



# COMMONWEALTH of VIRGINIA

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State Health Commissioner

*Department of Health*  
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March 31, 2010

**PIM #10-01**

## MEMORANDUM

**TO:** District Directors  
Environmental Health Managers  
Division of Food and Environmental Services Staff

**FROM:** Jeff Lake, Deputy Commissioner  
Community Health Services

Gary L. Hagy, Director  
Division of Food and Environmental Services

**SUBJECT:** Enforcement of Virginia Indoor Clean Air Act

This PIM addresses documentation of inspections and enforcement actions by environmental health specialists under the Virginia Indoor Clean Air Act, including referrals to law enforcement officials. All restaurant visits, inspections, complaint investigations, enforcement actions and referrals concerning violations of the Indoor Clean Air Act must be documented as described in this PIM

Please insert this document in your **PIM** manual and distribute copies to all persons in your district working in your foodservice protection program. Please note that the **PIM** is effective immediately.

If you have any questions, please contact Gary Hagy.

**Program:** Food

**Subject:** VDH Enforcement Procedures for Indoor Clean Air Act (ICAA)

**Objective:** Standardize enforcement procedures to be used by all local health departments for compliance with the ICAA

**Authority:** The authority for issuing the procedures as follows:

*Code of Virginia*

1. § 15.2-2825. Smoking in Restaurants Prohibited

**Background:** Title 15.2-2825 of the *Code of Virginia* became effective December 1, 2009. Title 15.2-2825 prohibits smoking in restaurants except for a few limited exceptions. VDH staff does not have authority to issue summonses for violations of the ICAA. VDH's only recourse is to document violations and attempt to obtain compliance through education and if those efforts fail, referring the matter to local law enforcement.

**Procedures:** During every inspection, including regular inspections for compliance with the *Food Regulations*, investigations of food safety complaints, and investigations of complaints regarding violations to the ICAA, environmental health specialists (EHSs) shall confirm the smoking status (Smoke Free, Outdoor Smoking Area, Smoking in Designated Areas, or Exempt) and then document the establishment's compliance with the ICAA. EHSs shall document these inspections and investigations in VENIS using the appropriate VENIS evaluation form as follows:

1. Routine inspections: Suspected violations of the ICAA discovered during regular food inspections, shall be documented using either the Risk Evaluation Report or the Food Facility Evaluation Report form in VENIS (or any subsequent form developed by OEHS for this purpose).
2. Complaint investigations: Suspected violations of the ICAA discovered as a result of investigating a complaint regarding possible ICAA violations, shall be documented using the Food Facility Evaluation Report in VENIS. Also, the complaint should be logged in VENIS by completing a complaint form under the specific establishment in VENIS. NOTE: ALL complaints involving VDH permitted facilities are to be entered into VENIS using the Complaint Form, regardless of the source or subject of the complaint.

The initial VDH response to violations to the ICAA discovered during inspections or complaint investigations is to attempt to educate the owner on the requirements of the ICAA and obtain compliance with education and persuasion.

If an owner/operator is attempting to comply, the suspected violation shall be documented as described above and a timetable for correction should be discussed. If an owner/operator is trying to construct a smoking area in compliance with the requirements of the ICAA but has not completed the work and is permitting patrons to smoke, the violation shall be noted and the EHS will advise the owner/operator that the facility must be smoke free until the work is complete and a compliant smoking area is constructed. If the owner/operator is working to construct a smoking area and is not permitting patrons to smoke in the facility, no violation exists. The facility is in compliance and this should be noted on the appropriate VENIS form described above.

If a non-compliant owner/operator expresses that he or she intends to comply with the ICAA but has not demonstrated any actions to achieve compliance, a written notice should be issued stating that it appears they are not in compliance with the ICAA and the notice shall include the observations that support that conclusion. The notice shall also specify a reasonable date by which VDH expects the owner/operator to be in compliance with the ICAA or the matter will be referred to law enforcement officials for possible action. (A sample notice is attached for your use)

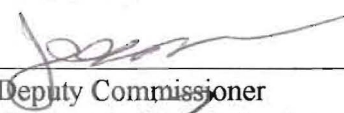
If a non-compliant owner/operator expresses that he or she does not intend to comply with the ICAA after being counseled by the EHS concerning the requirements of the law, the matter shall be referred immediately to law enforcement officials for possible action. Non-compliant owner/operator should also be advised of the potential of having their wine/beer license revoked by the Virginia Alcoholic Beverage Control Board pursuant to Virginia Code section 4.1-225(2)(A).

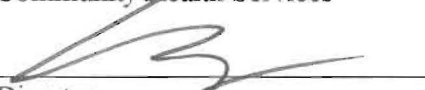
ALL referrals to law enforcement officials shall be documented in the comment section of whichever VENIS form is used as described above. Other methods for documenting referrals may be developed by OEHS.

**Responsibility:** District Health Directors and Environmental Health Managers are responsible for sharing this PIM with all environmental health specialists working in the food program. Environmental Health Managers are responsible for ensuring a copy of this PIM is placed in the office copy of the PIM Manual.

**Effective Date:** March 31, 2010

**Approved by:**

  
Deputy Commissioner  
Community Health Services

  
Director  
Division of Food and Environmental Services

{The following represents a template for the notice that is to be provided to a proprietor who is allegedly in violation of the ICAA. Note that this merely serves as an example, and that certain information must be modified and tailored to meet the specific circumstances of the alleged violation.}

Black/Bold font represents facts/circumstances that MUST be modified and tailored to fit the alleged violation.

Red font represents standard language that can be used for all ICAA offenses concerning proprietors.

