

# **FOOD FACILITY INSPECTIONS**

## **REASON FOR INVESTIGATION**

The Nevada County Grand Jury has the responsibility to review departments concerned to determine if they are meeting the needs of the community. The California Uniform Retail Food Facilities Law (CURFFL) and Senate Bill SB 180 mandate local inspections of all retail food facilities such as restaurants, snack bars, and grocery stores. The Grand Jury's objective is to ensure appropriate procedures are in place to protect the safety of individuals patronizing local food facilities.

## **PROCEDURE FOLLOWED**

Management and staff of the Consumer Protection Division of the Nevada County Environmental Health Department were interviewed. Inspection records and procedures were reviewed. Several local food facilities were checked for compliance with state mandates.

## **REFERENCES**

1. The California Uniform Retail Food Facilities Law (CURFFL) can be found at [www.dhs.ca.gov/fdb/HTML/Food/indexfoo.htm](http://www.dhs.ca.gov/fdb/HTML/Food/indexfoo.htm)
2. Senate Bill SB 180 can be found at [www.dhs.ca.gov/fdb/HTML/Food/indexsafty.htm](http://www.dhs.ca.gov/fdb/HTML/Food/indexsafty.htm) and [www.leginfo.ca.gov/bilinfo.htm](http://www.leginfo.ca.gov/bilinfo.htm)
3. Assembly Bill AB 1978 (1997-98 Session) can be found at [www.leginfo.ca.gov/bilinfo.htm](http://www.leginfo.ca.gov/bilinfo.htm)

## **FINDINGS**

1. CURFFL has changed in the last two years. Effective January 1, 2001, the State of California mandated that:
  - a. A copy of the most recent inspection report shall be maintained at the food facility.
  - b. The food facility shall post a notice advising patrons that a copy of the most recent inspection report is available for review by interested patrons.
  - c. Facilities not in compliance during the initial post January 2001 inspection were required to be advised orally of the above requirements.
  - d. The requirement notice may be provided by the local inspection agency.
2. There is no evidence that the county's Consumer Protection Division followed the above mandate.

3. Assembly Bill AB 1978 modified CURFFL to require every food facility to employ one person who has passed the certification test in food safety.
4. The Consumer Protection Division proposes to offer a supplemental two-hour food safety seminar for food workers.
5. Western Nevada County was without a full-time food inspector from June 1999 until May 2001.
6. A full-time food inspector was hired in May 2001. This is the only food inspector for western Nevada County.
7. Eastern Nevada County food facilities are covered by two inspectors who provide all Environmental Health Department inspection services for that area.
8. The Consumer Protection Division of the Environmental Health Department is a fee for service agency.
9. Food facilities pay a Certificate of Operation fee, which includes two inspections per year.
10. As of April 1, 2002, there were approximately 345 food facilities in western Nevada County and 130 in eastern Nevada County.
11. Information received from the Consumer Protection Division indicated that 368 inspections were reported/completed during the first nine months of this fiscal year.
12. Food facilities which require a re-inspection are charged a fee based on the department's hourly rate.
13. Fines are not issued to food facilities for failure to correct major violations.
14. The new state inspection format divides violations into major and minor categories. Major violations are defined as those that pose imminent risk to public health.

## **CONCLUSIONS**

1. Prior to May 2001, food facilities inspection was not a Nevada County priority.
2. The hiring of one full-time food facilities inspector was a step in the right direction. Additional food inspector staffing may be necessary.
3. The level of service, i.e. two inspections per facility per year, promised by the Certificate of Operation fee, is not being provided.

4. The Grand Jury found the Consumer Protection Division reluctant to communicate the state mandate on notification as outlined in finding number one.
5. The Consumer Protection Division is commended for the intent to offer supplemental food safety seminars.
6. There are no punitive measures to provide impetus for food facilities to promptly correct major violations.
7. The Nevada County Consumer Protection Division utilizes standards for inspection that meet or exceed the state's requirements.

### **RECOMMENDATIONS**

1. The Consumer Protection Division must inform all food facilities of the notification regulations to comply with state law.
2. The Consumer Protection Division should provide a copy of the required notice to be posted upon inspection of each food facility.
3. A system of fines should be in place for food facilities that continue to violate food safety standards.
4. The county should investigate adding a second food facility inspector for western Nevada County. A second inspector would enable the required number and quality of inspections to be maintained.

