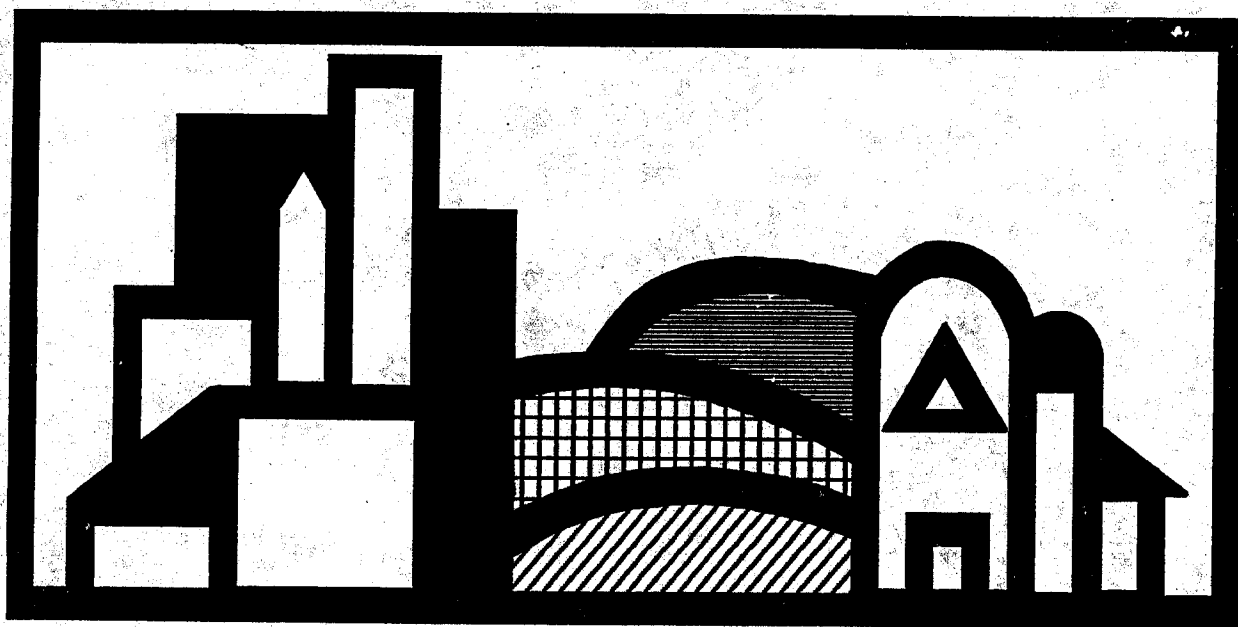


Controlling Public Health Nuisances: A Guide for Community Health Boards



**Minnesota Department of Health
State Community Health Services
Advisory Committee**

January 1992

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A Guide for
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**The Minnesota Department of Health
and the
State Community Health Services Advisory Committee**

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Table of Contents

Foreword	ii
Executive Summary	iii
Why Public Health Nuisance Control?	1
Success In Nuisance Control Is Worth A Lot	2
It's The Law	2
<i>Private Nuisance Law</i>	3
<i>Public Nuisance Law</i>	3
<i>Public Health Nuisance Law</i>	4
<i>Enforcing State Statute or Local Ordinance</i>	4
<i>Fiscal Implications</i>	5
A Formal Policy Can Help	6
<i>Defining the Problem</i>	6
<i>Using a Variety of Tools</i>	8
<i>Clarifying Authority for Enforcement</i>	8
<i>Using Teamwork</i>	10
<i>Putting It All Together</i>	12
Public Health Nuisance Control Policy and Procedures	15
<i>Purpose</i>	15
<i>Policy</i>	15
<i>Procedures</i>	16
Illustrations and Examples	21
<i>Table of Specific Authorities</i>	22
<i>Table of Board Organization</i>	24
<i>Case Studies</i>	27
Appendices	
Appendix A: Sample Administrative Search Warrant	
Appendix B: Sample Forms	
Appendix C: Excerpts from Minnesota Data Practices Act	
Appendix D: Examples of Public Health Nuisances (Survey Results)	

Foreword

Controlling Public Health Nuisances: A Guide for Community Health Boards was developed by the Minnesota Department of Health and a Work Group of the State Community Health Services Advisory Committee.

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Executive Summary

Controlling Public Health Nuisances: A Guide for Community Health Boards was developed by the Minnesota Department of Health and the State Community Health Services Advisory Committee. The Guide is intended to encourage and support community health boards and their staff in preventing and controlling nuisance problems. It does not represent new requirements for staffing or funding local nuisance control programs. Rather, it clarifies community health boards' responsibilities in public health nuisance control and gives helpful guidance in responding to these problems.

Success in Nuisance Control is Worth A Lot

Nearly all community health boards receive nuisance complaints on a routine basis, yet many do not have a formal public health nuisance control policy or program. A formal policy can help give the board and its staff a guide to follow and the confidence that it needs, to act swiftly and appropriately. A board that acts fairly and appropriately to control public health nuisances will gain credibility and the public's trust -- assets that are critical to success in public service.

Its The Law

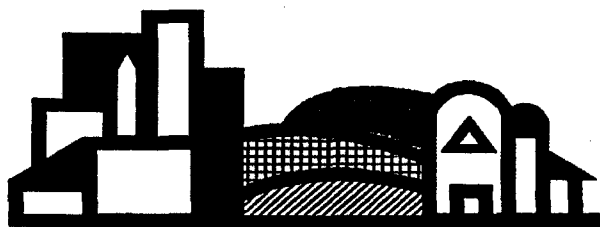
Nuisance law begins with the assumption that a person should not be allowed to interfere with the use and enjoyment of another person's property. From this simple assumption three types of nuisances have evolved statutorily: "private nuisances," "public nuisances," and "public health nuisances." Private nuisances are related to disputes between private parties and are generally not the concern of the board. Public nuisances are the concern of cities, towns, and counties; and a particular type of public nuisance -- public *health* nuisance -- is the concern and responsibility of the board of health. This Guide can help the board assure that it fulfills this responsibility, consistent with State law.

A Formal Policy Can Help

A formal policy can help the board (and its staff) sort through the many possible types of nuisance complaints it receives, more clearly define the problem, and determine the most appropriate response. This involves answering some basic questions about the nuisance complaint, how the board is organized, and how other units of local government -- within the board's jurisdiction -- are organized. This guide helps the board sort through these questions and make sound determinations.

Defining Public Health Nuisances

Perhaps one of the greatest difficulties in dealing with a nuisance complaint is determining whether or not the subject of the complaint is, in fact, a public *health* nuisance. This Guide can help in making that determination. Given a clear definition of the problem, the board is in a better position to determine which tools to use for the job. In some cases, education and consultation may be used to prevent or control a nuisance problem. In other cases, the problem may require enforcement action. In the case enforcement is required, it is very important the board and its staff have an accurate understanding of its enforcement authority. This Guide and a carefully developed nuisance control policy can help assure the board and staff use a variety of tools for the job, and that they use them appropriately.



Why Public Health Nuisance Control?

Nearly all community health boards deal with public health nuisance control problems on a routine basis, yet many do not have a formal public health nuisance control policy or program. Here are some of the reasons why community health boards might want to formalize their public health nuisance control efforts.

If you are hearing this...

Consider this...

- * *"Trying to solve a public health nuisance can be more trouble than it is worth. We are too busy working on other important public health programs."*
- * *"Nuisance control is not our job; its the cities' or the townships' job. Besides, most of the 'nuisances' in our area are 'out in the country' and affect only a few people -- it's a private matter."*
- * *"Having a formal public health nuisance control program eliminates our options. We are better-off keeping a 'low profile' on these nuisance problems and handling them informally."*

These statements appear reasonable, however they are not as true as they may sound. This document addresses some of the concerns boards have about getting involved in a formalized public health nuisance control program, provides a sample public health nuisance control policy, and demonstrates the use of the sample policy through several examples taken from actual case studies.

Success In Nuisance Control Is Worth A Lot (page 2).

Nuisance Control Is The Law (page 2).

A Formal Policy Can Help (page 6).

A Sample Policy (page 15)

Illustrations and Examples (page 21)

Success In Nuisance Control Is Worth A Lot

Public health nuisances can be difficult to handle and may take time to resolve. However, the actual nuisance is rarely the most challenging and time-consuming aspect of controlling a public health nuisance. More often, the confusion regarding the scope and the source of the board's¹ authority creates the most difficulty. This confusion can be compounded if other jurisdictions within the board's service area have nuisance control ordinances. A formal policy that is broadly understood can go a long way in eliminating this confusion. A board that acts fairly and appropriately to control public health nuisances will gain credibility and the public's trust -- assets that are critical to success in public service.

*A board that acts fairly and appropriately to control
public health nuisances
will gain credibility and public trust -- critical assets
to success in public service.*

The public is more aware of public health nuisance problems today than it was ten or twenty years ago. In fact, the awareness generated by recent media reports of "garbage houses" typically results in an influx of calls on other potential nuisance problems. The board's ability to handle a nuisance problem leaves a strong impression on the citizens of the community; and the importance of this impression should not be underestimated. A formal policy can help give the board and its staff a guide to follow and the confidence that it needs, to act swiftly and appropriately. This kind of action can earn the board credibility and the public trust it needs to serve the citizens of the community.

It's The Law

Nuisance law begins with the assumption that a person should not be allowed to interfere with the use and enjoyment of another person's property. From this simple assumption three types of nuisances have evolved statutorily: "private nuisances," "public nuisances," and "public health nuisances."

Private nuisances are related to disputes between private parties and are generally not the concern of the board. Public nuisances are the concern of cities, towns, and counties; and a particular type of public nuisance -- public *health* nuisance -- is the concern and responsibility of the board of health.

¹ The term "board" is used to refer to either a "board of health" (Minn. Stat. 145A.02 subd. 2) or a "community health board" (Minn. Stat. 145A.02 subd. 5). Those units of local government that do not have the powers and duties of a board of health will be referred to specifically as cities, towns, and counties.

It is important to note that the existence of a community health board or board of health preempts cities', towns', and counties' from basing their public health nuisance abatement activities on the State statutory authority contained in the Local Public Health Act (Chapter 145A); only a community health board or board of health has that authority. For more information, see the "Fundamental Transactions of the Community Health Board" and the "Joint Powers Agreements" section of the "CHS Administration Handbook" produced by the Minnesota Department of Health, January 1992.

Private Nuisance Law

Common and statutory law (Minnesota Statutes, section 561.01) allow for private remedies for private nuisances, however private enforcement of those rights is often time consuming and expensive. With very limited exceptions, private parties cannot bring suit to force abatement of, or collect damages from, activities which constitute a public nuisance.

Public Nuisance Law

Public nuisance law in Minnesota is based on certain activities and conditions being prohibited by statute. For example, Minnesota Statutes, sections 609.74 and 609.745 declares that a public nuisance is "... a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public;" Other statutes allow local governments to prohibit public nuisance activities or conditions.

Implementing this prohibition involves carefully defining nuisance problems, identifying applicable provisions in state statute, clarifying which parties may enforce the provisions, and clarifying which specific method of enforcement may be used by each party (see "A Formal Policy Can Help"). State statute declares that certain activities or conditions are nuisances and authorizes local governments to prohibit those activities or conditions through local enforcement of State statute or through adopting and enforcing local ordinances. For example, authority for local enforcement of State statute includes:

- * Minnesota Statutes, section 471.92 allows towns, cities and counties to regulate the maintenance or abandonment of open wells, cesspools, cisterns, etc. that are a danger to a "considerable number of persons" by defining them as public nuisances and abating them under public nuisance law;
- * Minnesota Statutes, section 462.17 allows cities of the first class to enforce State provision of residential zoning statutes under certain conditions;
- * Minnesota Statutes, section 429.021 allows towns, statutory cities and cities of the second, third, and fourth class "to abate nuisances and to drain swamps ..."

Still other statutes allow local government to prohibit public nuisance activities or conditions by adopting and enforcing local ordinances:

- * Minnesota Statutes, section 368.01, allows towns "... power by ordinance to define nuisances and provide for their prevention or abatement." (subdivision 15); towns may address health (subd. 14), animal control (subd. 13) and general welfare (subd. 19) under this section;
- * Minnesota Statutes, section 412.221 allows statutory cities the same ordnancing power as towns (nuisances in subd. 23, health in subd. 22, animal control in subd. 21, general welfare in subd. 32) and also allows ordnancing related to noise and disorder (subd. 24);
- * Minnesota Statutes, section 463.151 allows cities and towns to ..."remove or raze any hazardous building or remove or correct any hazardous condition of real estate..."
- * Charter cities can adopt ordinances relating to public nuisances and public health nuisances under their general governance authority if those ordinance powers are not prohibited by the city's charter.

Public Health Nuisance Law

(Specific to community health boards or boards of health)

Public health nuisance law follows the same general outline as does public nuisance law. Minnesota Statutes, section 145A.02, subdivision 17, defines "public health nuisance" and Minnesota Statutes, section 145A.04, subdivision 8, requires a board of health or its agent to remove or abate public health nuisances. Authority for local enforcement of State statute includes:

- * Minnesota Statutes, section 145A.04 subd. 8 requires a board of health to ..."order the owner or occupant of the property remove or abate the threat within a time specified in the notice but not longer than ten days."
- * Minnesota Statutes, section 145A.04, subdivision 9 allows a board of health "... to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health."
- * Minnesota Statutes, section 103I.111, subdivision 6 allows a county to abate unsealed wells with the same authority of a board of health to abate a public health nuisance.

Another provision allows county boards to adopt and enforce local ordinances. Often, county boards have the powers and duties of boards of health.

- * Minnesota Statutes, section 145A.05 allows county boards to adopt and enforce ordinances related to control of public health nuisances (subd. 7), regulation of offensive trades (subd. 6) and animal control (subd. 2); and

Enforcing State Statute or Local Ordinance

A board may choose one of two distinct legal approaches to dealing with public nuisance problems. One, they may enforce State statute; or two, they may rely on the local units of government within their jurisdiction to establish and enforce local ordinances. Many boards have been successful enforcing State statute and do not plan to establish public health nuisance control ordinances in the future. Other boards prefer a local ordinance and the ability it provides to more completely define public health nuisances.

Ordinance adoption and enforcement is straightforward in a single-county board of health (or community health board) yet requires considerable coordination among constituent counties in a multi-county board. This can take forms varying from some or all counties in a multi-county board adopting and enforcing their own specific ordinance to all counties adopting a uniform ordinance and enforcing the ordinance(s) using staff from the multi-county board.

Whether the board chooses to exercise its authority through enforcement of State statute or by enforcing duly adopted local ordinances is a matter of local choice.

Fiscal Implications

As noted above, Minnesota Statutes, section 145A.04 subd. 8 requires a board of health to "...order the owner or occupant of the property to remove or abate the threat within a time specified in the notice but not longer than ten days." On occasion, the owner or occupant fails to act within the ten day limit set by state law, and the board must abate the public health nuisance. This may, for example, require that the board hire a cleaning crew (See example work order in Appendix B) and cover the cost of the clean-up until the cost can be recovered from the owner. The cost of such an enforcement action "...may be assessed and charged against the real property on which the public health nuisance, source of filth, or cause of sickness was located" (Minn. Stat. 145A.08 Subd.2c).

When abating public health nuisances, it may be possible to use the resources of family members or volunteers. This will reduce or even eliminate the costs associated with abatement and resolve the issue as to who will pay for the abatement. However, a case may arise where family members or volunteers are simply not equipped to do the job and the board will be obligated to cover abatement costs -- at least until the costs can be recovered from the owner.

How a board chooses to account and plan for these costs is entirely a local matter. For example, a board may choose to include detailed descriptions of its nuisance control activities in its community health plan and create budget detail on staff time and enforcement costs including estimates of unrecovered abatement costs. This may be particularly appropriate if the program is new or has not been reviewed for a number of years. In another example, the board may chose to provide general descriptions of the activity in the plan and choose not to specifically identify the item in the budget. In either case, it is important that the board recognize its obligations under state law and make the necessary preparations to meet its obligations.

A Formal Policy Can Help

A formal policy does not negate the need for judgement nor does it necessarily limit a board's flexibility in dealing with public health nuisances. In fact a formal policy will aid the board in making decisions and acting appropriately to control public health nuisances in the community (see the sample "Policy and Procedure" on page 15).

As described in the previous section (see "Its the Law" on page 2), Minnesota statute defines public nuisances in several ways. Some provisions of state law define nuisances very broadly ("a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public;" Minn. Stat. 609.74) and others define nuisances very specifically (Minn. Stat. 471.92 - - Dangerous Excavations). This, in combination with the inherently subjective nature of a nuisance, can complicate the task of determining whether or not the subject of a complaint is in fact a public *health* nuisance. The task of clearly defining the problem is further complicated by the fact that separate statutory references are given for separate legal entities (township, city, county, board of health, etc.). Staff must understand these distinctions and use sound professional judgement when making nuisance control decisions, especially when the decision may obligate the board financially for the abatement.

A formal policy can help the board (and its staff) sort through the many possible types of nuisance complaints it receives, make valid and defensible determinations as to the nature of these complaints, clarify its authority to enforce nuisance law or local ordinances, and use teamwork and a variety of tools to control nuisances within the community.