DATE

**NOTICE OF VIOLATION  
INDOOR CLEAN AIR ACT**

Owner's Name

Street Address

City/Town, Virginia 20000

CERTIFIED MAIL # \_\_\_\_\_

Dear Mr. Owner:

Re: Restaurant Name/Address

This Notice is issued pursuant to § 15.2-2825 of the *Indoor Clean Air Act (Code of Virginia, §15.2-2820 et seq., the "ICAA")* which states that, subject to limited exceptions, "smoking shall be prohibited and no person shall smoke in any restaurant in the Commonwealth or in any restroom within such restaurant". Furthermore, this is to notify you that there is reason to believe that you are in not in compliance with the requirements of the *ICAA*.

**Background Information:**

1. On \_\_\_\_\_, 2009, one of your patrons contacted the \_\_\_\_\_ County Health Department ("local health department") because smoking was allegedly being permitted in your establishment.
2. On \_\_\_\_\_, 2009, \_\_\_\_\_, Environmental Health Specialist for the local health department, visited your establishment to investigate. During his visit on \_\_\_\_\_, 2009, Mr. \_\_\_\_\_ observed that patrons

were smoking in your restaurant and that adequate control measures, such as structural separation between designated smoking and non-smoking areas, had not been adopted. Mr. \_\_\_\_\_ observed that “No Smoking” signs were not clearly and conspicuously posted in your establishment. Mr. \_\_\_\_\_ also observed the presence of ashtrays in the bathroom and other areas of the establishment.

**Applicable Regulations:**

**Code of Virginia, § 15.2–2825. Smoking in restaurants prohibited; exceptions; posting of signs; penalty for violation.**

- A. *Effective December 1, 2009, smoking shall be prohibited and no person shall smoke in any restaurant in the Commonwealth or in any restroom within such restaurant, except that smoking may be permitted in:*
1. *Any place or operation that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include the preparation or storage of food for catering services, pushcart operations, hotdog stands, and other mobile points of service;*
  2. *Any outdoor area of a restaurant, with or without roof covering, at such times when such outdoor area is not enclosed in whole or in part by any screened walls, roll-up doors, windows or other seasonal or temporary enclosures;*
  3. *Any restaurants located on the premises of any manufacturer of tobacco products;*
  4. *Any portion of a restaurant that is used exclusively for private functions, provided such functions are limited to those portions of the restaurant that meet the requirements of subdivision 5;*
  5. *Any portion of a restaurant that is constructed in such a manner that the area where smoking may be permitted is (i) structurally separated from the portion of the restaurant in which smoking is prohibited and to which ingress and egress is through a door and (ii) separately vented to prevent the recirculation of air from such area to the area of the restaurant where smoking is prohibited. At least one public entrance to the restaurant shall be into an area of the restaurant where smoking is prohibited. For the purposes of the preceding sentence, nothing shall be construed to require the creation of an additional public entrance in cases where the only public entrance to a restaurant in existence as of December 1, 2009, is through an outdoor area described in subdivision 2; and*
  6. *Any private club.*
- B. *For the purposes of this section:*
- "Proprietor" means the owner, lessee or other person who ultimately controls the activities within the restaurant. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.*

*"Structurally separated" means a stud wall covered with drywall or other building material or other like barrier, which, when completed, extends from the floor to the ceiling, resulting in a physically separated room. Such wall or barrier may include portions that are glass or other gas-impervious building material.*

*D. The proprietor of any restaurant shall:*

*1. Post signs stating "No Smoking" or containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, clearly and conspicuously in every restaurant where smoking is prohibited in accordance with this section; and*

*2. Remove all ashtrays and other smoking paraphernalia from any area in the restaurant where smoking is prohibited in accordance with this section.*

*E. Any proprietor of a restaurant who fails to comply with the requirements of this section shall be subject to the civil penalty of not more than \$25.*

*I. Any local health department or its designee shall, while inspecting a restaurant as otherwise required by law, inspect for compliance with this section.*

**Code of Virginia, § 15.2-2822. Authority of law-enforcement officials.**

*Any law-enforcement officer may issue a summons regarding a violation of this chapter.*

**Notice of Violation:**

Based on facts described above, the local health department believes that you have violated, and that you are continuing to violate, the *ICAA* by:

- 1. Permitting smoking in your establishment without conforming to any of the limited exceptions articulated in the *ICAA*;**
- 2. Failing to post clear and conspicuous "No Smoking" signs as required by the *ICAA*; and**
- 3. Failing to remove ashtrays and other smoking paraphernalia from prohibited smoking areas as required by the *ICAA*.**

Such actions are prohibited as described above, and constitute real or potential threats to public health and safety.

**Corrective Actions:**

In accordance with § 15.2-2825 of the *ICAA*, the following **corrective actions** are requested within the timeframes described:

- 1. Immediately cease permitting any person to smoke in your establishment. You may only continue to permit smoking if its time, place and manner complies in all aspects with one of the limited exceptions articulated in *Code of Virginia*, § 15.2-2825(A).**

2. **Immediately remove all ashtrays from areas where smoking is prohibited.**
3. **Within fifteen (15) days of your receipt of this notice, post clear and conspicuous signs stating “No Smoking” or containing the international “No Smoking” symbol.**

If you fail to accomplish the actions requested above within the timeframes specified, the local health department may refer the matter to law enforcement officials who may issue a civil summons pursuant to *Code of Virginia*, § 15.2-2822. Violations of the *ICAA* shall be subject to a civil penalty of not more than \$25 and can result in the revocation of a liquor license by the Virginia Alcoholic Beverage Control Board pursuant to Virginia Code § 4.1-225(2)(A).

Please feel free to call me at ( ) 123123123 if you have any questions or if you wish to discuss this matter.

Sincerely,

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**Environmental Health Supervisor**