

Scott County Ordinance No. 25

CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE

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ARTICLE I. GENERAL PROVISIONS

SECTION 1.10 Title and Statutory Authority

1.11 This ordinance shall be known and referenced as the “Cleanup of Clandestine Drug Lab Sites Ordinance.”

1.12 This ordinance is enacted pursuant to the powers specified in Minnesota Statutes Chapter 145A and Minn Stat. §152.0275.

SECTION 1.20 Purpose

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

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

1.23 This ordinance establishes responsibilities and guidelines for involved parties to ensure 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.

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

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

1.26 This ordinance is intended to minimize the cost to Scott County for clean up of clandestine drug lab sites.

SECTION 1.30 Jurisdiction

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

1.32 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 1.40 Interpretation and Application

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

SECTION 1.50 Disclaimer of Liability

Liability on the part of, or a cause of action against, Scott 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 and Scott County Hazardous Waste Ordinance, No. 12.

SECTION 1.60 Fees

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

SECTION 1.70 Definitions, Rules, and Word Usage

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

1.71 Abatement/abated means that a chemical drug lab site has been cleaned or secured in such a manner as to no longer be a risk to the public safety.

1.72 Child means any person less than eighteen (18) years of age.

1.73 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, Minnesota Statute § 152.0275, and/or this ordinance.

1.74 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, as determined by a licensed law enforcement officer.

1.75 Clandestine drug lab site means any structure or parts of a structure such as a dwelling, building, or any conveyance such as a motor vehicle, trailer, or outdoor location occupied or affected by conditions and/or chemicals, typically associated with the manufacturing of methamphetamine, including waste materials.

1.76 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.

1.77 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.

1.78 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.

1.79 Public Health Nuisance shall have the meaning attributed to it in Minnesota Statute § 145A.02, subd. 17.

1.80 Public Health Authority means the Public Health Agent, or designee, within the Environmental Health Department, and/or the Public Health Director, or designee, within the Public Health Department, who are authorized to act as agents of the Scott 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.

1.81 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. Contamination of ground and surface water is included.

1.82 Structure means a dwelling, building, motor vehicle, trailer, boat, or any other area or location, either fixed or temporary, indoors or outdoors.

ARTICLE II. ADMINISTRATION

SECTION 2.00 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” unless and until abatement has been accomplished.

SECTION 2.10 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 and vulnerable adults – 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 Public Health Director of the Scott County Public Health Department.

SECTION 2.20 Law Enforcement notice to affected public, public health, and child protection authorities

2.21 Law enforcement authorities who identify a clandestine drug lab site or clandestine drug lab operation shall notify the county and/or city departments responsible for public health and the County department responsible for child and vulnerable adult protection within one (1) 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) identities of the property owner(s) and occupant(s) – 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.

2.22 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 Agency, and Scott County rules and regulations, including but not limited to Scott County Ordinance 12, Hazardous Waste Management. The law enforcement agency shall install locks on all entry doors of the affected area of a structure (s) after all occupants and animals have vacated the site.

2.23 When a law enforcement agency completes its work under 2.22 and is prepared to leave such sites, the agency shall affix a warning sign to all the entrances of the affected part of the structure or in a conspicuous place(s) on bare land. The warning sign shall be those that have been prepared in advance for such situations through the collaboration of County Law Enforcement, Public Health, 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 Authority and/or Law Enforcement agency identified on the sign.

2.24 It is unlawful for any person, except authorized county personnel, to remove a Chemical Investigation Site Public Health Nuisance warning sign from the posted property.

SECTION 2.30 Notice of Chemical Investigation Site Public Health Nuisance to Owner(s) and Occupant(s)

2.31 After the Public Health Authority receives notice from a law enforcement agency that a clandestine drug lab site has been identified and posted with the appropriate Chemical Investigation Site Public Health Nuisance warning sign, the Public Health Authority shall serve the known lawful occupant(s) and owner(s) 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.

2.32 The public health authority shall notify and order the property owner(s) of record and known occupant(s) or agent(s) to have the chemical investigation site removed or abated within ten (10) days, as provided in Minnesota Statute § 145A.04 and this ordinance. The public health 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 responsibilities of the property owner(s) and occupant(s) under this ordinance.
- d) Information on locating professional services necessary to remove and abate the chemical investigation site or public health nuisance status as provided in this ordinance and Minnesota Statutes §§ 145A.04 and 152.0275.

2.33 The public health authority shall endeavor to provide information in writing regarding the Chemical Investigation Site Public Health Nuisance declaration and potential hazard(s) to the following additional concerned parties:

- a) Neighbors within close proximity that reasonably can be 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 the site.

2.34 When the site is real property and the owner(s) or the address of the owner(s) is unknown, the owner(s) and owner's address is deemed to be that of the property's taxpayer's name(s) and address as that information is maintained by the County Finance Department. When the site is a vehicle, boat, or trailer and the owner(s) or the address of the owner(s) of the site is unknown, the owner(s) and the owner's address is deemed to be that of the person(s) on file as the owner(s) on the current or most recent title to the vehicle, boat, or trailer.

SECTION 2.40 Notice Filed with Property Record and/or Motor Vehicle Record

2.41 If after ten (10) business days notice and order, Public Health is unable to obtain any reasonable assurance or plan from the property owner(s) or occupant(s) that the dwelling or 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 dwelling or structure and/or properties. The County Recorder is authorized to file that information with the property record, to notify other persons with an interest in the property regarding the property's Chemical Investigation Site Public Health Nuisance status.

