



**FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.**

October 22, 2008

Xxxxxx Xxxx

Via email: Xxxxxx@gmail.com

RE: 2630 S. Memphis Way, Aurora

Dear Mr. Xxxx:

At your request, the June 1, 2007 letter issued by Herron Enterprises, USA, Inc. wherein Herron describes work which it identified as a "Preliminary Assessment" was reviewed today by Forensic Applications Consulting Technologies (FACTs) Forensic Industrial Hygienist.

The work, as submitted by Herron Enterprises, is fatally flawed, is grossly substandard, and grossly fails to meet the necessary regulatory elements of a "Preliminary Assessment." As such, at this point in time, there is no indication that a legitimate Preliminary Assessment has been performed at the above referenced property.

In the past, we have seen where Herron Enterprises has hired a consultant (a geologist) to perform methamphetamine sampling at properties. Although Herron Enterprises is a legitimate industrial hygiene firm, it would appear that the work performed at the above referenced property was performed by untrained and unauthorized subcontractors or other personnel who are not trained in methlab assessments, are not industrial hygienists, and are not familiar with the Colorado State regulations, and are not authorized to perform "Preliminary Assessments" under these regulations.

The report by Herron does **not** meet the minimum regulatory elements of a "Preliminary Assessment" and cannot be used, or substituted, as a legitimate Preliminary Assessment.

The Herron report contains many fatal flaws that render the document unusable, and fail to meet minimum regulatory standards. Also, language in the document indicates that the author is entirely unfamiliar with Colorado's Methlab Regulations, and the author identifies areas of the regulations that do not exist.

Therefore, FACTs finds the following:

- The report does not meet the minimum requirements for a Preliminary Assessment. Therefore, at this point in time, no Preliminary Assessment has been performed for the property.
- The Registered Owner (or the buyer of the property) is still required to perform a legitimate Preliminary Assessment.

- NO cleaning or removal of any personal items may occur. If any items have been removed from the property, the removal constitutes a violation of State Statutes.
- The work product failed to include the mandatory documentation as required by regulation.
- If a buyer purchases the property “as-is”, they are required by State statutes (§38-35.7-103(2)(c)) to perform a legitimate Preliminary Assessment within 90 days of the date of their purchase, or demolish the property.
- Although we did not perform an in depth review of the Herron work product, FACTs has identified several fatal flaws in the work and failures to comply (errors and/or omissions) which we briefly describe below (the work product contains more errors and omissions than included in the following discussion).

## DISCUSSION

Pursuant to Colorado regulations 6 CCR 1014-3,<sup>1</sup> following discovery and notification of a drug laboratory, a comprehensive and detailed “Preliminary Assessment” must be commissioned by the property owner and performed by an authorized and properly trained Industrial Hygienist. The content and context of the “Preliminary Assessment” is explicitly delineated by regulation.

Contrary to popular misconception, and contrary to the statements made in the Herron report, there is no *de minimis* concentration during a cursory assessment below which a property could be declared “not a meth lab” or “not of regulatory concern” since virtually any concentration of meth present in a sample during a cursory assessment at the property would:

*...lead a reasonable person, trained in aspects of methamphetamine laboratories, to conclude the presence of methamphetamine, its precursors as related to processing, or waste products.<sup>2</sup>*

In a recent unofficial opinion issued by the State of Colorado Department of Public Health and the Environment, Colleen Brisnehan opined in an email transmission to Mr. Craig Sanders<sup>3</sup> that even when the cursory concentrations are far below state mandated limits:

*"Performing a PA [Preliminary Assessment] and clearance sampling is the only way to meet the requirements of the Reg, get the liability shield, and provide protection for future Real Estate transactions."*

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<sup>1</sup> Titled: Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*.

<sup>2</sup> *Ibid.*

<sup>3</sup> Email transmission from Craig Sanders to FACTs, January 31, 2008 regarding a property at 32548 Kinsey Lane Conifer, Colorado.  
S Memphis Street, Aurora



# Cursory Overview of the Herron Report

Pursuant to State Regulations, Section 4:

## Section 4.0 PRELIMINARY ASSESSMENT

Information collected during the preliminary assessment shall include, but not be limited to, the following:

### Paragraph 4.1 Property Description

Property description including physical address, legal description, number and type of structures present, description of adjacent and/or surrounding properties, and any other observations made.

