

CHAPTER 93: PUBLIC HEALTH; NUISANCES

Section

General Provisions

- 93.01 Purpose
- 93.02 Objectives
- 93.03 Definitions
- 93.04 General prohibitions
- 93.05 Disclaimer of liability
- 93.06 Fees
- 93.07 Effective date

Administration

- 93.20 Standards adopted
- 93.21 Declaration as public health nuisance
- 93.22 Modifications to or dismissal of the declaration
- 93.23 Access to premises and records
- 93.24 Interference with Health Authority
- 93.25 Investigation and response to public health nuisance
- 93.26 Costs and reimbursements
- 93.27 Appeals

Clandestine Lab Sites

- 93.40 Peace officer notification
- 93.41 Handling hazardous wastes and materials
- 93.42 Posting of site
- 93.43 Actions to secure site
- 93.44 Health Authority notice to owner of site
- 93.45 Remediation plan
- 93.46 Health Authority abates nuisance
- 93.47 Vacating the public health nuisance order
- 93.48 Property disclosure

- 93.99 Penalty

GENERAL PROVISIONS

§ 93.01 PURPOSE.

This chapter is enacted to protect the health, safety and general welfare of the people of the county pursuant to powers granted under M.S. Ch. 145A and 375, as they may be amended from time to time, and M.S. § 152.0275, as it may be amended from time to time, and subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted from time to time.

(Ord. 11-06, passed 11-29-2011)

§ 93.02 OBJECTIVES.

The principal objectives of this chapter are:

- (A) To prevent injury and illness to occupants of the property and the public, especially children and vulnerable adults;
- (B) To provide countywide standards for the abatement of public health nuisances including, but not limited to, clandestine lab sites;
- (C) To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public health nuisances; and
- (D) To ensure proper actions are taken to remediate or abate public health nuisances.

(Ord. 11-06, passed 11-29-2011)

§ 93.03 DEFINITIONS.

Definitions of words, phrases and terms used in this chapter shall be those set forth in M.S. §§ 145A.02 and 152.0275, as they may be amended from time to time, and this section. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (A) **ABATEMENT.** The proper removal and/or containment of substances or materials hazardous to humans and/or the environment. **ABATEMENT** is part of remediation.
- (B) **CHILD.** Any person less than 18 years of age.
- (C) **CLANDESTINE LAB SITE.** Any structure or conveyance or outdoor location occupied or affected by the conditions or chemicals typically associated with the manufacturing of methamphetamine or other unlawful manufacture of a controlled substance.
- (D) **CONTROLLED SUBSTANCE.** A drug, substance or immediate precursor as defined in M.S. § 152.01, subd. 4, as it may be amended from time to time. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- (E) **COUNTY.** Wright County.
- (F) **EMERGENCY RESPONSE.** Includes, but is not limited to, removing and collecting evidence; securing the site; and removal, remediation and hazardous chemical assessment or inspection of the site where the relevant offense or offenses took place, regardless of whether these actions are performed by the public entities themselves or by private contractors paid by the public entities or the property owner.
- (G) **GARBAGE.** Any discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food.
- (H) **HEALTH AUTHORITY.** The County Human Services Board and its designated employees, agents or contractors, as the County Board of Commissioners may designate.
- (I) **OCCUPANT.** Any person who occupies real property, whether with or without any right, title or interest in the property, and any person in possession or charge of such property, in the event the owner resides or is located elsewhere.
- (J) **OWNER.** Any person, persons, organization or corporation that owns, in whole or in part, the land, structure or other property

or is the purchaser of the property under contract for deed.

(K) **PERSONAL PROPERTY.** All property other than that defined in definitions for "property" and "structure" herein that is subject to ownership.

(L) **PROPERTY.** Publicly- or privately-owned real property, including buildings and other structures, motor vehicles as defined in M.S. § 609.487, subd. 2a, as it may be amended from time to time, public waters and public rights-of-way.

(M) **PROPERTY AGENT.** A person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.

(N) **PROFESSIONAL REMEDIATION FIRM.** A firm that has provided written assurance to the Health Authority that they have appropriate equipment, procedures and personnel to accomplish remediation and that they are an experienced HAZMAT contractor.

(O) **PUBLIC HEALTH NUISANCE.** Any activity or failure to act that adversely affects the public health and shall include, but is not limited to, any condition which poses an immediate and direct hazard to human health if left unremedied due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals or other means of transmission or infections and includes, but is not limited to, a clandestine lab site and other public health hazards.

