



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

**Industrial Hygiene Assessment
of an Unoccupied Property
Resulting in the Discovery of an
Illegal Drug Laboratory
at
20 Bluebird Lane
Bailey, CO 80421**

Prepared for:

Doug Welker Realtor
Foothills Realty
27132 Main St., Suite #200
Conifer, CO 80433

Prepared by:

FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.
185 Bounty Hunter's Lane
Bailey, CO 80421



September 23, 2010

EXECUTIVE SUMMARY

- At the request of a potential buyer, through his selling agent, state of the art sampling was performed by Forensic Applications Consulting Technologies, Inc. (FACTs) at 20 Bluebird Lane, Bailey, CO 80421 CO (the subject property) for the determination of the presence of methamphetamine.
- The sample results indicated the presence of overt concentrations of methamphetamine contamination in excess of the regulatory and statutory levels permitted in Colorado.
- Based on the results of the samples, an illegal drug laboratory, as defined in Colorado Revised Statutes §25-18.5-101 exists at the subject property.
- By virtue of this letter and documentation, “Discovery” of an illegal drug laboratory, as that term is found in Colorado Revised Statutes §25-18.5-103 and Regulation 6CCR 1014-3 (3) has now occurred at the subject property.
- By virtue of this letter and documentation, “Notification” as that term is used in CRS §25-18.5-103 (1)(a) is hereby made.
- According to CRS §25-18.5-104, entry into the property is strictly prohibited. Prohibition on entry extends to Real Estate agents, property owner(s), maintenance personnel, home inspectors, and any and all other personnel, except law enforcement personnel and personnel meeting the requirements of Title 29 of the Code of Federal Regulations, Part 1910.120(e).
- Pursuant to CRS §25-18.5-103, the Registered Owner of the property exclusively has two options: 1) commission an authorized Industrial Hygienist to perform a Preliminary Assessment as described in 6 CCR1014-3 (4.0 *et seq*), or 2) demolish the property. No timeframe is currently assigned in Park County for the completion of the Preliminary Assessment or demolition.
- Several unauthorized consultants (including untrained Certified Industrial Hygienists), have been performing consultation in illegal drugs labs in Colorado. Use of these consultants will result in a fatal flaw in the work. This, or any other fatal flaw in compliance with the State Regulations, will prevent the registered owner from receiving the liability immunity provided by CRS §25-18.5-103(2).
- According to Regulation 6 CCR 1014-3, any cleaning and/or remediation and/or decontamination is strictly prohibited, except pursuant to a completed Preliminary Assessment.



INTRODUCTION

On Friday, September 17, 2010, Forensic Applications Consulting Technologies, Inc. (FACTs) was contracted to perform a standard cursory evaluation for the presence of methamphetamine at the residence located at 20 Bluebird (the subject property).

Pursuant to the Colorado Real Estate methamphetamine disclosure and testing statute as described by CRS §38-35.7-103(2)(a), FACTs collected from two standard five-part composite samples for the quantitative determination of the presence of methamphetamine from ten different locations in the structure and two outlying sheds.

The samples were collected by Mr. Caoimhín P. Connell, who is an Industrial Hygienist, as that term is defined in CRS §24-30-1402.

Based on state of the art sampling and analysis techniques, FACTs conclusively determined the presence of overt methamphetamine contamination in the residential structure. Based on current statutes and regulations, the property meets the definition of an “illegal drug laboratory” as described below, and has been conclusively demonstrated to be noncompliant with Colorado State regulations and State statutes as described below.

According to current State of Colorado Regulations and Statutes, this letter serves as “Discovery” as that term is found in Colorado Revised Statutes §25-18.5-103 and CRS §38-35.7-103(2)(c) and also as “Notification” as that term is used in CRS §25-18.5-103 (1)(a).

Background Information

Structure

The subject property built *circa* 1965, consisted of a single family dwelling and two sheds approximating 1,913 square feet of interior occupiable floor space. At the time of our visit, the structures were unoccupied and devoid of all chattels.

The interior of the residential structure appears to have been newly renovated complete with new paint, cabinetry, carpeting and lighting.

PERTINENT REGULATORY STANDARDS

The State of Colorado currently has one methamphetamine regulation and three methamphetamine statutes that are germane to the subject property.

State Statutes

Environmental Statutes

Colorado has one of the country’s most comprehensive and scientifically based clandestine drug laboratory regulations. The Colorado regulations become applicable when the owner of a property has received “notification” from a cognizant authority that a property is or may be noncompliant. The discovery upon which the notification is based may be from a peace



officer indicating that chemicals, equipment, or supplies indicative of a “drug laboratory” are located at the property, “...or when a “drug laboratory” is otherwise discovered.”¹”

In turn, “illegal drug laboratory” is defined in Colorado Revised Statutes §25-18.5-101(2.7) as the areas where controlled substances, have been manufactured, processed, cooked, discarded, **used**, or **stored** and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposal, use, or storing. In this case, the presence of the methamphetamine is conclusive for concluding that, at a minimum, methamphetamine was used and is currently being stored at the property.