Nowhere in the Herron report were we able to locate a legal description of the property as required by regulation. Nowhere in the report were we able to identify the square footage of the structure as required. The square footage of the structure is required to determine the number of samples needed for final verification sampling.

Pursuant to State regulations (mandatory Appendix A):

- An additional 100 cm<sup>2</sup> must be sampled for every additional 500 square feet of structural floor space. *[exceeding 1,500 square feet]*

Without documenting the square footage of the property in question, there is no way to know if the sampling is appropriate or meets the regulatory requirements.

### Paragraph 4.3 Identification of Functional Spaces

Pursuant to this section, the Industrial Hygienist is required to include:

Identification of structural features that may indicate separate functional spaces, such as attics, false ceilings and crawl spaces, basements, closets, and cabinets.

FACTs was unable to locate an inventory of functional spaces in the report. Herron entirely failed to perform this necessary phase of the assessment. The final sampling is incumbent on the functional spaces identified in the Preliminary Assessment; since no functional spaces were identified in the Herron report, there is no way to know from where the final samples are to be collected.

### Paragraph 4.10 Identification of Visual Indicators

Pursuant to State regulations, the Industrial Hygienist is required to provide:

Identification and documentation of signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation.

The Herron report fails to address the exterior grounds as required.

### Paragraph 4.11 Evaluation of the Plumbing System

Pursuant to State regulation, the Industrial Hygienist is required to provide:



Inspection of plumbing system integrity and identification and documentation of potential disposal into the sanitary sewer or an individual sewage disposal system (ISDS). If the consultant determines that field screening and/or sampling of an ISDS is necessary to determine if methamphetamine lab wastes have been disposed of into an ISDS, such field screening and/or sampling shall be conducted in accordance with the field screening and sampling protocols presented in Appendix D. Sample analysis shall be conducted in accordance with the method requirements presented in Appendices B and D.

Herron Enterprises explicitly shrugged responsibility for completing this regulatory obligation thusly:

*A plumbing inspection is outside HERRON's scope of work.*

At FACTs, we cannot understand how a legitimate agency can, on the one hand, accept the responsibility of performing a Preliminary Assessment, (which explicitly includes a plumbing inspection), and at the same time state that such an inspection is “outside their scope of work.” We similarly cannot understand how Herron can claim that a Preliminary Assessment was performed when explicitly required functions were not performed or are “outside the scope of work.”

#### **Paragraph 4.12 Contamination Migration**

Pursuant to State regulations, the Industrial Hygienist is required to provide:

Identification of adjacent units and common areas where contamination may have spread or been tracked.

Herron entirely has omitted any discussion of this section from their report.

#### **Paragraph 4.14 Photographic Record**

During the Preliminary Assessment, the Industrial Hygienist is required to provide a:

Photographic documentation of property conditions, including cooking areas, chemical storage areas, waste disposal areas, and areas of obvious contamination.

Herron entirely failed to fulfill this regulatory obligation. The Herron report contains only two photographs of site conditions. Herron entirely failed to photograph:

- 1) property conditions, (self explanatory)
- 2) cooking areas, (not addressed in the Herron report)
- 3) chemical storage areas (not addressed in the Herron report)
- 4) waste disposal areas
- 5) and areas of obvious contamination; which would include:
  - a. each and every functional space whose sample was positive for methamphetamine,
  - b. staining



## **Appendix A - Soil Contamination**

Herron identified outdoor areas in its discussion. Pursuant to State regulations:

For laboratories with outdoor components, or laboratories which are exclusively outdoors, the following sampling shall be performed when conditions indicate the potential for soil contamination. Sampling shall be conducted in accordance with the grid sampling method as described in the Midwest Research Institute's publication titled "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup" (referenced in 40 CFR § 761.130),

Herron entirely failed to comply with this mandatory requirement.