The following sections illustrate how a policy can help a board in making decisions about nuisance control. Each section describes the importance of making clear and defensible decisions at each phase of the decision process and includes a set of questions that may be helpful in guiding the decision. Lastly, a section on "Illustrations and Examples" shows how the decision process can be applied to actual situations (page 21).

Defining the Problem

Perhaps one of the greatest difficulties in dealing with nuisance complaints is determining whether or not the subject of the complaint is, in fact, a public *health* nuisance.

A substantiated nuisance complaint may be categorized in many ways. For a board of health, however, it is important first of all to determine if the problem effects the public, and if so, distinguish between those public problems that pose a threat to health and those that do not. This determination is very important and is not always as easy as it may seem. Making a proper determination will clarify which tools will be used to resolve the problem.

The following results, taken from an informal survey conducted in January of 1991, represent examples of various types of nuisance complaints being dealt with by local governments in the State of Minnesota. Some of the items on the list clearly pose a threat to public health while some of the others may not. Again, it is very important to distinguish between the nuisances that pose a threat to public health and those that do not.

- * Accumulation of garbage
- * Sewage
- * Noise
- * Junked Cars

- * Abandoned Swimming Pool
- * Odor
- * Electrical Wiring
- * Plumbing

The following questions can be used in determining whether a nuisance is a public health nuisance. This is not a legal judgement; it is a professional judgement, based on public health principles and is normally made by a public health professional. While the answers to the following questions do not provide hard and fast answers to all problems, they may be used as a guide in making professional judgements about nuisance complaints.

1. Does the condition affect the "Public?"

This question is intended to help determine whether something is either a *private* or a *public* nuisance. If a problem affects even only one individual, it is reasonable to expect that other public will also be affected. It is the rare exception that a condition is so isolated as to not affect anyone other than the one individual.

___ NO: If the answer to this question is no, than the problem is of a private nature, and not within the scope of the board's authority.

___ YES: If the answer is yes, go to the next question.

2. Does the condition affect "Health" (i.e., is there a real or potential health risk)?

This question is intended to help determine whether the problem is affecting health.

- a. Can the condition cause or be expected to cause transmission of disease?
- b. Does the condition cause or is there a potential for the condition to cause trauma or injury to the public?
- c. Does the condition constitute or is there a potential for the condition to constitute an exposure to hazardous elements or substances that could adversely affect the health of the public?
- d. Is the subject of the complaint an unsafe or potentially unsafe structural or environmental condition?

___ NO: If the answer to this question is no, the problem is not of a health nature and is not a public *health* nuisance.

___ YES: If the answer is yes, go to the follow-up questions. This may help specify the nature of the health risk or help to quantify the degree of risk, if possible. It is important to describe the risk as completely as possible. This will help in defending the judgement that the problem represents a risk to the public health. Once you have completed this, go to *Using a Variety of Tools* (page 8).

Using a Variety of Tools

Properly categorizing the nuisance complaint will determine which set of tools to use in resolving the nuisance problem.

A legal remedy is not the only remedy to a nuisance problem. Public information, education, and consultation can be used to remind people that certain actions or conditions, if allowed to exist, can become a nuisance to others. This approach can encourage a "be kind to your neighbor" environment, may improve voluntary compliance with the law, and may prevent problems from developing. For example, uncontrolled dogs can become a serious problem. However, a friendly reminder or an informal warning is often all that is needed to assure that a careless dog owner will be more careful in the future.

It is necessary to distinguish between problems that are common and easily handled informally, and those that are potentially serious and not willingly resolved by the violators. If a nuisance does not pose a public health threat, the board is not required to take action. The board may find, however, that the nuisance may become a public health threat if nothing is done to correct the problem. Such a problem may be considered a *potential public health nuisance* and the board may act to prevent a public health nuisance from developing (through education and consultation).

The following question can be used in determining whether a nuisance complaint requires a legal remedy, or if education and consultation may get the same result.

3. Does the problem require enforcement action?

This question is intended to determine if non-legal remedies may be used.

- ___ NO: If the answer to this question is no, the board may use public information, education, or consultation to relieve the problem.
- ___ YES: If the answer is yes, it will be important to clarify the board's ability to enforce nuisance abatement authority. Go to *Clarifying Authority for Enforcement* (page 8).

Clarifying Authority for Enforcement

Cities, towns, and county boards of health all have the ability to establish local ordinances for the purposes of controlling nuisances. In some cases this ordinance authority includes specific provisions for the control of nuisances that affect health. Therefore, it is entirely possible for a town, city, or county, within a community health board's jurisdiction to have public health nuisance control authority and responsibility. However, only a community health board or board of health has the authority to base its public health nuisance enforcement activity on the State statutory authority contained in the Local Public Health Act (Minn. Stat. 145A).

It is important that a board and its staff understand the authority it is choosing to exercise in controlling nuisance problems. If a board is enforcing Minn. Stat. 145A.04 Subd 8, it must recognize the obligations and procedural requirements of that statute. If it is using local ordinances it must recognize that such authority is given in separate statutes

with separate obligations and procedural requirements. Having these differences clear will assure that local policy is consistent with State statute and promote due process in the control of nuisance problems.

The "Table of Board Organization" in the "Examples and Illustrations" section may help the board clarify its scope of authority and the specific sources of authority it may use to abate public health nuisance problems. Additionally, the following questions may be helpful in clarifying the board's authority relative to the authority possessed by towns, cities, or counties within its jurisdiction.

4. Is the problem specifically addressed in a local ordinance or in State statute other than Minn. Stat. 145A?

This question is intended to help determine which specific provision of state law is most appropriate to the particular problem. Without answering the fourth question, a board of health, for example, might take enforcement action that could have been taken by another unit of government within its jurisdiction, using separate and more specific statutory authority for the enforcement.

___ NO: If the answer to this question is no (but the answers to the previous questions are yes) the problem is a public *health* nuisance. It is also determined that if this problem will require enforcement action and that Minn. Stat. 145A is the appropriate source of that authority for enforcement. It is also important to remember that the board of health is the only entity authorized to base its enforcement activity on this particular statutory provision.

___ YES: If the answer to this question is yes, the legal entity responsible for the enforcement of the specific provision must be identified. Go to the next question.

5. Is the specific provision enforceable by a legal entity other than the board of health?

The purpose of this question is to identify the legal entity (i.e. town, city, county) with the authority to enforce the specific provision identified in question four.

___ NO: If the answer to this question is no, the board of health is the only legal entity with the ability to enforce the abatement authority. The board should prepare and serve the abatement order, specifically citing its authority in the order.

___ YES: If the answer is yes, the board should refer the complaint to the legal entity with the ability to enforce the abatement authority. Go to *Using Teamwork* (page 10).

Using Teamwork

Commitment and teamwork among the board, its attorney, and public health professionals are critical to a successful public health nuisance control program. This teamwork can help assure that the board responds to public health nuisance problems in a professional and efficient manner. It is also important that the board and its staff work closely with the other local governments within its jurisdiction. A close working relationship is critical in finding the most appropriate solution.

Public health nuisances are both a legal matter and a public health matter. A board should rely on its public health staff to determine whether a nuisance is a *public health* nuisance, and rely on its legal counsel for advice as it determines suitable legal remedies. Furthermore, the board should reverse or modify staff decisions only after careful consideration. If the board equivocates on staff decisions, it will weaken its staff's -- and its own -- ability to deal with such problems in the future.

Having a functional team requires having a working definition of a *public health nuisance* that is agreed to by all members of the nuisance control team. This agreement does not come easily. It comes with experience and a continuing dialogue among the team members. With experience, however, a board will demonstrate convincing competence and efficiency in its nuisance control efforts.

*A board should
rely on its public health staff
to determine whether a nuisance
is a public health nuisance
and rely on its legal counsel
for advice
as it determines suitable
legal remedies.*

As indicated in earlier sections of this Guide, nuisance problems are often the responsibility of another legal entity (city, town, county) within the board's jurisdiction. For example, if a nuisance problem is determined *not* to pose a threat to the public health, it may be considered a "public nuisance" and be referred to a town, city, or county under separate statutory authority or ordinance. It is important, in these situations, to realize that the applicable statutory authorities are different from those given to boards of health. The staff must understand these relationships and assure that their enforcement activities are consistent with state law. For example, a staff person acting on the city's authority to control a general nuisance problem should not be issuing an abatement order using the board of health's authority to control public health nuisances.

Finally, public health nuisance control efforts may also be frustrated by the assumption that once the nuisance is abated the job is done. Public health nuisances are often the symptom of a larger or deeper problem. For example, a garbage house is often the sign of some other problem that may require action on the part of other agencies (e.g., social services). A public health nuisance control team that uses the full scope of resources to control a problem will have greater success in the long run.

6. Will the board refer the problem to another entity (or abate the problem using its legal authority to do so)?

This question recognizes that a board of health may choose to either abate the problem, using Minn. Stat. 145A or other specific authority, or it may choose to refer the problem to another agency or legal entity. The decision will depend on the circumstances of the complaint and on the relationship the board has with the other entities or agencies.

- ☐ NO: If the board chooses *not* to refer the problem to another agency or entity, it must enforce the authority it has identified.
- ☐ YES: If the board chooses to refer the problem, it may be helpful to specify the authority it has identified as enforceable by the entity to which it is referring the problem.

7. Is the problem resolved?

This question is intended to determine whether the abatement activity was effective. Whether the abatement activity included enforcement activity, or involved education and consultation exclusively, it is important to determine that the nuisance has in fact been abated.

- ☐ NO: If the answer to this question is no, the board has several possible responses (See the sample "Policy and Procedure" on page 15).
- ☐ YES: If the answer is yes, the board should document or acknowledge the resolution of the complaint.

Putting It All Together...

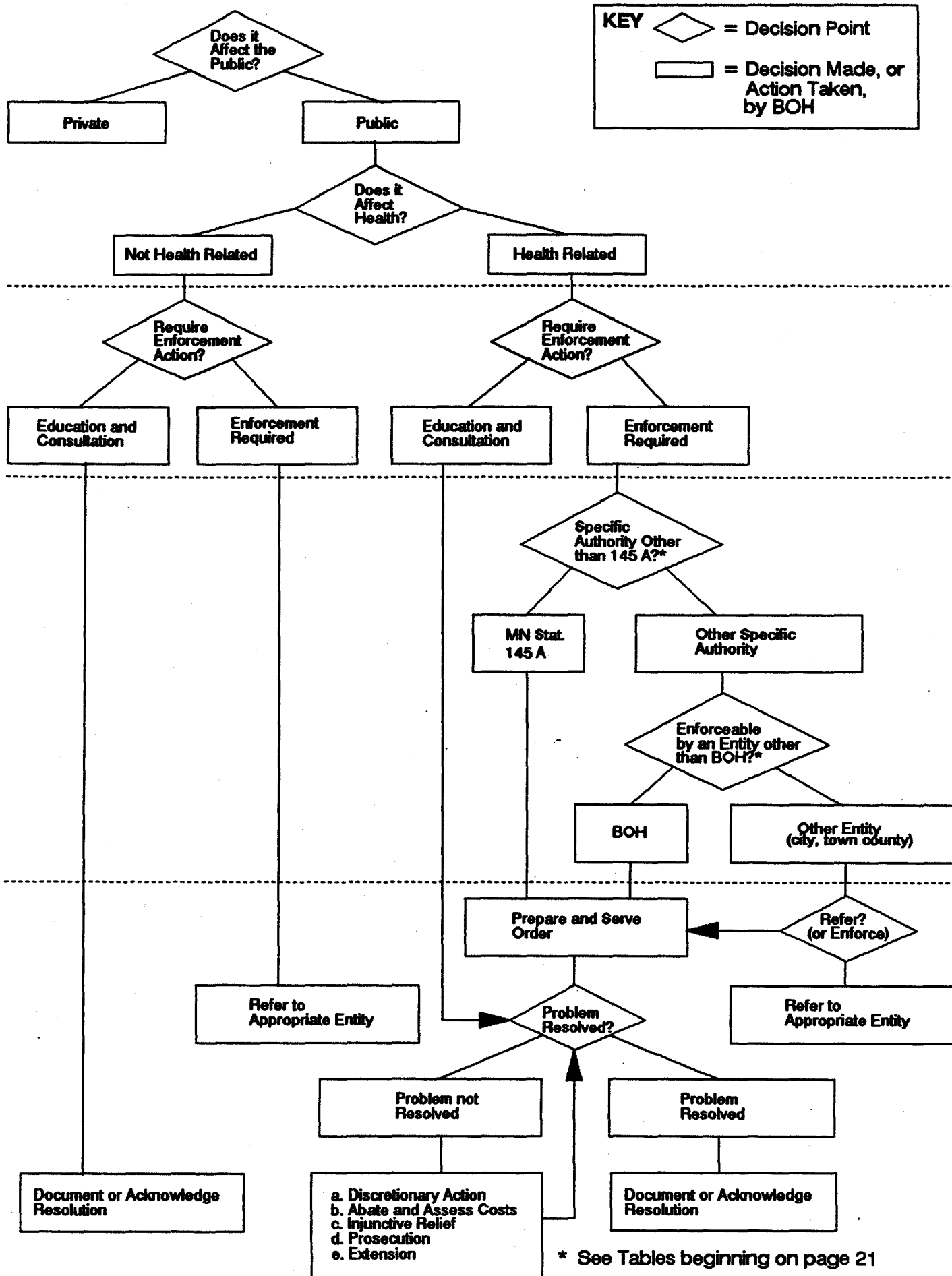
The "flow chart" on the next page illustrates the decision process described in this Guide. This chart is used in each of the case studies to show how, when consistently applied to nuisance complaints, this decision process can help the board in:

Defining the Problem..... 

Using a Variety of Tools..... 

Clarifying Authority For Enforcement..... 

Using Teamwork..... 



* See Tables beginning on page 21

Public Health Nuisance Control Policy and Procedures

Purpose:

Minnesota Statutes, Chapter 145A.04, places responsibility for Public Health Nuisance Control on Boards of Health. This policy and accompanying procedures is intended to ensure that the Board of Health responds to Public Health Nuisance Complaints in a consistent and timely manner.

Policy:

1. All Public Health Nuisance Complaints shall be investigated.
2. The definition of Public Health Nuisance shall be that definition as set out in Chapter 145A.02, Subdivision 17, "any activity or failure to act that adversely affects the public health." (See Case Studies, for examples of how one can utilize criteria for determining if this definition is met.)
3. The investigation of each nuisance complaint shall normally be within 10 working days and according to the procedures outlined herein.
4. The Board shall approve procedures, make budget appropriations, and promote the concept of a team approach between departments and/or agencies.
5. Complaints under the sole jurisdiction of another agency shall be referred to that agency.
6. In the event of an imminent threat to Public Health, immediate action shall be taken.
7. Discretion to allow an extension or to deviate from the standard procedures shall be provided.
8. The Board of Health shall handle data in accordance with the Government Data Practices Act (Minnesota Statutes, Chapter 13).
9. Abatement Notices shall be pursuant to Minnesota Statutes, Chapter 145A.04, Subdivision 8. (Time to remove or abate the Public Health Nuisance must be specified within an abatement notice, however the time specified must not exceed ten days.)
10. The Board's Attorney shall be notified whenever legal questions arise, whenever a warrant is requested and whenever abatement orders are considered.
11. All costs for abatement and administration may be recovered through assessment, pursuant to Minnesota Statutes, Chapter 145A.08, Subdivision 2.

Procedures:

I. Complaint Investigation

- A. Receive the complaint.** Upon receipt of a complaint, the Board of Health's Designated Agent will document the complaint. Designated Agent may include the Public Health Director, Public Health / Environmental Health Sanitarian, Medical Consultant, Public Health Nursing Services Director, Human Services Director, Planning and Zoning Administrator, and other individuals appointed by resolution of the Board of Health.
 - 1. Fill out complaint form (See Appendix B for Sample Forms).
 - 2. Log the complaint.
- B. Discretion**
 - 1. At the discretion of the Board of Health's Designated Agent and his/her Supervisor, the program may deviate from the order of nuisance enforcement if an individual situation requires such action.
- C. Verify the complaint.** The investigation will include questioning of witnesses and field inspection.
 - 1. Go to the location; or first
 - 2. Consult witnesses either by telephone or in person. Standards of Minnesota Statutes, Chapter 13, Government Data Practices, may apply to the collection of this data (See Appendix C for Chapter 13, Data Practices).
 - 3. If the complaint cannot be verified, document the reason for not proceeding.
- D. Investigate the complaint.**
 - 1. The Designated Agent investigating the Public Health Nuisance Complaint will provide identifying information (to the occupant and/or owner) of his/her authority.
 - 2. Reasonable effort shall be made by the Designated Agent to obtain permission to enter.
 - 3. If entry is refused or resisted, refer the case to the Board's Attorney for possible charges and/or the application for a warrant (See Appendix A for an example of an Administrative Search Warrant).
 - 4. If allowed entry, make the investigation and return with documentation (which may include photographs, written descriptions, videotape recordings, and/or audiotape recordings).

