

Enforcement of food safety regulations: a review of municipality records

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ABSTRACT

Enforcement of food safety regulations is the responsibility of municipalities with interest growing not only in the nature of the regulations, but the process by which they are enforced to ensure compliance. The municipality perform the enforcement function through the role of Environmental Health Practitioners (EHPs) obliged to keep and manage records and evidence of their actions. However the question on the role of EHPs remains moreover how they compile and manage records and maintains evidence of their enforcement actions. The study investigate the recording of non-compliance of food premises in the City of Johannesburg Metropolitan Municipality (CoJ) by EHPs in terms of food safety regulations and examines how evidence for enforcement action is recorded, managed and maintained. Quantitative data were collected using a data collection form to review random sampled documented records of non-compliant food premises from the seven regions of CoJ. The study showed that there are similarities in the enforcement actions recorded by EHPs. The data indicate significant flaws in the recorded information and poor construction and management of documented evidence with lack of intervention from supervisory managers on the matter. The finding of the study concludes a compliance process model used by CoJ. The record keeping and auditing system is inefficient in the regulatory authority and is need of reform. Furthermore, there is a need to train EHPs in health information systems.

Keywords: Food safety regulations; enforcement action; compliance,

Introduction and background

Food safety regulations include requirements and standards issued by public authorities, related to the hygiene and quality of foodstuffs (FAO, 2012:2), with the main objectives of safeguarding public health and reducing the risk of illnesses (Ragona and Mazzocchi, 2008:145).

The regulations are used to constrain the behaviour of actors in the food chain by stipulating specifications and requirements to be complied with and sanctions to be applied in case of non-compliance. This is an important function of government in maintaining food market order, protecting people's safety and maintaining social stability (Fu-feng, 2010:60). In South Africa, food safety regulation is the responsibility of municipalities as part of municipal health services at local government level (Pretorius and De Klerk, 2009:9). Hence municipalities are responsible for ensuring that food premises, from small shops and hot dog sellers to large food manufacturing, comply with food safety regulations and such records of compliance are managed and maintained.

The municipalities perform the key role of enforcing food safety regulations through the functions of EHPs (Hutter and Amodu, 2008:6) whom inspect food businesses in order to assess food safety compliance (Yapp and Fairman, 2006:43) and whom are responsible to create, update and manage records to provide evidence of their actions. Sound management of records, whether electronic or paper, has become a topical issue globally (Kalusopa and Ngulube, 2012:1).

Several studies (Henson and Heasman, 1998; Yapp and Fairman, 2005; Yapp and Fairman, 2006) have investigated factors affecting compliance within food manufacturers and retailers and literature exists on the impact of food safety regulations on enterprises, providing

guidance on how to implement regulatory requirements on the shop floor effectively (Mensah and Julien, 2011:1217). The question on the role of EHPs remains, moreover how they manage and maintain records to provide evidence of their enforcement action. Therefore, this article discusses how EHPs at municipality level manage records in relation to ensuring compliance to food safety regulations. Ngoepe (2014:7) highlighted the need for organisations to ask whether there will be sufficient evidence on records for a defence or to file a claim.

This is empirical to municipalities as non-compliance to food safety regulations pose a threat to the health of the consumer (Lunden, 2013:84) and records to support and provide evidence of actions taken must be authentic, complete and usable to support for legislative intervention.

Research purpose and objectives

The general purpose of the study was to determine the compliance process that EHPs follow in cases when food premises do not comply with food safety regulations and the objectives include:

- To evaluate the statutory requirements recorded by EHPs in terms of non-compliance to food safety regulations.
- To investigate how evidence of enforcement action is recorded, managed and maintained.

Research method

Our purpose was to investigate, first the recording of statutory requirements applied for non-compliance of food premises in City of Johannesburg by Environmental Health Practitioners (EHPs) in terms of food safety regulations and second, how the evidence for subsequent enforcement action is recorded, managed and maintained.

Permission was obtained from the Executive Director for Health to access the food premises files in the seven regions of the municipality (Region A – G). Figure 1 illustrates the map of City of Johannesburg Metropolitan Municipality, highlighting the seven regions of the city, where EHPs are employed to enforce food safety regulations in response to food control as one of the municipal health services. The municipality appoints EHPs to implement food safety regulations mainly the regulation relating to the general hygiene for food premises and the transport of food (Regulation No. 962 of 2012), hereafter referred to as R962/2012 and apply enforcement action for identified non-compliance.