### **Section 8 – Final Documentation**

The State regulations require that specific documents be provided in the Preliminary Assessment, and require that specific functions be documented. In its report, Herron failed to meet various aspects of the documentation process.

#### **Paragraph 8.1 Registered Owner and Legal Description**

According to this paragraph:

Property description including physical address, legal description, ownership, number and type of structures present, description of adjacent and/or surrounding properties, and any other observations made.

Herron failed to include the legal description.

#### **Paragraph 8.14 Health and Safety Affidavit**

According to State regulations, the Industrial Hygienist is required to provide:

A description of the health and safety procedures used in accordance with OSHA requirements.

Nowhere in its report do we find an assertion by Herron that its practices and procedures were in accordance with OSHA requirements.

#### **Paragraph 8.20 Photographic Record**

According to State regulations, the Industrial Hygienist is required to provide:

Photographic documentation of pre- and post-decontamination property conditions, including cooking areas, chemical storage areas, waste disposal areas, areas of obvious contamination, sampling and decontamination procedures, and post-decontamination conditions.

As already addressed, Herron failed to provide the required photographic record, failed to document property conditions, failed to photograph areas of obvious contamination, and failed to photograph burns, stains, etc.



### ***Paragraph 8.21 Statement of Qualifications***

According to State regulations, the Industrial Hygienist is required to provide:

Consultant statement of qualifications, including professional certification or qualification as an industrial hygienist as defined in section 24-30-1402, C.R.S., and description of experience in assessing contamination associated with methamphetamine labs.

Herron failed to provide a statement of qualifications. Herron failed to include the mandatory description of experience in assessing contamination associated with methamphetamine labs.

Nowhere has Herron identified that they are in fact authorized to perform the work, or document why they are authorized. We do not at this point have any reason to believe that Herron personnel are even authorized to perform a Preliminary Assessment, and considering the fatal flaws and sloppy work thus performed, it is apparent that Herron has no legitimate knowledge in methlabs or methlab assessments.

In a previous review of Herron's work related to methamphetamine issues, FACTs noted that unauthorized personnel, with no legitimate training or knowledge of methlab related issues, was used as a subcontractor for collecting samples.

### ***Paragraph 8.22 Certification and Variations***

According to State regulations, the Industrial Hygienist is required to provide:

Certification of procedures and results, and variations from standard practices.

Nowhere in its report does Herron identify each of the variations from the regulatory requirements as discussed in this review.

### ***Paragraph 8.23 and 8.24 Certification– Mandatory Language and Signature***

Pursuant to State regulations, the Industrial Hygienist performing the work is required to sign a statement, an affidavit, attesting to the fact that they performed the work. State regulations are as follows:

A signed certification statement in one of the following forms, as appropriate:

"I do hereby certify that I conducted a preliminary assessment of the subject property in accordance with 6 CCR 1014-3, § 4, and that I conducted post-decontamination clearance sampling in accordance with 6 CCR 1014-3, § 6. I further certify that the property has been decontaminated in accordance with the procedures set forth in 6 CCR 1014-3, § 5, and that the cleanup standards established by 6 CCR 1014-3, § 7 have been met as evidenced by testing I conducted."

"I do hereby certify that I conducted a preliminary assessment of the subject property in accordance with 6 CCR 1014-3, § 4. I further certify that the cleanup standards established by 6 CCR 1014-3, § 7 have been met as evidenced by testing I conducted."



Nowhere, has Herron identified who actually performed the work, and failed to provide the mandatory affidavit concerning the individual who performed the work and did not provide the mandatory documentation on that individual.

## CONCLUSION

- No preliminary Assessment has been performed for the subject property.
- The Herron “report” is fatally flawed and cannot be used as a Preliminary Assessment.
- There is no indication that the individuals performing the work were qualified.
- If the property transaction completes as scheduled, the seller will **not** receive liability immunity.
- If the property transaction completes as scheduled, the buyer must complete a Preliminary Assessment, and any necessary remediation, and obtain a Decision Statement within 90 days of closing.

