are quick to correct violations found during an inspection. Remember that the inspection report is a snap shot, a record of what was observed **at the time of the inspection**. The two categories of violations, critical and non-critical, cited during a food inspection can be found below.

**-RED (Critical) VIOLATIONS** - These violations generally involve an unapproved food source and condition, improper food cooking and cold hold and hot hold storage temperatures, unsanitary practices, unsafe water supply or sewage present in the food prep area, and the improper storage of toxic chemicals. Critical violations have a high probability of directly causing an outbreak of food borne illness. Some critical violations are considered so hazardous that if they are found during an inspection, the inspector must close the establishment. These types of violations (imminent health hazards) are fortunately found very rarely during inspections. Critical violations are the inspector's primary focus during an inspection. If critical violations are found, they must be corrected at the time of the inspection and enforcement actions may be taken or the facility may be closed and possibly face further enforcement actions.

**-BLUE (Non-Critical) VIOLATIONS** – These violations cover many areas from the design and maintenance of the facility to the cleanliness and storage of food items and utensils. Although they may have a lower probability of directly causing food borne illness, non-critical violations still negatively affect the operation of the establishment. A significant number of non-critical violations can alert the inspector that a facility has ongoing problems that need to be addressed and can lead to enforcement.

## **ENFORCEMENT**

Each occurrence of a violation may require individual attention and judgment based on the hazard created. Enforcement is initiated against a food establishment for the following reasons:

- a. One occurrence of a blatant or negligent Category 1 Public Health Hazard as defined in New York State Department of Health's Technical Reference item # ADM 2. An example is operating with a sewage spill or backup in a food establishment.
- b. A Category 2 Public Health Hazard as defined in New York State Department of Health's Technical Reference item # ADM 2 on two or more consecutive inspections, including re-inspections. Examples include impure, unsafe, or unwholesome food, spoiled food or food not held at acceptable hot or cold holding temperatures.
- c. Repeat sanitation or maintenance violations if not corrected in one or two re-inspections. Examples include floors or walls not clean and in good repair and non food contact surfaces found not clean.

The first step in the enforcement process is to send the following documents to the owner/operator of the establishment:

1. **Notice of Violation (NOV)** – This document informs the owner/operator that on certain dates, violations of the New York State Sanitary Code, Broome County Sanitary Code and/or the New York State Public Health Law were found. The maximum fine for the violation is also provided.
2. **Finding of Violation (FOV)** – This document informs the owner/operator that they are scheduled to appear at a hearing. The date, time, location of the hearing and name of the hearing officer is provided.
3. **Settlement Agreement** – This document informs the owner/operator that they may waive the right to a hearing by admitting to the violations, correcting the violations by a specified date and paying a stipulation fine by a specified date. If the operator disputes the enforcement action, they may choose to attend the hearing.

In many circumstances, the owner/operator agrees to the terms of the Settlement Agreement. Provided the violations have been corrected, they will pay the stipulation fine and the hearing is waived. Sometimes the owner/operator is required to appear at the hearing because the conditions of the Settlement Agreement were not met or they dispute the violations and choose to go forward with the hearing. At the conclusion of the hearing, the hearing officer will have 30 days to render a decision. Once the Health Department receives the hearing officer's decision, an Administrative Order is generated and sent to the owner/operator informing them of the hearing officer's decision. The Administrative Order may direct the owner/operator to pay a fine and correct violations within 60 days. If the owner/operator fails to pay the fine by the specified date, a collection agency retained by the County may be directed to collect this fine and/or the establishment will not be granted a permit at time of renewal and will be required to close until the violations are corrected and the fine is paid. Understand that if critical violations are found at the time of the inspection, they are to be corrected immediately or the facility may be closed.

To view detail of those facilities taken to enforcement in 2012 and 2013, please click on the facilities name.

Please be aware that some inspection forms are difficult to read due to the type of electronic pen/computer program that was used to record the data. That recording system is no longer in use.