- E. Make a determination whether or not a Public Health Nuisance exists. The Community Health Board Agent makes this determination.
1. Public Nuisance. If a public nuisance exists, the source of statutory authority and entity that would enforce that authority is contained in the Flow Chart.
 2. Public Health Nuisance. The Guide contains a series of questions that will assist in making this determination:
 - a. Does the condition affect the "Public"?
 - b. Does the condition affect "Health", i.e., is there a real or potential health risk?
 1. Can the condition cause or be expected to cause transmission of disease?
 2. Does the condition cause or is there a potential for the condition to cause trauma or injury to the public?
 3. Does the condition constitute or is there a potential for the condition to constitute an exposure to hazardous elements or substances that could adversely affect the health of the public?
 4. Is the subject of the complaint an unsafe or potentially unsafe structural or environmental condition?
 - c. Does the condition require enforcement action?
 - d. Are there other statutes specific to this problem?
 3. Potential Public Health Nuisance. If the conditions encountered could pose a future public health problem, however have not progressed in seriousness or to an extent to constitute a Public Health Nuisance at the time of the investigation, education or consultation in the form of a follow-up letter or discussion with the responsible party is appropriate.
 4. Unsubstantiated Complaint.
- F. Abatement Notice.
1. If a Public Health Nuisance is found to exist, prepare a written Abatement Notice and obtain approval from the Board's Attorney (See Appendix B for Sample Forms). Include the following:
 - a. A description of the Public Health Nuisance, the Statute violated or if appropriate, the Section of the Ordinance violated.
 - b. The location of the Public Health Nuisance and a description of the real estate sufficient for identification.
 - c. The remedial action required to abate the Public Health Nuisance.

- d. The compliance deadline (0 - 10 days).
 - e. A statement developed with the advice of the Board's Attorney that if the remedial action is not taken, the County Board will abate the Public Health Nuisance and charge all costs incurred therein against the real estate as a special assessment to be collected in the same manner as property taxes.
2. Serve the Abatement Notice. The Abatement Notice shall be served on the occupant, owner, or agent of the property in one or more of the following ways:
- a. By registered or certified mail.
 - b. By an officer authorized to serve a warrant.
 - c. By a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice. (See Appendix B for Sample Form).
3. If the occupant and/or owner of the property is unknown or absent and has no known representative upon whom notice can be served, the Board of Health or its Designated Agent shall post a written or printed notice on the property stating that, unless the Public Health Nuisance is abated or removed within a period not longer than 10 days, the Board will have the Public Health Nuisance abated or removed at the expense of the owner, pursuant to Minnesota Statutes, Chapter 145A.08 or other applicable State or Local Law.
4. A reasonable attempt to locate the occupant and/or property owner and shall include contacting at least:
- a. The Assessor's Office
 - b. The Utilities Department
 - c. The Permitting Authority Files (The office responsible for granting any permits relevant to the property.)

G. Follow-Up.

1. Follow-up of the Abatement Notice will take place within __ working days after the compliance date.
2. If the Public Health Nuisance is not abated, the Designated Agent, the Board's Attorney and any other designated agent(s) shall pursue the next course of action, which could include:
 - a. Abatement. Removal or abatement of the Public Health Nuisance.
 - b. Assessment. Assessment of the cost of abatement or removal as a lien against the property (Minnesota Statutes, Chapter 145A.04, Subdivision 8).
 - c. Injunctive Relief. The local authority could seek an injunction in district court and prosecute as a civil case (Minnesota Statutes, Chapter 145A.04, Subdivision 9).
 - d. Prosecution. The local authority could choose to prosecute the violator in criminal court (Minnesota Statutes, Section 609.74 or Section 609.745).
 - e. Extension. At the discretion of the Board of Health's Designated Agent and his/ her Supervisor, the time period for compliance may be extended if an unusual situation exists, the violator has adequately communicated this situation, and is making acceptable progress toward resolution.

H. Resolution.

1. If the Public Health Nuisance is abated, the issue is resolved. For public relations purposes, a letter may be sent, signed by the Designated Agent, notifying the occupant and/or property owner of the resolution (See Appendix B for Sample Forms). When the information being released may be protected under the Data Practices Act, the Board's Attorney should be consulted.
2. Close the file.

II. Multi-Disciplinary Investigation

- A. The Designated Agent will inform his/her Supervisor of the need for involvement of representatives from other disciplines.**
- B. The Designated Agent will coordinate the actions of a multi-disciplinary investigative team that may include representatives from the following areas:**
 - 1. Child Protection**
 - 2. Adult Protection**
 - 3. Community Health**
 - 4. Environmental Health**
 - 5. Mental Health**
 - 6. Law Enforcement**
 - 7. Building Inspector**
 - 8. Planning and Zoning**
 - 9. Fire Marshal**
- C. The agent(s) shall confer and discuss the validity of the complaint with investigative team members.**
- D. Investigation documentation (which may include photographs, written descriptions, videotape recordings, and/or audiotape recordings) shall be retained by the Designated Agent's department. Standards of Minnesota Statutes, Chapter 13, Government Data Practices, may apply to the retention of this data. (See Appendix C for Chapter 13, Data Practices as of 1991 -- Refer to Minn. Laws and Statutes for more recent changes.)**
- E. Investigation by the multi-disciplinary team will proceed in the manner outlined in the preceding procedures.**

Illustrations and Examples

The previous section, "A Formal Policy Can Help" described a set of questions to consider when responding to a nuisance complaint and illustrated the decision process with a flow chart. This section provides two tables that can help in the process and gives a set of case studies for the purposes of demonstrating how the process might be used with real situations.

Two tables are included in this section.

The "Table of Specific Authorities" provides a list of specific statutory references pertaining to nuisances. It is organized by the type of problem (animals, noise, swamps, etc.). Used in combination with the flow chart it can help assure that the board does not rely exclusively on Minn. Stat. 145A, but that it use whatever authority is most appropriate given the circumstances.

The "Table of Board Organization" is similar to the "Specific Authorities" table in that it helps the board clearly identify the *scope* and specific *source* of its nuisance control authority. It also helps identify other *entities* within the board's jurisdiction that may have nuisance control authority. The exact nature of the board's relationship with these other entities will depend on how a community health board is organized (city, county, or multi-county). By using this table, a multi-county board, for example, can quickly identify which entities within its jurisdiction may have nuisance control authority.

Case Studies Based on Actual Situations

Lastly, this section provides case studies designed to illustrate how different types of nuisance problems, and different circumstances, require different approaches. Each case is analyzed with respect to the decision process described in the previous section and includes a highlighted flow chart, to illustrate how the process works with a variety of situations. These case studies are for illustration purposes only. Each real-life situation encountered, may have similarities to the case studies described, however, the professional judgement of the persons involved and the uniqueness of the situation may result in a different resolution to the problem.

These case studies are for illustration purposes only.

***The professional judgement of the persons involved
and the uniqueness of each situation
may result in a different solution to the problem.***

Table of Specific Authorities

<u>DEFINITION</u>	<u>SOURCE</u>	<u>ENTITY</u>	<u>METHOD</u>
Private:			
- Broad	561.01	Private Party	Civil Action
Public:			
- Broad	412.221, Subd 23 368.01, Subd 15	City Town	Ordinance Ord.
- Health	412.221, Subd 22 368.01, Subd 14	City Town	Ord. Ord.
- Animal	412.221, Subd 21 368.01, Subd 13	City Town	Ord. Ord.
- General Welfare	412.221, Subd 32 368.01, Subd 19	City Town	Ord. Ord.
- Noise & Disorder	412.221, Subd 24	City	Ord.
- Hazardous Buildings	463.151	City, Town	Ord.
- Swamps	429.021	City, Town	State Law
- Open wells, cesspools, cisterns	471.92	City, Town, County	State Law
- Residential Zoning	462.17	City	Ordinance

Table of Specific Authorities (continued)

<u>DEFINITION</u>	<u>SOURCE</u>	<u>ENTITY</u>	<u>METHOD</u>
Public Health:			
- Broad	145A.02, Subd 17	BOH	State Law
	145A.04, Subd 8	BOH	State Law
	145A.04, Subd 9	BOH	State Law
- Unsealed Wells	103I.111, Subd 6	County	State Law
- Broad	145A.05	County	Ordinance

* BOH = Board of Health

* Ord. = Ordinance

Table of Board Organization

When acting to enforce nuisance control authority, it is very important to clearly identify which legal entity is taking the action, the legal entity's scope of authority with respect to nuisance control, and the specific source of the entity's nuisance control authority. This is important to prevent a community health board, for example, from acting outside of its authority to control a non-health related nuisance.

Entity: This refers to the legal entity (county, city, township, board of health, etc.) as defined in state statute. For example, the board of health is a separate legal entity from the county board, even if its membership is identical to that of county board. These legal distinctions must be clear in ordinances and other policy to assure that board policy is consistent with state statute.

Scope: This refers to the scope of the entity's authority. For example, the scope of a community health board's authority is limited to *public health* nuisances as defined in Minn. Stat. 145A. On the other hand, a county board may act to control *non-health related nuisances* using other specific statute or local ordinances.

Source: This refers to the source of the entity's authority. There are many references to specific types of nuisances in state law. Clearly stating the source of the authority being used in abatement orders and in other nuisance enforcement communications can prevent, for example, a city council (that is not a board of health) from erroneously referencing Minn. Stat. 145A in its ordinance.

For Single County Board of Health:

<u>Entity</u>	<u>Scope</u>	<u>Source</u>
* Community Health Board (CHB)	Public Health Nuisances	Minn. Stat. 145A
* Board of Health within CHB (Township or City)	Public Health Nuisances	Minn. Stat. 145A
* County Board	Dangerous Excavations Public Health Nuisances	Minn. Stat. 471.92 Local Ordinance (Minn. Stat. 145A.05)
* City Council	Nuisances (including health)	Local Ordinance (Minn. Stat. 412.221) (Also, Minn. Stat. 429.021, 462.17 & 463.151)
* Township Board	Nuisances (including health)	Local Ordinance (Minn. Stat. 368.01 & Minn. Stat. 429.021)

For Multi-County Board of Health:

<u>Entity</u>	<u>Scope</u>	<u>Source</u>
* Community Health Board (Multi-County)	Public Health Nuisances	Minn. Stat. 145A
* Board of Health in CHS Area (Township, City, or County)	Public Health Nuisances	Minn. Stat. 145A
* County Board	Dangerous Excavations Public Health Nuisances	Minn. Stat. 471.92 Local Ordinance (Minn. Stat. 145A.05)
* City Council	Nuisances (including health)	Local Ordinance (Minn. Stat. 412.221) (Also, Minn. Stat. 429.021, 462.17 & 463.151)
* Township Board	Nuisances (including health)	Local Ordinance (Minn. Stat. 368.01 & Minn. Stat. 429.021)

For City Board of Health:

<u>Entity</u>	<u>Scope</u>	<u>Source</u>
* Community Health Board	Public Health Nuisances	Minn. Stat. 145A
* City Board of Health (Within Community Health Area)	Public Health Nuisances	Minn. Stat. 145A
* City Council	Nuisances (including health)	Local Ordinance (Minn. Stat. 412.221) (Also, Minn. Stat. 429.021, 462.17 & 463.151)

Case Studies



The following case studies illustrate many of the Public Health Nuisance Control Procedures in simulated situations to illustrate how one could handle different situations. Some of these situations actually occurred, however some facts have been changed to protect identity and editorial privileges taken to better illustrate specific points.

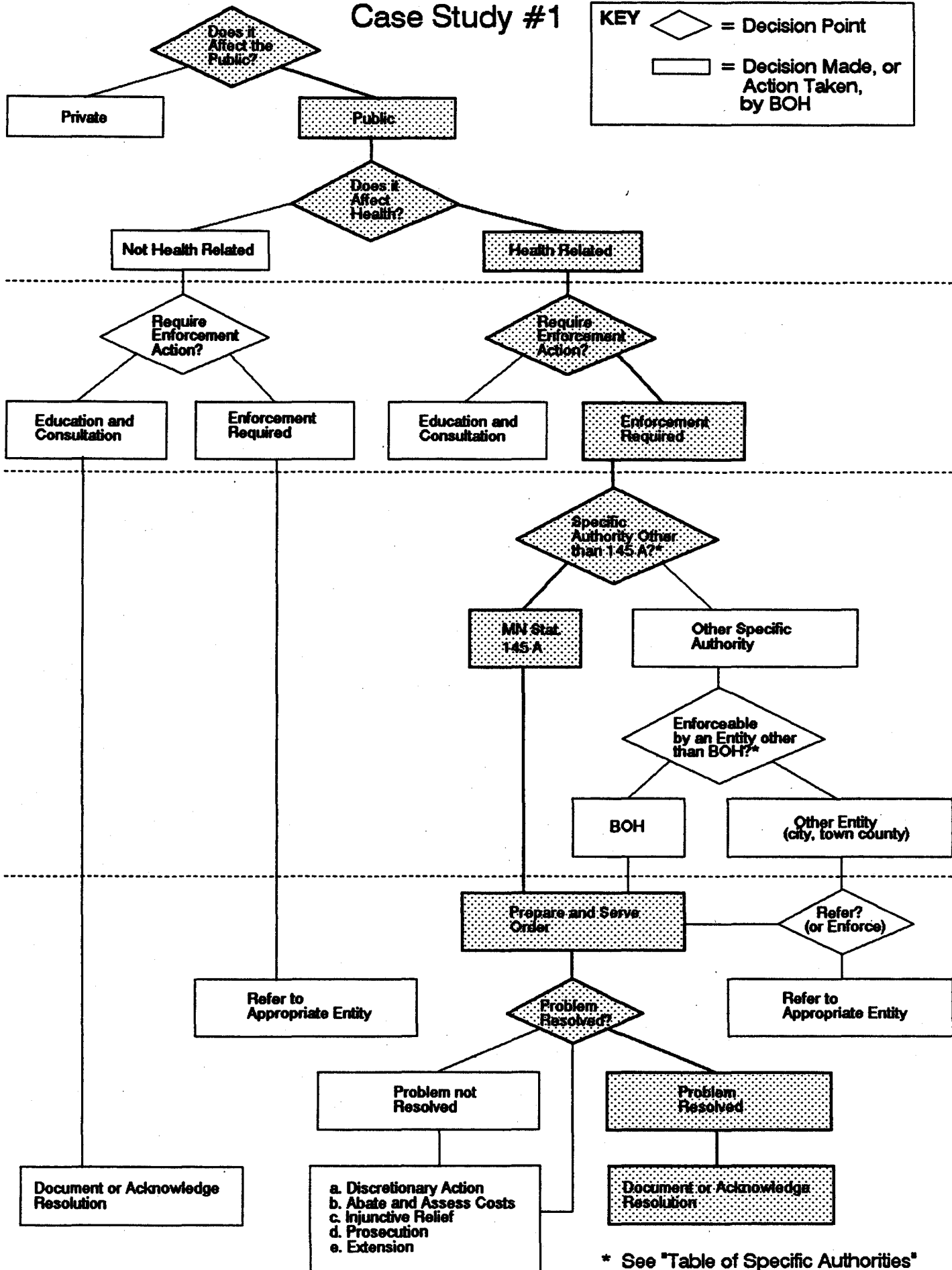
These case studies are for illustration purposes only. Each real-life situation encountered, may have similarities to the case studies described, however, the professional judgement of the persons involved and the uniqueness of the situation may result in a different resolution to the problem.

The "Table of Specific Authorities" and the "Table of Board Organization" may be helpful in reviewing these cases. Also, refer to the "A Formal Policy Can Help" and the "Policy and Procedure" sections of the Guide and review any points that need clarification.

**The professional judgement of the persons involved
and the uniqueness of the situation
may result in a different resolution.**

Case Study #1

KEY  = Decision Point
 = Decision Made, or Action Taken, by BOH



* See "Table of Specific Authorities"

CASE STUDY #1

Situation: A sand blasting firm was hired by a city to remove paint from one of the city's water towers. Work was started on a windy day. Paint dust blew into the surrounding residential area.

Complaint: The City Sanitarian was notified of the dust created in the neighborhood.

Verify/Investigate: Upon investigation the City Sanitarian determined that in addition to dust being generated, there was also lead in the dust from the old lead-based paint.

Make a Determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
It was recognized that the lead laden dust affected the people living in the area.
2. Does the condition affect "Health"?
It was recognized that the lead in the old paint was a severe hazard, especially to the young children in the area. In this case the exposure to the lead laden dust was considered to be exposure to a hazardous substance, since toxic levels of lead in young children can cause developmental disabilities and death.
3. Does the condition require enforcement action?
Yes, enforcement is required. The immediacy and severity of this threat was sufficient to rule out using an informal educational approach to gaining compliance.
4. Are there other statutes specific to this problem?
No, not at the time of this particular occurrence. Minnesota Department of Health Rules for Lead Abatement were enacted in April, 1991, and Minnesota Pollution Control Agency Rules specific to abrasive blasting were enacted in September, 1991, which could now be utilized as a means of enforcement.