### **RESPONSES REQUIRED**

Board of Supervisors due by September 16, 2002

Environmental Health Department due by August 14, 2002

Consumer Protection Division due by August 14, 2002

**NEVADA COUNTY BOARD OF SUPERVISORS RESPONSES TO  
2001-2002 CIVIL GRAND JURY INTERIM REPORT NO. 7  
DATED JUNE 14, 2002  
RE: FOOD FACILITY INSPECTIONS**

*Responses to findings and recommendations are based on either personal knowledge, examination of official county records, review of the responses by the Environmental Health Department, or testimony from the board chairman and county staff members.*

**I. GRAND JURY INVESTIGATION:**

**Food Facility Inspections.**

**A. RESPONSE TO FINDINGS & RECOMMENDATIONS:**

**Findings:**

1. **CURFFL has changed in the last two years. Effective January 1, 2001, the State of California mandated that:**
  - a. **A copy of the most recent inspection report shall be maintained at the food facility.**
  - b. **The food facility shall post a notice advising patrons that a copy of the most recent inspections is available for review by interested patrons.**
  - c. **Facilities not in compliance during the initial post January 2001 inspection were required to be advised orally of the above requirements.**
  - d. **The requirement notice may be provided by the local inspection agency.**

Partially disagree

The State law (Section 113946(a) of the California Health and Safety Code) that was changed in January 2001 to add this requirement directed the State Health Department to develop a standardized food facility inspection format. The State did not develop and distribute such a format until March 2002. Prior to development of this format, the State also did not provide guidance to county Environmental Health departments as to implementation of the new requirements.

2. **There is no evidence that the county's Consumer Protection Division followed the above mandate.**

Partially disagree

The Environmental Health (EH) department was fully aware of the changes to state law and regularly attended state technical advisory committee meetings to ensure they understood the new requirements. In the absence of guidance from the State as to how to implement the new regulations, the department followed the lead of most other counties in not implementing them until the State developed the food facility inspection format required by the legislation and provided specific instructions regarding implementation and enforcement.

3. **Assembly Bill AB 1978 modified CURFFL to require every food facility to employ one person who has passed the certification test in food safety.**

Agree

4. **The Consumer Protection Division proposes to offer a supplemental two-hour food safety seminar for food workers.**

Agree

This type of training has been offered in the past by EH and has again been funded in the FY 2002-2003 budget. Department performance measures have also been developed to measure program effectiveness.

5. **Western Nevada County was without a full-time food inspector from June 1999 until May 2001.**

Agree

The EH department experienced difficulty recruiting a qualified food facility inspector. A registered EH specialist from the Sutter County EH department was hired on a temporary basis to provide food facility inspection services as needed on weekends and holidays.

6. **A full-time food inspector was hired in May 2001. This is the only food inspector for western Nevada County.**

Partially disagree

The Consumer Protection Division of the EH department is presently staffed by a qualified inspector and a full-time program manager to provide food facility inspection services for Western Nevada County. The program manager can perform food facility inspections on a limited, as needed basis.

7. **Eastern Nevada County food facilities are covered by two inspectors who provide all Environmental Health Department inspection services for that area.**

Agree

8. **The Consumer Protection Division of the Environmental Health Department is a fee for service agency.**

Partially disagree

The majority of division funding comes from user fees for the cost of the service. A small portion of division funding comes from the state. These funds are typically applied to non-fee generating services, such as food poisoning investigations and investigation into complaints against food businesses which are subsequently found to be unsubstantiated.

9. **Food facilities pay a Certificate of Operation fee, which includes two inspections per year.**

Partially disagree

While the Certificate of Operation permitting process is still utilized, the service level determination has been modified in recent years. Currently, fees are based on a variety of elements, including maintaining a comprehensive food inspection/education program, staff training, actual inspection expenses, plan check and construction inspection time, complaint investigations, and consultation costs. The actual number of annual inspections provided to a facility is determined based on a risk assessment of the specific facility. Facilities with a greater public health risk receive more inspections; those with fewer problems receive less. High risk facilities may receive more than 2 inspections on an as-needed basis.

10. **As of April 1, 2002, there were approximately 345 food facilities in western Nevada County and 130 in eastern Nevada County.**

Agree

The number of actual facilities will vary slightly from year-to-year.

11. **Information received from the Consumer Protection Division indicated that 368 inspections were reported/completed during the first nine months of the fiscal year.**

Agree

- 12. Food facilities which require a re-inspection are charged a fee based on the department's hourly rate.**

Agree

The EH department has worked with the local business community to define and identify significant violations that would require a mandatory re-inspection.

- 13. Fines are not issued to food facilities for failure to correct major violations.**

Agree

Board policy is to encourage voluntary compliance with food service facility laws and regulations. Mandatory re-inspections and additional inspection fees have encouraged a high level of voluntary compliance with few if any uncooperative food service facility operators failing to correct major violations.

- 14. The new state inspection format divides violations into major and minor categories. Major violations are defined as those that pose imminent risk to public health.**

Agree

**Recommendations:**

1. **The Consumer Protection Division must inform all food facilities of the notification regulations to comply with state law.**

The recommendation has been implemented.