2.42 If the chemical investigation site is abated, but not properly cleaned, remediated and tested, and remains contaminated, the property or portion of the property may not be occupied or used until it has been properly cleaned, remediate and tested as provided in the Department of Health's Clandestine Drug Lab General Cleanup Guidelines. The health authority shall record the information required by Minnesota Statute § 152.0275, subd.2(h) with the County Recorder.

2.42 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, in accordance with Minnesota Statute § 152.0275, subd. 2(g).

SECTION 2.50 Property Owner's and Occupant's Responsibility to Act

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

2.52 Within ten (10) business days of receiving the Public Health notice and order to cleanup the Chemical Investigation Site Public Health Nuisance, the property owner(s) and/or occupant(s) shall take the following actions:

- a) Notify Scott County Public Health Authority that the affected parts of the dwellings, buildings, motor vehicles, boats, and/or land have been and will remain vacated and secured until the Public Health Authority provides notice that the chemical contamination has been abated and a 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 Scott County Departments of Health) to accomplish the following:
- c) Provide Scott County Public Health Authority with the selected contractor's plan and schedule for remediation that will abate the Chemical Investigation Site Public Health Nuisance declaration.
- d) The property owner(s) or occupant(s) may request an extension of time to consider options for arranging cleanup or removal of the affected parts of the structure(s). The owner(s) or occupant(s) must show good cause for any such extension. Any such extension shall be dependant on the assurances of the owner(s) that the affected parts of the structure(s) will not be occupied pending appropriate cleanup or demolition.

SECTION 2.60 Property Owner's Responsibility for Costs and Opportunity for Recovery

2.61 Consistent with Minnesota Statutes, Chapter 145A, and Minnesota Statute § 152.0275 as applicable the property owner(s) shall be responsible for:

- a) private contractor's fees, cleanup, remediation, and testing of chemical investigation site public health nuisance conditions; and
- b) Scott County's fees and costs of administering notices and enforcing, vacating, cleanup, remediation, and testing of affected parts of the property.

2.62 Nothing in this ordinance is intended to limit the rights of the property owner(s), agent(s), occupant(s), or the County to recover costs or damages from persons contributing to the chemical investigation site such as the operators of the clandestine drug lab site and/or other lawful sources.

2.63 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 2.70 Special Assessment to Recover Public Costs

2.71 The County is authorized under Minnesota Statute § 145A.04, subd. 8(c) to proceed within ten (10) business days of service of a notice for abatement or removal of the Public Health Nuisance to initiate the site assessment and cleanup when a) the property owner is not located, or b) the property owner(s) is located, but the Public Health Authority determines that the owner(s) refuses to, or cannot pay the costs, or arrange a timely assessment and cleanup that is acceptable to the Public Health Authority.

2.72 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 site public health nuisances.

2.73 When the estimated cost of testing, cleanup, and remediation exceeds seventy-five (75%) percent of the Scott 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(s) of the county's intent to remove and dispose of the affected real property instead of proceeding with cleaning and remediation.

2.74 The property owner(s) has five (5) business days to notify the County Administrator (or the Administrator's formally identified designee) of an appeal of the decision to remove and dispose of the property. If appealed, the property owner(s) shall be given an opportunity to show cause as to why such removal and disposal should not occur. The appeal shall also provide the owner(s) with an opportunity to assume responsibility and provide acceptable plans, contract, and schedule in compliance with section 2.52.

2.75 The property owner(s) 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 2.63. 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 Scott County Board Resolution.

2.76 Payment on the special assessment shall be at the annual rate of at least One Thousand Dollars (\$1,000) or more as needed to assure full payment to the County within ten (10) years. This amount shall be collected at the time(s) real estate taxes are due. The amount due and/or payment rate may be adjusted by action of the Scott County Board of Commissioners.

2.77 The County may also seek recovery of costs through other methods allowed by Federal or State law.

SECTION 2.80 Authority to Modify or Remove Declaration of Chemical Investigation Site Public Health Nuisance

2.81 The designated Public Health Authority may modify conditions of the declaration and order removal of the Declaration of Chemical Investigation Site Public Health Nuisance.

2.82 Such modification or removal shall occur only after the Public Health Authority has determined that levels of contamination are sufficiently reduced or abated 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(s) and/or others, such as state and local health, safety, law enforcement and pollution control authorities, to reach such decisions.

2.83 When the Declaration is modified or removed, the Public Health Authority shall forward that information to the Scott County Recorder for addition to the property record, in accordance with Minnesota Statute § 152.0275, subd. 2(h), if notice of the Chemical Investigation Site Public Health 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. Scott County maintains a Household Hazardous Waste Facility.

SECTION 2.90 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 accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and Scott County rules and regulations for solid, hazardous household and other hazardous wastes.

ARTICLE III. EXCEPTIONS, APPEALS, AND PENALTIES

SECTION 3.10 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, Minnesota Statute § 152.0275 and other applicable Minnesota law,

the Scott County Hazardous Waste Regulation Ordinance and the Scott County Solid Waste Management Ordinance.

SECTION 3.20 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

This ordinance shall be in full force and effect upon adoption pursuant to Minnesota law.

Dated this ____ day of _____, 2005.

COMMISSIONERS

SCOTT COUNTY BOARD OF

ATTEST:
