

TITLE X

PUBLIC HEALTH

CHAPTER 147

NUISANCES; TOILETS; DRAINS; EXPECTORATION; RUBBISH AND WASTE

Section 147:7-b

147:7-b Collection of Nuisance Abatement Costs. – A municipality which has incurred costs for the removal or destruction of a public health nuisance pursuant to RSA 147:4-6, 147:11, 147:13, 147:17, or 147:17-a, may, as an alternative to a civil action to recover such costs, institute collection of such costs using the following procedure:

I. After obtaining the consent of the municipal governing body, the health officer shall issue an order for costs, bearing the title "Order for Abatement Costs Pursuant to RSA 147:7-b" containing:

(a) A copy of any notice or order sent pursuant to RSA 147:7-a and a statement that such notice or order was not complied with within the time specified; or, in the case of removal without notice pursuant to RSA 147:6, a statement of what the nuisance or other danger to the public health was, and a statement of the circumstances justifying the removal without notice.

(b) A statement of what corrective action was taken by the municipality.

(c) An expense account of the municipality's costs in taking the corrective action, including the cost of issuing and serving orders under RSA 147:7-a and this section.

(d) A statement that such costs constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property for nonpayment, and, if no written objection is filed with the health officer within 30 days, the account will be committed to the tax collector.

(e) The address of the office of the health officer, where any objection must be filed.

(f) A copy of this section.

II. The order shall be served upon the record owner of the property or such owner's agent, and upon the person to whom taxes are assessed for the property, if other than the owner, in the same manner provided for service of a summons in a civil action.

III. Within 30 days after such service, any person served may file a written objection with the health officer, stating with specificity the basis for the objection.

IV. If no such objection is filed, the health officer shall forward a copy of the order, together with proof of service and a certification that no objection was received, to the selectmen or other officers responsible in that municipality for issuing tax warrants under RSA 76:10. The selectmen or other officers shall commit the expense account to the municipal tax collector, together with a warrant requiring the collector to collect the same from the person to whom real estate taxes are assessed for the premises upon which such corrective action was taken, and to pay the amount so collected to the municipal treasurer. Within 30 days after the receipt of such warrant, the collector shall send a bill as provided in RSA 76:11. Interest as provided in RSA 76:13 shall be charged on any amount not paid within 30 days after the bill is mailed. The collector shall have the same rights and remedies as in the collection of taxes, as provided in RSA 80.

V. If an objection is filed, the health officer may file a motion to affirm the order in the district court of the district in which the property is located if the amount does not exceed the limits of the district court's civil damages concurrent jurisdiction as set forth in RSA 502-A:14, or otherwise in the superior court. The filing shall include copies of the order and the objection. The clerk shall schedule a hearing

on the motion, and shall give notice of the hearing by registered mail upon the person filing the objection, at least 20 days prior to the hearing. At the hearing, the technical rules of evidence shall not apply, but the court may admit any evidence deemed material and proper. Following the hearing, or upon default, the court shall enter judgment affirming, correcting if necessary, or denying the order for abatement costs. If the order is affirmed, the expense account shall be amended to reflect the municipality's expenses in connection with the motion, including filing fees, service fees, witness fees, attorneys' fees and traveling expenses.

VI. Orders of the health officer under this section shall be deemed prima facie lawful and reasonable. The owner's lack of responsibility for creating the nuisance or danger to health shall not constitute a defense. The court shall not deny the order except upon the following grounds, the burden of proof for which shall lie with the owner:

(a) That the actions taken were clearly outside the authority of the health officer, or constituted a gross abuse of discretion; or

(b) That the owner did not receive any order pursuant to RSA 147:7-a, and that the nuisance or other danger to health was not one for which an owner may be held strictly liable under either state or federal law, and further, that neither the owner nor any agent of the owner knew, had any reason to know, or in the exercise of due care in the ownership and maintenance of property or any other legal duty could have had any reason to know, of the circumstances constituting the nuisance or other danger to health.

VII. If the order is affirmed in whole or in part, the health officer shall forward it for collection in the manner provided by paragraph IV of this section.

Source. 1991, 208:1. 1998, 318:6, eff. Aug. 25, 1998.