

**Date: January 27, 2004**

**Ord. #02-04**

**CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE**

On motion of Commissioner Tucker, seconded by Commissioner Ellingson, the following Ordinance was unanimously passed and adopted by the Mower County Board of Commissioners at a meeting held January 27, 2004 at the Courthouse, Austin, Minnesota.

**WHEREAS**, a Notice of Intention to consider a new ordinance of the Mower County Code by the Mower County Board of Commissioners was published in the Austin Daily Herald on January 2, 2004.

**WHEREAS**, the County Board held a public hearing on said Ordinance on January 13 and 27, 2004.

**BE IT ORDAINED** that the following Ordinance of the Mower County Code be adopted as follows:

**CHAPTER 15**

**CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE**

**ARTICLE I. GENERAL PROVISIONS**

SECTION 15.110 Title and Statutory Authority

15.110 This ordinance shall be known and referenced as the "Cleanup of Clandestine Drug Lab Sites Ordinance."

15.111 This ordinance is enacted pursuant to the powers specified in Minn. Stat. § 145A.05.

SECTION 15.120 Purpose

15.121 Professional reports, based on assessments, testing, and investigations, show that chemicals used in the production of illicit drugs can condense, penetrate, and contaminate on the land, surfaces, furnishings, and equipment in or near structures where Clandestine drug labs are located.

15.122 These conditions present health and safety risks to occupants and visitors of such structures and land through fire, explosion, and skin and respiratory exposure to chemicals.

15.123 This ordinance establishes responsibilities and guidelines for involved parties to assure that:

- a) people are not unnecessarily exposed to the dangers of these contaminated structures or land; and

- b) proper steps are taken to remove contaminants and assure appropriate tests are completed to verify that affected structures and land are sufficiently cleaned for human contact.

15.124 This ordinance assists and guides appropriate public authorities, property owners, and occupants to prevent injury and illness to members of the public, particularly children.

15.125 This ordinance is intended to reduce exposure to chemicals used at clandestine drug lab operations in structures including dwellings, buildings, motor vehicles, trailers, appliances or the land where they are located.

15.126 This ordinance is intended to minimize the cost to Mower County for clean up of Clandestine drug lab sites.

#### SECTION 15.130 Jurisdiction

15.131 This ordinance shall apply to all incorporated and unincorporated municipalities and land (city or township) within the boundaries of Mower County.

15.132 Where a municipality has lawfully passed an ordinance to regulate and enforce the cleanup of Clandestine drug labs that is more restrictive, the County shall coordinate regulation and enforcement with that municipality.

#### SECTION 15.140 Interpretation and Application

15.141 The provisions of this ordinance shall be interpreted and applied as the minimum requirements necessary to protect public health, safety, and welfare.

15.142 Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable provisions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall apply.

#### SECTION 15.150 Disclaimer of Liability

Liability on the part of, or a cause of action against, Mower County or any employee or agent thereof for any damages that may result from reliance on this ordinance shall be eliminated or limited as provided by Minn. Stat. § 466.02.

#### SECTION 15.160 Fees

Fees for the administration of this ordinance may be established and amended periodically by resolution of the Mower County Board of Commissioners.

#### SECTION 15.170 Definitions, Rules, and Word Usage

For the purpose of this ordinance, the following terms or words shall be interpreted as follows:

15.171 Child means any person less than 18 years of age.

- 15.172 Chemical investigation site means a clandestine drug lab site that is under notice and order for cleanup and/or remediation as a public health nuisance, as authorized by Minnesota Statute Chapter 145A, and this ordinance.
- 15.173 Clandestine drug lab operation means the unlawful manufacture or attempt to manufacture a controlled substance within any area of a structure such as a dwelling, building, motor vehicle, trailer, boat, or other structure or appliance.
- 15.174 Clandestine drug lab site means any parts of a structure such as a dwelling, building, motor vehicle, trailer, or appliance occupied or affected by conditions and/or chemicals, typically associated with a clandestine drug lab operation.
- 15.175 Cleanup means proper removal and/or containment of substances hazardous to humans and/or the environment at a chemical investigation site. Cleanup is a part of remediation.
- 15.176 Controlled substance means a drug, substance or immediate precursor in Schedules I through V of Minnesota Statute § 152.02, as amended in the future. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.
- 15.177 Owner means any person, firm, or corporation who owns, in whole or in part, the land and/or structures such as buildings, motor vehicle, trailer, boat or other appliance at a clandestine drug lab site.
- 15.178 Public Health Nuisance shall have the meaning attributed to it in Minnesota Statutes § 145A.02, Subd. 17.
- 15.179 Public Health Authority means the Director of Community Health Services or their designees who are authorized to act as agents of the Mower County Board of Commissioners, in their role as the Community Health Board, pursuant to the Local Public Health Act, Minnesota Statutes § 145A.09 to 145A.13.
- 15.180 Remediation means methods such as assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, and/or removal of contaminated materials from a chemical investigation site.
- 15.181 Structure means a dwelling, building, motor vehicle, trailer, boat, appliance or any other area or location, either fixed or temporary.

## ARTICLE II. ADMINISTRATION

### SECTION 15.200 Declaration of Site as a Chemical Investigation Site Public Health Nuisance

Clandestine drug lab sites, as defined herein, are declared by this ordinance to be “chemical investigation site public health nuisances”.

SECTION 15.210 Medical guidelines for assessing health status of exposed persons

Medical guidelines for assessing the health status and determining medical care needs of persons – particularly children – that are found or known to be occupants or frequent visitors at a clandestine drug lab site, may be established and updated as necessary by the “Medical Consultant” who provides consultation services under contract to the Mower County Public Health Department.

SECTION 15.220 Law Enforcement notice to affected public, public health, and child protection authorities

15.221 Law enforcement authorities who identify a clandestine drug lab site, or clandestine drug lab operation shall notify the Mower County departments responsible for public health and child protection within one working day of identifying the lab site. The obligation to promptly notify may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and child protection responsibilities are not unnecessarily compromised. The notice shall include sufficient information to inform the recipients of the following:

- a) property location by street address and other identifiable location;
- b) property owner’s and occupant’s identities – especially the identities of any children and women of child-bearing age found or known to be associated with the site;
- c) chemicals found and indications of chemical residues;
- d) presumed duration of the lab;
- e) equipment in a dwelling or structure that is typically associated with the manufacture of a controlled substance; and
- f) conditions typically associated with a clandestine drug lab site or operation including weapons, illicit drugs, filth, fire, or electrical shock and other harmful conditions as determined by Minnesota law.

15.222 Upon identification of the clandestine drug lab site or operation, law enforcement agencies may treat, store, transport or dispose of all hazardous waste found at the site in a manner consistent with Minnesota Department of Health, Minnesota Pollution Control, and Mower County rules and regulations.

15.223 When a law enforcement agency completes its work under 15.222 and is prepared to leave such sites, the agency shall affix a warning sign to the entrance of the affected part of the structure. The warning sign shall be those that have been prepared in advance for such situations through the collaboration of County Law Enforcement, Public Health Authority, and city officials if applicable. The warning sign shall be of a size and contain information sufficient to alert visitors or returning occupants that the site is a chemical investigation site public health nuisance, may be dangerous to enter, and must not be entered except by authorization of the Public Health Authorities and/or Law Enforcement agency identified on the sign.

SECTION 15.230 Notice of Chemical Investigation Site Public Health Nuisance to Owner and Occupant

15.231 After the Public Health Authority receives notice from a law enforcement agency that they've identified a clandestine drug lab site and posted the appropriate Chemical Investigation Site Public Health Nuisance warning sign, the Public Health Authority shall serve the known lawful occupants and owners of the site pursuant to Minnesota Statute § 145A.04, Subd. 8(b), with notice of their responsibilities relative to the chemical investigation site public health nuisance.

15.232 The Public Health Authority shall notify and order the property owner of record and known occupant or agent to have the public health nuisance removed or abated within 10 days as provided in Minnesota Statute § 145A.04 and this ordinance. The Public Health Authority notice and order shall include the following:

- a) A replica of the Chemical Investigation Site Public Health Nuisance declaration that is posted at the site's entrance(s).
- b) Information about the potentially hazardous condition of the chemical investigation site.
- c) A summary of the property owner's and occupant's responsibilities under this ordinance.
- d) Information on locating professional services necessary to remove and abate the chemical investigation site public health nuisance status as provided in this Ordinance and Minnesota Statute § 145A.04.

