CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE

Nobles County and Rock County

ARTICLE I. GENERAL PROVISIONS

SECTION 1.10 TITLE AND STATUTORY AUTHORITY
SECTION 1.20 PURPOSE
SECTION 1.30 JURISDICTION
SECTION 1.40 INTERPRETATION AND APPLICATION
SECTION 1.50 DISCLAIMER OF LIABILITY
SECTION 1.60 FEES
SECTION 1.70 DEFINITIONS, RULES, AND WORD USAGE

ARTICLE II. ADMINISTRATION

SECTION 2.00 DECLARATION OF SITE AS A CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE
SECTION 2.10 MEDICAL GUIDELINES FOR ASSESSING HEALTH STATUS OF EXPOSED PERSONS
SECTION 2.20 LAW ENFORCEMENT NOTICE TO AFFECTED PUBLIC, PUBLIC HEALTH, AND CHILD PROTECTION AUTHORITIES
SECTION 2.30 NOTICE OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE TO OWNER AND OCCUPANT
SECTION 2.40 NOTICE FILED WITH PROPERTY RECORD AND/OR MOTOR VEHICLE RECORD
SECTION 2.50 PROPERTY OWNER'S AND OCCUPANT'S RESPONSIBILITY TO ACT
SECTION 2.60 PROPERTY OWNER'S RESPONSIBILITY FOR COSTS AND OPPORTUNITY FOR RECOVERY
SECTION 2.70 SPECIAL ASSESSMENT TO RECOVER PUBLIC COSTS
SECTION 2.80 AUTHORITY TO MODIFY OR REMOVE DECLARATION OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE
SECTION 2.90 WASTE GENERATED FROM CLEANING UP A CLANDESTINE DRUG LAB

ARTICLE III. EXCEPTIONS AND APPEALS

SECTION 3.10 EXCEPTIONS, APPEALS, AND PENALTIES
SECTION 3.20 SEVERABILITY AND SAVINGS CLAUSE

ARTICLE IV. EFFECTIVE DATE

NOBLES/ROCK COUNTY ORDINANCE NO. _____

CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE

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 Minn. Stat. § 145A.10.

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 on 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, and skin and respiratory exposure to chemicals.

1.23 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.

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 and pregnant women.

1.25 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.

1.26 This ordinance is intended to minimize the cost to Nobles County and Rock 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 Nobles County and Rock County.

1.32 Where a municipality has lawfully passed an ordinance to regulate and enforce the cleanup of clandestine drug labs, the County shall coordinate regulation and enforcement with that municipality.

SECTION 1.40 Interpretation and Application

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

1.42 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 1.50 Disclaimer of Liability

Liability on the part of, or a cause of action against, Nobles County, Rock 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 1.60 Fees

Fees for the administration of this ordinance may be established and amended periodically by resolution of the 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 Child means any person less than 18 years of age.

1.72 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.

1.73 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.

1.74 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.

1.75 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.

1.76 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.

1.77 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.

1.78 Public Health Nuisance shall have the meaning attributed to it in Minnesota Statutes § 145A.02, Subd. 17.

1.79 Public Health Authority means the Nobles/Rock Public Health Service, as established by the Joint Powers Agreement between the Nobles and Rock Counties' Boards of Commissioners pursuant to the Local Public Health Act, Minnesota Statutes § 145A and authorized to act as agents of the county Board of Commissioners.

1.80 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.

1.81 Law Enforcement means any licensed peace officer.

1.82 Structure means a dwelling, building, motor vehicle, trailer, boat, ice fishing house, appliance or any other area or location, either fixed or temporary.

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 nuisance".

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 – 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 Nobles/Rock 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 Public Health Authority and the Nobles County or Rock County departments responsible for child protection within one working day of identifying the lab site, as permitted by MN Statute § 13.82 as amended. 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 or structure location by street address and other identifiable location;
b) property or structure 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) equipment in a dwelling or structure that is typically associated with the manufacture of a controlled substance; and
e) 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 rules and regulations adopted by the Minnesota Department of Health, Minnesota Pollution Control, Nobles County and Rock County.

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 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, 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.

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

2.31 After the Public Health Authority receives notice from a law enforcement agency that they have 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.

2.32 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 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.

2.33 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 the site.
e) County Administrator

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

2.41 If after 30 days of receiving the notice and orders, Nobles/Rock Public Health 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, the Nobles/Rock Public Health shall 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.

2.42 When the affected property is a motor vehicle, boat, or trailer, Nobles/Rock Public Health shall notify the appropriate state and local agencies that maintain motor vehicle, boat, or trailer records, and the holders of liens or security interests against the vehicle or trailer.

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

2.51 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, buildings, motor vehicles, trailers, boat, appliances or any other affected area or location.

2.52 Within ten 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 Public Health Authority that the affected parts of the dwellings, buildings, and/or motor vehicles 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 Department of Health and/or Nobles/Rock Public 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 therein.

c) Provide the 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 the 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 cleanup 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 dependant on the owner's assurance that the affected parts of the structure 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, the property owner shall be responsible for a) private contractor's fees, cleanup, remediation, and testing of chemical investigation site public health nuisance conditions; and b) Nobles County or Rock County 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 property owners, agents, occupants, or the County's right to recover 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.

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 business days of service of a notice for abatement or removal of the Public Health Nuisance to initiate the assessment and cleanup 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 cleanup that is acceptable to the designated 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 sites.

2.73 When the estimated cost of testing, cleanup, 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.

2.74 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 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 County Board Resolution.

2.75 The cost of testing, cleanup, and remediation shall be certified by the Director of Nobles/Rock Public Health, or its designee. Notice of cost, and demand for payment, shall be forwarded to the property owner by certified mail at the property owner's last known address as shown on property tax records. If payment in full is not made within 30 days of mailing of notice, Nobles/Rock Public Health may request that all costs be assessed against the property.

2.76 Not later than October 31 of each year Nobles/Rock Public Health shall certify to the appropriate County Board of Commissioners the amount of any unpaid costs under this sections. Said certification shall include the unpaid amount, the name of the property owner, the legal description and the address as shown on the property tax records. The County Board may then levy an assessment in such amount as it determines and shall specify the term and the interest rate on unpaid balances. Said assessment shall be placed on the property and collected in the same manner as other assessments.

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 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.

2.83 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 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 rules and regulations adopted by the Minnesota Department of Health, Minnesota Pollution Control Agency, Nobles County and Rock County.

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, other applicable Minnesota laws, and the Nobles County or Rock 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 16TH day of December, 2003.

Board Chairperson

ATTEST:

County Administrator