The EH department has been informing existing food facilities of the new requirements since the state guidelines were published in March 2002. New facilities are notified of the requirements as part of the food service inspection information provided to all new food service facilities.

Instructions from the state recommend local agencies work with local food service facilities to phase-in compliance and enforcement action over a reasonable period of time.

2. **The Consumer Protection Division should provide a copy of the required notice to be posted upon inspection of each food facility.**

The recommendation has been implemented.

A copy of the required notice has been provided to each inspected food facility since March 2002.

3. **A system of fines should be in place for food facilities that continue to violate food safety standards.**

The recommendation requires further analysis to be completed by February 28, 2003.

The CEO has been directed, in conjunction with approval of this response, to review the need to establish a schedule of fines for continued violation of food safety standards by food service facility operators. Following his review, a recommendation will be made to the Board by February 28, 2003.

4. **The county should investigate adding a second food facility inspector for western Nevada County. A second inspector would enable the required number and quality of inspections to be maintained.**

The recommendation requires further analysis to be completed by December 31, 2002.

The Community Development Agency, of which the EH department and Consumer Protection Division are a part, is presently undergoing a reengineering evaluation including workload analyses and benchmark comparisons with other comparable counties.



Following presentation of this study to the Board this Fall, the CEO will be directed to make recommendations to the Board regarding implementation of recommendations in the study.

Any specific decision regarding staffing in the EH department will not be made until the reengineering study is completed and fully evaluated in relation to operational needs and availability of existing resources.



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3 July 2002

## **Environmental Health Response to Grand Jury's Report on Food Inspection Findings & Recommendations**

### **FINDINGS:**

**1. CURFFL has changed in the last two years. Effective January 1, 2001, the State of California mandated that:**

- a. A copy of the most recent inspection report shall be maintained at the food facility.**
- b. The food facility shall post a notice advising patrons that a copy of the most recent inspection report is available for review by interested patrons.**
- c. Facilities not in compliance during the initial post January 2001 inspection were required to be advised orally of the above requirements.**
- d. The requirement notice may be provided by the local inspection agency.**

*Disagree.* Section 113946 (a) of the law referred to (California Health & Safety Code) is confusing as to how it was to be implemented. The Code starts out by stating: "On or before January 1, 2002, the department shall establish, and each local health agency shall utilize, a standardized, food facility inspection format for food facility inspections"... Such a format was NOT developed by the State Health Department until March of 2002, more than a year later. There was great confusion amongst local environmental health agencies as to how this was to be implemented, and when. Many interpreted this to mean that these requirements were not required to be implemented until the State Health Department provided the guidelines.

**2. There is no evidence that the county's Consumer Protection Division followed the above mandate.**

*Disagree.* The county's Consumer Protection Program Manager regularly attended State Technical Advisory Committee meetings in Red Bluff to ensure that Nevada County was following State guidelines and local interpretations in enforcing this requirement. There were vast inconsistencies statewide on the implementation of this specific legal provision. The Environmental Health Department was following the understanding that this requirement, which does not impact public health, was to be implemented at such time as the State Health Department published it's guidelines.

**3. Assembly Bill AB 1978 modified CURFFL to require every food facility to employ one person who has passed the certification test in food safety.**

*Agree.* This is a true reflection of State law.

**4. The Consumer Protection Division proposes to offer a supplemental two-hour food safety seminar for food workers.**

*Agree.* The Nevada County Department of Environmental Health previously provided such a seminar for local county food businesses and has included this into their budget and performance measures again for this new fiscal year.

**5. Western Nevada County was without a full-time food inspector from June 1999 until May 2001.**

*Agree.* The department had great difficulties in recruiting a new inspector to replace an intra-department transfer from the Consumer Protection division to its Land Use Division, which resulted from high land development demands, and therefore staff migration into the private sector.

It should be noted that during part of the noted time period, the department hired a professional registered environmental health specialist from adjoining Sutter County to provide food inspection services during the staffing shortfall, during weekends and holiday periods.

**6. A full-time food inspector was hired in May 2001. This is the only food inspector for western Nevada County.**

*Partially agree.* The Consumer Protection division for Western Nevada County is comprised of a full-time program manager and inspector. The single inspector (Environmental Specialist) is available full-time for inspections in the Consumer Protection division, which includes such other additional programs as recreational health, housing and institutions (organized camp, detention facilities, housing complaints), vector control (hantavirus, plague, Lyme disease), tattoo/body piercing/permanent make-up. The program manager is available for inspections on a limited basis.

**7. Eastern Nevada County food facilities are covered by two inspectors who provide all Environmental Health Department inspection services for that area.**

*Agree.* Historically, the Eastern Nevada County sub-office is served by advanced level inspectors who provide the array of EH services under the supervision of the Consumer Protection division program manager.

**8. The Consumer Protection Division of the Environmental Health Department is a fee for service agency.**

*Generally agree.* Most of the division funding comes from user fees, while a small percentage is derived from State funding.

