

Washington County, Minnesota Ordinances

Ordinance No. 165

Washington County Public Health Nuisance Ordinance

Date Approved: 05/06/2003

Date Published: 05/14/2003

Resolution No. 2003-080

Adopting the Washington County Public Health Nuisance Ordinance No. 165

WHEREAS,

MINN. STAT. §145A.05, subd. 1 empowers Washington County to adopt ordinances to regulate actual or potential threats to the public health; and

WHEREAS,

Washington County is experiencing rapid growth rate throughout the County, thus creating an environment for more potential public health nuisance problems; and

WHEREAS,

Washington County has seen a proliferation in the number of clandestine drug lab sites in the County; and

WHEREAS,

the Washington County Board of Commissioners determines it is in the best interest of the County to more closely regulate all public health nuisances, including those arising from the operation of clandestine labs; and

WHEREAS,

on April 15, 2003, the Washington County Board of Commissioners conducted a public hearing to consider enacting a public health nuisance ordinance.

NOW, THEREFORE, BE IT RESOLVED,

that the Washington County Board of Commissioners hereby adopts the Washington County Public Health Nuisance Ordinance No. 165 to take effect upon the passage of this resolution and its publication according to law.

Attest:

James R. Schug, County Administrator

Dennis C. Hegberg, Chairman, County Board

Hegberg – X – Yes

Kriesel – X – Yes

Peterson – X – Yes

Pulkrabek – X – Yes

Stafford – X – Yes

**PUBLIC HEALTH NUISANCE ORDINANCE #165
For Washington County**

Section 1 Purpose and Authority

- 1.1** The purpose of this Ordinance is to establish standards and authority to protect the public health, safety and general welfare of the people of Washington County pursuant to powers granted under Minnesota Statutes Chapter 145A. Whenever, and if, this Ordinance conflicts with other applicable laws, regulations and ordinances, the most restrictive shall prevail.
- 1.2** This ordinance establishes minimum standards for the health, safety and protection of parties who may be exposed to Public Health Hazards and/or public health nuisances by:
- (1) establishing responsibility for involved parties to assure that people are not unnecessarily exposed to the dangers of Public Health Hazards;
 - (2) preventing injury and illness to Occupants of the property and the public, especially Children and Vulnerable Adults.
 - (3) requiring that proper steps are taken to remove Public Health Hazards; and
 - (4) requiring that appropriate tests are done to demonstrate that affected Structures and media (air, water, soil) are sufficiently cleaned for human contact.

Section 2 Scope

- 2.1** This Ordinance shall be applicable in all incorporated and unincorporated municipalities (city or township) within the boundaries of Washington County under the jurisdiction of the Washington County Community Board of Health.
- 2.2** The provisions of this Ordinance shall be interpreted and applied as the minimum requirements necessary to protect public health, safety and welfare.
- 2.3** Where a local community has a housing ordinance or public nuisance ordinance, this Ordinance shall apply in addition to that local ordinance and may serve to supplement the local community's enforcement of its ordinance(s).

Section 3 Definitions

- 3.1** For the purpose of this Ordinance, the following terms or words shall be interpreted as follows:
- (1) Acceptable Environmental Hazard Testing and/or Cleaning Firm means a firm that has provided written assurance to the State of Minnesota or the Health Authority that they have appropriate equipment, procedures, and personnel to accomplish clean-up and that they are an experienced HAZMAT contractor.
 - (2) Board of Health shall have the meaning given to it by Minnesota Statutes section 145A.02, subd. 2.
 - (3) 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 Statutes Chapter 145A, and this Ordinance.
 - (4) Child means any person less than 18 years of age.
 - (5) Clandestine Drug Lab Operation means the unlawful manufacture, or attempt to manufacture, of a drug, substance or immediate precursor which are scheduled in Schedules I through V of Minnesota Statutes section 152.02.
 - (6) Clandestine Drug Lab Site means any portion of real property and improvements thereon and any personal property located therein where the unlawful manufacture or attempted manufacture of a drug, substance or immediate precursor which is scheduled in Schedules I through V of Minnesota Statutes section 152.02 occurs.
 - (7) Cleanup means proper removal and/or containment of substances or materials hazardous to humans and/or the environment. Cleanup is a part of Remediation.
 - (8) Controlled Substance means a drug, substance or immediate precursor scheduled in Schedules I. through V. of Minnesota Statutes section 152.02 and as subsequently amended in the future. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.
 - (9) County Protection Unit shall mean the department and/or section of a department assigned the responsibilities for child protection and/or adult protection.
 - (10) Health Authority means the Department of Public Health and Environment.
 - (11) Medical Consultant means a physician licensed to practice medicine in Minnesota who is working under a written agreement with, employed by, or under contract with the Board of Health.