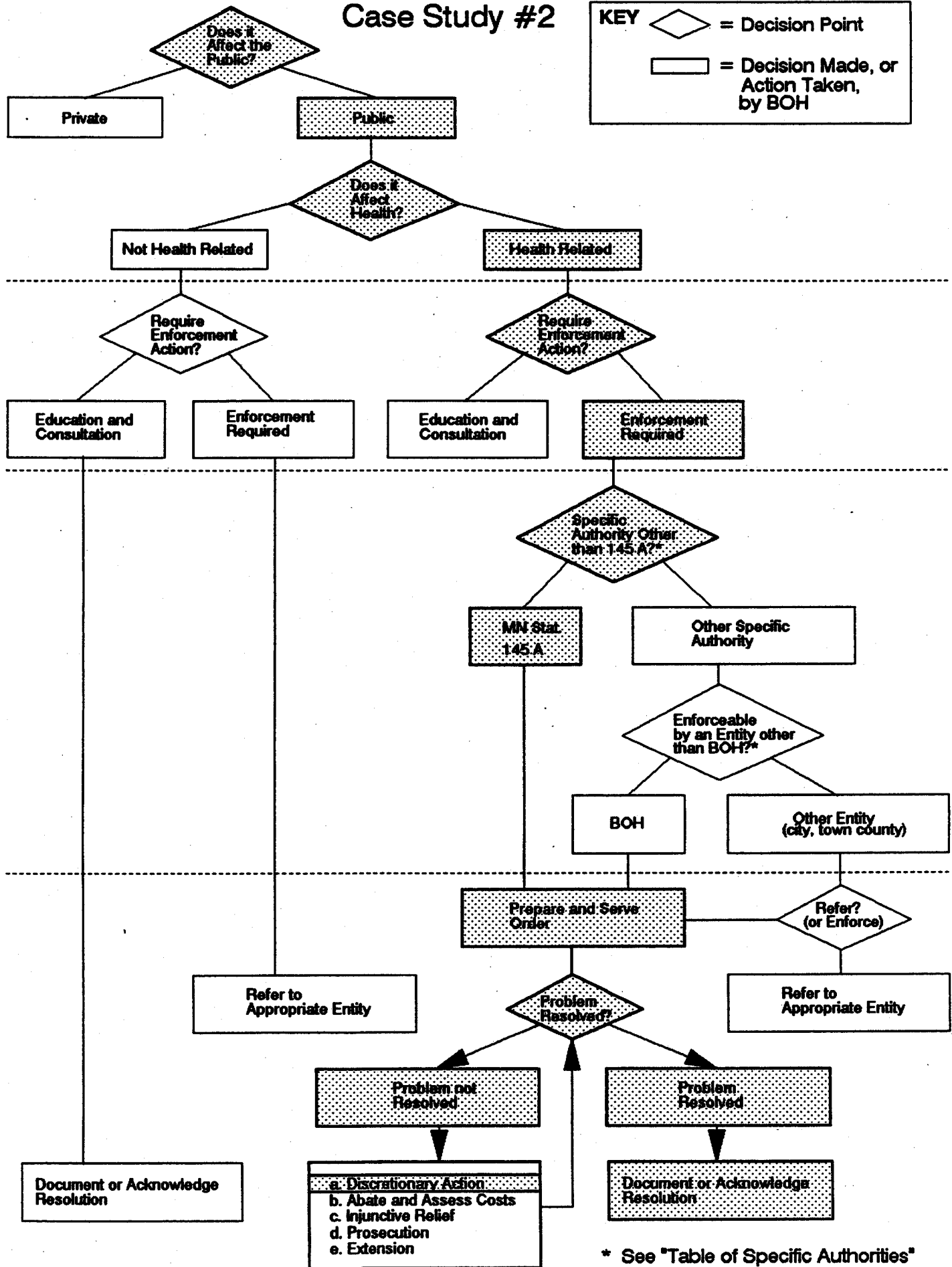
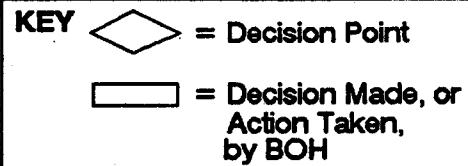
Determination: Public Health Nuisance, in order to resolve the situation quickly.

Abatement Notice: Orders were issued by the City Sanitarian, acting as an agent of the Community Health Board under the authority of Minnesota Statutes, Chapter 145A, to immediately shut down the operation until a procedure could be worked out to safely remove the paint.

Follow-Up: The sand blasting company constructed a shroud out of plastic film that completely enclosed the water tower from the top to the base. The debris from the sand blasting operation fell down within the shroud and was removed by vacuuming. Yards in private residences and elementary schools were also cleaned. The county provided blood lead testing at no cost to anyone wishing to be tested. Fortunately no elevated blood levels were found.

Resolution: A letter was sent to the sand blasting company confirming the resolution of the complaint and the file was closed.

Case Study #2



* See "Table of Specific Authorities"

CASE STUDY #2

Situation: An abandoned swimming pool existed in a new residential area. The pool had not been used for several years.

Complaint: A resident complained that the abandoned pool had an accumulation of water, dirt, and weeds (reeds and lily pads). The resident feared a child could fall into the pool and be hurt or drown.

Verify/Investigate: The complaint was substantiated by a visit to the site.

Make a Determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
It was determined that the condition affected at least the residents living in the area of the abandoned swimming pool.
2. Does the condition affect "Health"?
It was determined that the condition constituted an unsafe structural and environmental condition. The pool was easily accessible to area children, who could fall into the pool and be hurt or drown.
3. Does the condition require enforcement action?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
There were no other state statutes or local ordinances specific to this problem.

Determination: Public Health Nuisance.

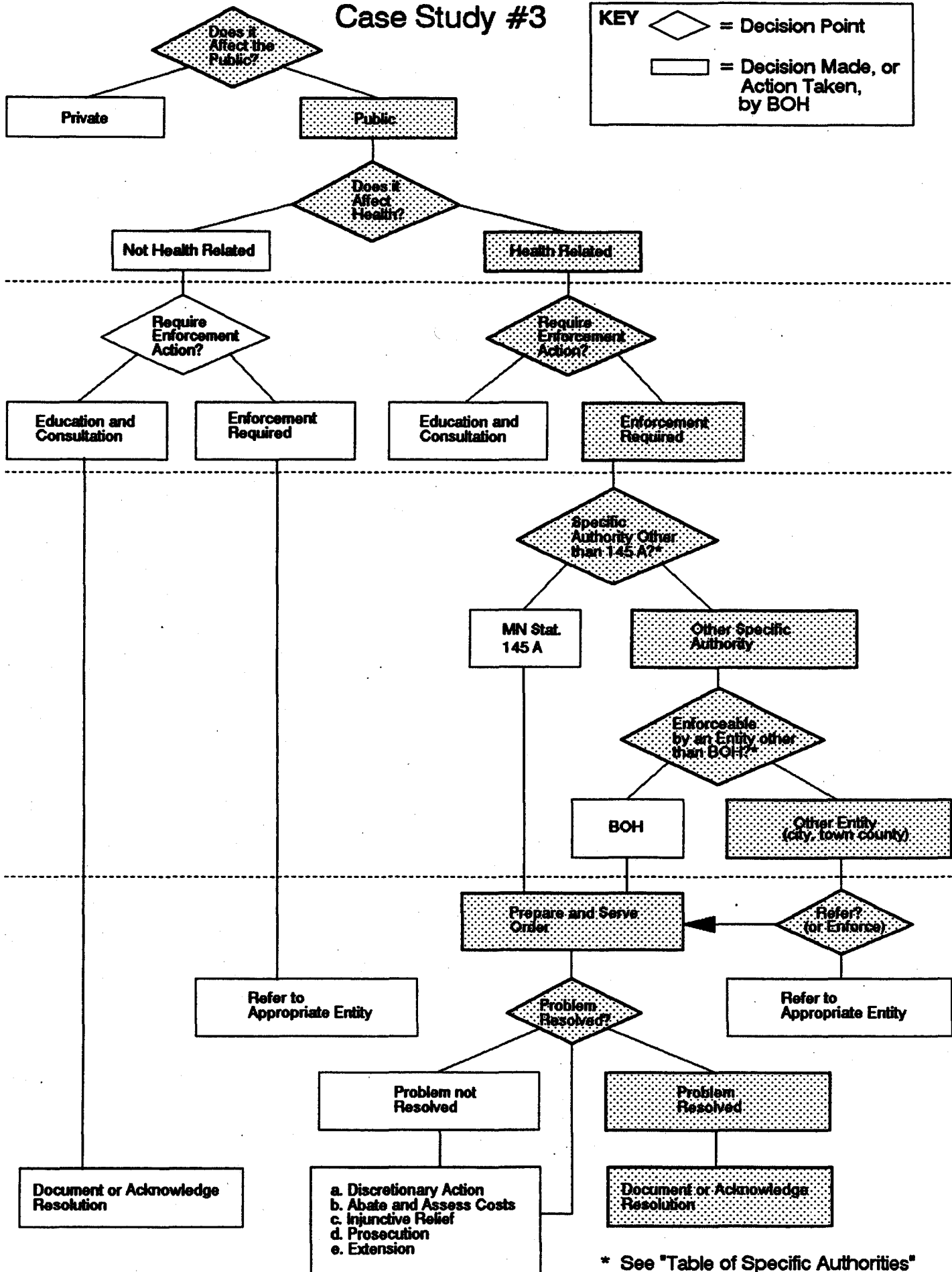
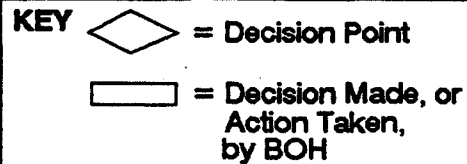
Abatement Notice: Orders were issued by the County Sanitarian, acting as an agent of the Community Health Board under the authority of Minnesota Statutes, Chapter 145A, to remove the pool within seven days. It was necessary to use the records at the Assessor's Office to locate the owner.

Follow-Up: At the 1st Follow-up the pool had not been removed yet. An agreement was made (Discretionary Action) that a snow fence be erected around the pool until such time that the pool could be filled with dirt.

2nd Follow-Up: The following Spring a bull-dozer came in and filled the pool with dirt.

Resolution: A letter was sent to the owner of the property confirming the resolution of the complaint and the file was closed.

Case Study #3



* See "Table of Specific Authorities"

CASE STUDY #3

Situation: An abandoned well existed on the property of an old farm site. The 30 feet deep, 3 feet in diameter well was lined with bricks and had several feet of water at the bottom. The cover for the well was constructed of plywood and held down with a couple of concrete blocks.

Complaint: The family living on the adjacent property had a three year-old son who rode his tricycle on their driveway located only 15 feet from the well. The safety of the child was a concern to the family.

Verify/Investigate: The County Sanitarian visited the site and took pictures of the well and its condition.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
It was determined that the condition affected the public, especially the family living on the adjacent property.
2. Does the condition affect "Health"?
It was determined that the cover of the well was unsafe structurally and injury to a person could occur if they were to fall into the well.
3. Does the condition require enforcement action?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
Yes, Minnesota Statutes, section 471.92 allows towns, cities and counties to regulate the maintenance or abandonment of open wells, cesspools, cisterns, etc. that are a danger to a considerable number of persons by defining them as public nuisances and abating them under public nuisance law. In addition, Minnesota Statutes, Chapter 103I gives authority for Minnesota Rules Chapter 4725, Department of Health, Water Well Construction Code, which has established standards for sealing abandoned water wells. Since this particular county is a Board of Health and has entered into a delegation agreement for the Water Well Program, Minnesota Statutes, Chapter 103L.111 and 103L.231 give authority to the Board of Health to order a property owner to take remedial measures if the well is a health or safety hazard.

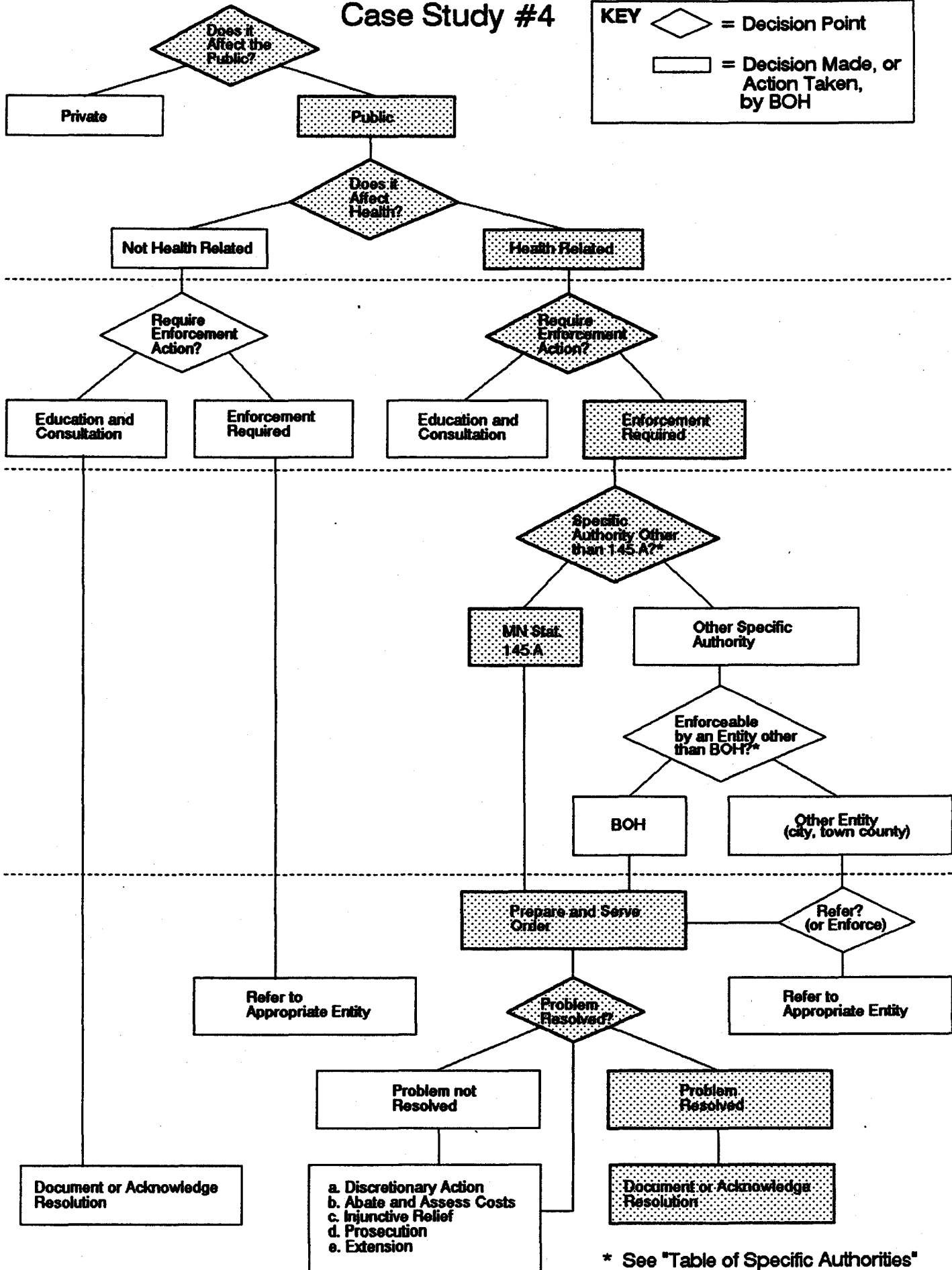
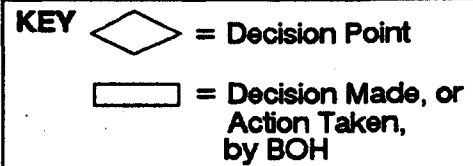
Determination: Public Nuisance.

Abatement Notice: Orders were issued by the County Sanitarian, acting as an agent of the Community Health Board under the authority of Minnesota Statutes, Chapter 103I, to have the well properly sealed and abandoned by a licensed water well contractor, within one month, and in accordance with the requirements of Chapter 4725, Minnesota Water Well Construction Code.

Follow-up: The well was properly sealed and abandoned.

Resolution: A letter was sent to the property owner confirming the resolution of the complaint and the file was closed.

Case Study #4



* See "Table of Specific Authorities"

CASE STUDY #4

Situation: Foul odor in an apartment building from an unknown source.

Complaint: The building management company complained to the county that there was a foul odor in the building from an unknown source.

Verify/Investigate: Upon investigation by the County Sanitarian it was determined that a resident of the building was skinning beavers in the basement of the building. The site visit revealed beaver skins stretched and drying in one corner, skinned carcasses piled on the floor that were blackened with age and decaying, and an intense odor problem.

Make a Determination: Is it a Public Health Nuisance ?

1. Does the condition affect the "Public"?
Given that this activity was being conducted in a common area of the apartment building with easy access by other residents and children, it was determined to affect the public.
2. Does the condition affect "Health"?
It was determined that the decaying animals could pose a potential transmission of disease.
3. Does the condition require enforcement?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
No.