**9. Food facilities pay a Certificate of Operation fee, which includes two inspections per year.**

*Generally disagree.* The fee methodology and service levels associated with it have evolved over the years. In the early 90's this statement was true. Now, the fees are based on providing a level of service for operating a program that ensures safe food handling for Nevada County residents and visitors. The actual service level is determined based more on risk assessment than a specific number of inspections. Some facilities actually receive more than two (2) inspections annually.

**10. As of April 1, 2002, there were approximately 345 food facilities in western Nevada County and 130 in eastern Nevada County.**

*Generally agree.* The numbers fluctuate on a weekly basis as businesses open and close on an on-going basis. As an extreme example, the recent Nevada City fire resulted in the immediate loss of three (3) food businesses.

**11. Information received from the Consumer Protection Division indicated that 368 inspections were reported/completed during the first nine months of this fiscal year.**

*Agree.*

**12. Food facilities which require a re-inspection are charged a fee based on the department's hourly rate.**

*Agree.* The Nevada County Department of Environmental Health has worked with the local business community to determine violations that trigger a "mandatory reinspection" which generates an additional fee to the food business for the major public health and safety violations. This process was developed so as to reward those food businesses which protect public health and ensure those businesses which have public health violations pay for the ensurance by the department that they are corrected.

**13. Fines are not issued to food facilities for failure to correct major violations.**

*Agree.* The posture of the Nevada County Board of Supervisors is not to punish businesses, but to encourage compliance with laws. The publicly published

criteria for Mandatory Reinspections, and the resulting hourly rate charges, noted in Finding 12 above tend to discourage repeat or major violations.

**14. The new state inspection format divides violations into major and minor categories. Major violations are defined as those that pose imminent risk to public health.**

*Agree.*

## **RECOMMENDATIONS:**

**1. The Consumer Protection Division must inform all food facilities of the notification regulations to comply with state law.**

*Agree.* The Nevada County Department of Environmental Health is and has been informing food facilities of this requirement since the publishing of the State guidelines in this March of 2002. The guidance document from the State indicates (in *italics*):

*SB 180 adds Section 113946 (c) to CURFFL. This section specifies that a food facility must maintain a copy of the most recent inspection report at the food facility. Furthermore, the facility must post a notice advising patrons of the availability of the report. Both of these requirements become effective on January 1, 2001, despite the fact that Section 113946 (a) does not mandate implementation of the standardized inspection format until January 1, 2002.*

*The dual requirements of maintaining the most recent inspection report and making it available for review on January 1, 2001 could result in thousands of food facility operators requesting copies of their last inspection report (pre 2001) from local health agencies. This would be costly for local agencies and facility operators. The author and sponsor of SB 180 did not intend for the requirement to maintain the most recent inspection report at the food facility to apply to inspections performed before January 1, 2001.*

*Therefore, DHS recommends that all local agencies adopt the following policy:*

- 1. No enforcement action (including notation on a written report) be taken against a food facility that does not maintain a copy of a report of an inspection conducted prior to January 1, 2001;*
- 2. Food facilities that are found not in compliance with Section 113946(c) during the initial inspection conducted on or after January 1, 2001 be advised orally of the requirement to maintain a copy of their most recent inspection report at the food facility, and, if necessary, be*

*provided with a sign similar to the one attached to this notice for posting at the facility;*

- 3. The written notice should be standardized for use statewide. However, Section 113946(c) does not mandate specific wording, minimum type size, color, size or location of the notice. Facilities that do not use the attached example, or another notice approved by the local agency, must be evaluated on a case by case basis for compliance with Section 113946(c). The notice must be in the English language, but may also appear in other languages as desired by the food facility.*

Therefore, it was never intended by the State that there would be a massive undertaking for the implementation of this relatively minor requirement to be implemented all at once.

**2. The Consumer Protection Division should provide a copy of the required notice to be posted upon inspection of each food facility.**

*Agree.* The Nevada County Department of Environmental Health is complying with this requirement as noted in the response to Recommendation #1.

**3. A system of fines should be in place for food facilities that continue to violate food safety standards.**

*Neither agree nor disagree.* The Nevada County Department of Environmental Health is not the legislative body for making this type of determination. Rather, this is an issue of Board policy which is determined via the electorate process.

**4. The county should investigate adding a second food facility inspector for western Nevada County. A second inspector would enable the required number and quality of inspections to be maintained.**

*Agree.* The Community Development Agency is currently undergoing a re-engineering evaluation, which includes workload analysis, and benchmarks compared to other counties. It is noted that historically the department's Consumer Protection division in the early 90's employed four (4) inspectors and one program manager prior to a downsizing movement.

Respectfully,



Norm Greenberg, REHS #4188  
Director of Environmental Health