

## Lesson 38. EMBARGOES, SEIZURES & CONDEMNATIONS

### INTRODUCTION

The terms embargo, seizure and condemnation refer to three specific enforcement actions in which the government, to some degree, affects the usage, possession and even ownership of a person's personal property. It might seem, therefore, that these actions stem from a very different motive than the preventive posture adopted in our discussions of the the issuance of orders and citations to stop a prohibited act or condition. In reality, however, the seizure or embargo of a product is of a preventive, rather than a punitive, nature. The purpose is not to inflict a penalty but rather to prevent the dissemination of dangerous goods in the interest of public health.

### LESSON OBJECTIVES

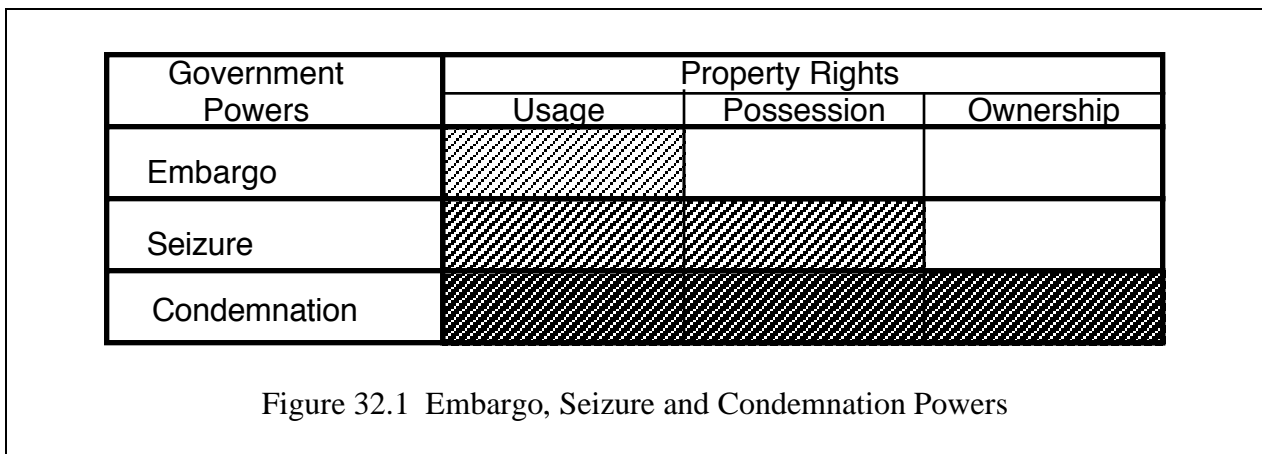
At the completion of this lesson, you should be able to:

1. Compare and contrast the use and effect of the legal sanctions of embargo, seizure and condemnation; and,
2. Select the appropriate remedy for a given specific situation.

### KEY POINTS

#### A. Nature of Powers

A fundamental principle of administrative legal actions is to use the least amount of power necessary to get the job done. This applies particularly well in the use of embargo, seizure and condemnation powers. A handy way to consider the degree of force being use by these powers is to compare them based on the degree to which each interferes with private property rights.



The shaded areas in Figure 9-1 indicate the relative degree to which each of these sanctions interfere with a person's property rights. An embargo only temporarily interferes with an owner's

otherwise unlimited usage of his property. If the goods are seized, the owner not only loses his use of the goods, but also his possession of them. Finally, condemnation extinguishes even the person's ownership of the property.

### **B. Use and Effect**

Besides the legal reasons for choosing embargo, seizure or condemnation, there are practical and administrative considerations as well. Since the use of embargoes, seizure and/or condemnation involves a degree of interference with or taking of private property, due process requires that the owner be given notice and have an opportunity for a hearing. Although, as you will see in the cases, the hearing need not be held before the goods are embargoed, seized or even destroyed.

1. **Adams v. Milwaukee:** Involves a dairy which contested the validity of a Milwaukee city ordinance which prohibited the entry of milk into the city from herds which had not been examined and certified by an approved veterinarian.

The court accepts that the health department may determine what tests may be used to determine wholesomeness of the product. Failure to comply with the requirement may then result in appropriate sanctions, and does not constitute an unconstitutional taking without due process.

2. **North American Cold Storage Co. v. City of Chicago:** This 1908 case involved a cold storage company which had accepted a load of poultry which was condemned by the health department while in cold storage. The company refused to deliver up the poultry for destruction and the health department closed the company by denying entrance to any of its customers.

The department's action in denying access was clearly inappropriate, but the issue argued before the Supreme Court was whether or not the ordinance was in conflict with the due process of law provision (14th Amendment). The court held that it was not, even though property might be taken without prior hearing. The owner has recourse at law and may be able to recover damages if he can prove that the action was not supportable on the evidence.

As has been stated before, an agency has only those powers that have been delegated to it and must follow the procedures specified in the legislation delegating its powers. Thus, if only embargo authority is delegated, then that is all the power the agency has, it can not then seize or destroy a product.

### **C. Procedures**

Usually the procedures for using the authority delegated in this regard, specify that notice must be given and that the owner is entitled to a hearing, but little else. The environmental health specialist has some rather broad and extraordinary powers in his/her ability to embargo, seize or condemn products, substances and even animals and buildings which constitute a health hazard. There are three basic legal considerations of which a person contemplating the use of one of these actions must be aware.

1. **They must have the power.** As was discussed above, these powers are statutory powers, and thus, they should be carefully defined in the legislation. The statute should specify exactly what powers are to be used; who may exercise them; and, under what conditions they may be exercised.
2. **There must be reasonable grounds.** The practitioner must have a reasonable basis for his/her belief that the product, substance or condition violates the law and/or is a health hazard under the authority delegated by the statute. These grounds may include observations, the results of field tests, and/or laboratory results of samples.
3. **The powers are not unlimited.** As with most governmental powers, there are limits to their use. These are usually spelled out in the authorizing legislation, but they may also be defined by judicial review or agency actions. Generally they will include:
  - a. Due Process
  - b. Equal Protection
  - c. Probable Cause (reasonable)
  - d. Not arbitrary or capricious.

#### STUDY QUESTIONS:

1. If you had the choice of using any one of the three powers discussed in this lesson in connection with a case of a contaminated food product, under what circumstances would you use the embargo?
  - a. What are the practical and administrative problems with using this power?
  - b. Under what conditions would you choose to use seizure? Why? What are the practical and administrative problems involved with using this power?
  - c. Under what conditions would you condemn the food product? Why? What are the practical and administrative problems involved with using this power?
2. What type of notice is required when exercising embargo, seizure or condemnation powers?
3. In using seizure powers, do you need the signature of the owner before you can remove the goods?
4. What additional procedures should an agency adopt in order to insure correct use of its authority while protecting its officials from possible liability?

Why is it important to:

  - Test the goods?
  - Make a complete inventory of the goods?
  - Describe all of the goods impounded?

5. Read reading #25 -- *Provimi v. United States*, 680 F.2d. 111 (1982), then analyze this case in terms of the issues raised in this lesson.

- a. What were the major arguments in this case?
- b. What principle did the judge use in making the decision?
- c. What implications does this decision have for the use of embargo powers in a restaurant inspection program?