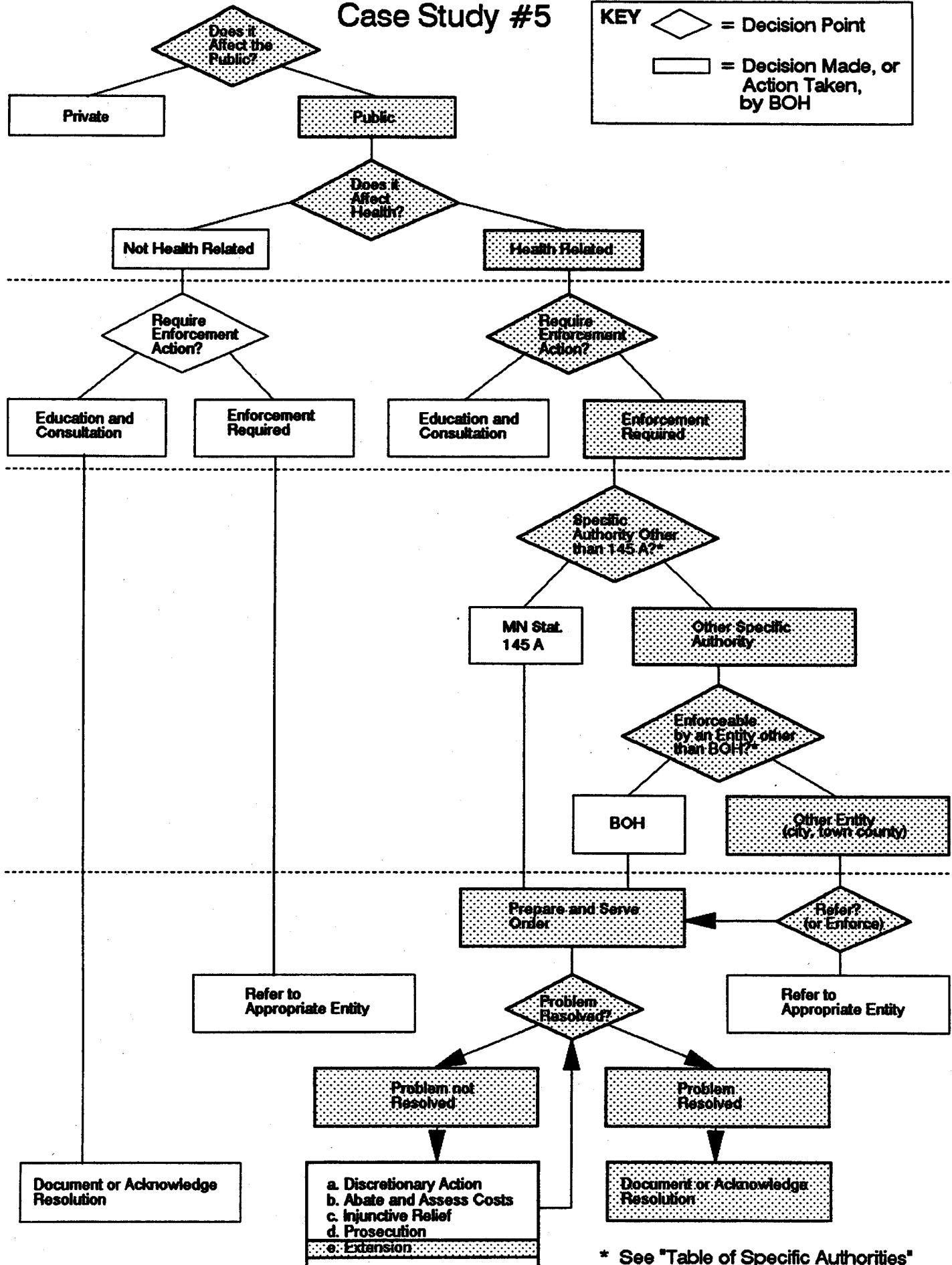
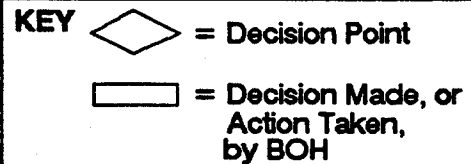
Determination: Public Health Nuisance.

Abatement Notice: Orders were issued by the County Attorney, acting as an agent of the Community Health Board under the authority of Minnesota Statutes, Chapter 145A, to cease operation and clean the area within five days.

Follow-Up: The site was cleaned and the trapping operation ceased.

Resolution: A letter was sent to the trapper to confirm resolution of the complaint and the file was closed.

Case Study #5



* See "Table of Specific Authorities"

CASE STUDY #5

Situation: A local stable operator had allowed a manure pile to accumulate to approximately 50 feet by 125 feet.

Complaint: The Sanitarian hired by a three-county community health board was notified of improper manure management at a stable in one of these counties; manure had been allowed to accumulate for over one year, resulting in a strong odor and many flies.

Verify/Investigate: Upon investigation the Sanitarian also noticed dirty water drainage/runoff from the pile to an agricultural tile inlet thirty yards away, in addition to the large accumulation of manure, odor and flies.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
Yes, it was determined that the odor and flies affected the person complaining. If the condition affects even only one individual, it is reasonable to expect that other public will also be affected.
2. Does the condition affect "Health"?
Yes. It was determined that the condition could cause transmission of disease and constituted an unsafe environmental practice.
3. Does the condition require enforcement?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
Yes, local ordinances regulated manure management and prohibited the drain-off to an agricultural tile.



Determination: Public Health Nuisance, in order to resolve the situation quickly.

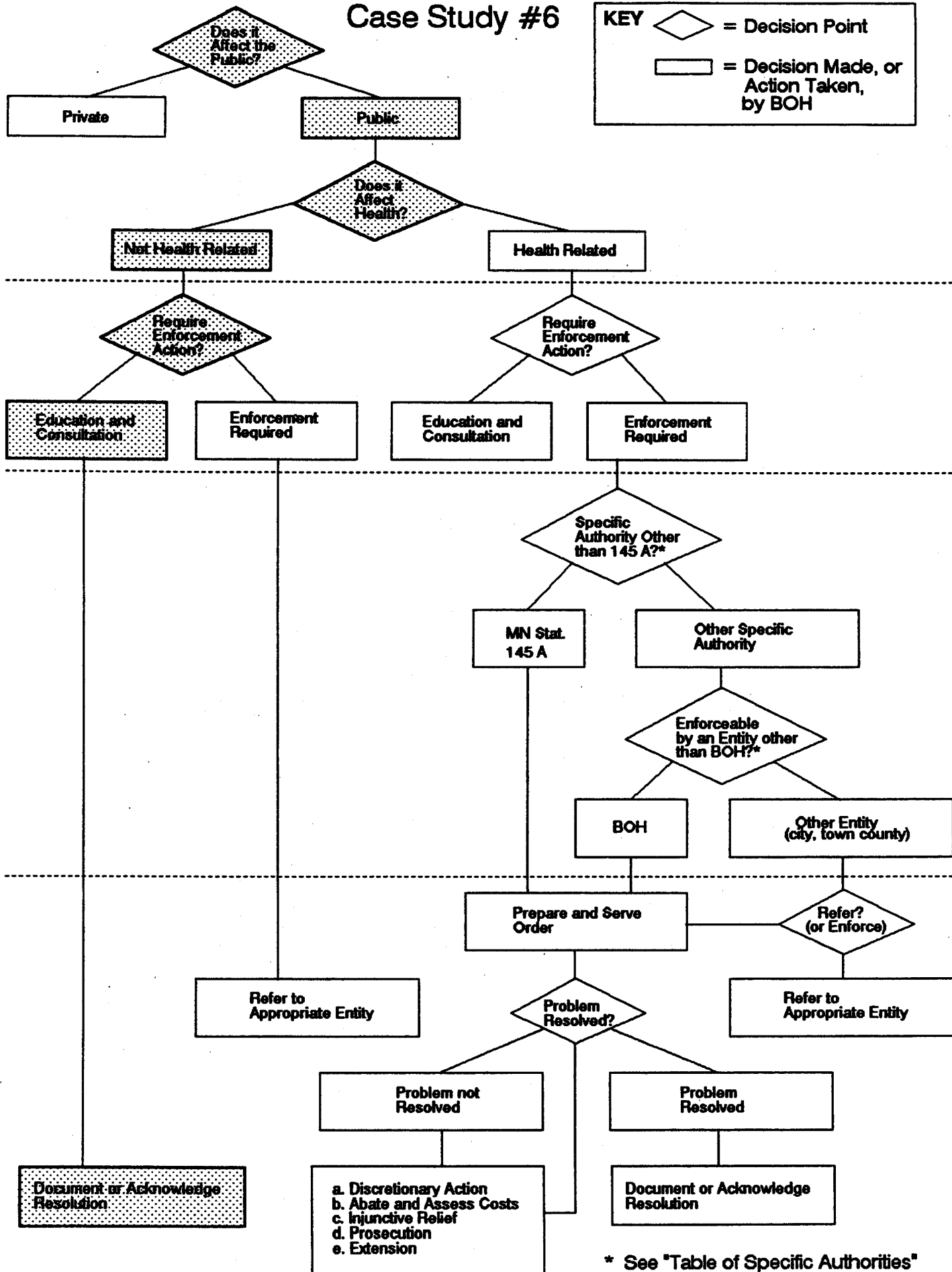
Abatement Notice: Orders were issued by the Sanitarian, acting as an agent of the Multi-County Community Health Board under the authority of Minnesota Statutes, Chapter 145A, to, within ten days, submit a written plan for disposal of the manure, to request in writing permission for land spreading and to develop measures to be taken to avoid future accumulations, in addition to the removal of the existing accumulation of manure.

Follow-Up: The operator received permission for land spreading and removed the existing pile of manure within the ten days. Since progress was being made on the written plan for removal of future accumulations of manure, compliance on this aspect of the order was extended two weeks (Extension).

Resolution: A letter was sent to the property owner confirming resolution of the complaint and the file closed.

Case Study #6

KEY  = Decision Point
 = Decision Made, or Action Taken, by BOH



* See "Table of Specific Authorities"

CASE STUDY #6

Situation: A dog likes to bark, when the Bloom County Community Band holds rehearsals in the band shell at the park.

Complaint: A complaint is received by the County Sanitarian that the noise from the barking dog is driving an elderly person's housekeeper "loony" and the person fears that they will lose their housekeeping services.

Verify/Investigate: The County Sanitarian investigated the situation and determined that indeed a dog was barking during the rehearsal time.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
Yes.
2. Does the condition affect "Health"?
The sanitarian determined that health was not affected.
3. Does the condition require enforcement action?
The sanitarian determined that enforcement was not required, however chose to use consultation as a technique to address the concerns of the person.

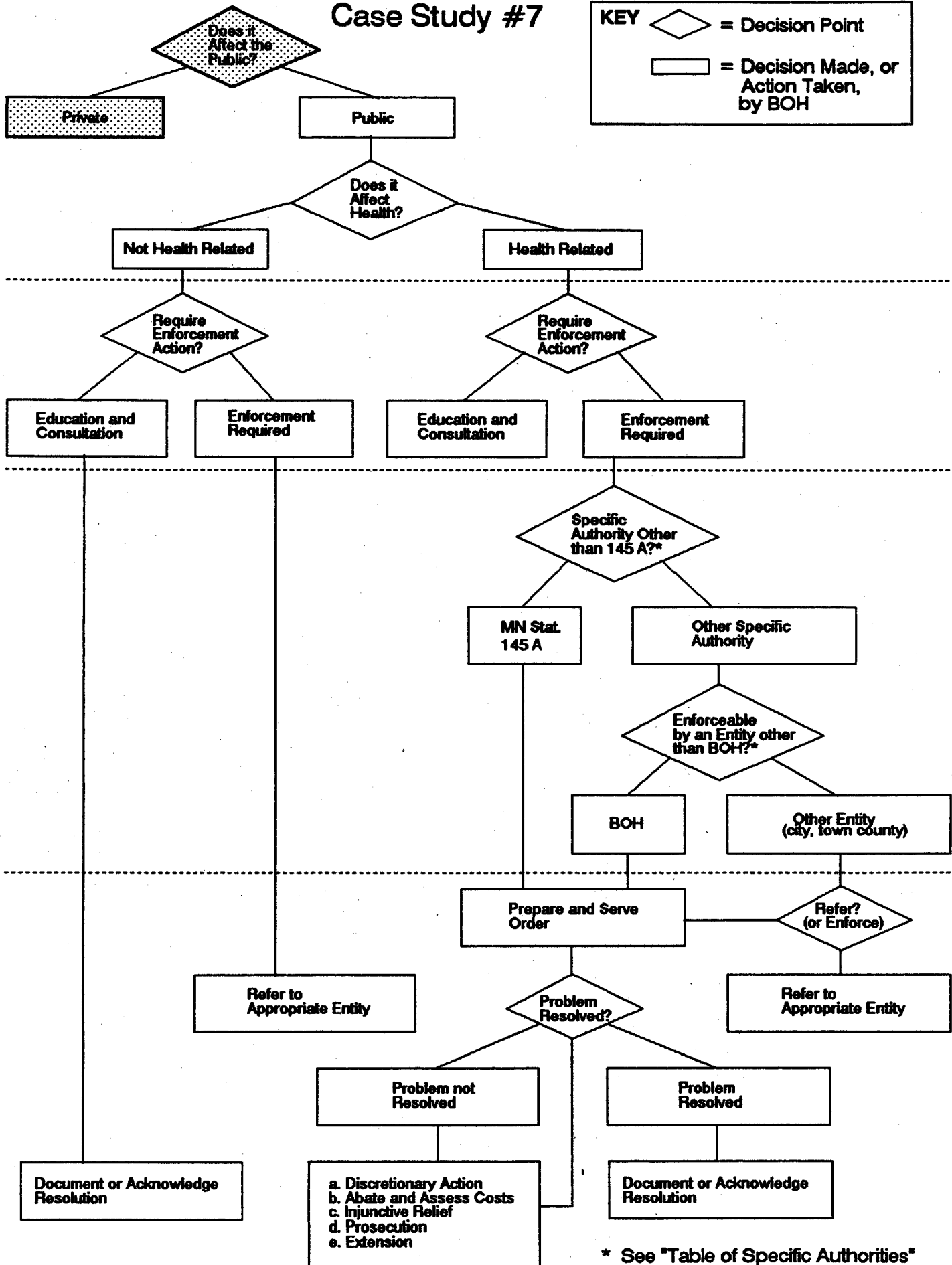
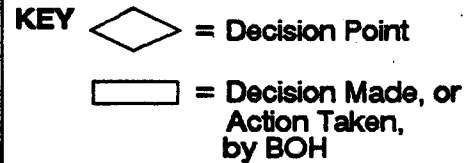
Determination: Not a Public Health Nuisance at this time.

Abatement Notice: None

Follow-Up: None

Resolution: A letter was sent to the concerned citizen confirming that on (date) a consultation had occurred to discuss possible remedies that the citizen could take to lessen the impact of the barking dog, including closing of windows and rescheduling of housekeeping services for a different day of the week. The file was closed.

Case Study #7



* See "Table of Specific Authorities"

CASE STUDY #7

Situation: There is a bag of garbage that has been sitting in a garage for a week.

Complaint: The County Sanitarian receives a complaint that there is an accumulation of garbage at a residence. There is a tremendous odor problem and the party has not removed the garbage for weeks. Litter is also strewn all over the property.

Verify/Investigate: The County Sanitarian investigated the situation and found one bag of garbage in the garage of the residence. The garbage indeed had a foul odor, however was not excessive. The property owner indicated that the sanitary pick-up service, which had been cancelled by their spouse during current divorce proceedings, had not been renewed. The person suspected their spouse of the complaint and indicated the garbage would be taken care of tomorrow. There was no litter on the premises.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
No, the sanitarian determined that there was no excessive odor problem. There was no debris or litter.
2. Does the condition affect "Health"?
Not Applicable.
3. Does the condition require enforcement action?
Not Applicable.
4. Are there other statutes specific to this problem?
Not Applicable.



