



Date: November 9, 2017



To: District Health Directors
District Environmental Health Managers
Office of Environmental Health Services Staff

Through: Hughes Melton, MD, MBA, FAAFP, Chief Deputy Commissioner 
Department of Public Health and Preparedness

Through: Allen Knapp, Director 
Office of Environmental Health Services

From: Julie Henderson, Director 
Division of Food and General Services

Authority: Virginia Department of Health Food Regulations 12VAC5-421 et seq. (Food Regulations); specifically 12VAC5-421-3960

Subject: **Condemnation of Food**

Purpose: The Food Regulations address the examination and condemnation of food product(s) suspected of violating regulatory requirements. This policy outlines the procedural details Virginia Department of Health (Department) personnel must follow when impounding and condemning food.

Procedure: If the environmental health specialist (EHS) and local health department (LHD) determine impoundment is warranted, based on observations indicating food product(s) may be unsafe or adulterated, LHD staff shall follow impoundment procedures as outlined in this document. If operation of the food establishment constitutes a substantial and imminent threat to the public health based upon non-compliance with an impoundment notice, suspension of the operation permit may be pursued. Upon the effective date of this document, PIM #06-01 shall be rescinded.

Definitions: The following definitions serve to provide clarity to the following procedures:

Adulterated: has the meaning stated in the Federal Food, Drug, and Cosmetic Act, §402 (Act). The Act states in part, food shall be deemed to be adulterated when: (a) poisonous, insanitary, etc. (b) absence, substitution, or addition of constituents has occurred, or (c) color additives which have been deemed unsafe by law are observed.

Condemnation: the act of declaring something unfit for use.

Denature: decharacterization of a product, whereby it is made unusable for its originally intended purpose.

Destruction: the procedures involved in rendering a product unsalvageable.

Impoundment: to place an item in the custody of the Department.

Voluntary Disposal

An EHS who suspects food product(s) on the premises of a food establishment fail(s) to comply with the Food Regulations shall afford the owner, permit holder, or person in charge (PIC) an opportunity to voluntarily denature or destroy the subject food product(s). When the owner, permit holder, or PIC elects to voluntarily destroy or denature food product(s), the following steps shall be taken by the EHS:

1. Supervise and document the destruction or denaturing, specifically noting:
 - a. Description of the food product(s);
 - b. Date and Time; a
 - c. Method of Destruction/Denaturing; and
 - d. Document the owner, permit holder, or PIC was afforded the opportunity to contest the allegations regarding the noncompliant food product(s) and waived such proceedings.

The EHS must not physically destroy or denature the food product(s) or assist the owner, permit holder, or person in charge (PIC) in the destruction or denaturing process. The EHS should take pictures or record the destruction or denaturing process, if possible. The destruction or denaturing process shall render the food product(s) inconsumable. For additional guidance on suggested methods to destroy or denature food product(s), see **Appendix 1**.

The owner, permit holder, or PIC shall be afforded the opportunity to voluntarily denature or destroy any food prior to initiating impoundment procedures.

When is Impoundment Appropriate?¹

Impoundment of food product(s) may occur when suspected food product(s): *(FDA Food Code Annex 8-903.10/ VAC 12 VAC5-421-940)*

¹ As a reminder, during inspection prior to permitting, VDH may not impound food that otherwise presents an imminent health hazard, rather providing notice of permit denial is the appropriate administrative enforcement step.

- a. Originated from an unapproved source;
- b. May be unsafe, adulterated, or not honestly presented;
- c. Is not labeled according to the Food Regulations, or, if raw molluscan shellfish, is not tagged or labeled according to the Food Regulations;
- d. Is part of a recall conducted by any regulatory authority; or
- e. Is otherwise not in compliance with the Food Regulations.

Procedures when Impounding Food Product(s)

In the event the owner, permit holder, or PIC does not voluntarily denature or destroy food product(s) which fail to comply with the Food Regulations, the EHS shall immediately notify the environmental health manager or supervisor² of the conditions leading to the request to denature or destroy food product(s) and the owner's, permit holder's, or PIC's refusal to take such action. If the environmental health manager or supervisor agrees that the specified food product(s) should be impounded, the EHS will proceed with the impoundment and inform the owner, permit holder, or PIC of such actions.