Pursuant to State statute CRS §25-18.5-105(1), 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, and must either be demolished or remediated pursuant to a Preliminary Assessment.

Property Statutes

Pursuant to CRS §38-35.7-103(1) a buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.

The fatal flaws of CRS §38-35.7-103, notwithstanding, pursuant to CRS §38-35.7-103 (2)(a):

If the buyer's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health..., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract.

In this case, the conclusive presence of methamphetamine is a reasonable indicator that the property was used as a methamphetamine laboratory.

Contrary to common misconception, by virtue of these findings, any second test performed pursuant to CRS §38-35.7-103(2)(b) that fails to confirm the presence of methamphetamine **cannot** be used to release the seller from the statutory requirements to perform the required Preliminary Assessment, since the discovery and notification have already occurred pursuant to CRS §25-18.5-103 (1)(a) and Colorado regulations 6 CCR 1014-3.

Pursuant to State statutes, any additional testing by another Industrial Hygienist at this property can only be used if the data support these initial findings; the data are not permitted to be used to refute, rebut or counter these findings, and cannot be used to provide the seller with regulatory relief, and cannot be used in lieu of a Preliminary Assessment.

Criminal Proceedings – Public Nuisance Statutes

Pursuant to State statute CRS §16-13-303(c)(1), 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

¹ CRS §25-18.5-103



is an offense under the laws of Colorado. Based on CRS §16-13-303(c)(1), the presence of extant methamphetamine in the property is *prima facie* evidence of possession of the same.

Pursuant to State statute §16-13-308)(1)(a), if probable cause for the existence of a Class 1 Public Nuisance is shown to the court by means of a complaint supported by an affidavit, the court shall issue a temporary restraining order to abate and prevent the continuance or recurrence of the nuisance or to secure property subject to forfeiture. Such temporary restraining order shall direct the County Sheriff or a peace officer to seize and, where applicable, close the public nuisance and keep the same effectually closed against its use for any purpose until further order of the court.

An alternative declaration of Public Nuisance may be found in statute §16-13-307(4), wherein an action to abate a public nuisance may be brought by the district attorney, or the attorney general with the consent of the district attorney, in the name of the people of the State of Colorado or in the name of any officer, agency, county, or municipality whose duties or functions include or relate to the subject matter of the action.

In this case, jurisdiction for the abatement of the public nuisance lies with the office of the “Governing Body.” The property lies within the County of Park, and the office of the “Governing Body” is:

Tom Eisenman
1246 CR 16
P.O. Box 216
Fairplay, CO 80440

FACTs will forward a copy of this report to the Governing Body on Monday, September 27, 2010. The Governing Body has the statutory authority to abate the public nuisance, close the public nuisance, seize the property until the nuisance is abated and set a time frame on the completion of abatement.

State Regulations

Pursuant to Colorado regulations 6 CCR 1014-3,² following discovery and notification, a comprehensive and detailed “Preliminary Assessment” must be commissioned by the property owner (seller) 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 of the property must be based on the Industrial Hygienist’s Preliminary Assessment, and cannot occur until such assessment has been conducted.

Since discovery and notification had not, to our knowledge, taken place at the time of our visit, FACTs was not performing a “Preliminary Assessment” as that term is defined in State regulation, and this work does not meet the elements or definition of a “Preliminary Assessment” and cannot be used or otherwise substituted for a Preliminary Assessment.

² Titled: Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*.



Mandatory Contamination Thresholds

A recurring myth amongst unauthorized consultants in methlab related issues is that if sampling (such as that performed at the subject property) finds methamphetamine, but the concentration is less than 0.5 micrograms per one hundred square centimeters ($\mu\text{g}/100\text{cm}^2$) of surface area, 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 an Industrial Hygienist chooses non-mandatory sampling (such as performed at the subject property) during an industrial hygiene evaluation, and those samples result in any contamination, even below the value of $0.5 \mu\text{g}/100\text{cm}^2$, then the property must, by state regulation, be declared an illegal drug laboratory.³ This is due to the fact that cursory sampling does not meet the data quality objectives upon which the State clean-up level of “ $0.5 \mu\text{g}/100\text{cm}^2$ ” value is based.

It was for this reason that during the establishment of our data quality objectives, FACTs was careful to select reportable limits that were sufficiently elevated such that trace or *de minimis* quantities of methamphetamine would not inappropriately trigger the State regulations.