Determination: Unsubstantiated Public Health Nuisance Complaint;
(Private Dispute)

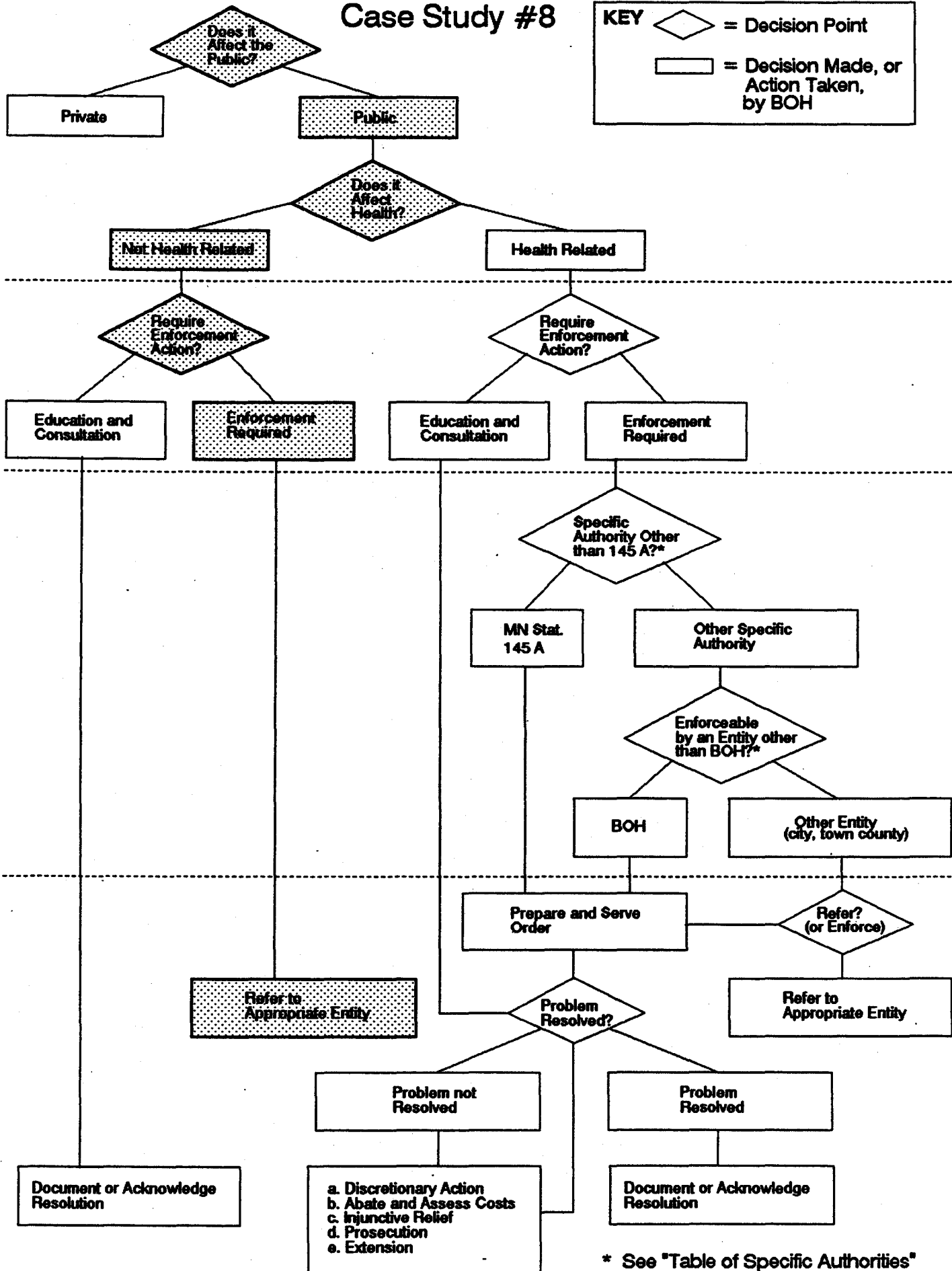
Abatement Notice: None

Follow-Up: None

Resolution: A letter was sent to the citizen confirming that on (date) an investigation of the premises confirmed that no public health nuisance was found to exist in reference to the complaint received. The file was closed.

Case Study #8

KEY  = Decision Point
 = Decision Made, or Action Taken, by BOH



* See "Table of Specific Authorities"

CASE STUDY #8

Situation: An old car with a cracked windshield, rusty body, torn car seats and slashed tires sits on the boulevard of a busy county road in Bloom County. The car has been sitting there for two months.

Complaint: A citizen complains to the county that this junked car is a public nuisance.

Verify/Investigate: The County Sanitarian investigates and indeed finds the car in the condition described. There are no animals harboring in or near the vehicle and no other obvious problem. The owner is angered by the complaint and investigation. The person exclaims to the sanitarian, "I'll park my car where I want, and when I want!"

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
Yes, it was determined that the junked, abandoned car affected the public by existing as an eyesore along this roadway.
2. Does the condition affect "Health"?
No, it was determined that in the present condition and with no current harborage of animals that the health of persons was not affected.
3. Does the condition require enforcement action?
Yes, enforcement is required. It was determined that the car was on public property.
4. Are there other statutes specific to this problem?
Yes, Minnesota Statutes, section 368.01 allows towns to adopt and enforce local ordinances. This township has a local ordinance which maintains that a vehicle left abandoned for more than two weeks is determined to be a nuisance and must be removed.

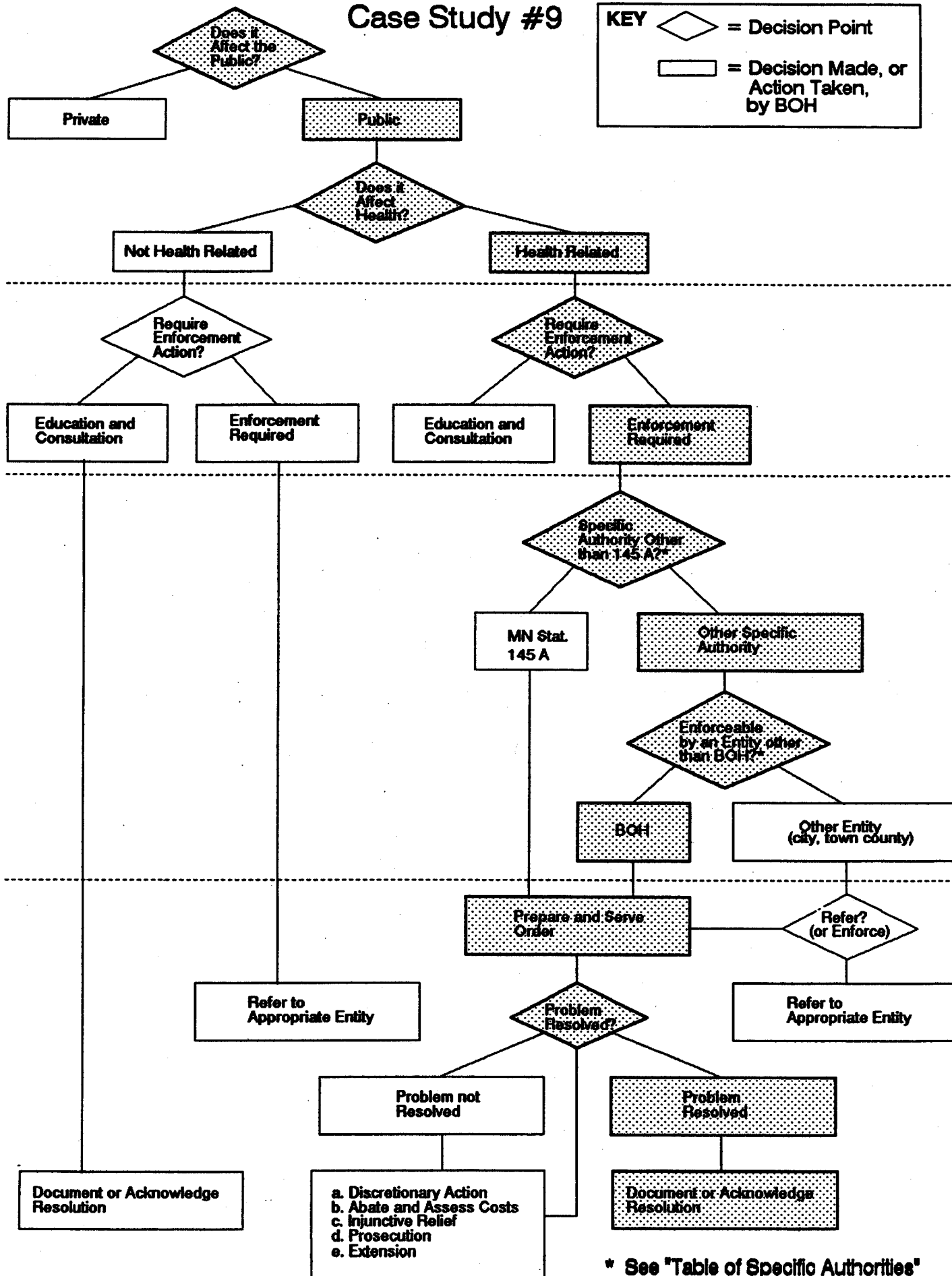
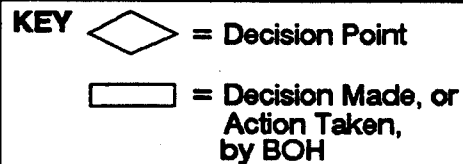
Determination: Refer to appropriate entity.

Abatement Notice: An order to remove the abandoned car is issued to the car owner by the Deputy Sheriff, acting as an agent of the Township Board, under the authority of the local township ordinance.

Follow-Up: The car was removed by the owner.

Resolution: A letter was sent to the owner confirming the resolution of the case and the file was closed.

Case Study #9



* See "Table of Specific Authorities"

CASE STUDY #9

Situation: A place of refreshment (tavern) licensed by the county that relied on its own well for a water supply was given a routine inspection by the County Sanitarian. A sample of the water was analyzed for nitrate nitrogen. The results (50 mg/L) showed the level to be unacceptable.

Complaint: No complaint was registered by a member of the public, however the inspecting sanitarian is aware of a problem.

Verify/Investigate: This situation arose as a part of a routine monitoring process established by the county for places of refreshment. The county has a written delegation agreement for licensing and inspection of food, beverage and lodging establishments.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
Yes.
2. Does the condition affect "Health"?
Yes, there is a potential for the condition to constitute an exposure to a substance that could adversely affect the health of the public. The maximum level permissible by the Environmental Protection Agency Standards for Public Drinking Water is set at 10 mg/L of nitrate nitrogen. In addition high nitrate nitrogen levels in drinking water pose a risk to some infants and can cause a condition known as methemoglobinemia or "blue babies". Infants under six months of age are most susceptible, however susceptibility can vary due to differences in individual body chemistry. (Other information on nitrate nitrogen levels in water supplies can be obtained from the Minnesota Department of Health).
3. Does the condition require enforcement action?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
Yes. Minnesota Statutes, Chapter 157 governs the licensing and inspection of food, beverage and lodging establishments serving the public. The State of Minnesota has adopted a drinking water standard of 10 milligrams per liter (10mg/L) for nitrate nitrogen (Minnesota Statutes, Chapter 144). This standard is mandatory for public water supplies. Since this county is a Board of Health and has a delegation agreement for Food Beverage and Lodging Establishments (Minnesota Statutes, Chapter 145A), the Board of Health must enforce the rules adopted under Minnesota Statutes, Chapters 144 and 157.

Determination: Violation of Minnesota Rules promulgated for the regulation of licensed establishments.

Abatement Notice: An abatement order was not issued, since it was determined that this situation was not determined to be a Public Health Nuisance. However licensing orders, applicable to this licensed establishment, were issued by the County Sanitarian, acting as an agent of the Board of Health, to: Post a notice that "Samples of water have shown the nitrate nitrogen levels to exceed the maximum level permissible by the Environmental Protection Agency Standards for Public Drinking Water of 10mg/L of nitrate nitrogen" until the establishment could provide potable water by means of a new approved well, by finding another source of water or by an approved point-of-use water treatment device.

Follow-Up: Since high nitrate nitrogen levels were consistently a problem in this county, a new well was not mandated. A distillation unit was installed for drinking water at the bar and a reverse osmosis unit was installed for water supplying all other faucets. Upon re-sampling the water with these devices in place, the results (2mg/L) met the requirements for an acceptable nitrate nitrogen level.

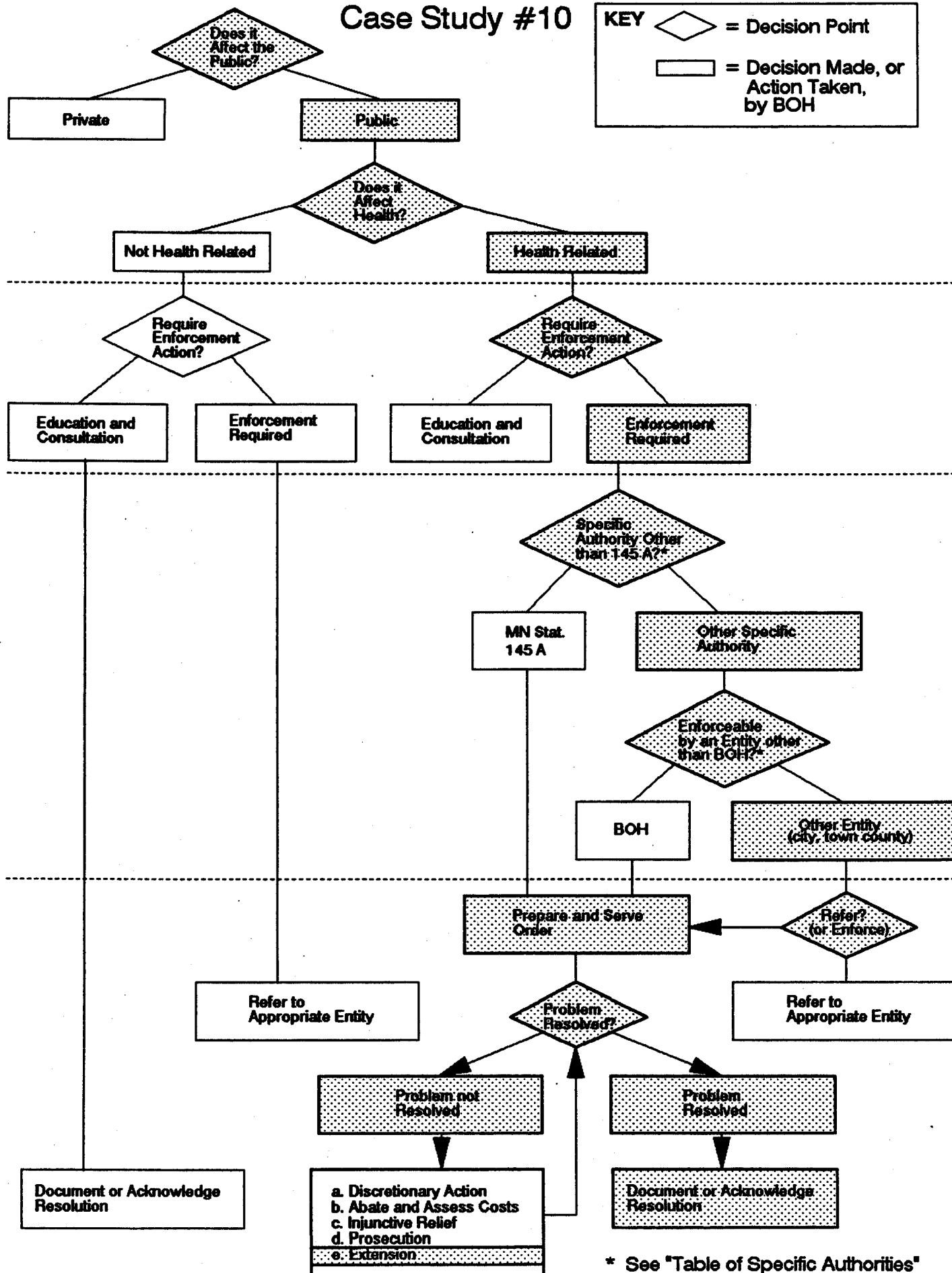
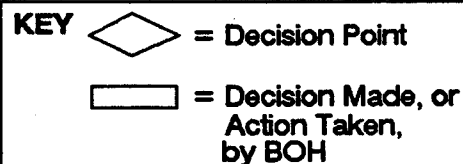
Resolution: Licensing orders were noted as corrected at the time of re-inspection.

CASE #10

(Next Page)



Case Study #10



* See "Table of Specific Authorities"

CASE STUDY #10

Situation: A person failed to come to work one morning. Police found the person unconscious on the kitchen floor with alcohol bottles scattered around. The person owned the duplex and the residence was noticeably filled with trash.

Complaint: The person is living in an unsanitary environment.

Verify/Investigate: The County Sanitarian discussed the situation with the investigating police officer, the county adult protection intake person and the city housing inspector in the city where the person lived. A joint site inspection of the duplex was made by the sanitarian and housing inspector.

Make a determination: Is it a Public Health Nuisance?

1. Does the condition affect the "Public"?
It was determined that the public was impacted, especially the individuals living in the duplex as well others with whom the person worked and with whom they interacted.
2. Does the condition affect "Health"?
It was determined that the person's unsanitary living conditions impacted their health condition and therefore impacted the health of individuals with whom the person worked and with whom they interacted.
3. Does the condition require enforcement action?
Yes, enforcement is required.
4. Are there other statutes specific to this problem?
Yes, local ordinances covered general housing conditions.

Determination: Public Health Nuisance, in order to resolve the situation quickly.

Abatement Notice: A meeting was held in the city offices between the county sanitarian, the city housing inspector and the person. Orders were issued by the County Sanitarian, acting as an agent of the Community Health Board under the authority of Minnesota Statutes, Chapter 145A, to clean the premises within three days. The city housing inspector suggested cleaning firms.

Follow-Up: Since progress was being made and someone had been hired to clean the premises, additional time was allowed (Extension). Within ten days 36 cubic yards of paper, trash and other unwanted and unused items were removed.

Resolution: A letter was sent to the occupant, the police officer, the county adult protection intake person and the housing inspector confirming the resolution of the complaint and the file was closed.

NOTE: Although many situations may be resolved readily, given different circumstances, alternate methods may need to be used. For example, the following alternate scenario may occur.

Alternate Scenario 10-A: Abate and Assess Costs

Follow-Up: No progress was made. The county hired a private company to clean the premises. The board covered the cost of this expense using the budget appropriation it had authorized for this type of clean-up. The costs incurred were assessed and charged against the real property and were recovered from the property owner in this manner (Minn. Stat. 145A.08 subd. 2 c).

Resolution: A letter was sent to the occupant, the police officer, the county adult protection intake person and the housing inspector confirming the resolution of the complaint and the file was closed.

