



MISSOURI DEPARTMENT OF  
**HEALTH &**  
**SENIOR SERVICES**

## Food Establishment Inspection Authority Next Steps When Denied Access to Perform an Inspection

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Aaron Winslow  
Bureau of Environmental Health Services  
Field Operations Manager

# Food Establishment Inspection Authority

## Next Steps When Denied Access to Perform and Inspection



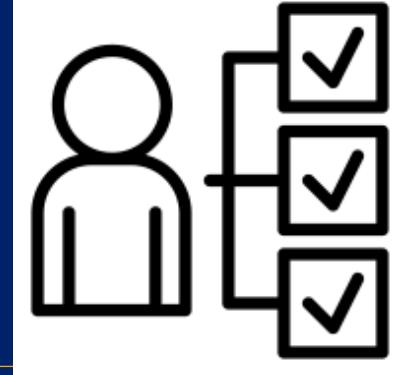
**Legal  
Authority**



**A Case In Point**



**Lessons  
Learned**



**Key Take Aways**

# Know Your Legal Authorities

- **Chapter 196.010 – 196.298 RSMo**
  - Missouri laws governing the sell of food, drugs, devices, or cosmetics



# Know Your Legal Authorities

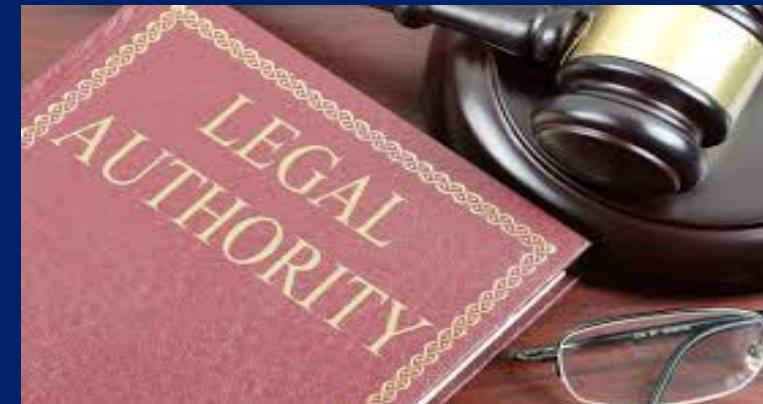
## 196 RSMo

- Includes
  - Definitions
  - Acts Prohibited
  - Embargo Authority
  - Adulterated Conditions
  - Misbranding
  - **Access**
  - Cottage Food Laws
  - Penalties
  - Closing Authority
  - Etc.



# Know Your Legal Authorities

- **196.045 RSMO**
  - Grants DHSS the authority to promulgate regulations for the efficient enforcement of sections 196.010 to 196.120
- **Thus, we have:**
  - **19CSR 20-1.025**
    - Sanitation of Food Establishments:
    - AKA: The Missouri Food Code
- **192.300 RSMo**
  - Allows LPHA's to Adopt Local Ordinances



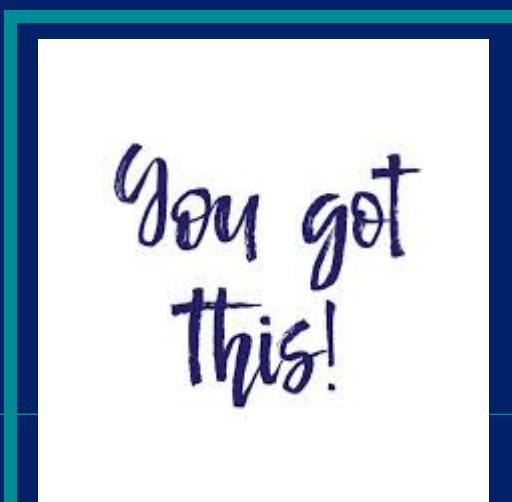
# Food Establishments May need a little help to gain compliance:



**Education**



**Motivation**



**Encouragement**



**And  
Sometimes  
Enforcement**

**In Cases where enforcement is necessary:**

**The Environmental Health Operational Guidelines (EHOG) is a resource for Options:**

**Work with your State Regional Environment Public Health Specialist:**

**Risk Control Plans**

**Work Orders and Closing Orders**

**But what about cases where you are denied access to perform an inspection**



**IN MOST CASES  
FOOD  
ESTABLISHMENTS  
UNDERSTAND OUR  
AUTHORITY TO  
PERFORM ROUTINE  
INSPECTIONS**

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# Denied Access to Perform an Inspection:

## RSMo's To Know

- **196.055**

- “Access to places in which food, drugs, devices or cosmetics are manufactured.”