- (12) Occupant shall mean 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.
- (13) Owner means any person, firm, partnership or corporation who owns, in whole or in part, the real property and/or fixtures or personal property such as buildings, motor vehicle, trailer, boat or other appliance.
- (14) Personal Property means all property other than real estate or Structures.
- (15) Property Agent means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.
- (16) Public Health Hazard shall mean any condition upon real property which poses an immediate and direct hazard to human health 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 infection.
- (17) Public Health Nuisance shall have the meaning given to it by Minnesota Statutes section 145A.02, subd. 17 and shall include, but not be 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.
- (18) Remediation means methods employed in dealing with Public Health Hazards/Public Health Nuisances and include, but are not limited to, assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, and/or removal of materials.
- (19) Standing Order means a rule or prescriptive order signed by a medical physician for governing the medical response for Children and/or pregnant women who are or may have been exposed to chemicals from a Clandestine Drug Lab Operation.
- (20) Structure means a Structure, building or other fixtures upon real property.
- (21) Vulnerable Adult shall have the meaning given to it by Minnesota Statutes section 626.5572, subd. 21.

Section 4 Prohibitions

- 4.1** The creation or maintenance of a Public Health Hazard or Public Health Nuisance is prohibited.

4.2 The following are hereby expressly declared to be Public Health Hazards or Public Health Nuisances, without limitation by reason of such enumeration:

- (1) 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.
- (2) Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of a carcass 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;
- (3) Accumulation of decayed animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, tires or any other substances in which flies, mosquitoes, other disease carrying insects, rodents or other vermin can harbor; this definition does not include compost bins or compost sites which are being managed in accordance with acceptable standards;
- (4) Any Structure which has become dangerous for further occupancy because of sanitary defects;
- (5) Infestations of flies, fleas, cockroaches, lice, ticks, rats, mice, fly larvae, and hookworm larvae;
- (6) Unnatural breeding grounds which support mosquito larvae and mosquitoes carrying West Nile Virus, LaCrosse encephalitis, or any other disease causing microorganisms;
- (7) Accumulations of animal feces, rubbish or junk remaining in any place so as to become injurious and dangerous to the health and safety of any individual or to the public in general;
- (8) Causing or allowing improper sewage disposal facilities to be operated, or causing or allowing the effluent from any cesspool, septic tank, drain field or sewage disposal system to discharge upon the surface of the ground or into any body of water;
- (9) Maintaining a hole or opening caused by an improperly abandoned cistern, septic system, unused or non-maintained private swimming pool, foundation, mine shaft or tunnel, including an improperly abandoned, sealed, barricaded or backfilled excavation;
- (10) A Clandestine Drug Lab Operation and/or a Clandestine Drug Lab Site.

Section 5 Administration

- 5.1** This Ordinance shall be administered by the Washington County Department of Public Health and Environment, hereinafter referred to as the “Health Authority”.
- 5.2** It shall be the duty of the Health Authority to determine whether or not a Public Health Hazard or Public Health Nuisance exists.
- 5.3** In accordance with Minnesota Statutes section 145A.04, subd. 7, the Health Authority has right of entry for inspection of property where a Public Health Hazard or Public Health Nuisance is suspected or known.
- 5.4** This Ordinance shall be construed to incorporate and be consistent with the relevant portions of Washington County Ordinance #128 (and subsequent amendments): individual Sewage Treatment System Regulations; Ordinance # 119 (and subsequent amendments): Hazardous Waste Management Ordinance; and Ordinance #'s 114 and 137 (and subsequent amendments): Solid Waste Management Ordinance in the enforcement of clean-up and remediation of Public Health Nuisances.
- 5.5** Waste generated through cleanup or remediation of a site that is considered a Public Health Hazard/Public Health Nuisance shall be treated, stored, transported, and disposed in accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and Washington County guidelines, rules and regulations for clandestine lab clean-up, for solid waste, and for hazardous household/other hazardous wastes.
- 5.6** Fees for the administration of this ordinance may be established and amended periodically by action of the Washington County Board of Commissioners.