In any event, contrary to erroneous statements frequently made by unauthorized consultants, the mere value of “ $0.5 \mu\text{g}/100\text{cm}^2$ ” is not the State of Colorado cleanup level, but rather is the value upon which the final cleanup level is based and which is described in the mandatory Appendix A of the State regulations. The Colorado clearance level of “ $0.5 \mu\text{g}/100\text{cm}^2$,” frequently misquoted by members of the general public, applies exclusively as *prima facie* evidence of decontamination at the end of a project⁴ and is that attainment threshold occasionally needed to issue a “decision statement” (final clearance).

Contrary to popular misconception, there is no *de minimis* concentration during a cursory evaluation or Preliminary 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 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.*⁵

In an unofficial opinion issued by the State of Colorado Department of Public Health and the Environment,⁶ even when the cursory concentrations are far below state mandated limits:

³ *Ibid.* Appendix A

⁴ Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*, 6 CCR 1014-3.

⁵ *Ibid.*

⁶ Email transmission from Craig Sanders to FACTs, January 31, 2008, quoting Coleen Bresnahan, CDPHE, regarding a property at 32548 Kinsey Lane Conifer, Colorado.



"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."

Although our initial testing was conducted pursuant to CRS §38-35.7-103, based on our observations, our role and activities jointly and contemporaneously fell under CRS §25-18.5-103, and the drug laboratory was "otherwise" discovered.

ASSESSMENT PROTOCOLS

Sampling Protocol

During our cursory assessment, the hypothesis was made that the subject property was devoid of detectable concentrations of methamphetamine at a specified limit of detection and data would be collected to support the hypothesis. As such, the data quality objectives were not designed to quantify or characterize the *extent* or degree of contamination, but rather to support the statement:

Methamphetamine is not present in the property above specified levels.

Our DQOs were such that we selected a total sampling area that would result in a reportable quantity limit of 0.10 µg/100cm². That is, unless the concentration of the methamphetamine in the sample submittal exceeded 0.09 µg/100cm², the laboratory would report the concentration as "below detection limit." The value of 0.10 µg/100cm² was selected since according to the State of Colorado Regulations, the minimum permissible concentration of methamphetamine allowed as determined during compliance sampling for a five parted sample is 0.1 µg/100cm².

Our testing produced results that failed to support the hypothesis, and we therefore accept the null hypothesis; *viz.* the subject property conclusively contains methamphetamine. The null hypothesis that we must accept is:

Methamphetamine is present in the property above specified levels.

Our sampling indicates that if the samples were collected as part of a final clearance sampling protocol, the concentrations of methamphetamine would have been about 300 times the minimum permissible concentration of methamphetamine allowed as determined during compliance sampling, with a 20% probability that at least one surface contained methamphetamine at a concentration of 1,500 times greater than the regulatory threshold.

Our data also suggest that there is no probability that the methamphetamine concentrations in the property are such that upon completion of the mandatory Preliminary Assessment, conditions at the property will permit the Industrial Hygienist to issue a Decision Statement directly from the mandatory Preliminary Assessment. That is, the concentrations are such, that upon completion of the Preliminary Assessment, some remediation will be required to release the property and allow occupancy.



According to Colorado revised statutes,⁷ the seller of a property shall disclose in writing to a buyer whether the seller knows that the property was previously used as a methamphetamine laboratory. Therefore, from this point forward, and until such time that an authorized Industrial Hygienist has issued a Decision Statement, the seller of the property must disclose that the property is or has been an illegal drug laboratory.

Nothing in State statutes prohibit a buyer from purchasing the property knowing the property to be contaminated. If this is done, then according to CRS §38-35.7-103(2)(c) the buyer shall notify the Governing Body of the purchase in writing on the day of closing and shall complete the Preliminary Assessment and remediation process and obtain a Decision Statement within 90 days of closing.

Sample Collection

Using standard industrial hygiene methods, we collected two 5-part composite samples from each of the structures. The samples were submitted to Analytical Chemistry, Inc. for quantitative analysis using gas chromatography coupled with mass spectrometry. Analytical Chemistry Inc. is one of the laboratories listed in Colorado's regulations as being proficient in methamphetamine analysis. A copy of the results is attached to this report.

Wipe Samples

The wipe sample media was individually wrapped commercially available Johnson & Johnson™ brand gauze pads. Each gauze material was assigned a lot number for quality assurance and quality control (QA/QC) purposes and recorded on a log of results. Each pad was moistened with reagent grade methyl alcohol. Each batch of alcohol was assigned a lot number for QA/QC purposes and recorded on a log of results.