- Free access at all reasonable hours

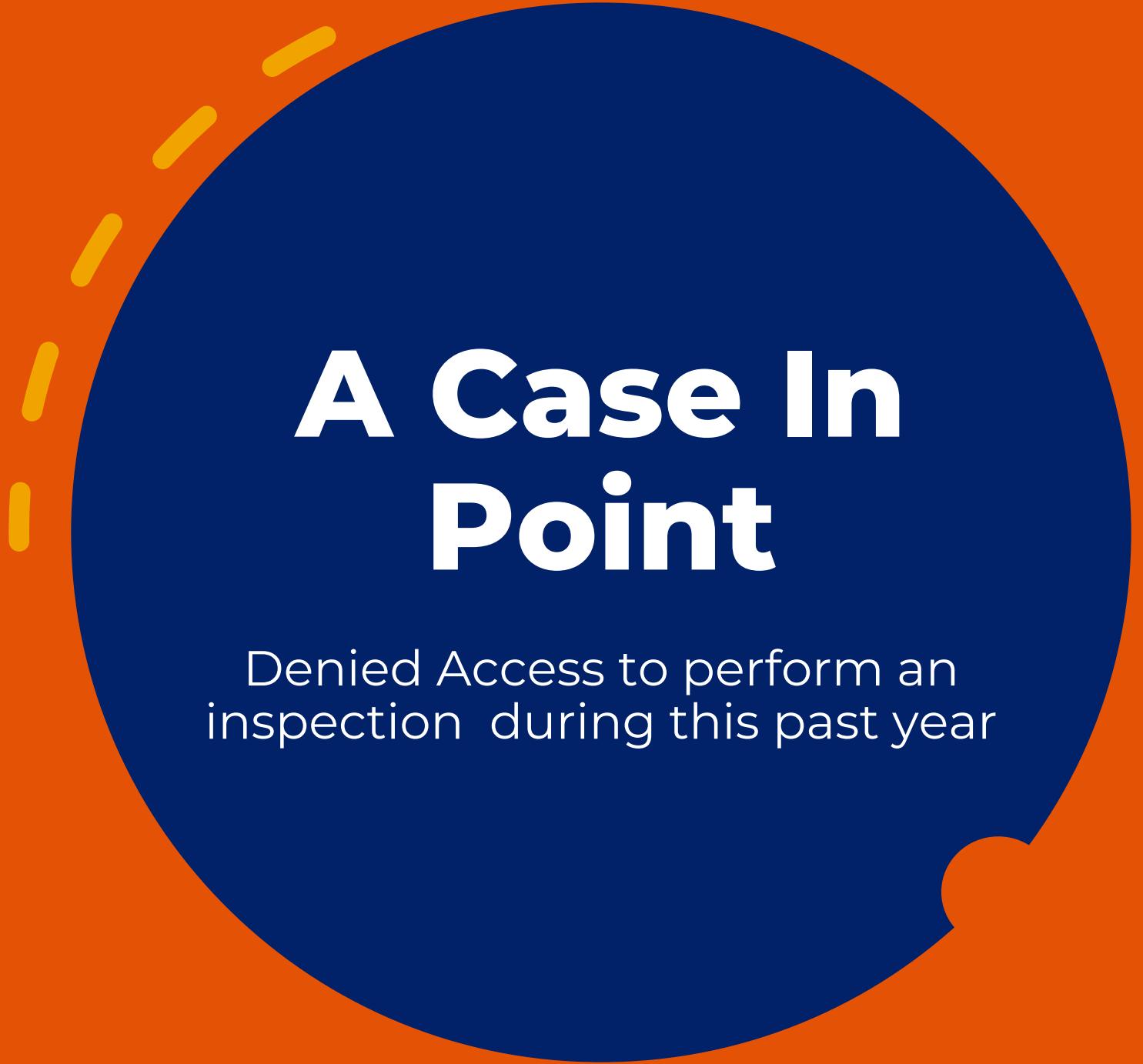
- Any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce including transport vehicles

# Denied Access to Perform an Inspection: RSMo's To Know

- 196.015

- “The following acts and the causing thereof within the state of Missouri are hereby prohibited:”

- (6) “The refusal to permit entry or inspection, to permit the taking of a sample, as authorized by section 196.055;”



# A Case In Point

Denied Access to perform an inspection during this past year

Nov.  
2023

Nov.  
2023

Dec.  
2023

**LPHA alerted BEHS**

LPHA alerted BEHS of the denial to inspection. The establishment was not approved to open by LPHA

Jan.  
2024

**Joint Inspection with LPHA and DHSS**

Attempt inspection was made. Local law enforcement on scene as well. Owner denied access.