Section 6 Investigation and Response to Public Health Hazard or Public Health Nuisance which is not a Clandestine Lab Site

- 6.1** In the event the Health Authority determines that a Public Health Hazard or Public Health Nuisance exists, it shall promptly give notice of that determination to the Owner, the Occupant and the Property Agent, if applicable, by certified mail.
- 6.2** The Owner and Occupant shall be ordered to abate such Public Health Hazard or Public Health Nuisance within ten (10) working days of 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 preserve the public health and safety. In such case, the time for abatement shall be specified in the order and the reasons for a shortened abatement period shall be specified.

- 6.3** Where it is determined that a Child neglect, Child endangerment or Vulnerable Adult situation may exist as a result of the Public Health Hazard or Public Health Nuisance, the Health Authority shall notify the County Protection Unit for response to the potential Child neglect, Child endangerment or vulnerable adult situation.
- 6.4** The notice provided by the Health Authority as referenced in Section 6.3 of this Ordinance, shall include sufficient information to inform the County Protection Unit of the following:
- (1) property location by street address and other identifiable location;
 - (2) Owner's and Occupant's identities including the identities of any Children, pregnant women, or Vulnerable Adult found or known to be associated with the site;
 - (3) conditions found which make this home or residence a Public Health Hazard or Public Health Nuisance; and
 - (4) any other conditions which may be associated with the site which could present harmful conditions as determined by Minnesota law.
- 6.5** When the Health Authority leaves a Public Health Hazard/Public Health Nuisance site, the Health Authority shall leave a posted warning sign when deemed necessary to protect further public health and safety; the warning sign shall be posted on the entrance of the affected Structure, if applicable. The warning sign shall be one which has been prepared in advance for such situations. The warning sign shall be of a size and contain information sufficient to alert visitors or returning Occupants to the site that the area may be dangerous to enter, and that entry is prohibited unless authorized by the agency identified on the sign. It shall be unlawful for this sign to be removed except by the Health Authority.
- 6.6** The Health Authority shall notify and order the Owner and Occupant to have the Public Health Nuisance removed or abated as provided in Minnesota Statutes section 145A.04 and this Ordinance. The Health Authority shall include the following as part of the notice and order:
- (1) Information about the potentially hazardous condition creating the Public Health Hazard/Public Health Nuisance;
 - (2) A summary of the Owner's and Occupant's responsibilities under this Ordinance;
 - (3) Specific orders for abatement of the Public Health Hazard and/or Public Health Nuisance and timeframe for completion of abatement; and
 - (4) Information that can help the Owner and Occupant locate appropriate services necessary to abate the Public Health Nuisance.

6.7 Notice for Abatement or Removal must be served on the Owner, Occupant and Property Agent, if applicable, in one of the following ways:

- (1) by registered or certified mail using the last known address of record;
- (2) by an officer authorized to serve a warrant; or
- (3) by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

If the Owner of the property is unknown or absent and has no known representative upon whom 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 a period of ten days, the Health Authority will have the threat abated or removed at the expense of the Owner under MN Statutes, section 145 A.08, this Ordinance, or other applicable state or local law.

6.8 The Health Authority shall send written notice within three (3) business days following the service of a notice of abatement describing the condition of the property and the action required to the following parties:

- (1) The local municipal clerk;
- (2) Local law enforcement; and
- (3) 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 with regards to the situation.

6.9 If after 10 days notice and order, the Health Authority is unable to obtain any reasonable assurance or plan from the property Owner or Occupant that the property and/or Structure is being properly vacated, and/or cleaned, and/or remediated, the Health Authority is authorized to provide a copy of the Public Health Nuisance notice and order to the County Recorder and to the lien and mortgage holders of the affected Structure and/or property. The County Recorder is authorized to file that information with the property record, to help assure that persons with interest in the property have access to information about the property's Public Health Nuisance status.

6.10 Pursuant to Minnesota Statutes section 145A.04, subd. 8, if the Owner or Occupant fails or neglects to comply with the requirement in the notice provided under Section 6.6 of this Ordinance, then the Health Authority shall remove or abate the public health hazard/public health nuisance described in the notice from the property. The Health Authority will recoup such costs as necessary to abate the Public Health Hazard/Public Health Nuisance as provided in Section 8.