The sampling media were prepared off-site in small batches in a clean environment. The sample media were inserted into individually identified polyethylene centrifuge tubes with screw caps and assigned a unique sample identifier.

Field Blanks

Our data quality objectives did not include a field blank, and none were submitted. The history of the FACTs sampling media has demonstrated a media and solvent contamination level below the analytical detection limit for the method (for n=109) and out of tolerance blanks for n=2 (with one withdrawn).

Field Duplicates

For the purposes of the data quality objectives associated with this cursory evaluation, no duplicates were required, and none were collected.

Sample Results

The actual methamphetamine *concentrations* found in the samples taken at the subject property, are not germane, are not within our stated data quality objectives, and therefore, are not required to be reported here. In the table below, we have presented the result of the sampling in the context of the DQOs.

⁷ CRS 38-35.7-103(3)(a)



Sample ID	Sample Location	Methamphetamine
BM091710-1A	Living room, top of fluorescent light fixture	Present Above Detection Limit
BM091710-1B	SE Bedroom, ceiling fan	
BM091710-1C	Ground floor bathroom, top of shower stall	
BM091710-1D	A-Frame shed, plastic on window	
BM091710-1E	Tool shed, top of electrical outlet	
BM091710-2A	SE Bedroom, supply vent duct interior	Present Above Detection Limit
BM091710-2B	Living room, return vent	
BM091710-2C	US Bath, top of north light	
BM091710-2D	US West cubby, top of electrical wiring	
BM091710-2E	US East cubby, top of duct	

Table 1
Results of Methamphetamine Samples

If the positive composite samples had been collected and submitted as part of final verification sampling conducted pursuant to Colorado regulation 6 CCR-1014-3, the results would have indicated that the concentrations were approximate 300 times above the statutory clean-up limit permitted by regulation, with a 20% probability that at least one surface exceeded the minimum regulatory threshold by 1,500 times.

CONCLUSIONS

Based on our objective sample results collected during our September 17, 2010 visit, the subject property contains overt methamphetamine contamination in excess of the regulatory thresholds set by the Colorado Board of Health and as defined in 6 CCR 1014-3.

Pursuant to State statutes, the illegal drug lab has been “otherwise discovered.”

Pursuant to statute, a Preliminary Assessment must be performed pursuant to regulation by an authorized Industrial Hygienist, and a “decision statement” obtained, or the property must be demolished.

Prepared by:



Caoimhín P. Connell
Forensic Industrial Hygienist



APPENDIX A

LABORATORY REPORT





ANALYTICAL CHEMISTRY INC.

Established in 1979

4611 S. 134th Place, Ste 200
Tukwila WA 98168-3240

Website: www.acilabs.com

Phone: 206-622-8353

E-mail: info@acilabs.com

Lab Reference:	10157-09
Date Received:	September 20, 2010
Date Completed:	September 21, 2010

September 22, 2010

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

CLIENT REF: Bluebird

SAMPLES: wipes/2

ANALYSIS: Methamphetamine by Gas Chromatography-Mass Spectrometry.

RESULTS: in total micrograms (ug)

Sample	Methamphetamine, ug	% Surrogate Recovery
BM091710-01	10.1	106
BM091710-02	7.40	110
QA/QC Method Blank	< 0.004	
QC 2.00 ug Standard	1.88	
QA 0.020 ug Matrix Spike	0.021	
QA 0.020 ug Matrix Spike Duplicate	0.020	
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

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

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

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FAX: 206-622-4623

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APPENDIX B

CONSULTANT'S SOQ





**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:	Bluebird	Form # ML15
Date Sept. 23, 2010		
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 Statutes §24-30-1402. He has been a practicing Industrial Hygienist in the State of Colorado since 1987; and he is the contract Industrial Hygienist for the National Center for Atmospheric Research and has been involved in clandestine drug lab (including meth-lab) investigations since 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 over 200 hours of 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; he is a member of the Colorado Drug Investigators Association, the American Industrial Hygiene Association (where he serves on the Clandestine Drug Lab Work Group), and the Occupational Hygiene Society of Ireland. Mr. Connell is an Subject Matter Expert for the Department of Homeland Security, IAB Health, Medical, and Responder Safety SubGroup, and he conducted the May 2010 Clandestine Drug Lab Professional Development Course for 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."

Mr. Connell is 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 190 assessments in illegal drug labs, and collected over 1,700 samples during assessments (a detailed list of drug lab experience is available on the web at:

<http://forensic-applications.com/meth/DrugLabExperience2.pdf>

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 services to private consumers, Indian Nations, state officials and Federal Government representatives with forensic services and 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 a coauthor of a 2007 AIHA Publication on methlab assessment and remediation.

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