Figure 1: City of Johannesburg map (not to scale) [www.joburg.org.za, 2012]

It is the responsibility of each EHP to keep documented record of all food premises of their allocated area and to manage and maintain related evidence as per National Health Act No. 61 of 2003. The municipality also appoints managers to supervise the work of the EHPs and provide guidance on further enforcement actions where non-compliance persists. All EHPs appointed by the City to implement food safety regulations were targeted for the study. The EHPs surveyed in the study

were sampled using purposeful sampling due to their responsibility for food premises inspections (Newbold et al., 2008:54) and their role to enforce food safety regulations (Hutter and Amodu, 2008:6). An explanation of the aim of the study was provided to the EHPs beforehand and informed written consent was obtained for their participation in the study.

A total of 110 EHPs out of a total of 151 EHPs in the municipality, at the time of study responded and each was asked to randomly select five documented food premises files in their area of operation; according to their expert opinion in the category of non-compliance and such non-compliance identified five years prior to the study (2009 to 2013). The files were in a hard copy format with hand written reporting of inspection findings, identified non-compliance conditions, and enforcement action taken by EHPs and additional documentation (hand written and typed) provided in the files as evidence. The study followed a quantitative approach and quantitative data were collected through reviewing documented records of the non-compliant food premises (550) of 110 EHPs who participated in the study. The total sample of 550 record files was regarded as a representative sample composed of elements that contain characteristics and typical attributes representative of the population.

A data collection form was used and completed by the researcher, at the regional Environmental Health offices, to summarise information recorded by EHPs. Information recorded included 1) steps taken to ensure rectification of non-compliance conditions, 2) follow-up action where non-compliance persisted, and 3) a review of additional documentation on record serving as evidence of action taken at the specific food premises. An examination of the additional documentation/ lack thereof in the files

provided in-depth information on management and maintenance of documentation of evidence. Data were coded manually and captured on Microsoft Excel for simple statistical analysis. The number of responses was converted into percentages to allow for the data to be tabulated and for additional links within and between concepts to be documented.

Research results

The research found clear similarities in the statutory requirements recorded by EHPs in cases where non-compliance was identified. The reviewed documented records show that 62% of food premises' files recorded health education as the first step to remedy an identified non-compliance, 68% recorded issuing a compliance notice as a follow-up step and 76% recorded issuing a prosecution fine as their final measure to ensure that the persistent non-compliance is remedied. This allow for a general model of the compliance process to be outlined in line with food safety legislation, however not to the latter of the legislative requirements as final statutory steps for conviction of an offender are not recorded.

The study found good and bad practices in the compilation and administration of records and in the management and maintenance of evidence regarding enforcement of food safety regulations. The good practices included: 1) All the files were recorded with and inspection date; 2) 66% of the records detailing the non-compliance conditions at the premises; and 3) 100% of the files had been checked by the supervisory manager as indicated by signature and date of checking.

Though supervisory managers check the files, only 22% of these were recorded with comments from the supervisor either to note the flaws in the file or to advise for further enforcement action. This indicates a recording system is in place however with practices in need of improvement.

Lack of evidence of enforcement action

The action recorded in the files by EHPs includes spot notice (hand-written and issued by the EHP at the food premise), statutory notice (typed, printed and posted to the registered address of the owner of the food premises) and prosecution fine issued at the food premises upon identifying non-compliance conditions. However proof of these actions was not available in certain records as verification that the enforcement action was applied, raising the following concerns: 1) the records do not show a true reflection of actions taken due to the missing evidence; 2) the inconsistency in the management of documents as certain files had evidence of actions taken and some did not; and 3) the supervisory managers do not check the recorded enforcement action against the existing proof.

Table 1 shows the files with recorded enforcement action and the percentage of files without evidence of such actions. Keeping of evidence on file is of importance as can be required by the court of law to serve as proof for a court case.

TABLE 1: Unavailability of evidence for recorded enforcement actions

Enforcement actions	Number of files with recorded action	% of evidence unavailable on file
Spot notice (Hand written)	400	265 (66%)
Statutory notice (Typed)	138	89 (65%)
Prosecution Fine	82	52 (63%)

Lack of follow-up of enforcement action

Where enforcement action is applied, food premises were given a range of days by EHPs (7 – 30) to comply with the requirements of R962/2012. Yet 82% of follow – up action was not conducted in correspondence with the number of days given to comply. Table 2 displays the range of days given to comply with some premises, however, only followed up after a month or even after 6 months. The records indicate a delay in the follow-up action upon lapsing of the duration given to comply and pose a food safety risk to consumers because remedying of the observed non-compliance is not verified by the EHPs. Recording that spot notice/ statutory notice issued, means little if there

is no follow-up of that enforcement action to ensure the non-compliance condition is corrected because compliance with regulations require ongoing monitoring and evaluation of food premise to ensure continued conformity. An interesting finding regarding follow-up was that when a new EHP is allocated an area, they would not follow-up the previous EHP's enforcement action but rather apply their own as a result of the regulatory authority being target driven than outcome driven (Griffith, 2005).