Any food product(s) suspected of not complying with the Food Regulations shall be listed on the Food Establishment Inspection Report and shall contain the following:

- a) Description of food product(s) subject to impoundment, which should contain the common name of the food products, label information³, and regulatory authority tag or identification information, if applicable;
- b) Container description;
- c) Quantity, weight (if pertinent), and location of the food product(s);
- d) Specific reasons for placing food under impoundment order and the potential public health risk created by the observed condition;
- e) Applicable Food Regulation(s) which serve(s) as the basis for impoundment;
- f) A statement that food product(s) shall not be used, sold, given away, moved, or destroyed without permission from the LHD;
- g) A statement informing the owner, permit holder, or PIC that any request for an informal fact-finding conference must be filed with

² EH Managers or supervisors should consult the District Standardization Officer (DSO) whenever possible. In the event an EH Manager or supervisor is not available, a DSO shall have the authority to render a decision regarding the impoundment of any suspected food product(s).

³ Examples of "Label Information" include: lot numbers, brand name, date marking information, or other information necessary to identify the food product.

the LHD⁴ within ten(10) calendar days of receiving the impoundment notice, and if no conference is requested, the identified food product(s) shall be destroyed, under the direction of the LHD, by the owner, permit holder, or PIC; and

- h) The contact information for the LHD staff member to whom a request for an appeal shall be made. (*FDA Food Code Annex 8-903.30/ 8-903.51/ 8-903.80*)

Upon receipt of approval to commence impoundment procedures and after providing the Food Establishment Inspection Report containing the enumerated items to the owner, permit holder, or PIC, the EHS shall tag or label the food product(s) subject to impoundment utilizing **Appendix 3**. (*FDA Food Code Annex 8-903.40*)

If allowing impounded food product(s) to remain on the premises presents an imminent health threat, the EHS shall contact the environmental health manager or supervisor and inform them of the potential health threat. The environmental health manager or supervisor shall inform the local health director of the imminent health threat and provide guidance as necessary, including the potential for summary suspension of the facility's operation permit.

Administrative Process

If the owner, permit holder, or PIC requests an informal fact-finding conference within ten (10) calendar days of receiving the Food Establishment Inspection Report, the LHD must send a conference scheduling notice to the requestor within five (5) business days of receipt of the conference request, including the date, time, and location of the requested informal proceeding. Generally, the local health director will conduct any scheduled informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia. The local health director will then issue a case decision memorializing the agency's findings, which either affirm or vacate the impoundment.

The ten (10) calendar day deadline for a request for an informal fact-finding conference regarding the impoundment of food product(s) does not supersede any regulatory timelines for corrections as outlined in 12VAC 5-421-3930.

⁴ In instances involving mobile or temporary food establishments where the alleged violation occurs in a district other than where the establishment was permitted, the request for an informal fact finding conference shall be made to the local health district making the allegation. The informal fact finding conference shall also be held in the district in which the alleged violation occurred.

Vacating the Impoundment

When an owner, permit holder, or PIC contacts the LHD to voluntarily destroy or denature suspected food product(s) listed in the Food Establishment Inspection Report or Notice of Impoundment or when a case decision issued by the local health department is vacated by court order, the EHS shall conduct a follow-up inspection of the food establishment within two (2) business days of receiving the re-inspection request. *(FDA Food Code Annex 8-904.40)*

When the impoundment of food product(s) suspected of violating the Food Regulations is vacated due to compliance or destruction/denaturing, the EHS shall provide a notice, in writing, that the impoundment is vacated. Once the impoundment is vacated the EHS shall remove the impoundment tag or label from the food product(s). See **Appendix 4**.

Delivery of a case decision or court order vacating an impoundment subsequent to an informal fact-finding conference or court proceeding will satisfy this notice requirement. *(FDA Food Code Annex 8-903.90)*

Food Establishment: Non-Compliance with Impoundment Notice

If an EHS reasonably suspects or observes food product(s) specified in an impoundment notice was used, sold, given away, destroyed, or moved from a food establishment, the EHS shall notify the environmental health manager or supervisor. After receiving notification from the EHS of the alleged non-compliance, the environmental health manager or supervisor shall institute suspension procedures as outlined in the Food Regulations if the act of non-compliance constitutes a substantial and imminent threat to the public health.

After consulting with and receiving concurrence from the Commissioner of Health, the local health director shall follow suspension procedures pursuant to 12 VAC5-421-4010 or any other applicable regulation or policy. The food establishment shall immediately cease food service operations upon receipt of the notice of permit suspension. Operations shall not resume until all corrections are implemented and the local health director has authorized lifting the suspension, or until the decision to suspend is resolved via an informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia. *(FDA Food Code Annex 8-904.10, 8-904.20)*

Food Establishment: Failure to Request an Administrative Hearing

In the event the owner, PIC, or permit holder fails to request a hearing within ten (10) calendar days of the issuance of the Food Establishment Inspection Report, an EHS shall conduct a follow-up inspection⁵ of the food establishment. Such inspection, as it relates to the impoundment of food product(s), shall take place no later than twenty (20) calendar days following the issuance of the Food Establishment Inspection Report. The owner, permit holder, or PIC shall be afforded an opportunity to voluntarily destroy or denature food product(s) prior to taking final enforcement action.