Section 7 Investigation and Response to a Clandestine Lab Site

- 7.1** Law Enforcement authorities who identify a Clandestine Drug Lab Site or Clandestine Drug Lab Operation shall notify the Health Authority and, when Children, a pregnant woman or a Vulnerable Adult are present, the County Protection Unit. The obligation to notify may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and Child/Vulnerable Adult protection responsibilities are not unnecessarily compromised.
- 7.2** The initial removal and inventory of all chemicals found at a Clandestine Lab Site shall be the responsibility of the responding law enforcement agency in accordance with their procedures.
- 7.3** The notice provided by law enforcement to the Health Authority, as referenced in Section 7.1 above, shall include sufficient information to inform the Department of the following:
- (1) property location by street address and other identifiable locators;
 - (2) Owner's and Occupant's identities including the identities of any Children, pregnant women or Vulnerable Adult found or known to be associated with the site;
 - (3) a copy of the search warrant affidavit and police report;
 - (4) a copy of the chemical manifest as provided by the HazMat responder (in accordance with 7.2 above) when that report is provided to Law Enforcement.
- 7.4** A medical protocol for assessing the health status and determining medical care needs of Children that are found or known to be frequent visitors at a Clandestine Lab Site may be established by the Board of Health's Medical Consultant as a Standing Order. Such order may be amended or updated as deemed necessary by the Medical Consultant without amendment to this Ordinance. The County Protection Unit shall be the delegated authority implementing the medical protocol.
- 7.5** When law enforcement completes their investigative work and prepares to leave a Clandestine Drug Lab Site, they shall leave a warning sign posted on the entrance of the affected part of the Structure, if applicable. The warning sign shall be those that have been prepared in advance for such situations. The warning sign shall be of a size and contain information sufficient to alert visitors or returning Occupants to the site that the area is a Chemical Investigation Site, may be dangerous to enter, and may not be entered except by authorization of the Health Authority or Law Enforcement agency identified on the sign. Once this sign is posted, it shall be unlawful for any person to enter the site except by permission of the Health Authority or Law Enforcement. This proscription shall not apply to law enforcement officers, health officials, or their agents. It shall be unlawful for any person, other than the Health Authority, to remove this sign.

7.6 After the Health Authority receives information from law enforcement that they have identified a Clandestine Drug Lab Site and posted the appropriate Chemical Investigation Site Public Health Nuisance sign, the Health Authority shall make a site visit, document the conditions at the site, complete appropriate testing, and contact the Owner, Occupant and Property Agent, if applicable, by certified mail, to inform the Owner and Occupant of their responsibilities relative to the Chemical Investigation Site Public Health Nuisance.

7.7 The Health Authority shall issue a notice for removal and abatement of a Public Health Nuisance and an Order requiring the Owner and Occupant to have the Public Health Nuisance removed or abated as provided in Minnesota Statutes section 145A.04, Subd. 8, and this ordinance. The Health Authority shall include in the notice and order the following:

- (1) Information about the Public Health Hazard and Public Health Nuisance;
- (2) A summary of the Owner's and Occupant's responsibilities under this Ordinance; and
- (3) Information that can help the Owner and Occupant locate appropriate services necessary to abate the Chemical Investigation Site Public Health Nuisance.

7.8 Notice for Abatement or Removal must be served on the Owner, Occupant and Property Agent, if applicable, in one of the following ways:

- (1) by registered or certified mail using the last known address of record;
- (2) by an officer authorized to serve a warrant; or
- (3) by a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

If the Owner of the property is unknown or absent and has no known representative upon whom 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 a period of ten days, the Health Authority will have the threat abated or removed at the expense of the Owner under Minnesota Statutes, section 145 A.08, this Ordinance, or other applicable state or local law.

7.9 The Health Authority shall send written notice about the Chemical Investigation Site Public Health Nuisance declaration within three (3) business days of service of a notice of abatement describing the condition of the property and the action required to the following parties:

- (1) Neighbors in proximity that can be reasonably affected by the conditions found;
- (2) The local municipal clerk;
- (3) Local law enforcement; and
- (4) 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 with regards to the situation.

7.10 Owner(s) and Occupant(s) provided with a notice, including posted notice informing them about the Clandestine Lab Site, shall promptly act to vacate the Occupants within twenty-four (24) hours.

7.11 Within ten (10) business days of receiving the notice and order to abate the Public Health Nuisance, the Owner(s) and/or Occupant(s) shall act to accomplish the following:

- (1) Notify the Health Authority that the affected parts of the Structures have been and will remain vacated and secured until Public Health acts to rescind the hazard investigation Public Health Nuisance declaration.
- (2) Contract with one or more acceptable environmental hazard testing and/or cleaning firms to accomplish the following as delineated in the Health Authority's order for abatement including, but not limited to:
 - a) Carry out and/or direct remediation and cleanup operations,
 - b) Perform and/or direct follow-up sampling and testing, and
 - c) Provide a report and summary of actions taken to the Health Authority.
- (3) Provide the Health Authority with the identity of the testing and cleaning Firm the Owner and/or Occupant has contracted with for remediation/cleanup of the Structure(s) or Personal Property as described above.
- (4) Provide the Health Authority with the contractor's plan and schedule for remediation leading to removal of the Public Health Nuisance declaration.
- (5) Due to the potentially extensive nature of cleanup of a Clandestine Lab Site, the Owner or Occupant may seek authorization for an extension of time to allow the Owner or Occupant time to consider options for arranging cleanup or removal of the affected parts of the Structure or Personal Property. Owner or Occupant must show good cause for any such extension. Any such extension shall be dependant on the Owner's and/or Occupant's assurance that the affected parts of the Structure or Personal Property will not be occupied pending appropriate cleanup or demolition.

- (6) The Health Authority may authorize extensions up to but no more than ninety (90) calendar days.
- (7) The Owner, Occupant or the Owner or Occupant's contractor must provide documentation of clean-up and remediation, including but not limited to follow-up environmental testing as deemed necessary, to the Health Authority in the format prescribed by the Health Authority. Review and determination of acceptable clean-up must be made by the Health Authority prior to re-occupancy of the property.

7.12 If after the 10 days notice or declaration and order, the Health Authority is unable to obtain any reasonable assurance or plan from the Owner or Occupant that the Structure or Personal Property is being properly vacated, cleaned, remediated, and tested, the Health Authority shall provide a copy of the Chemical Investigation Site Public Health Nuisance notice and order to the County Recorder and to all lien and mortgage holders of the affected Structure and/or properties. The County Recorder shall file that information with the property record and give notice to persons with any interest in the property about the property's Chemical Investigation Site Public Health Nuisance status.

7.13 If the affected property is Personal Property such as a motor vehicle, boat, or trailer, the Health Authority shall notify the appropriate State and local agency maintaining personal property records and to the lien and mortgage holders of the affected properties of the property's status as a Clandestine Drug Lab Site Public Health Nuisance.

7.14 Pursuant to Minnesota Statutes section 145A.04, subd. 8, if the Owner or Occupant fails or neglects to comply with the requirement in the notice provided under 7.7, then the Health Authority shall remove or abate the Public Health Hazard/Public Health Nuisance described in the notice from the Property. The Health Authority will recoup such costs as necessary to abate the Public Health Hazard/Public Health Nuisance as provided in Section 8.

Section 8 Costs and Reimbursements

8.1 If the County is required to remove or abate a Public Health Hazard/Public Health Nuisance, the County may recover the costs incurred in removal or abatement in a civil action; or at the discretion of the County Board, the cost of an enforcement action under this Ordinance may be assessed and charged against the real property on which the Public Health Nuisance was located. The County Auditor shall extend the cost as assessed and charged on the tax roll against said real property.

- 8.2** Nothing in this Ordinance 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 the operators of the clandestine drug lab and/or other lawful sources.
- 8.3** 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 Public Health Nuisance Sites.
- 8.4** Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by Federal or State law.

Section 9 Modifications and Appeals

- 9.1** The Health Authority may modify conditions of the declaration and order removal of the declaration of Public Health Nuisance.
- 9.2** Such modification or removal shall be only after the Health Authority has determined the level of Public Health Hazard is sufficiently reduced through remediation to warrant modification or removal of the declaration. The Health Authority may rely on information from competent sources, including those supplied by the Owner, Occupant and/or others such as state and local health, safety, and pollution control authorities to reach such decisions.
- 9.3** When the declaration is modified, rescinded or removed, the Health Authority shall forward that information to the County Recorder for addition to the property record if the Recorder has been notified as described in Sections 6.9 and 7.12 of this Ordinance. Notice shall be provided to the motor vehicle or other license records agency and lien holders if a notice under Section 7.13 has previously been provided to them.

Section 10 Enforcement

- 10.1** Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- 10.2** In the event of a violation or a threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or any other appropriate action in court, to prevent, restrain, correct or abate such violation or threatened violation.

Section 11 Severability

11.1 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.

Section 12 Effective Date

12.1 This Ordinance shall be effective upon passage by the Washington County Board of Commissioners and upon publication according to law.

Passed by the Board of County Commissioners of Washington County, Minnesota, this 6th day of May, 2003.

Dennis C. Hegberg, Chair
Board of County Commissioners

Attest:
James R. Schug
Washington County Administrator

Approved as to form and legality:
George Kuprian, Assistant Washington County Attorney

Ordinance prepared by:
Washington County
Department of Public Health and Environment
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