



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

September 29, 2006

Kimberly Phillips
Michaelson, Connor & Boul
4500 Cherry Creek Drive, South
Suite 1060
Glendale, CO 80246

REF: **Case 052-323402 (5151 Duluth Street, Denver, CO 80239)**

Dear Ms. Phillips:

On September 21, 2006, Forensic Applications Consulting Technologies, Inc.(FACTs) visited the property listed above. The purpose of the visit was to assess reports from an home inspector who made several observations which he believed indicated the possible presence of a clandestine methamphetamine drug laboratory at the property.

Based on our assessment, methamphetamine was conclusively identified in the property. Pursuant to state regulations, a Preliminary Assessment must be performed at this subject property.

DISCUSSION

Our work was performed pursuant to all pertinent statutes and regulations. According to Colorado Revised Statutes (CRS §25-18.5-103(1)(a)):

Upon notification from a peace officer that chemicals, equipment, or supplies indicative of an illegal drug laboratory are located on a property, or when an illegal drug laboratory used to manufacture methamphetamine is otherwise discovered... the owner of any contaminated property shall meet the cleanup standards for property established by the board in section CRS §25-18.5-102.

Furthermore, pursuant to State Regulation 6-CCR 1014-3, the degree of information needed to form the conclusion of the presence of an illegal drug lab is:

Sampling, if it is performed, is conducted in the areas with the highest probability of containing the highest possible concentrations of contaminants. Any data that disproves the hypothesis, including police records, visual clues of production, storage, or use or documentation of drug paraphernalia being present, is considered conclusive, and leads the consultant to accept the null hypothesis and declare the area non-compliant.

The strength of evidence needed to reject the hypothesis is low, and is only that which 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.

As such, the information available to us is such that it leads us to conclude the presence of methamphetamine in the property.

In Colorado a “drug laboratory” is defined in Colorado Revised Statutes §25-18.5-101 as:

...areas where controlled substances have been manufactured, *processed*, cooked, disposed of, *or stored* and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing, or storing.

Pursuant to State statute¹:

...every building or part of a building including the ground upon which it is situated and all fixtures and contents thereof, and every vehicle, and any real property shall be deemed a Class 1 Public Nuisance when used for the unlawful storage or possession of any controlled substance, or any other drug the possession of which is an offense under the laws of Colorado. Pursuant to State statute

An illegal drug laboratory that has not met the cleanup standards set by the State Board of Health must be deemed a public health nuisance.²

Pursuant to Colorado regulations,³ upon discovery, a comprehensive and detailed “Preliminary Assessment” must be commissioned by the property owner and performed by an authorized and properly trained Industrial Hygienist who must characterize extant contamination. The content and context of the “Preliminary Assessment” is explicitly delineated by regulation. Any remediation or cleaning must be based on the Industrial Hygienist’s Preliminary Assessment.

Contamination Thresholds

The actual methamphetamine concentration found in each sample, for reasons described below, are not germane, are not within our stated data quality objectives, and therefore, are not reported here. A recurring myth in methlab related issues is that if a consultant performs a cursory investigation or a “Preliminary Assessment” and finds methamphetamine contamination, but that contamination is less than 0.5 micrograms per one hundred square centimeters ($\mu\text{g}/100\text{cm}^2$), then the property is “OK,” and not covered by the State regulations.

However, this argument is erroneous and no such provisions are found anywhere in State statutes or State regulation. If a consultant chooses non-mandatory sampling (such as performed at this subject property) at the beginning of an industrial hygiene evaluation, and those samples result in ANY contamination, even below the value of $0.5 \mu\text{g}/100\text{cm}^2$,

¹ CRS §16-13-303(c)(1)

² CRS §25-18.5-105(1)

³ Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*, 6 CCR 1014-3.



then the property must be declared a methlab.⁴ This is because the cursory sampling does not meet the data quality objectives under which the 0.5 µg/100cm² value is based.

Even for “Preliminary Assessments,” the initial declaration of contamination is not exclusively based on testing, as described in the language of the regulation provided above.

Contrary to popular misconception, there is no *de minimis* concentration at the beginning of the process below which a property could be declared “not a meth lab” or “not of regulatory concern” since the question being asked is not “How much methamphetamine is present?” but rather, “Is methamphetamine present: Yes or No.” Our sampling has conclusively answered the question “Yes.”

In Colorado, the “clearance level” of 0.5 µg/100 cm², frequently cited by uninformed members of the public and some consultants, applies exclusively as *prima facie* evidence of decontamination at the end of a project⁵ when sampling has been conducted pursuant to the requirements needed to issue a “decision statement” and is that attainment threshold generally needed to issue a “final clearance.” The thresholds are not applicable during cursory sampling.

Sampling Locations

Samples were collected using the protocols found in pertinent state regulations. Samples were collected from locations specified by Michaelson, Connor & Boul Work Order Number 052-323402-015D. Specifically samples were collected from:

- 1) The air intake (positive for methamphetamine)
- 2) Main floor kitchen area (positive for methamphetamine)
- 3) Lower Level Bedroom #1
- 4) Lower Level Bedroom #2

The fact that the ventilation system tested positive for methamphetamine indicates the potential for widespread contamination.

CONCLUSIONS

We have conclusively identified the presence of methamphetamine at the subject property.

⁴ *Ibid.* Appendix A

⁵ Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*, 6 CCR 1014-3.