(P) **REMEDICATION.** Proper cleanup, treatment or containment of hazardous substances or methamphetamine, in accordance with local, state or federal regulations, at or in a clandestine lab site or public health nuisance, and may include demolition or disposal of structures or other property when an assessment so indicates.

(Q) **RUBBISH.** Any non-putrescible solid wastes including, but not limited to, ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, furniture, appliances, concrete, asphalt, tires, plastic, metal or fiberglass.

(R) **STRUCTURE.** A dwelling, building, motor vehicle, trailer, boat, appliance or any other area or location, either fixed or temporary.

(S) **VULNERABLE ADULT.** The meaning as defined in M.S. Ch. 609.232, subd. 11, as it may be amended from time to time.

(T) **WASTE.** Material that, in the opinion of the Health Authority, is no longer of any value for its original purpose and has been or should be discarded.

(Ord. 11-06, passed 11-29-2011)

§ 93.04 GENERAL PROHIBITIONS.

(A) *General.* The creation or maintenance of a public health nuisance is prohibited. The following are hereby expressly declared to be public health nuisances without limitation by reason of such enumeration:

- (1) A clandestine lab site;
- (2) Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure or discharging into a body of water;
- (3) An unsecured hole or opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel;
- (4) Failure to keep waste, refuse or garbage in an enclosed building or properly contained in a closed, insect- and rodent-proof, container designed or reasonably adapted for such purpose, except for the immediate time preceding pick-up by a refuse hauler;
- (5) Accumulation of carcasses of animals, birds or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death. This provision shall not apply if the animals, birds or fish are intended for human consumption;
- (6) Accumulation of decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, tires or any other substances which can harbor flies, mosquitoes, other disease carrying insects, rodents or other vermin; this definition does not include compost bins or compost sites which are being managed in accordance with acceptable standards;
- (7) Accumulations of waste, refuse, garbage, rubbish or junk as to become dangerous or injurious to the health and safety of any

individual or to the public;

(8) Any structure that has become dangerous for further occupancy because of sanitary defects;

(9) Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae or hookworm larvae; and

(10) Unnatural breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus or any other disease causing microorganism.

(B) *Jurisdiction.*

(1) This chapter shall be applicable in all incorporated and unincorporated municipalities (city or township) within the boundaries or the county under the jurisdiction of the County Human Services Board.

(2) This chapter does not preempt any ordinances adopted by a city or township related to clandestine lab sites or related to buildings and housing.

(Ord. 11-06, passed 11-29-2011)

§ 93.05 DISCLAIMER OF LIABILITY.

Liability on the part of, or a cause of action against, the county or any officer, employee or agent thereof for any damages that may result from administration and enforcement of this chapter shall be limited as provided by M.S. § 466.02, as it may be amended from time to time.

(Ord. 11-06, passed 11-29-2011)

§ 93.06 FEES.

Fees for the Health Authority complaint investigation, verification, administration and enforcement of violations of this chapter shall be those established by resolution, as amended from time to time, of the County Board of Commissioners.

(Ord. 11-06, passed 11-29-2011)

§ 93.07 EFFECTIVE DATE.

After passage by the County Board of Commissioners, this chapter took effect on 11-29-2011.

(Ord. 11-06, passed 11-29-2011)

ADMINISTRATION

§ 93.20 STANDARDS ADOPTED.

This chapter incorporates by reference the provisions of M.S. Ch. 145A, as it may be amended from time to time, unless clearly inapplicable, and M.S. § 152.0275, as it may be amended from time to time, and all subsequent recodifications and amendments.

(Ord. 11-06, passed 11-29-2011)

§ 93.21 DECLARATION AS PUBLIC HEALTH NUISANCE.

(A) It shall be the duty of the Health Authority to determine whether or not a public health nuisance exists.

(B) For purposes of emergency response and notification to applicable authorities and posting for the public, a peace officer may determine that a structure, property or portion of a property constitutes a public health nuisance, including, but not limited to, the

determination that the site constitutes a clandestine lab site.

(Ord. 11-06, passed 11-29-2011)

§ 93.22 MODIFICATIONS TO OR DISMISSAL OF THE DECLARATION.

(A) The Health Authority may modify conditions of the declaration or dismiss the declaration of a public health nuisance.

(B) Such modifications or dismissal shall occur only after the Health Authority has confirmed that the levels of contamination are sufficiently reduced through abatement, remediation or other evidence discovered.

(C) The Health Authority will base its criteria for determining levels of contamination on the best health and safety information available at the time of the remediation and cannot be held liable for future discoveries.

(D) For good cause shown, the owner or occupant may request authorization from the Health Authority for an extension of time to complete abatement activities. The Health Authority may grant such extension if the extension does not increase the risk to public health or safety and is deemed appropriate by the Health Authority.