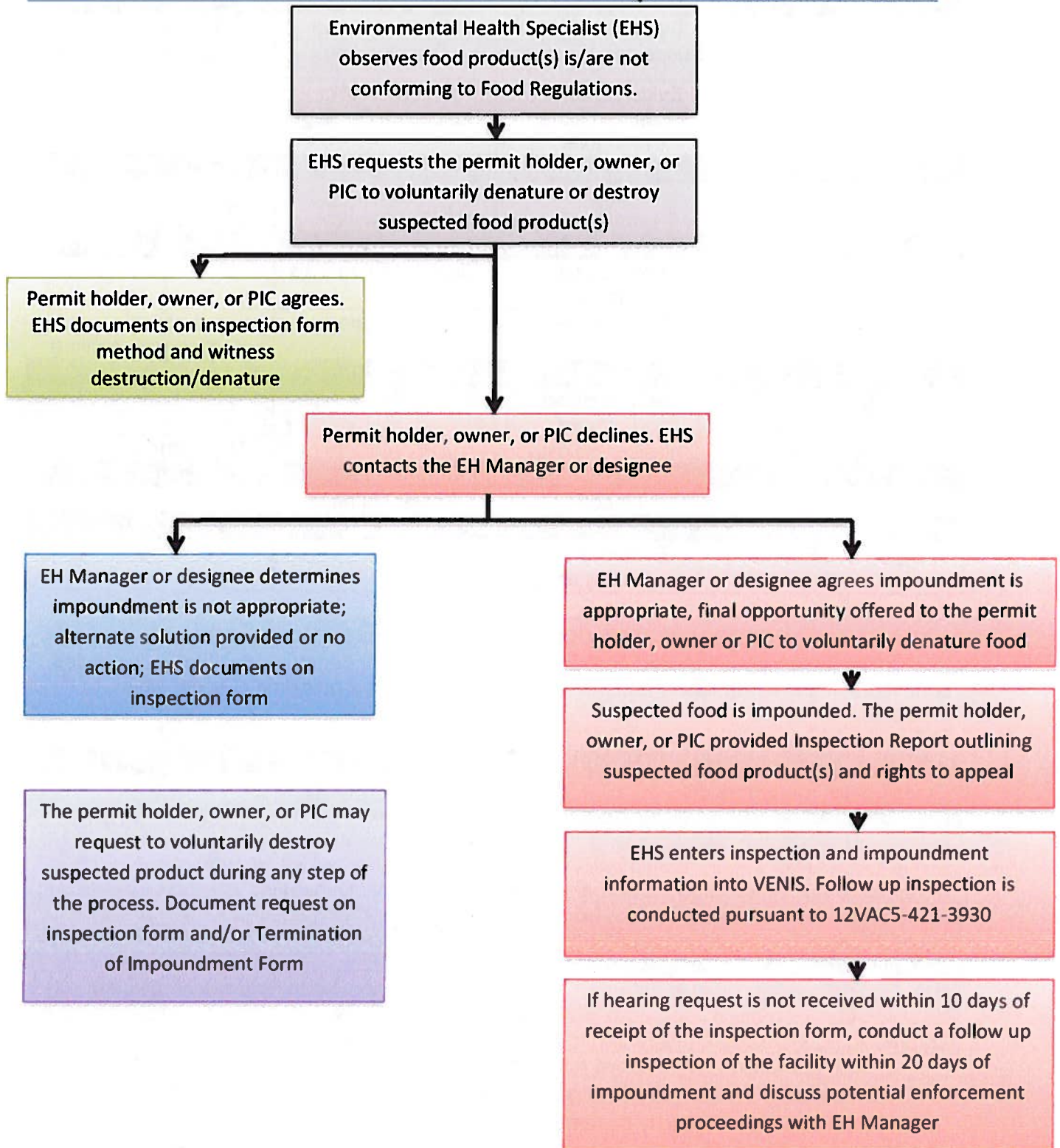
Upon receiving notification from the EHS of the continued non-compliance, the environmental health manager or supervisor shall institute suspension procedures as outlined in the Food Regulations if the act of non-compliance constitutes a substantial and imminent threat to the public health.

