


Permits & Licenses



Lesson No. 7

ENV H 471
Environmental Health Regulation
Winter Quarter 2004

Assignment for Today

- ❖ **Grad:** Chapter 6 -- Permits, Licenses and Registration
- ❖ **Statutes:** Various sections pertaining to information gathering
- ❖ **Readings:**
 - **Reading #23** - PHS *Food Service Sanitation Manual*, Chapter 10.
 - **Reading #24** - *In Re Department of Environmental Protection*, 426 A.2d. 534 (1981). [Group B]

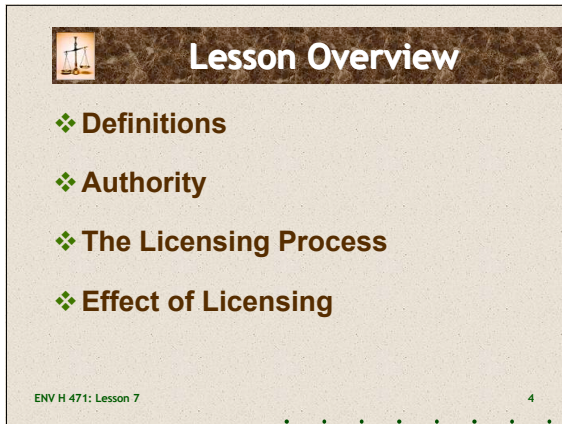
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Lesson Objective

The objective for this lesson is to provide you with:

- ❖ an understanding of the nature and use of permits and licenses in environmental health, and
- ❖ to enable you to discuss some of the benefits and constraints of their use in particular situations.

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Lesson Overview

- ❖ **Definitions**
- ❖ **Authority**
- ❖ **The Licensing Process**
- ❖ **Effect of Licensing**

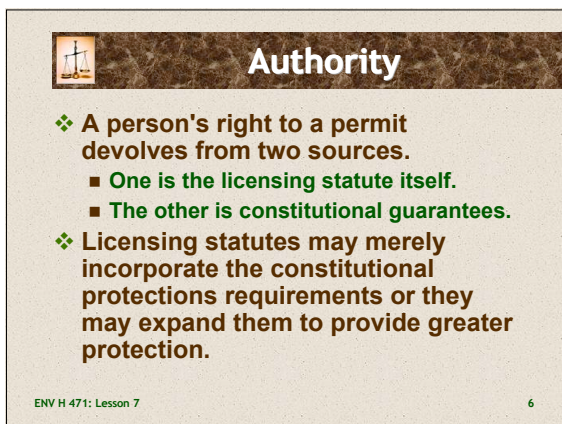
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Definitions

- ❖ **Registration**
 - **A Listing**
- ❖ **Certification**
 - **Meets some minimal standard**
- ❖ **Permit**
 - **Government permission**
- ❖ **License**
 - **Government regulation**


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Authority


- ❖ **A person's right to a permit devolves from two sources.**
 - **One is the licensing statute itself.**
 - **The other is constitutional guarantees.**
- ❖ **Licensing statutes may merely incorporate the constitutional protections requirements or they may expand them to provide greater protection.**

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 **Authority** (Continued)

❖ **As long as the minimal constitutional protections are provided the licensing statute controls the agency's actions and discretion.**


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 **Authority** (Continued)

❖ **Constitutional Implications**

- **Constitutional guarantees are bare minimums that apply across the board.**
- **Since the U. S. Constitution speaks in terms of "property", for the purpose of meeting "due process" requirements, this concept should be used instead of the ambiguous terms of "right" and "privilege".**


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 **Authority** (Continued)

❖ **Constitutional Implications**


- **An intangible property right is said to exist when there is a mutual expectation between the parties.**
 - **For a permit, the mutual expectation is that upon meeting the standards of the permit, a person will be allowed to continue operating.**
 - **The agency's expectation is that the person will meet and continue to abide by the standards in order to lawfully maintain his/her operation.**

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 **The Licensing Process**


- ❖ Initial Application
- ❖ During Term of License
- ❖ On Renewal


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 ***In Re: State Department of Environmental Protection***


- ❖ Facts & Arguments
 - Who's suing whom, for what?
- ❖ Court History
- ❖ Legal Issues
 - Why?
- ❖ Decision
- ❖ Concurrence and/or Dissent
- ❖ Application

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 **The Effect of Licensing**




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 **Cases**

❖ *In Re: State Department of Environmental Protection*

- This case discusses the application of this possible exception to the warrant requirement.
- Since many environmental health programs involve the licensing or permitting of an establishment or business the court's consideration of the issues in this case are particularly important.

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 **Cases**

In Re: State Department of Environmental Protection

❖ **The court distinguished between two types of cases.**


- The first involves "general regulatory schemes"
- The second type of case involves regulatory legislation governing specific licensed industries.

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 **Next Lesson**


Orders & Citations

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 **Assignment for Lesson 8**

- ❖ Grad: **Chapter 9 - Abatement of Nuisances and Dangerous Conditions, pp. 167-177.**
- ❖ Statutes & Regulations:
 - 246 WAC 215 - Food Service Sanitation §§200-210.
 - 173 WAC 304 - Minimum Functional Standards for Solid Waste Handling
 - King Co. Food Code, Parts 92 & 96.
 - King Co. Solid Waste Regulations, Part III, §§5 & 6.
 - 29 USC 658 - Occupational Safety and Health Act §9.
 - Michigan Code - §§2451- 2455.

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 **Assignment for Lesson 8**

- ❖ Required Readings:
 - Reading #23 - PHS Food Service Sanitation Manual, Chapter 10.
 - Reading #25 - *Marshall v. B.W. Harrison Lumber*, 6 OSHC 1446 [Group C]

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