15.233 The Public Health Authority shall endeavor to provide information in writing about the Chemical Investigation Site Public Health Nuisance declaration and potential hazard(s) to the following additional concerned parties:

- a) Neighbors within close proximity that can be reasonably affected by the conditions found;
- b) The local municipal clerk;
- c) Local law enforcement;
- d) Other state and local authorities, such as the Minnesota Pollution Control Agency and Minnesota Department of Health, that may have public and environmental protection responsibilities at that site.

SECTION 15.240 Notice Filed with Property Record and/or Motor Vehicle Record

15.241 If after 10 days notice and order, Public Health Authority is unable to obtain any reasonable assurance or plan from the property owner or occupant that the structure is being properly vacated, cleaned, remediated, and tested, Public Health may provide a copy of the Chemical Investigation Site Public Health Nuisance notice and order to the County Recorder and to the lien and mortgage holders of the affected structure and/or properties. The County Recorder is authorized to file that information with the property record, to notify other persons with interest in the property about the property's chemical investigation site public health nuisance status.

15.242 When the affected property is a motor vehicle, boat, or trailer, Public Health shall notify the appropriate State and local agency that maintains motor vehicle, boat, or trailer records, and the holders of liens or security interests against the vehicle or trailer.

SECTION 15.250 Property Owner's and Occupant's Responsibility to Act

15.251 Property owner(s) and occupant(s) provided with a notice, which also includes the posted warning sign informing them about the chemical investigation site public health nuisance, shall promptly act to vacate occupants from those parts of a structure that are a chemical investigation site public health nuisance. This includes dwellings, building, motor vehicles, trailers, boat, appliances or any other affected area or location.

15.252 Within ten business days of receiving the Public Health notice and order to clean-up the Chemical Investigation Site Public Health Nuisance, the property owner(s) and/or occupant(s) shall take the following actions:

- a) Notify Mower County Public Health Authority that the affected parts of the dwellings, building, and/or motor vehicle have been and will remain vacated and secured until the Public Health Authority provides notice that the public health nuisance no longer exists.
- b) Contract with one or more acceptable environmental hazard testing and cleaning firms (acceptable firms are those that have provided assurance of appropriate equipment, procedures, and personnel, as determined by the Minnesota and/or Mower County Departments of Health) to accomplish the following:
  - 1) A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
  - 2) Soil testing of the site and testing of all property and soil in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
  - 3) A complete clean-up of the site (including but not limited to the clean-up or removal of contaminated plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and a complete clean-up of the demolished site;
  - 4) A complete clean-up, or disposal at an approved dumpsite, of all personal property in the site;
  - 5) A complete clean-up of all property and soil in proximity to the site that is found to have been affected by the conditions found at the site, and
  - 6) Remediation testing and follow-up testing to determine that all health risks are sufficiently reduced, according to Minnesota Department of Health guidelines, to allow safe human occupancy and use of the site and use of the personal property there.

- c) Provide Mower County Public Health Authority with the identity of the testing and cleaning firm the owner or occupant has contracted with for remediation of the structure(s) as described above.
- d) Provide Mower County Public Health Authority with the contractor's plan and schedule for remediation that will abate the chemical investigation site public health nuisance declaration.
- e) The property owner or occupant may request an extension of time to consider options for arranging clean-up or removal of the affected parts of the structure. The owner or occupant must show good cause for any such extension. Any such extension shall be dependent on the owner's assurance that the affected parts of the structure will not be occupied pending appropriate clean-up or demolition.

SECTION 15.260 Property Owner's Responsibility for Costs and Opportunity for Recovery

15.261 Consistent with Minnesota Statutes Chapter 145A, the property owner shall be responsible for a) private contractor's fees, clean-up, remediation, and testing of chemicals investigation site public health nuisance conditions; and b) Mower County's fees and costs of administering notices and enforcing, vacating, clean-up, remediation, and testing of affected parts of the property.

15.262 Nothing in this ordinance is intended to limit the property owners, agents, occupants, or the County's right to recover the costs or damages, from persons contributing to the public health nuisance, such as the operators of the clandestine drug lab and/or other lawful sources.