Pursuant to State Regulations (cited above), discovery and notification are made by virtue of this report.

Pursuant to State Regulations (cited above), a Preliminary Assessment must be performed at the property.

RECOMMENDATIONS

The degree of contamination may be such that a decision statement may be issued based on the work performed as a Preliminary Assessment. To avoid unnecessary costs, we recommend that the Preliminary Assessment be performed in light of the possibility of a resulting "Decision Statement."

Sincerely,

A handwritten signature in black ink, appearing to read 'Caoimhín P. Connell', written in a cursive style.

Caoimhín P. Connell
Forensic Industrial Hygienist



**APPENDIX A:
CONSULTANT'S STATEMENT OF QUALIFICATIONS**





FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

CONSULTANT STATEMENT OF QUALIFICATIONS

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

FACTs project name:	5151 Duluth Street	Form # ML15
Date: Sept 29, 2006		
Reporting IH:	Caoimhín P. Connell, Forensic IH	

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 States §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 2nd, 7th and 9th 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.

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, and the American Industrial Hygiene Association.

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."

He is also an active 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 40 assessments of illegal drug labs.

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 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, who is a committee member of the ASTM International Forensic Sciences Committee is the sole author of the draft ASTM E50 *Standard Practice for the Assessment of Contamination at Suspected Clandestine Drug Laboratories*.

APPENDIX B

ANALYTICAL REPORT





ANALYTICAL CHEMISTRY INC.

Established in 1979

4611 S. 134th Place, Ste 200
Tukwila WA 98168-3240
Phone: 206-622-8353
Fax: 206-622-4623

E-mail: aci@acilabs.com

Website: www.acilabs.com

Lab Reference:	06178-10
Date Received:	September 25, 2006
Date Completed:	September 27, 2006

September 27, 2006

CAOIMHIN P CONNELL
FORENSIC APPLICATIONS INC
185 BOUNTY HUNTER'S LN
BAILEY CO 80421

CLIENT REF: Duluth Street

SAMPLES: wipes/4

ANALYSIS: Methamphetamine by Gas Chromatography-Mass Spectrometry.

RESULTS: in total micrograms (ug)

Sample	Methamphetamine, ug	% Surrogate Recovery
DM092106-01	< 0.030	93
DM092106-02	0.034	94
DM092106-03 (650 milligrams)	0.082	94
DM092106-04	< 0.030	95
QA/QC Method Blank	< 0.004	
QC 0.100 ug Standard	0.101	
QA 0.020 ug Matrix Spike	0.018	
QA 0.020 ug Matrix Spike Duplicate	0.018	
Method Detection Limit (MDL)	0.004	
Practical Quantitation Limit (PQL)	0.030	

'<': less than, not detected above the PQL

Robert M. Orheim
Director of Laboratories



ANALYTICAL CHEMISTRY INC.

CDL SAMPLING & CUSTODY FORM

4611 S 134th Pl, Ste 200 Tukwila WA 98168-3240
 Website: www.aclilabs.com

Phone: 206-622-8353
 FAX: 206-622-4623

Please do not write in shaded areas.

SAMPLING DATE:	September 21, 2006	REPORT TO:	Caoimhin P. Connell	ANALYSIS REQUESTED	1 Methamphetamine 2 Use entire contents 3 4 5 6
PROJECT Name/No:	Duluth Street	COMPANY:	Forensic Applications, Inc.		
eMail:	Fiosrach@aol.com	ADDRESS:	185 Bounty Hunters Lane, Bailey, CO 80421		
SAMPLER NAME:	Caoimhin P. Connell	PHONE	303-903-7494		

LAB Number	Sample Number	SAMPLE MATRIX			ANALYSIS REQUESTS						SAMPLER COMMENTS	LAB COMMENTS	No of Containers	
		Wipe	Vacuum	Other	1	2	3	4	5	6				
	DM092106-01	X			X	X								1
	DM092106-02	X			X	X								1
	DM092106-03	X		Bulk	X	X								1
	DM092106-04	X			X	X								1

CHAIN OF CUSTODY RECORD				Wipes Results in:		<input type="checkbox"/> µg/100cm ²		<input checked="" type="checkbox"/> Total µg		Total Number of Containers (verified by laboratory)		4	
PRINT NAME	Signature	COMPANY	DATE	TIME	Turnaround Time	Custody Seals:	Container:	Temperature:	Inspected By:	Lab File No.	Yes	No	
Caoimhin P. Connell	<i>Caoimhin P. Connell</i>	FACTS, Inc.	09/21/06	12:15	<input type="checkbox"/> 24 Hours (2X) <input type="checkbox"/> 2 Days (1.75X) <input type="checkbox"/> 3 Days (1.5X)	<input type="checkbox"/> 24 Hours (2X)	Intact	Ambient	MIA SAZON	06178-10	<input checked="" type="radio"/>	<input type="radio"/>	Broken
MIA SAZON	<i>MIA SAZON</i>	ACI	9/25/06	1400	<input type="checkbox"/> 2 Days (1.75X) <input type="checkbox"/> 3 Days (1.5X)	<input type="checkbox"/> 2 Days (1.75X)	Cooled				<input type="radio"/>	<input checked="" type="radio"/>	

CDL Form 09/2006, Revised 12/2006, 09/2006
 FACTS Form 09/2006, Revised 12/2006, 09/2006