## RECOMMENDATION

We recommend that this letter be delivered to the Aurora Police Department and the Governing Body (who was never identified in the report).



Caoimhín P. Connell  
Forensic Industrial Hygienist





## FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

### CONSULTANT STATEMENT OF QUALIFICATIONS

(as required by State Board of Health Regulations 6 CCR 1014-3 Section 8.21)

<b>FACTs project name:</b>	<b>S Memphis</b>	<b>Form # ML15</b>
<b>Date:</b>	<b>October 22, 2008</b>	
<b>Reporting IH:</b>	<b>Caoimhín P. Connell, Forensic IH</b>	

Caoimhín P. Connell, is a private consulting forensic Industrial Hygienist meeting the definition of an "Industrial Hygienist" as that term is defined in the Colorado Revised Statutes §24-30-1402. Mr. Connell has been a practicing Industrial Hygienist in the State of Colorado since 1987 and has been involved in clandestine drug lab (including meth-lab) investigations since May of 2002.

Mr. Connell is a recognized authority in methlab operations and is a Certified Meth-Lab Safety Instructor through the Colorado Regional Community Policing Institute (Colorado Department of Public Safety, Division of Criminal Justice). Mr. Connell has provided methlab training for officers of over 25 Colorado Police agencies, 20 Sheriff's Offices, federal agents, and probation and parole officers from the 2<sup>nd</sup>, 7<sup>th</sup> and 9<sup>th</sup> Colorado judicial districts. He has provided meth-lab lectures to prestigious organizations such as the County Sheriff's of Colorado, the American Industrial Hygiene Association, and the National Safety Council, and Regis University.

Mr. Connell is Colorado's only private consulting Industrial Hygienist certified by the Office of National Drug Control Policy High Intensity Drug Trafficking Area Clandestine Drug Lab Safety Program, and P.O.S.T. certified by the Colorado Department of Law (Certification Number B-10670); he is a member of the Colorado Drug Investigators Association, the American Industrial Hygiene Association, and the Occupational Hygiene Society of Ireland.

He has received over 120 hours of highly specialized law-enforcement sensitive training in meth-labs and clan-labs (including manufacturing and identification of booby-traps commonly found at meth-labs) through the Iowa National Guard/Midwest Counterdrug Training Center and the Florida National Guard/Multijurisdictional Counterdrug Task Force, St. Petersburg College as well as through the U.S. Bureau of Justice Assistance (US Dept. of Justice). Additionally, he received extensive training in the Colorado Revised Statutes, including Title 18, Article 18 "Uniform Controlled Substances Act of 1992."

Mr. Connell is also a current law enforcement officer in the State of Colorado, who has conducted clandestine laboratory investigations and performed risk, contamination, hazard and exposure assessments from both the law enforcement (criminal) perspective, and from the civil perspective in residences, apartments, motor vehicles, and condominiums. Mr. Connell has conducted over 80 assessments in illegal drug labs, and collected over 1,000 samples during assessments.

He has extensive experience performing assessments pursuant to the Colorado meth-lab regulation, 6 CCR 1014-3, (State Board Of Health *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*) and was an original team member on two of the legislative working-groups which wrote the regulations for the State of Colorado. Mr. Connell was the primary contributing author of Appendix A (*Sampling Methods And Procedures*) and Attachment to Appendix A (*Sampling Methods And Procedures Sampling Theory*) of the Colorado regulations. He has provided expert witness testimony in civil cases and testified before the Colorado Board of Health and Colorado Legislature Judicial Committee regarding methlab issues. Mr. Connell has provided private consumers, state officials and Federal Government representatives with forensic arguments against fraudulent industrial hygienists and other unauthorized consultants performing invalid methlab assessments.

Mr. Connell, who is a committee member of the ASTM International Forensic Sciences Committee, was the sole sponsor of the draft ASTM E50 *Standard Practice for the Assessment of Contamination at Suspected Clandestine Drug Laboratories*, and he is an author of a recent (2007) AIHA Publication on methlab assessment and remediation.