APPENDIX A

**SAMPLE
ADMINISTRATIVE SEARCH WARRANT**

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
OTHER CIVIL

APPLICATION FOR
ADMINISTRATIVE SEARCH
WARRANT AND SUPPORTING
AFFIDAVIT

STATE OF MINNESOTA)
COUNTY OF CARVER) SS.
COUNTY OF CARVER)

---, being first duly sworn upon oath, hereby makes application to this Court for a warrant to search the premises hereinafter described for the purpose hereafter described.

Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of her own knowledge, save as to such as are herein stated on information and belief, and as to those, she believes them to be true.

Affiant has good reason to believe, and does believe, that the following condition exists in the __ of __, County of Carver, State of Minnesota, to wit:

This affiant applies for issuance of a search warrant upon the following grounds:

1. The above indicates reasonable suspicion that contagion, infection, filth, or other source of preventable disease exists in said building, conveyance, or place.

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

Affiant, as an agent of Carver County Community Health Services, has a right to enter and inspect for a public health nuisance under Minn. Stat. 145A.04, Subd. 7, and an obligation to enforce removal of said nuisance under Minn. Stat. 145A.04, Subd. 8.

WHEREFORE, Affiant requests a search warrant be issued, commanding ---, Carver County Community Health Services, and those individuals under her direction, to search the hereinbefore described premises for the above described condition and to make photographic or videographic records of said condition.

Signature

Subscribed and sworn to before me this ____ day of
_____, 1991.

Judge of District Court

SEARCH WARRANT

**STATE OF MINNESOTA
COUNTY OF CARVER**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT
OTHER CIVIL**

TO: ---, Carver County Community Health Services, and those individuals under her direction.

WHEREAS, --- has this day on oath, made application to the said Court applying for issuance of a search warrant to search the following described premises:

located in the ___ of ___, County of Carver, State of Minnesota, for the following described conditions:

AND WHEREAS, the application and supporting affidavit of --- were duly presented and read by the Court, and being fully advised in the premises,

NOW, THEREFORE, the Court finds the probable cause exists for the issuance of a search warrant upon the following grounds:

1. Reasonable suspicion that contagion, infection, filth, or other source of preventable disease exists in said building, conveyance, or place.

NOW, THEREFORE, YOU, ---, CARVER COUNTY COMMUNITY HEALTH SERVICES, AND THOSE INDIVIDUALS UNDER YOUR DIRECTION, ARE HEREBY COMMANDED, IN THE DAYTIME ONLY, TO SEARCH THE DESCRIBED PREMISES FOR THE ABOVE DESCRIBED CONDITION AND TO MAKE PHOTOGRAPHIC AND VIDEOGRAPHIC RECORDS OF SAID CONDITION.

BY THE COURT:

dated: _____

Judge of District Court

**DISTRICT COURT
FIRST JUDICIAL DISTRICT
OTHER CIVIL**

I, ---, received the attached search warrant issued by the Honorable _____, on _____, 19____, and have executed it as follows:

I made a photographic and/or videographic record of the condition of the premises.

STATE OF MINNESOTA)
) SS.
COUNTY OF CARVER)

I, ---, being duly sworn, depose and say that I have read the foregoing receipt and return and the matters stated are true and correct, except as to such matters stated therein on information and belief, and as to those, I believe them to be true.

Subscribed and sworn to before me this _____ day of _____, 199__.

Notary Public

APPENDIX B

SAMPLE FORMS

These sample forms represent the diversity of forms currently being utilized, in 1991, by various counties in the State of Minnesota.

Complaint Intake Forms and Checklist

Abatement Notices

Proof of Service of Abatement Notice

Work Order

Follow-up Letter sent on Resolution of Abatement

CASS-TODD-WADENA-MORRISON BOARD OF HEALTH

ENVIRONMENTAL HEALTH NUISANCE COMPLAINT INVESTIGATION RECORD

Part I - Intake Information

DATE/TIME _____ RECEIVED BY _____
PHONE CALL _____ LETTER _____ IN PERSON _____ REFERRED TO _____
NAME OF COMPLAINANT _____ TELEPHONE _____
ADDRESS _____

Part II - Complaint

NATURE OF COMPLAINT _____

LOCATION OF NUISANCE: ADDRESS _____
AND/OR SECTION _____
TOWNSHIP _____

NAME OF OWNER AND/OR OCCUPANT OF PREMISES INVOLVED IN COMPLAINT _____

Part III - Findings

DATE _____ TIME _____

FINDINGS: _____

ORDINANCE OR STATUTE VIOLATED _____

ACTION TAKEN: _____ Unsubstantiated, no further follow-up. Referred to
Reason _____

_____ Referred for Abatement to Public Health, Date _____

DATE OF FOLLOW-UP INVESTIGATION _____

Designee (Inspector)

ENVIRONMENTAL HEALTH NUISANCE COMPLAINT FINDINGS CONTINUED:[illegible]

Washington County Public Health Department Complaint Form

14900 61st Street North P.O. Box 6
Stillwater, Minnesota 55082
779-5445

Location

Date

Time

Received by

From

Complainant

Name

Address

Telephone

Complaint

Name

Address

Telephone

Nature of Complaint

Action Taken

COMPLAINT LOG

[illegible]

ENVIRONMENTAL COMPLAINT FORM

- A. SERVICE CODE NUMBER: _____ B. Recd. by: _____ Time: _____ Date: _____
- C. Staff Referral: Env. Tech. _____ Residential/Commercial (Solid Waste/Nuisance)
Section Sanitarian: _____ Licensed Establishment, Illness _____
- D. Minnesota Statutes, Section 13.44, Property Complaint Data
● All data is confidential while investigation is active. (See M.S. 13.02, 13.39, and 13.41)
● The names of individuals who register complaints concerning violations of laws or ordinances are classified as confidential.
- E. RESPONSIBLE PARTIES:
Owner's Name _____ Phone _____ Address _____
Renter's Name _____ Phone _____ Address _____
- F. Address of Problem _____ Zip Code _____
Township/Subdivision _____ Section/Subsection _____
Other Directions _____
- G. PROBLEM DESCRIPTION:
- H. INVESTIGATION RECORD: ● Refer to Building & Safety if residence/apt. in City of Rochester
Date Staff Name Descptn. of invest. findings, action taken, or referral to other agency
- I. Onsite Visit made? (Yes) (No)
- J. Filing Needs: CHS _____, Case _____
- K. Supervisor reviewed before filing _____

ORDINARY SUMMARY ABATEMENT CHECKLIST

ADDRESS _____ C.T. _____

S.N. _____ PIN _____

If abatement cost over \$2000 or building to be torn down use Substantial Abatement

☐ Refuse ☐ Weeds ☐ Accessory structure ☐ Interior ☐ PLEASE REQUEST TITLE SEARCH FROM CITY ATTORNEY
☐ Other _____

_____ I RECOMMEND SUMMARY ABATEMENT _____
date inspector's signature

_____ SUMMARY ABATEMENT APPROVED _____
date supervisor's signature

_____ ORDERS SENT TO OWNER AND KNOWN RESPONSIBLE PARTIES
date

_____ RECHECK _____
date
COMPLETE. → SIGN AT BOTTOM
NOT COMPLETE. → CHECK FOR APPEAL
EXTENSION. → SUSPEND TO _____

RECHECKED _____ SUSPEND TO _____

RECHECKED _____ SUSPEND TO _____

<p>_____ <input type="checkbox"/> NO APPEAL FILED date WORK ORDER APPROVED _____ supervisor's signature WORK ORDER SENT _____ SUSPEND TO _____ RECHECK _____</p>	<p><input type="checkbox"/> APPEAL FILED Hearing Date _____ Take pictures and prepare resolution. Suspend for hearing. COUNCIL ACTION: _____ _____ _____ _____</p>
--	--

_____ COMPLETE _____
date inspector sign when complete

CHARGES:

number of rechecks + appeal inspection X \$10.00 = _____

FOR OFFICE USE ONLY

COUNTY OF WASHINGTON
PUBLIC HEALTH DEPARTMENT

ORDER TO ABATE A PUBLIC HEALTH NUISANCE

TO: _____

PURSUANT TO AUTHORITY GRANTED IN MINNESOTA STATUTES SECTION 145A.04, BE ADVISED
THAT THE WASHINGTON COUNTY PUBLIC HEALTH DEPARTMENT HAS FOUND THAT A PUBLIC
HEALTH NUISANCE EXISTS AT (ADDRESS) _____

TO WIT: (LIST)

AND THAT (WHO) IS HEREBY ORDERED TO ABATE THE NUISANCE AS FOLLOWS:

(ORDERS)

THIS ACTION MUST BE COMPLETED NO LATER THAN (TIME) ON (DATE).

DATED: _____

WASHINGTON COUNTY
PUBLIC HEALTH DEPARTMENT

MARY LUTH, DIRECTOR

COUNTY PUBLIC HEALTH DEPARTMENT

ADDRESS: _____

Date of Inspection: _____ Date Mailed: _____

Date Issued: _____ By: _____

ABATEMENT ORDER

TO: _____
Address: _____

As owner or person responsible for: _____

you are hereby notified to eliminate the following nuisance: _____

If you do not correct the nuisance by _____ or
file an appeal, the County will correct the nuisance and charge all costs
to you/or against the property as a special assessment to be collected in
the same way as property taxes. (Appeal information below).

FAILURE TO COMPLY MAY ALSO NECESSITATE COURT ACTION

IF YOU HAVE QUESTIONS REGARDING THIS ORDER, THE REQUIREMENTS OR THE
DEADLINE, YOU MAY CONTACT THE INSPECTOR BY CALLING _____
BETWEEN 9:00 A.M. AND 4:00 P.M. AT _____

You may appeal this order and obtain a hearing before the County Appeals
Board by filing a written request with the Public Health Department
before the appeal deadline which is the deadline above. No appeals may
be filed after that date.

Send your written request to: _____

Designee _____ Date: _____ Health Department _____ Date: _____
Director

COUNTY OF OLMSTED

ORDER TO ABATE A PUBLIC HEALTH NUISANCE

TO: _____

PURSUANT TO AUTHORITY GRANTED IN MINNESOTA STATUTES SECTION
145A.04, BE ADVISED THAT OLMSTED COUNTY OFFICIALS HAVE FOUND A
PUBLIC HEALTH NUISANCE EXISTS AT (address)

TO WIT: (List)

AND THAT _____ IS HEREBY ORDERED TO ABATE
(property owner/renter)

THE NUISANCE AS FOLLOWS:

THIS ACTION MUST BE COMPLETED NO LATER THAN _____ ON
_____.

DATED: _____

OLMSTED COUNTY
COMMUNITY HEALTH DEPT.

COMMUNITY HEALTH CENTER DIRECTOR

Department of Community Services
 Division of Public Health
 Environmental Health Section
 555 Cedar Street
 St. Paul, MN 55101
 292 - 7771

Date of Inspection: _____

Date Mailed: _____

Date Issued: _____

By: _____ CT: _____

SUMMARY ABATEMENT ORDER

To: _____ Address: _____

To: _____ Address: _____

To: _____ Address: _____

As owner or person responsible for: _____

you are hereby notified to eliminate the following nuisance: _____

If you do not correct the nuisance by _____ or file an appeal (appeal information below), the City will correct the nuisance and charge all costs against the property as a special assessment to be collected in the same way as property taxes.

FAILURE TO COMPLY MAY ALSO NECESSITATE COURT ACTION

Issued by: _____

If you have any questions regarding this order, the requirements or the deadline, you may contact the inspector by calling 292 - 7771 between 8 and 9 a.m.

You may appeal this order and obtain a hearing before the City Council by filing a written request with the city clerk before the appeal deadline which is the deadline above or seven calendar days after the date mailed, whichever ever comes first. No appeals may be filed after that date.

You may obtain an application from the City Clerk's Office, Room 386, City Hall St. Paul, MN 55102. The telephone number is 298-4231. You must submit a copy of this order with your application.

If the City corrects the nuisance, the charges will include the cost of correction, inspection, travel time, equipment, etc... The hourly rate will be around \$130.

CASS-TODD-WADENA-MORRISON BOARD OF HEALTH

PROOF OF SERVICE

STATE OF MINNESOTA }
COUNTY OF _____ } ss.

* (City -- Village -- Town) of _____

The above notice and order was served by me on _____,

19_____, by:

_____ Handing a copy thereof to the *(Owner -- Occupant -- Agent)
of the above-described premises.

_____ Posting a copy thereof upon the above-described premises.

 Registered or Certified Mail

Notarized

Subscribed and sworn to before me this _____ day of

_____, 19__.

Signature of Notary

Original - Finance Dept.-Acct'g.
Duplicate - Dept. Rendering Service
Triplicate - Office Cop.

CITY OF SAINT PAUL

Division of Public Health

WORK ORDER

DATE

ISSUED BY DEPARTMENT OF COMMUNITY SERVICES

TO DEPT OR DIVISION

DEBIT APPROPRIATION ITEM

Nº

PLEASE FURNISH THE ARTICLES OR RENDER THE SERVICES LISTED BELOW:

ESTIMATED COST

The Division of Public Health, Housing Code Enforcement issued orders to _____ on _____, requesting abatement of the hereinafter described nuisance, with the later order stating that the owner may appeal it; and as of _____, said nuisance remains and no appeal has been filed.

Pursuant to Chapter 45 of the Saint Paul Legislative Code, the Division of Public Health Section of Housing Code Enforcement through the Department of Parks is authorized and directed to remove and abate the following nuisance:

REMOVE THE ACCUMULATION OF TRASH AND GARBAGE FROM YARD AREA. USED VEHICLE PARTS, FULL PLASTIC GARBAGE BAGS, SCRAP WOOD, DISCARDED APPLIANCES, SCRAP _____, ETC.

from the property at _____; described as _____ ADDITION OF LOT _____ AND ALL OF LOT _____ BLK _____ The Department of Parks and Recreation is directed to charge all costs incurred to Fund No. 03230 and to report these costs to the Division of Public Health, Section of Housing Code Enforcement; and the Division of Public Health, Section of Housing Code Enforcement is directed to report these costs to the Department of Finance and Management Services so that they may be charged against the real estate as a special assessment.

CC:

City Hall

NOTICE
WORK ORDER MUST
BE FURNISHED BE-
FORE THE SERVICE IS
STARTED.

THE ABOVE IS NECESSARY AND AUTHORIZED BY

John Setz

LAKE COUNTY HEALTH DEPARTMENT

ENVIRONMENTAL HEALTH HEALTH EDUCATION

601 3rd Avenue
Two Harbors, MN 55616
(218) 834-8325

PUBLIC HEALTH NURSING HOME HEALTH SERVICES

4th Street and 11th Avenue
Two Harbors, MN 55616
(218) 834-7205



Dear

An inspection of your premises located at _____
_____ on _____, disclosed a
garbage can and refuse storage problem.

In conformance with our conversation, the matter
will be taken care of by _____. A
reinspection will be made in the near future. We are
hopeful that corrections will have been made prior to
that date. Thank you for complying with the Lake County
Health Department.

Yours truly,

Clarine Northey
Public Health Environmentalist

CN:ph

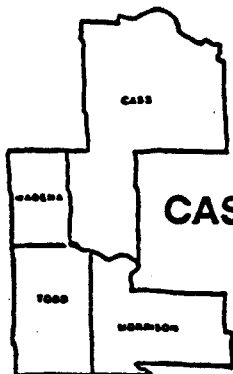
Harold Leppink, M.D., M.P.H.
Executive Officer

Clarine Northey, B.S., M.Ed.
Environmental Health

Signe Hill, R.N., B.S.N., M.A.
Health Educator

Joyce Highmark, R.N.
Public Health Nursing/
Home Health Services

An Equal Opportunity Employer



CASS-TODD-WADENA-MORRISON BOARD OF HEALTH

DATE: _____

TO: _____

FROM: _____

RE: Follow-up on Notice of Abatement and Removal

Please be advised that an inspection of the premises at

_____ was conducted on _____

by _____ the Cass-Todd-Wadena-Morrison Board
of Health, and found the Public Health Nuisance abated.

Your cooperation and efficiency is appreciated by the Board of
Health. Thank you for your attention in this matter.

Sincerely,

cc: _____ County Attorney

APPENDIX C

Excerpts From

MINNESOTA STATUTES

CHAPTER 13

GOVERNMENT DATA PRACTICES

NOTE: This material was taken from 1990 Minnesota Statutes.
Please refer to current Minnesota Laws and Statutes for more recent material.

Data Practices

CHAPTER 13

GOVERNMENT DATA PRACTICES

GENERAL REQUIREMENTS

- 13.01 Government data.
- 13.02 Collection, security, and dissemination of records; definitions.
- 13.03 Access to government data.
- 13.04 Rights of subjects of data.
- 13.05 Duties of responsible authority.
- 13.06 Temporary classification.
- 13.07 Duties of the commissioner.
- 13.08 Civil remedies.
- 13.09 Penalties.
- 13.10 Data on decedents.

DATA MAINTAINED BY
STATE AGENCIES AND
POLITICAL SUBDIVISIONS

- 13.30 Attorneys.
- 13.31 Benefit data.
- 13.32 Educational data.
- 13.33 Elected officials; correspondence; private data.
- 13.34 Examination data.
- 13.35 Federal contracts data.
- 13.36 Firearms data.
- 13.37 General nonpublic data.
- 13.38 Health data.
- 13.39 Investigative data.
- 13.40 Library data.
- 13.41 Licensing data.
- 13.42 Medical data.
- 13.43 Personnel data.
- 13.44 Property complaint data.
- 13.45 Salary benefit survey data.
- 13.46 Welfare data.
- 13.47 Employment and training data.