(Ord. 11-06, passed 11-29-2011)

§ 93.23 ACCESS TO PREMISES AND RECORDS.

The owner or other parties shall, upon the request of the Health Authority and after proper identification, permit access to all parts of the site or structure as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this chapter.

(Ord. 11-06, passed 11-29-2011) Penalty, see § 93.99

§ 93.24 INTERFERENCE WITH HEALTH AUTHORITY.

No person shall, in any way, interfere with or hinder the Health Authority in the performance of duties, or refuse the Health Authority access to gather information necessary to ascertain compliance with this chapter.

(Ord. 11-06, passed 11-29-2011) Penalty, see § 93.99

§ 93.25 INVESTIGATION AND RESPONSE TO PUBLIC HEALTH NUISANCE.

(A) *Health Authority owner notification.* Upon declaration of a public health nuisance, the Health Authority shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. This notice shall be served in person, by certified mail or by an officer authorized to serve a warrant and contain the following:

- (1) Property location by street address, property identification number or other property description;
- (2) Information identifying the nature of the public health nuisance at the property;
- (3) A summary of the owner's and occupant's responsibilities under this chapter;
- (4) Specific orders for abatement or remediation of the public health nuisance;

(5) A date for completion of the abatement not to exceed ten county business days following the receipt of the notice unless a shorter time is required due to the Health Authority's further determination that the immediate abatement is necessary to protect the public's health and safety. In such cases, the reason for a shortened abatement period shall be specified; and

(6) Information regarding a right of appeal as provided in § 93.27 of this chapter and that, unless the threat to public health is abated or removed in accordance with the terms of the notice, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of M.S. § 145A.08, as it may be amended from time to time, this chapter or other applicable state or local law.

(B) *Unknown or absent property owner.* In the event the owner of the property is unknown or absent and has no known representative upon whom the notice can be served, the Health Authority shall post a written or printed notice on the property stating that, unless the threat to the public health is abated or removed within the ten county business days, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of M.S. § 145A.08, as it may be amended from time to time, this chapter or other applicable state or local law.

(C) *Public notification.* The Health Authority shall provide information in writing about the public health nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

- (1) Child protection unit in situations of potential child maltreatment or endangerment;
- (2) Adult protection unit in situations of potential vulnerable adult maltreatment or endangerment;
- (3) Neighbors in close proximity likely to be affected by the conditions found at the site;
- (4) The local municipal clerk, city administrator or other city official;
- (5) Local law enforcement officials; or
- (6) Other state and local authorities that may have public safety or environmental protection responsibilities.

(D) *Warning sign.* The Health Authority shall post a warning sign when deemed necessary to further protect the public health and safety. The warning sign shall be posted on the entrance(s) of the structure or property and contain information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter and that entry is prohibited unless authorized by the Health Authority or the law enforcement department posting the sign. Any person other than the Health Authority or its designated agent that removes a warning sign shall be in violation of this chapter.

(E) *Health Authority abates nuisance.* If the owner, property agent or occupant, fails or neglects to comply with the requirements in the notice provided under division (A) above, then the Health Authority shall abate or remediate the public health nuisance described in the notice. The Health Authority will recoup such costs as necessary to abate the public health nuisance as provided in § 93.26 of this chapter and M.S. § 145A.08, as it may be amended from time to time.

(F) *Vacating the public health nuisance order.* Upon Health Authority verification of proper abatement, remediation or removal at the site, the Health Authority shall issue written notice to those persons served notice under division (A) above that the public health nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under division (C) above.

(Ord. 11-06, passed 11-29-2011)

§ 93.26 COSTS AND REIMBURSEMENTS.

(A) *Recovery of costs.*

(1) If the Health Authority is required to remove, abate or remediate a public health nuisance, the county may recover costs incurred in investigation, removal, abatement or remediation in a civil action or, at the discretion of the County Board of Commissioners. The cost of enforcement action under this chapter may be assessed and charged against the real property on which the public health nuisance was located, pursuant to M.S. § 145A.08, as it may be amended from time to time. The county shall extend the cost as assessed and charged on the tax roll against said real property.

(2) When the estimated cost of abatement and remediation exceeds 75% of the County Assessor's market value of the structure, the County Administrator or designee, is authorized to notify the property owner of the county's intent to remove and dispose of the affected property instead of proceeding with abatement and remediation. For motor vehicles, the county will use the Kelley Blue Book value or equivalent in determining market value.

(3) Nothing herein precludes or limits the (3) county from seeking recovery of costs through other methods allowed by federal or state law.