**Letter Issued**

Letter sent to owner stating they meet definition of food establishment and informing them an inspection would be conducted.

Dec.  
2023

**Joint inspection with LPHA and BEHS**

Attempt inspection was made. Owner denied access.

Dec.  
2023

**Notice of Acceptance**

Owner issued Non-negotiable Notice of Acceptance letter to DHSS.

Jan.  
2024

March  
4, 2024

March  
13, 2024

**Notice of Acceptance**

Owner issued Non-negotiable Notice of Acceptance letter.

**Court Order**

Court order was received to allow DHSS to conduct inspections.

**Joint Inspection**

Joint inspection with DHSS and LPHA. Local law enforcement on scene as well. Owner denied access.

March  
21, 2024

**Inspection Conducted**  
Inspection was conducted.  
Violations were found.  
Unapproved product was  
found, embargoed, and  
voluntarily destroyed.

March  
21, 2024

**BEHS Inspection**  
Inspection conducted by  
BEHS staff of facility.

March  
19, 2024

**Contempt of Court**  
Owner was in violation of  
court order.

April  
23, 2024

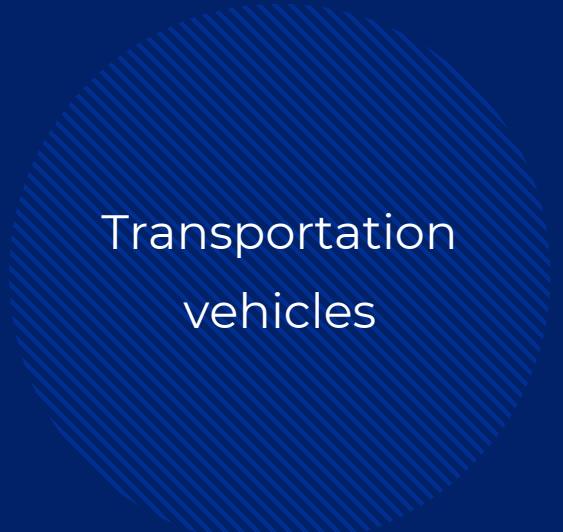
**Follow-up Inspection**  
BEHS staff conducted a  
follow-up inspection. Met  
with owner and facility  
was in compliance with  
established standards

To  
Date

**Establishment Engaging  
with LPHA and BEHS to  
assure compliance**

# Other Examples

Denied Access to perform an inspection  
Easily resolved with explanation



Transportation  
vehicles



Outbuildings  
located at a  
food  
warehouse



Fun Center  
with a food  
concession  
stand



Convenience  
store  
back room  
storage  
area

# **Lessons Learned: What to do when denied access to inspect**

- Meticulous documentation is a must:
  - Sanitation Report detailing the events:
    - Facility name, owner, time of arrival/departure, who you spoke with during your visit , the purpose for your visit and circumstances surrounding denied access.
    - Pictures if possible

**DO NOT FORCIBLY ATTEMPT TO INSPECT**

**CONTACT YOUR STATE REGIONAL EPHS FOR ASSISTNACE**

# **Lessons Learned: What to do when denied access to inspect**

- **Call**
  - **Your regional EPHS Supervisor will assist you including:**
    - A joint call, email and/or letter to the facility explaining authority to inspect
    - Notice provided to the facility including an anticipated date when the inspection will be performed.
- **Follow-up visit to the facility**
  - Detailed document of the field visit
  - Providing applicable copies of statutes to the owner including allowed access to conduct an inspection

# **Lessons Learned: What to do when denied access to inspect**

- If continued failure to gain access our only option is to proceed with legal action including:
  - Probable cause statements
  - Court hearing
  - Court orders

# Key Takeaways

- It is important to know your regulatory authority
- Exhaust all efforts to gain voluntary compliance thru
  - Education
  - Motivation
  - Encouragement

# Key Takeaways

- Development of great partnerships
  - LPHA's
  - BEHS
  - Local Law Enforcement
  - Prosecuting Attorney's Office
- Court recognizing the importance of our right to conduct food establishment inspections



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# QUESTIONS?

Bureau of Environmental Health Services  
Retail Food Program



[RetailFood@health.mo.gov](mailto:RetailFood@health.mo.gov)



573-751-6095