Table 2: Follow-up period of recorded enforcement action

Number of days given	Follow-up period (in months)	% of actual follow up conducted
7 days	1 m	54%
	3 m	34%
	6 m	12%
	> 6 m	0
14 days	1 m	74%
	3 m	21%
	6 m	5%
	> 6 m	0
21 days	1 m	0
	3 m	36%
	6 m	15%
	>6 m	49%
30 days	1 m	0
	3 m	24%
	6 m	31%
	>6 m	45%

To ensure continuity and conformity to regulatory standards irrespective of the EHP who applied the enforcement action, adequate information should be made available through properly documented records and maintained evidence. An assessment of the additional documentation in the files revealed incompleteness and inconsistency in the management and maintenance of the record keeping system within regions and across the City.

The contents of the reviewed files were noted with substantial flaws including spelling errors and missing information (name of premise, address of premise, number of days given to comply, signature of EHP, contact number of EHP) on hand-written notices issued at the food premises

and typing errors on statutory notices posted to owners of food premises.

The procedure for maintaining evidence on file was not standard across the different regions and amongst EHPs in the same region. Table 3 indicates the type of additional documentation to be kept as per standard operating procedure ON Application and Issuing of Certificate of Acceptability for food premises in the City and percentage of the evidence found to be kept on file. In light of these findings, the question arise about the competence of the existing, supposedly qualified EHPs in enforcing the regulations and creating and maintaining records, vital to meeting the obligation to keep record as per The National Health Act (South Africa, 2003).

TABLE 3: The percentage of additional documentation on file

Document type	Percentage (%) on file
Certificate of Acceptability Application forms	80%
Identity document of premises owner	77%
Certificate of Acceptability issued	72%
Floor plan of premises	36%

Discussion

As in all organisations, officials create records to support and provide evidence of, their transactions and the records must be authentic, complete and usable (Kasulopa and Ngulube, 2012). This study highlights the flaws that needs to be addresses and in need of reform duly accountable to the EHPs whom update the records and file the evidence and the supervisors whom must verify and audit the enforcement action recorded and advice for further action where needed. The spelling errors and missing information on spot notices and typing errors on statutory notices issued by the

EHPs do not encourage businesses to take the matter of food safety seriously and to move towards conforming to regulatory requirements and ensuring compliance.

The records show a delay in follow-up of enforcement action and this begins to question how EHPs perceive their role in safeguarding public health and how businesses in turn perceive that role. Yapp and Fairman, 2004:9 highlights that it is generally accepted by enforcers and experts that there will always be a sector of business that will not comply with food safety legislation and in 2006, they further highlighted that for businesses to respond to and remedy non-compliance, there

needs to be the perception that action will be taken by the EHP if it is not remedied. With these delay in follow-up, the food businesses will continue to view the issues raised by EHPs as ‘petty’ and ‘irrelevant’ (Yapp and Fairmann, 2006:45) with the focus on food safety remaining secondary to sales (Dundes and Swann, 2008:158).

Conclusions

Based on the findings of the 550 reviewed food premises records, a compliance

process model for food safety regulations can be outlined as shown in figure 2. The model sketches the steps taken by EHPs in the City of Johannesburg municipality to ensure food premises comply with food safety regulations. However, the model indicates a deadlock as a result of EHPs not taking any further action after issuing a prosecution fine, subsequently resulting in a repetition of the compliance steps.