After consulting with and receiving concurrence from the Commissioner of Health, the local health director shall follow suspension procedures pursuant to 12 VAC5-421-4010 or any other applicable regulation or policy. The food establishment shall immediately cease food service operations upon receipt of the notice of permit suspension. Operations shall not resume until all corrections are implemented and the local health director has authorized lifting the suspension, or until the decision to suspend is resolved via an informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia. (*FDA Food Code Annex 8-904.10, 8-904.20*)

⁵ In the event during the follow-up inspection the owner, operator, or PIC requests to voluntarily denature or destroy the suspected food products, EHS shall afford the opportunity to denature or destroy the suspected food products as outlined under the "Voluntary Disposal" section of this document.

Appendix 1

Virginia Department of Health Office of Environmental Health Services Impoundment Process



Appendix 1

When to Impound

The following is a guideline as to when impoundment is/may be appropriate.

Microbial/Biological Contamination			
Swollen Cans	Evidence of or Suspected Viruses	Unnatural Food Discoloration	Evidence of or Suspected Parasites
Evidence of or Suspected Bacteria	Evidence of or Suspected Other Pathogens	Evidence of or Suspected Spoilage	
Physical Contamination			
Hair	Metal	Insects	Stones
Glass	Band-aids	Fingernails	Earrings
Chemical Contamination			
Unapproved Food Additives	Agricultural Chemicals	Cleaning Chemicals	
Machine Lubricants	Deodorizers	Sanitizers	Food Containers(leaching)
Food handler Contamination			
Hygiene	Not washing/rinsing food properly	Health	Improper utensil usage
Improper Cooking	Improper Holding	Processing	Deliberate sabotage
Disaster Contamination			
Fires	Floods	Power Outages	
Other			
Unapproved Source	Evidence of temperature abuse		

Suggested Methods to Destroy or Denature Food

The owner, permit holder, or PIC may opt to destroy or denature food that is suspected of not conforming to regulatory requirements. The following is a guideline of acceptable methods.

Food Product Destruction and Denaturing	
Liquid/Loose Food Products	Solid Food Products
Liquid/loose food such as soup, jams, pastas, ice cream, ice, sauces, milk, seasons/spices, or batters should be disposed of in a refuse bag (<i>double bagging is preferred</i>). Such disposal shall be from the suspected food container (stock pot, hotel pan, plastic container) directly into the refuse bag. Liquid/loose food should not be disposed of in its original packaging. For denaturing options please review items (a-d).	Solid food items such as cuts of meat, fruit, vegetables, bread, cakes, or seafood should be disposed of in a refuse bag and denatured to prevent reuse. Denaturing may occur by utilizing any of the following agents: a. Bleach; b. Sanitizer; c. Solution: 1 part food coloring (blue or green), 40 part water, 40 part liquid detergent; or d. Finely powdered charcoal.

Such application of the above referenced denaturing agents shall only be applied by the owner, permit holder, or PIC. Agents must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the food product a distinctive color, odor, or taste so that such food product(s) cannot be utilized for human consumption.

Appendix 2



**Virginia Department of Health
Office of Environmental Health Service
Food and Environmental Health**

Notice of Impoundment/Disposition

The <insert LHD name> has found or has probable cause to believe the food product(s) listed below are in violation of certain provisions of the Food Regulations (12VAC5-421 et seq.).

1. Establishment Information

Establishment Name: _____ Facility Type: _____
 Address: _____
 City: _____ Zip Code: _____ Phone: _____
 Name of Operator/Owner: _____

2. Product Disposition or Impoundment Selection

<input type="checkbox"/>	The food listed below has been voluntarily destroyed or denatured by the food establishment. This food, found on the premises of the food establishment was alleged to be in violation of certain provision(s) of the <u>Food Regulations</u> . Destruction and final disposition of said food product(s) has been completed in the presence of an Environmental Health Specialist. The owner, operator, or person in charge was afforded the opportunity to contest the allegations regarding the noncompliant food product(s) and waived such proceedings.
<input type="checkbox"/>	The food product(s) listed below is (are) hereby impounded pursuant to 12 VAC 5-421-3960 of the <u>Food Regulations</u> . All persons are warned that the food product(s) under impoundment shall not be used, served, or moved from the food establishment without permission from the local health department. To contest the impoundment, you must file a written request for an informal fact-finding conference within 10 calendar days of the impoundment. Pursuant to 12 VAC 5-421-3960, in the absence of a timely request for an informal fact finding conference, the food shall be destroyed by the owner, permit holder or person in charge.
<input type="checkbox"/>	A representative sample of the below food product(s) listed below has been taken for laboratory analysis.