15.263 The County's administrative and enforcement services, referenced in subsection 2.61, include but are not limited to, the following:

- a) Posting warning notices or signs at the site;
- b) Notification of affected parties;
- c) Securing the site, providing limited access to the site, and prosecution of unauthorized persons found at the site;
- d) Expenses related to the recovery of costs, including the assessment process;
- e) Laboratory fees;
- f) Clean-up services;
- g) Administrative fees; and
- h) Other associated costs.

SECTION 15.270 Special Assessment to Recover Public Costs

15.271 The County is authorized under Minnesota Statute § 145A.04, Subd. 8(c) to proceed within ten business days of service of a notice for abatement or removal of the Public Health Nuisance to initiate the assessment and clean-up when a) the property owner is not located, or b) the Public Health Authority determines that the owner refuses to, or cannot pay the costs, or arrange timely assessment and clean-up that is acceptable to the designated Public Health Authority.

- 15.272 The County Administrator (or the Administrator's formally identified designee) shall be fully authorized to act, consistent with Minnesota Law, on behalf of the County to direct funds to assure prompt remediation of chemical investigation sites.
- 15.273 When the estimated cost of testing, clean-up, and remediation exceeds seventy-five percent of the County Assessor's market value of the structure and land, the County Administrator (or the Administrator's formally identified designee) is authorized to notify the property owner of the county's intent to remove and dispose of the affected real property instead of proceeding with cleaning and remediation.
- 15.274 The property owner shall be responsible for all costs, including those of the County, incurred to abate the public health nuisance, including contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dump site clean-up. The County's costs may also include, but shall not be limited to those set forth in Section 15.263. Fees and costs specified above that are not paid for in any other way may be collected through a special assessment on the property as allowed by Minnesota Statute § 145A.08, or by any other applicable Federal, State, and County Laws, Ordinances, and/or applicable County Board Resolution.
- 15.275 Payment on the special assessment shall be at the annual rate of at least One Thousand Dollars (\$1000) or more as needed to assure full payment to the County within ten (10) years. This amount shall be collected at the time real estate taxes are due. The amount due and/or payment rate may be adjusted by action of the Mower County Board of Commissioners.
- 15.276 The County may also seek recovery of costs through other methods allowed by Federal or State law.

SECTION 15.280 Authority to Modify or Remove Declaration of Chemical Investigation Site Public Health Nuisance

- 15.281 The designated Public Health Authority may modify conditions of the declaration and order removal of the declaration of Chemical Investigation Site Public Health Nuisance.
- 15.282 Such modification or removal shall occur only after the Public Health Authority has determined that levels of contamination are sufficiently reduced through remediation to warrant modification or removal of the declaration. The Public Health Authority may rely on information from competent sources, including those supplied by the property owner and/or others such as state and local health, safety, law enforcement and pollution control authorities to reach such decisions.
- 15.283 When the declaration is modified or removed the Public Health Authority shall forward that information to the County Recorder for addition to the property record if notice of the nuisance declaration was previously filed with the Recorder as

described above. Similarly, notice shall be provided to the motor vehicle or other license records agencies and lien holders if a notice had previously been provided to them.

**SECTION 15.290 Waste Generated From Cleaning Up A Clandestine Drug Lab.**

Waste generated from chemical investigation site public health nuisances shall be treated, stored, transported, and disposed in according with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and Mower County rules and regulations for solid waste, and for hazardous household and other hazardous wastes.

**ARTICLE III. EXCEPTIONS, APPEALS, AND PENALTIES**

**SECTION 15.310 Exceptions, Appeals, and Penalties**

Administration of this ordinance, including guidance for, challenges to, and penalties shall be according to the authorities provided in Minnesota Statute Chapter 145A, other applicable Minnesota law, the Mower County Hazardous Waste Regulation Ordinance and the Mower County Solid Waste Management Ordinance.

**SECTION 15.320 Severability And Savings Clause**

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation of, or affect the validity or enforceability of any other section or provision of this ordinance.

**ARTICLE IV. EFFECTIVE DATE**

**BE IT FURTHER ORDAINED** that the preceding Ordinance is effective immediately upon publication.

Passed and approved this 27<sup>th</sup> day of January, 2004.