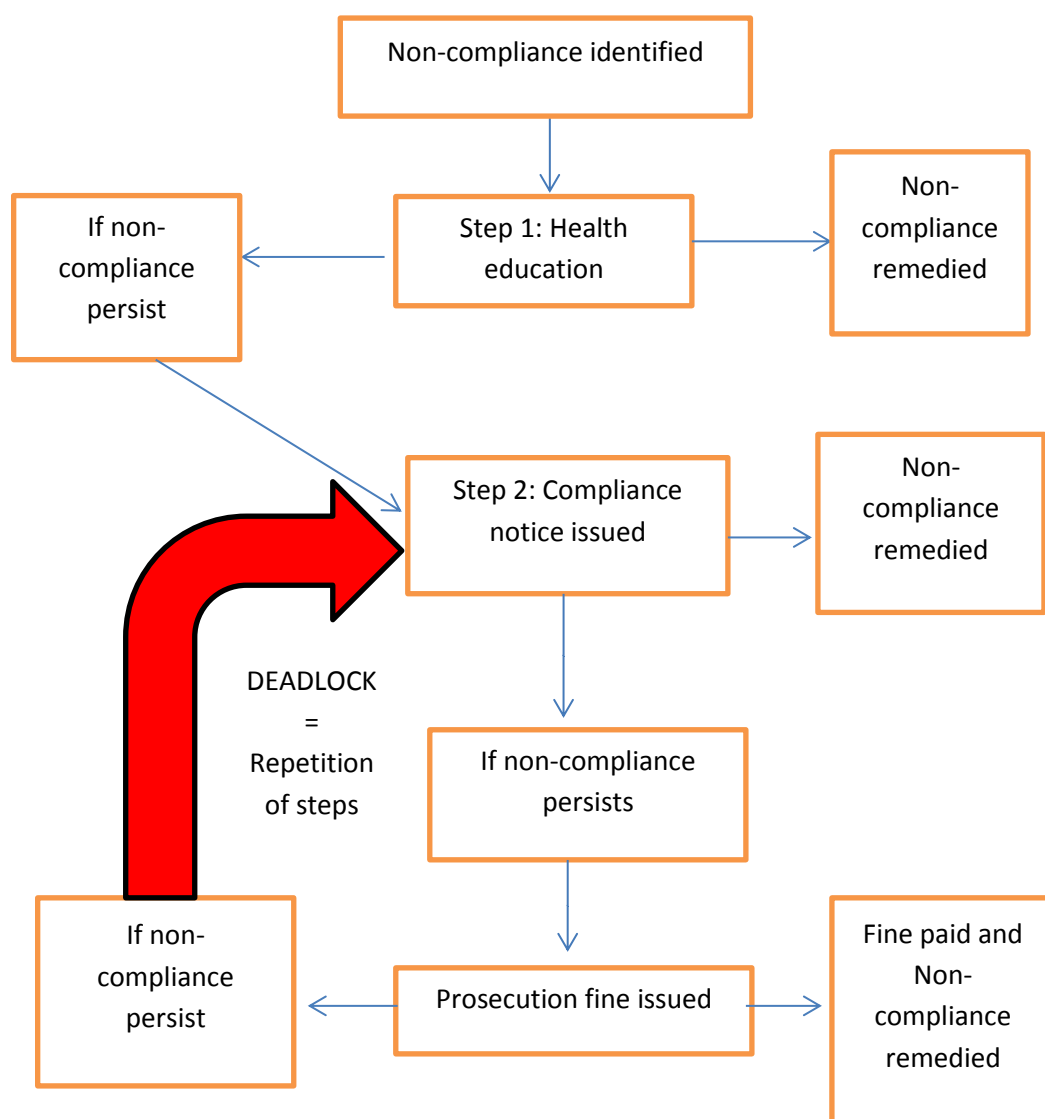


Figure 2: Compliance process model followed by EHPs in CoJ for enforcement of food safety regulations

The model indicates that EHPs do not enforce the legislation in its entirety, to a point where a person guilty of an offense is liable to conviction by a court of law. This necessitate training of EHPs with the focus on prosecution of offenders as it seems to be the area in the compliance process that EHPs are most hesitant about to apply and follow-up. With the city continuously appointing EHPs to ensure it is resourced to enforce food safety regulations systematically, it remains crucial to ensure proper compilation and administration of records and management and maintenance of evidence thereof. This is more so to ensure the regard of the seriousness of the non-compliance by the food premises owner.

Yapp and Fairmann, 2006:45 highlight that EHPs were seen by businesses to act inconsistently and making different food safety requirements, despite the conditions remaining the same and the same EHP visiting the premises.

Substantial flaws in the record reviewed indicate the inefficiency of the record keeping and audit systems in the regulatory authority to conform to national standards and the need to train practicing EHPs on health information systems. This also calls for the incorporation of health information systems into the curriculum for training of EHPs at academic institutions. The poor construction of documents, follow –up as per recorded period and the constructive comments of the operational managers supervising the EHPs are most in need of reform. The supervising manager should also take responsibility and accountability for management of records and constructive feedback for follow –up enforcement action. An electronic system to scan and save the additional documentation is recommended as a measure to prevent paper documents missing.

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Authors' contribution

M.C. (University of Johannesburg) was the project leader, collected and analysed the data. M.C. (University of Johannesburg) compiled the article in collaboration with T.S. (University of Johannesburg) and T.M. (University of Malawi-Polytechnic).

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