3. Food Product(s) Information

Description of Food Product	Lot No.	Container Description	Quantity	Location	Regulation	Sample Taken
<i>Frozen Chicken Breast-Tyson's</i>	#V1DE-187	Plastic Bag	6 bags	Rear Walk-In Freezer	12VAC5-421-770	Yes

Received by: _____	Date: _____	Time: _____
EHS: _____	Phone: _____	

Appendix 2

Instructions for Completing “Notice of Impoundment” Form

Section 1. Establishment information

Enter the establishment's name as it is displayed in VENIS or the appropriate database, the establishment's physical address, responsible person(owner, permit holder, or person-in-charge) and his/her title, date, type of facility(mobile food unit, commissary, restaurant, temporary food establishment).

Section 2. Product Disposition or Impoundment Selection

Select the appropriate box that describes the action that was taken. You may select more than one box. For example, the suspected food product(s) may be sampled as well as voluntarily destroyed.

Section 3. Food Product(s) Information

Input the information regarding the food product(s) in the appropriate column.

Appendix 3

Impoundment Label Template

When food product(s) are suspected of not complying with the Food Regulations (12VAC5-421 et seq.), the below template language shall be used when tagging the suspected food product(s).

VDH VIRGINIA
DEPARTMENT
OF HEALTH

The food product(s) to which this label is attached is (are) hereby impounded by the (insert name) Health Department pursuant to 12 VAC 5-421-3960 of the Virginia Administrative Code. All persons are warned not to sell, remove, or dispose of the food product(s) without permission from the (insert name) Health Department. To contest the impoundment, you must file a written request for an informal fact finding conference within 10 calendar days of the impoundment.

REMARKS:

Tag Applied By: _____
Date: _____ Time: _____
Contact Number: _____

Avery Label 6874 (3 x 3.75)

The food product(s) to which this label is attached is (are) hereby impounded by the (insert name) Health Department pursuant to 12 VAC 5-421-3960 and shall not be sold, removed, or disposed of without permission of the local health department. To contest the impoundment, file a written request for a hearing within 10 calendar days of the impoundment. Questions: Call: : _____.

Avery Label 5161 (1 x 4)

Suggested Language: While information regarding the impoundment will be documented on the Food Establishment Inspection Report; the "Remark" section may be utilized to document any information believed to be pertinent to the impoundment action. Including information in the "Remarks" section of the impoundment sticker is voluntary.

Appendix 4



**Virginia Department of Health
Office of Environmental Health
Food and Environmental Health Service**

Notice of Termination of Impoundment

1. Establishment Information

Establishment Name:	Address:
Owner/Person-in-Charge:	Date:
Facility Type:	

2. Description of Product(s)

Description of Product(s):

3. Disposition of Product(s)

Description of Destruction/Denature Process:
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4. Official Terminating Impoundment

Name of Official Terminating Impoundment:
Position Title:
Date:

The impoundment of suspected food product(s) at the above referenced food establishment is hereby terminated for the following reason:

- Voluntary Disposal
 Other _____

Signature of Responsible Person:	Date:	Time:
Signature of Staff:	Date:	Time:

Appendix 4

Instructions for Completing "Termination of Impoundment" Form

Section 1. Establishment Information

Enter the establishment's name as it is displayed in VENIS or the appropriate database, the establishment's physical address, responsible person(owner, permit holder, or person-in-charge) and his/her title, date, type of facility(mobile food unit, commissary, restaurant, temporary food establishment).

Section 2. Description of product(s).

Describe the type of food, drink or ingredients that were subject to the impoundment. Record the quantity by specifying the approximate weight, measure, or numerical count. Describe the status of the impounded product i.e. location or damage to seal or tag. The EHS should compare this information with the original inspection report to ensure suspected food product(s) are/is not missing or have not been relocated.

Section 3. Disposition of product(s).

Describe the destruction or denaturing process that took place. Be specific. For example, "PIC poured bleach into trash bag containing 5lbs of the previously impounded chicken, trash bag placed in exterior refuse bin, EHS present and recorded denaturing event."

Section 4. Official Termination Impoundment

List the name of the local health department staff member who approved the termination of the impoundment order. This person typically would be the environmental health manager, health director, or a designee. If the EHS has the authority to terminate the impoundment order, they shall list their name and position. The date listed shall be the date on which the impoundment was terminated which may not match the date of destruction/denaturing.

- Request that the responsible person sign and record his/her title. Indicate, "refused to sign" if applicable. The EHS who witnessed the voluntarily denature or destruction process shall sign the document.