DATA MAINTAINED ONLY BY
POLITICAL SUBDIVISIONS

- 13.50 Appraisal data.
- 13.51 Assessor's data.
- 13.511 Lodging tax data.
- 13.52 Deferred assessment data.
- 13.521 Transportation service data.
- 13.53 Foster care data.
- 13.531 Farm assistance data.
- 13.54 Housing agency data.
- 13.55 St. Paul civic center authority data.
- 13.551 Classification of Saint Paul port authority data.
- 13.552 Human rights data.
- 13.56 Sexual assault data.
- 13.57 Social recreational data.
- 13.59 Redevelopment data.

- 13.60 Elected or appointed officials; financial disclosure statements.
- 13.61 Insurance trust data; private and nonpublic data.
- 13.62 Economic assistance data.

DATA MAINTAINED ONLY
BY STATE AGENCIES

- 13.64 Department of administration data.
- 13.642 Teachers retirement association data.
- 13.643 Department of agriculture data.
- 13.644 State auditor's data.
- 13.65 Attorney general data.
- 13.66 Corrections ombudsman data.
- 13.67 Employee relations data.
- 13.671 Iron range resources and rehabilitation board data.
- 13.68 Energy and financial data and statistics.
- 13.69 Public safety data.
- 13.691 Public employees retirement association data.
- 13.692 Department of public service data.
- 13.71 Department of commerce data.
- 13.72 Transportation department data.
- 13.74 Environmental quality data.
- 13.75 Bureau of mediation services data.
- 13.76 Department of trade and economic development data.
- 13.761 Indian affairs council data.
- 13.77 Agricultural resource loan board data.
- 13.771 Harmful substance injury compensation board data.
- 13.78 Minnesota export authority data.
- 13.79 Department of labor and industry data.
- 13.791 Rehabilitation data.
- 13.792 Minnesota zoological garden data.
- 13.793 Natural resources mineral data.
- 13.794 Internal auditing data.

DATA MAINTAINED BY
CRIMINAL JUSTICE AGENCIES

- 13.80 Domestic abuse data.
- 13.82 Comprehensive law enforcement data.
- 13.83 Medical examiner data.
- 13.84 Court services data.
- 13.85 Corrections and detention data.
- 13.86 Investigative detention data.
- 13.87 Criminal history data.
- 13.88 Community dispute resolution center data.
- 13.89 Dissemination of data to protection and advocacy systems.
- 13.90 Government data practices.

GENERAL REQUIREMENTS

13.01 GOVERNMENT DATA.

Subdivision 1. Applicability. All state agencies, political subdivisions and state-wide systems shall be governed by this chapter.

Subd. 2. Citation. This chapter may be cited as the "Minnesota government data practices act."

History: 1979 c 328 s 1; 1981 c 311 s 1,39; 1Sp1981 c 4 art 1 s 4,5; 1982 c 545 s 24

not public by this chapter or any other statute, including private data on decedents and confidential data on decedents, is physically transferred to the state archives, the data shall no longer be classified as not public and access to and use of the data shall be governed by section 138.17.

Subd. 8. Change to classification of data not on individuals. Except for security information, nonpublic and protected nonpublic data shall become public either ten years after the creation of the data by the government agency or ten years after the data was received or collected by any governmental agency unless the responsible authority for the originating or custodial agency for the data reasonably determines that, if the data were made available to the public or to the data subject, the harm to the public or to a data subject would outweigh the benefit to the public or to the data subject. If the responsible authority denies access to the data, the person denied access may challenge the denial by bringing an action in district court seeking release of the data. The action shall be brought in the district court located in the county where the data are being maintained, or, in the case of data maintained by a state agency, in any county. The data in dispute shall be examined by the court in camera. In deciding whether or not to release the data, the court shall consider the benefits and harms in the same manner as set forth above. The court shall make a written statement of findings in support of its decision.

History: 1979 c 328 s 7; 1980 c 603 s 7; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 6; 1982 c 545 s 2,24; 1984 c 436 s 2-4; 1985 c 298 s 1-4; 1987 c 351 s 1; 1990 c 573 s 1

13.04 RIGHTS OF SUBJECTS OF DATA.

Subdivision 1. Type of data. The rights of individuals on whom the data is stored or to be stored shall be as set forth in this section.

Subd. 2. Information required to be given individual. An individual asked to supply private or confidential data concerning the individual shall be informed of: (a) the purpose and intended use of the requested data within the collecting state agency, political subdivision, or statewide system; (b) whether the individual may refuse or is legally required to supply the requested data; (c) any known consequence arising from supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data, pursuant to section 13.82, subdivision 5, to a law enforcement officer.

Subd. 3. Access to data by individual. Upon request to a responsible authority, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.

The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivision, or within five days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. If unable to comply with the request within that time, the responsible authority shall so inform the individual, and may have an additional five days within which to comply with the request, excluding Saturdays, Sundays and legal holidays.

Subd. 4. Procedure when data is not accurate or complete. (a) An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either:

(1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

The determination of the responsible authority may be appealed pursuant to the provisions of the administrative procedure act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.

(b) Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a state agency, political subdivision, or statewide system without regard to the requirements of section 138.17.

After completing, correcting, or destroying successfully challenged data, a state agency, political subdivision, or statewide system may retain a copy of the commissioner of administration's order issued under chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

History: 1974 c 479 s 4; 1975 c 401 s 4; 1977 c 375 s 7; 1980 c 603 s 12; 1981 c 311 s 9,39; 1982 c 545 s 4,24; 1984 c 436 s 5; 1Sp1985 c 14 art 1 s 3; 1986 c 444; 1987 c 351 s 2; 1988 c 670 s 1

13.05 DUTIES OF RESPONSIBLE AUTHORITY.

Subdivision 1. Public document of data categories. The responsible authority shall prepare a public document containing the authority's name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by the authority's state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to maintain the accuracy of the document. The document shall be available from the responsible authority to the public in accordance with the provisions of sections 13.03 and 15.17.

Subd. 2. Copies to commissioner. The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

Subd. 3. General standards for collection and storage. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.

Subd. 4. Limitations on collection and use of data. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by political subdivisions, statewide systems, or state agencies for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or agencies specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

Subd. 3. **Data dissemination.** Crime prevention block maps and names, home addresses, and telephone numbers of volunteers who participate in community crime prevention programs may be disseminated to volunteers participating in crime prevention programs.

History: 1980 c 603 s 15; 1981 c 311 s 11,39; 1982 c 545 s 24; 1984 c 436 s 15; 1985 c 248 s 4; 1990 c 573 s 3,4

13.38 HEALTH DATA.

Subdivision 1. **Definitions.** As used in this section:

(a) "Commissioner" means the commissioner of health.

(b) "Health data" means data on individuals created, collected, received, or maintained by the department of health, political subdivisions, or statewide systems relating to the identification, description, prevention, and control of disease or as part of an epidemiologic investigation the commissioner designates as necessary to analyze, describe, or protect the public health.

Subd. 2. **Data on individuals.** (a) Health data are private data on individuals. Notwithstanding section 13.05, subdivision 9, health data may not be disclosed except as provided in this subdivision and section 13.04.

(b) The commissioner or a local board of health as defined in section 145A.02, subdivision 2, may disclose health data to the data subject's physician as necessary to locate or identify a case, carrier, or suspect case, to establish a diagnosis, to provide treatment, to identify persons at risk of illness, or to conduct an epidemiologic investigation.

(c) With the approval of the commissioner, health data may be disclosed to the extent necessary to assist the commissioner to locate or identify a case, carrier, or suspect case, to alert persons who may be threatened by illness as evidenced by epidemiologic data, to control or prevent the spread of serious disease, or to diminish an imminent threat to the public health.

Subd. 3. **Health summary data.** Summary data derived from data collected under section 145.413 may be provided under section 13.05, subdivision 7.

History: 1981 c 311 s 31,39; 1982 c 545 s 24; 1987 c 309 s 24; 1987 c 351 s 4

13.39 INVESTIGATIVE DATA.

Subdivision 1. **Definitions.** A "pending civil legal action" includes but is not limited to judicial, administrative or arbitration proceedings. Whether a civil legal action is pending shall be determined by the chief attorney acting for the state agency, political subdivision or statewide system.

Subd. 2. **Civil actions.** Data collected by state agencies, political subdivisions or statewide systems as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13 in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3 in the case of data on individuals. Any agency, political subdivision or statewide system may make any data classified as confidential or protected nonpublic pursuant to this subdivision accessible to any person, agency or the public if the agency, political subdivision or statewide system determines that the access will aid the law enforcement process, promote public health or safety or dispel widespread rumor or unrest.

Subd. 3. **Inactive investigative data.** Inactive civil investigative data are public, unless the release of the data would jeopardize another pending civil legal action, and except for those portions of a civil investigative file that are classified as not public data by this chapter or other law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. Civil investigative data become inactive upon the occurrence of any of the following events:

(1) a decision by the state agency, political subdivision, or statewide system or by the chief attorney acting for the state agency, political subdivision, or statewide system not to pursue the civil action;

(2) expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil action; or

(3) exhaustion of or expiration of rights of appeal by either party to the civil action.

Data determined to be inactive under clause (1) may become active if the state agency, political subdivision, statewide system, or its attorney decides to renew the civil action.

History: 1981 c 311 s 22,39; 1982 c 545 s 11,24; 1985 c 298 s 11; 1987 c 351 s 5

13.40 LIBRARY DATA.

Subdivision 1. Records subject to this chapter. All records collected, maintained, used or disseminated by a library operated by any state agency, political subdivision or statewide system shall be administered in accordance with the provisions of this chapter.

Subd. 2. Private data; records of borrowing. That portion of records maintained by a library which links a library patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials is classified as private, pursuant to section 13.02, subdivision 12, and shall not be disclosed except pursuant to a valid court order.

History: 1980 c 603 s 21; 1981 c 311 s 39; 1982 c 545 s 6,24

13.41 LICENSING DATA.

Subdivision 1. Definition. As used in this section "licensing agency" means any board, department or agency of this state which is given the statutory authority to issue professional or other types of licenses, except the various agencies primarily administered by the commissioner of human services. Data pertaining to persons or agencies licensed or registered under authority of the commissioner of human services shall be administered pursuant to section 13.46, subdivision 4.

Subd. 2. Private data. The following data collected, created or maintained by any licensing agency are classified as private, pursuant to section 13.02, subdivision 12: data, other than their names and addresses, submitted by applicants for licenses; the identity of complainants who have made reports concerning licensees or applicants which appear in inactive complaint data unless the complainant consents to the disclosure; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the identity of patients whose medical records are received by any health licensing agency for purposes of review or in anticipation of a contested matter; inactive investigative data relating to violations of statutes or rules; and the record of any disciplinary proceeding except as limited by subdivision 4.

Subd. 2a. Board of peace officer standards and training. The following government data of the board of peace officer standards and training are private data:

(1) home addresses of licensees and applicants for licenses; and

(2) data that identify the state agency, statewide system, or political subdivision that employs a licensed peace officer.

The board may disseminate private data on applicants and licensees as is necessary to administer law enforcement licensure.

Subd. 3. Confidential data. The following data collected, created or maintained by any licensing agency are classified as confidential, pursuant to section 13.02, subdivision 3: active investigative data relating to the investigation of complaints against any licensee.

Subd. 4. Public data. Licensing agency minutes, application data on licensees, orders for hearing, findings of fact, conclusions of law and specification of the final

any state agency or political subdivision to administer employee assistance programs similar to the one authorized by section 16B.39, subdivision 2, are classified as private, pursuant to section 13.02, subdivision 12. This section shall not be interpreted to authorize the establishment of employee assistance programs.

History: 1979 c 328 s 17; 1980 c 603 s 24,25,29; 1981 c 311 s 12,13,17,39; 1982 c 545 s 9,10,24; 1984 c 436 s 17; 1984 c 544 s 89; 1985 c 298 s 12; 1987 c 186 s 15; 1987 c 284 art 1 s 1; 1987 c 351 s 7; 1987 c 384 art 1 s 2; 1988 c 598 s 1; 1990 c 550 s 1

13.44 PROPERTY COMPLAINT DATA.

The identities of individuals who register complaints with state agencies or political subdivisions concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data, pursuant to section 13.02, subdivision 3.

History: 1980 c 603 s 20; 1981 c 311 s 39; 1982 c 545 s 5,24; 1984 c 436 s 18

13.45 SALARY BENEFIT SURVEY DATA.

Salary and personnel benefit survey data purchased from consulting firms, non-profit corporations or associations or obtained from employers with the written understanding that the data shall not be made public which is maintained by state agencies, political subdivisions or statewide systems are classified as nonpublic pursuant to section 13.02, subdivision 9.

History: 1981 c 311 s 19,39; 1982 c 545 s 24

13.46 WELFARE DATA.

Subdivision 1. Definitions. As used in this section:

(a) "Individual" means an individual pursuant to section 13.02, subdivision 8, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system pursuant to statute or federal law.

(c) "Welfare system" includes the department of human services, county welfare boards, county welfare agencies, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and mental retardation, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract.

(d) "Mental health data" means data on individual clients and patients of community mental health centers, established under section 245.62, mental health divisions of counties and other providers under contract to deliver mental health services, or the ombudsman for mental health and mental retardation.

Subd. 2. General. (a) Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used, or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

- (1) pursuant to section 13.05;
- (2) pursuant to court order;
- (3) pursuant to a statute specifically authorizing access to the private data;
- (4) to an agent of the welfare system, including a law enforcement person, attorney, or investigator acting for it in the investigation or prosecution of a criminal or civil proceeding relating to the administration of a program;
- (5) to personnel of the welfare system who require the data to determine eligibility, amount of assistance, and the need to provide services of additional programs to the individual;
- (6) to administer federal funds or programs;
- (7) between personnel of the welfare system working in the same program;

APPENDIX D

Examples of Public Health Nuisances

(Survey Results)

The following results, taken from an informal survey conducted in January of 1991, represent examples of various types of nuisance complaints being dealt with by local governments in the State of Minnesota. Some of the items on the list clearly pose a threat to public health while some of the others may not. It is very important to distinguish between the nuisances that pose a threat to public health and those that do not (See "A Formal Policy Can Help" page 6).

Name of Person Completing Form: Results:88 Surveys Returned

Position: _____

Agency: _____

Categories are intended to be general; assume an automatic "etc."
Please check (YES) or (NO)

	YES	NO
Domesticated animals at large	(41)	()
Animal bites	(61)	()
Dangerous dogs	(41)	()
Animal carcass disposal	(59)	()
Wild bird control	(40)	()
Infestation and harborage of vermin	(79)	()
Infestation and harborage of rodents	(88)	()
Disease exposure of contagious reportable diseases	(58)	()
Accumulation and disposal of garbage: putrescible animal and vegetable wastes from food	(82)	()
Accumulation and disposal of rubbish: non-putrescible solid wastes such as caardboard, tin cans, paper	(78)	()
Accumulation and disposal of refuse: all putrescible and non-putrescible solid wastes except body waste	(79)	()
Accumulation and disposal of solid wastes	(71)	()
Housing hygiene - "Garbage Houses"	(84)	()
Dwellings: unfit for human habitation	(81)	()
Dwellings: hazardous conditions	(78)	()
Electrical wiring	(40)	()
Plumbing	(48)	()
Space heaters	(34)	()
Heating and ventilation: lack of	(51)	()
Heating and ventilation: safety	(51)	()
Safe structural elements: floors, walls, ceilings	(50)	()
Lead based paints: dwellings	(45)	()
Lead based paints: sandblasting water towers	(18)	()
Vacant buildings	(60)	()
Accumulation of wood, metal, glass, scrap	(66)	()
Accumulation of machinery, old equipment	(60)	()
Abandoned dishwashers, refrigerators, furniture	(62)	()
Junked cars	(55)	()
Sidewalks: removal of snow and ice	(15)	()
Sidewalks: encumbered pedestrian walkways	(13)	()
Tree limbs	(13)	()
Yard cover: lack of vegetative growth	(11)	()
Exterior lighting	(10)	()
Abandoned wells, cisterns, excavated holes,	(74)	()
Elimination of stagnant water	(31)	()
Privy or port-a-potty maintenance	(43)	()
Sewage	(73)	()
Accumulation of abandoned property in waterways: streams, rivers, drainage ditches	(35)	()
Noxious weeds	(39)	()
Air pollution: dense soot, smoke, fumes	(45)	()
Air pollution: offensive odors	(53)	()
Noise pollution	(33)	()
Adulterated food	(36)	()
Other: <u>See reverse.</u>	(22)	()

Other:

Asbestos
Drinking Water
Excess cats and dogs in homes
Dirty bathrooms
Needle disposal
Tires
Wild Animals - skunks, racoons, snakes
Tall grass on lawns
Dirty garbage trucks
Barbed wire
Swimming pools not fenced
Minor hazardous waste
Dog droppings
Springs
Improper oil disposal
Trespassing and defecating in fish houses