(B) *Subrogation rights.* Nothing in this chapter is intended to limit the subrogation rights of any party and the owner occupants. The county shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage, such as those convicted of manufacturing methamphetamine or other controlled substances.

(Ord. 11-06, passed 11-29-2011)

§ 93.27 APPEALS.

(A) *Right of appeal.* When a public health nuisance is declared, an owner and/or an occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the Health Authority, by filing a written request with the Health Authority for an administrative hearing within ten calendar days of the date of service, exclusive of the day of service, of notice under §§ 93.25(A) or 93.44 of this chapter, exclusive of the day of service. In the event of an unknown or absent property owner, the appeal must be requested within ten calendar days of the day of posting of the notice under § 93.25(B) of this chapter.

(B) *Administrative hearing.* If any owner or occupant makes a written request to the Health Authority for an administrative hearing, such hearing shall be held before the Health Authority Division Manager or his or her designee.

(C) *Schedule.* The hearing shall be held no later than 15 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 30 calendar days after the date of service of the request for a hearing.

(D) *Notice.* The Health Authority shall mail a notice of the time and place of the hearing at least ten calendar days prior to the hearing.

(E) *Witnesses and evidence.* All parties shall have full opportunity to respond to and present evidence and witnesses.

(F) *Standard of proof.* The appellant shall have the burden of proving its position by clear and convincing evidence.

(G) *Rules of evidence.* Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.

(H) *Record of hearing.* The hearing shall be taped or videotaped.

(I) *Notice of decision.* The decision of the Health Authority Division Manager shall be issued within ten calendar days following the administrative hearing. Unless otherwise provided by law, the decision of the Health Authority shall constitute the final decision unless the County Board of Commissioners modifies or rejects it as provided in division (J) below.

(J) *Human Services Board review.* Each party adversely affected may submit written exceptions and arguments to the Human Services Board within ten calendar days of the service of the decision Health Authority Director. The Human Services Board shall consider the decision of the Health Authority at the next possible Board meeting and may adopt or modify the decision, reject the decision or remand for further hearing.

(K) *Further appellate rights.* Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than 30 calendar days after the party receives the final decision from the County Board of Commissioners.

(Ord. 11-06, passed 11-29-2011)

CLANDESTINE LAB SITES

§ 93.40 PEACE OFFICER NOTIFICATION.

A peace officer who identifies a clandestine lab site shall notify the Health Authority of the location and of any arrests made at the site. If a child, or a vulnerable adult is present, the peace officer shall also notify the child protection unit or the adult protection unit.

(Ord. 11-06, passed 11-29-2011)

§ 93.41 HANDLING HAZARDOUS WASTES AND MATERIALS.

A peace officer or designated agent shall attempt to secure, store, transport or dispose of suspected hazardous waste and hazardous materials found at the site in a manner consistent with all applicable laws, ordinances, regulations and rules.

(Ord. 11-06, passed 11-29-2011)

§ 93.42 POSTING OF SITE.

Upon identification of a clandestine lab site, a peace officer shall post a warning sign at the entrance(s) on the property as a public health nuisance in a form approved by the Health Authority. The sign must state that no person(s) shall enter, occupy or remove any personal property from the site without authorization of the Health Authority or the law enforcement department that posted the property as a public health nuisance. Persons who enter a property without authorization or remove the sign will be in violation of this chapter.

(Ord. 11-06, passed 11-29-2011)

§ 93.43 ACTIONS TO SECURE SITE.

(A) The law enforcement department posting the property as a public health nuisance shall have the authority to secure all structures on the site that may pose a threat to public safety.

(B) These methods may include, but are not limited to:

- (1) Removing all persons occupying the site;
- (2) Overseeing the initial removal of all chemical materials in accordance with § 93.41 of this chapter;
- (3) Boarding up and locking buildings;
- (4) Towing any vehicles involved to places of safe storage; and
- (5) Removing all domesticated animals from the site.

(Ord. 11-06, passed 11-29-2011)

§ 93.44 HEALTH AUTHORITY NOTICE TO OWNER OF SITE.

(A) Upon receipt of the peace officer's notice of a clandestine lab site, the Health Authority shall give written notice of the determination and orders to remediate the site to the owner, occupant and property agent, if applicable. This notice shall be served in person, by certified mail, or by an officer authorized to serve a warrant. If the owner is unknown, the Health Authority will follow the provisions of § 93.25(B) of this chapter.

