

Lesson 14.

ORDERS & CITATIONS

We have already discussed the legal basis for the regulation of environmental concerns, and the methods and procedures for identifying and documenting problems. Once we have identified a problem, the next step involves doing something about it.

Usually the first step in an enforcement process, after the identification of a problem, is to inform the responsible person of the existence of the problem and of the actions necessary to correct it. This is the primary function of the administrative order. The order will also notify them that they must correct the problem and may inform them of possible legal consequences resulting from the existence of the problem and/or from failure to correct it.

Professor Grad states that "[v]iolation orders are entirely the creation of statutory law, an order of this kind will not be legally binding unless there is some specific statutory authority for the procedure". This means that the authorizing legislation must contain a provision permitting or requiring the issuance of an order.

Not only do statutes provide the authority to issue orders. They also often specify the content and sometimes the method of issuing or serving such orders. Notice the differences between the requirements of each of the statutes, ordinances and rules and regulations which you read.

LESSON OBJECTIVES

The objectives for this lesson are that you:

1. Understand, and are able to discuss, the purpose and use of an administrative order; and
2. Are able to write a lawful order, consistent with the requirements of the applicable statute, ordinance or rule and regulation.

KEY POINTS

A. Purpose

The primary purpose of an administrative order is to inform the responsible person of the existence of a problem and of the actions necessary to correct it. The order will also notify them that they must correct the problem and may inform them of possible legal consequences resulting from the existence of the problem and/or from their failure to correct it.

The primary purpose of a citation, on the other hand is deterrence, that is, that the fear of being fined or imprisoned for a particular act or for permitting a specific condition to exist will keep people from performing such acts or permitting such conditions exist.

B. Authority

Professor Grad states that "[v]iolation orders are entirely the creation of statutory law, an order of this kind will not be legally binding unless there is some specific statutory authority for the procedure". This means that the authorizing legislation must contain a provision permitting or requiring the issuance of an order or of a citation.

Not only is there a difference in the purpose of the administrative order and the citation, there are considerable differences in their impact. Since the citation may result in an immediate economic loss, or even imprisonment, the requirements for its use are much more de-tailed and strict, than are those of the order. Moreover, judicial review is readily available for any citation issued. Usually, these requirements are readily apparent in the authorizing statutes.

1. Statutory Delegation: The expressed requirements of the statute providing the authority will dictate the specific use of the order. Statutes also often specify the specific con-tents and sometimes the method of issuing or serving such orders or citations. Notice the differences between the requirements of each of the statutes, ordinances and/or rules and regulations which you read.

Examples:

- a. APHA-CDC Housing Code. This is an example of a local ordinance which provides for the issuance of notices of violation.
- b. OSHAct. Section 9. Citations
- c. RCW 18.20.110 Inspection of Boarding Homes -- Approval of Changes or New Facilities
- d. King Co. Board of Health Rules and Regulations No. XVII. Section 17. Inspection - Report .

2. Limits: Not only do statutes provide the authority to issue administrative orders, they also provide the limits of that authority. Administrative orders must conform to the expressed requirements of the statute.

C. Content

The statutes may also specify the content and sometimes even the manner in which the order is to be served. Although more often, the specific contents of the notice is left to the agency, the statute merely requiring that the agency provide notice.

There are numerous federal statutes which provide examples of this kind of provision. TSCA, RCRA, CAA, FD&CA, etc. each contain such a provision, and each are worded somewhat differently. It is important to look at the precise wording of the statutory authoriz-tion in order to determine exactly what you are permitted, and required, to do in a particular instance.

In contrast to the federal statutes, the Michigan Public Health Code and the RCW 70.05 are not confined to a specific program area such as water or food, but apply to any and all potential public health problems. These are typical examples of the broad powers granted by the states to local health departments.

In addition to the requirements imposed by the specific authorizing statute, there are often requirements or guidelines for writing and issuing orders imposed by other, more general, statutes. These are often contained in an "administrative procedures act" which governs all of the general administrative procedures of a government agency, including the issuance of notices, orders, citations, etc. There may also be even more specific and detailed instructions contained in the agencies policy and procedure manuals. The OSHA Field Operations Manual is a good example of this.

In general the content of a citation or of an order, while dependent upon the wording of the statute which authorizes its use, at a minimum requires the following items.

- a. Notice of condition:
 - 1) Description of location
 - 2) Description of problem
- b. Requirement to abate
 - 1) What constitutes abatement
 - 2) Time limits
- c. Right of appeal.

The requirements for a citation will be similar, although they may be more detailed as to what information is required. Depending on the nature of the condition and of the statute, there may or may not be a section requiring the abatement of the condition.

D. Service

A citation or an administrative order must be served upon the responsible party in order for it to take affect. For the citation which is handed to a person observed in the act which is covered by the citation, there is usually little legal problem with proving service. The situation is not as easy with other means of service. The following are some key points to keep in mind regarding the issuance of an order or citation.

1. In person: An order may be handed to a person at the property at the time of the inspection. Make sure the person has the legal ability to receive the notice, i.e., charge, care and control. He should sign your copy of the notice indicating that he has received it. If he refuses to sign, you should note that fact, plus the time and date and initial the notation.

It would also be wise to send a copy of the inspection report to the owner of record, if he is not the person to whom you handed the notice.

2. By mail: There is a presumption that mail is delivered, however, to be sure you should send the notice by certified or registered mail. If it comes back refused, you will need some other proof of service. One is to send another copy by regular mail. (You can take it to the post office and have them log it in.)

3. Posting: You may actually attach the notice to the property involved. Most states, have a requirement, for residential property and sometimes commercial as well, that the owner or his authorized agency visit the property at a fixed schedule, e.g., once a month.

4. Publication: This method is not often used. But if all else fails and you need to document that you have made a reasonable attempt to locate and notify the owner, publication of the notice in the appropriate newspaper will often suffice.

STUDY QUESTIONS:

1. When can an agency issue an administrative order? Can any or all agencies issue orders?
 - a. Why would an agency want to waste its time to develop and issue an order, and then wait for compliance instead of issuing a citation?
 - b. What administrative and legal advantages are there to using orders? What disadvantages are there?
2. If an individual violates an order, what sanctions may be imposed on him? From an agency's point of view, are these sanction stronger than other judicial remedies? Are they faster? Are they surer?
3. Are citations used by your agency? Can they be used?
 - a. If you use them, describe your procedures noting the major steps and administrative requirements.
 - b. Why do so few health agencies use citations? When would a citation be useful? Do you believe that they are not effective? Why?