(B) The notice will contain the following:

- (1) Property location by street address, property identification number or other property description;
- (2) The determination that the property constitutes a clandestine lab site and therefore a public health nuisance requiring a remediation plan;
- (3) The requirements of the remediation plan in § 93.45 of this chapter;
- (4) The remediation plan must be received by the Health Authority within ten county business days following the receipt of the notice; and
- (5) The property owner, occupant or property agent must receive Health Authority approval prior to implementing the remediation plan. The notice of the action shall state the right of appeal as provided in § 93.27 of this chapter and that, unless the threat to public health is abated or removed in accordance with the terms of the notice, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of M.S. §§ 145A.08 and 152.0275, as they may be amended from time to time, this chapter or other applicable state or local law.

(Ord. 11-06, passed 11-29-2011)

§ 93.45 REMEDIATION PLAN.

(A) The written remediation plan shall be completed by a professional remediation firm on forms approved by the Health Authority.

(B) The plan shall provide information on the following activities the professional remediation firm will complete within 30 calendar days following the Health Authority's approval of the remediation plan:

(1) A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;

(2) A detailed remediation schedule of activities;

(3) A complete abatement of the site, including if appropriate the removal and destruction (to prevent salvaging) of all contaminated personal property on the site;

(4) A complete cleanup of all property in proximity to the site that is found to have been affected by the conditions found at the site; and

(5) Remediation testing and follow-up testing to determine that health risks are sufficiently reduced, according to the state's Department of Health's Clandestine Drug Lab General Cleanup Guidelines and best practices at the time of abatement, to allow safe human occupancy and use of the site and/or use of the personal property therein.

(Ord. 11-06, passed 11-29-2011)

§ 93.46 HEALTH AUTHORITY ABATES NUISANCE.

If the owner, occupant or agent fails or neglects to comply with the requirements of the notice provided under § 93.44 of this chapter, the Health Authority shall remove or abate the nuisance as provided in § 93.25 of this chapter.

(Ord. 11-06, passed 11-29-2011)

§ 93.47 VACATING THE PUBLIC HEALTH NUISANCE ORDER.

Upon proper removal and remediation of the site, the professional remediation firm shall verify to the property owner and the Health Authority that the work was completed according to the state's Department of Health's Clandestine Drug Lab General Cleanup Guidelines and best practices. The professional remediation firm shall provide written verification to the property owner and the Health Authority within five county business days from the completion of the remediation. Following the Health Authority's review and approval of the contractor's verification, the Health Authority shall vacate the public health nuisance order.

(Ord. 11-06, passed 11-29-2011)

§ 93.48 PROPERTY DISCLOSURE.

According to the requirements set forth in M.S. § 152.0275, subd. 2, as it may be amended from time to time, and subsequent amendments, the following steps shall be taken to disclose a property's contamination status associated with a clandestine lab site to interested persons.

(A) The Health Authority shall notify the Registrar of Motor Vehicles of a vehicle's contamination associated with a clandestine lab site following the issuance of orders under § 93.44 of this chapter. The Health Authority will provide a subsequent notice when the motor vehicle remediation is completed according to § 93.45 of this chapter.

(B) The Health Authority shall record an affidavit with the County Recorder of a property's contamination associated with a clandestine lab site following the issuance of orders under § 93.44 of this chapter. The Health Authority will record a subsequent affidavit when the property remediation is completed according to § 93.45 of this chapter.

(C) The County Recorder must record all affidavits presented under division (B) above in a manner that assures their disclosure in the ordinary course of a title search of the subject property.

(D) The Health Authority shall maintain a list, available to the public upon request, of properties receiving notices under § 93.44 of this chapter and their status under § 93.45 of this chapter.

(E) Prior to signing an agreement to sell or transfer real property, the seller or transferor must disclose in writing to the buyer or transferee if, to the seller's or transferor's knowledge, methamphetamine production has occurred on the property.

(F) Prior to signing a lease or rental agreement, the owner or owner's representative, must disclose in writing to the renter or tenant if, to the owner or owner's representative's knowledge, methamphetamine production has occurred on the property.

(Ord. 11-06, passed 11-29-2011)

§ 93.99 PENALTY.

(A) *Misdemeanor.* Any person who violates this chapter, or who permits a violation to exist on the premises under his or her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the Health Authority, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law. Each day that a violation continues shall constitute a separate offense.

(B) *Civil remedies.* In the event of a violation or threat of violation of this chapter, the County Attorney may take appropriate action to enforce this chapter, including application for injunctive relief, action to compel performance or other appropriate action in court, if necessary, to prevent, restrain,

correct or abate such violations or threatened violations. The County Attorney enforcing provisions of this chapter may seek costs and disbursements, including staff time and attorneys' fees.

(Ord. 11-06, passed 11-29-2011)