



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

February 8, 2010

Sherry Dimick
Prime Properties Realty Real Estate
4950 W. 71st Place
Westminster, CO 80030

Dear Ms. Dimick:

We reviewed the information you provided to us regarding the property located at 4690 West 76th Ave., Westminster Colorado (the subject property). Specifically we have looked at the document identified as a "Preliminary Assessment" and the report by "Inspection Perfection."

According to Colorado State Statute, upon *Discovery* and *Notification* of potential methamphetamine contamination at a property, an authorized Industrial Hygienist must prepare a "Preliminary Assessment" for the property. The documentation conclusively confirms that *Discovery* and *Notification* of potential contamination has occurred for this property prior to the purchase by your client.

Based on our cursory review of the documents we have made the following findings:

- The documentation available to FACTs indicates that the property located at 4690 West 76th Ave. was conclusively found by law enforcement to meet the definition of an "illegal drug laboratory" as defined in CRS 25-18.5-101.
- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" exhibited gross technical incompetence.
- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" references legislative standards that don't exist.
- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" appears to have been prepared for a property in California pursuant to California regulations.
- The work by Gobbell Hays Partners, Inc. (GHP) lacked credibility, exhibited substandard professional attributes and appears to have violated the code of ethics of the American Industrial Hygiene Association and the American Board of Industrial Hygienists.
- The document prepared by GHP and identified as a "Preliminary Assessment" is not a "Preliminary Assessment" as defined by regulation and does not meet the definition of a "Preliminary Assessment" as defined in Colorado Regulation 6

CCR 1014-3. The work by GHP failed to contain the necessary elements required of a Preliminary Assessment.

- The document prepared by GHP and identified as a “Preliminary Assessment” is fatally flawed, exhibits gross technical incompetence, and GHP failed to comply with the following mandatory sections of State Regulations in the preparation of a “Preliminary Assessment.”

Paragraph 4.1 Property Description
Paragraph 4.2 Law Enforcement Documentation
Paragraph 4.3 Identification of Functional Spaces
Paragraph 4.4 Manufacturing Methods
Paragraph 4.5 Manufacturing Methods
Paragraph 4.6 Identification of Areas of Contamination
Paragraph 4.7 Identification and documentation of chemical storage areas
Paragraph 4.8 Identification and documentation of chemical storage areas
Paragraph 4.9 Identification and documentation of cooking areas
Paragraph 4.10 Identification and documentation of signs of contamination such as staining, etching, fire
Paragraph 4.11 Plumbing Inspection
Paragraph 4.12 Identification of adjacent units and common areas where contamination may have spread
Paragraph 4.14 Photographic documentation
Paragraph 8.7 Figure of signs of contamination
Paragraph 8.11 Sampling procedures
Paragraph 8.12 A description of the analytical methods used
Paragraph 8.13 Figures of sampling locations
Paragraph 8.14 Health and safety procedures used in accordance with OSHA requirements.
Paragraph 8.21 Consultant statement of qualifications
Paragraph 8.22 Certification of procedures and results
Paragraph 8.23 Mandatory certification language
Paragraph 8.24 Signature of the consultant

- The document prepared by Gobbell Hays Partners, Inc. contained gross technical errors, misinformation, and indicated that the authors were unfamiliar with State regulations, State statutes and the assessment of illegal drug laboratories.
- As such, to date, no Preliminary Assessment has been completed for the subject property as required by State Statutes and State Regulation.
- According to State Statutes and State Regulation, prior to allowing entry into a contaminated property by any unauthorized person, the property must be remediated pursuant to the findings of the Preliminary Assessment. All remediation must be performed in compliance with 6 CCR 1014-3. No remediation or cleaning may occur except that based on the Preliminary Assessment.
 - Based on the information available to FACTs, no lawful remediation occurred at the property.



- If some undocumented cleaning occurred at the property, the cleaning is in violation of State regulation since no Preliminary Assessment has been performed for the property.
- According to State statutes and State regulations, following the lawful remediation of a contaminated property, an authorized Industrial Hygienist must perform final sampling to determine if the remediation activities properly and successfully removed the contamination. The final testing must be performed in a manner identified by State regulation. If the final testing indicates compliance, the Industrial Hygienist must issue a “Decision Statement” (a statement of compliance) releasing the property for reentry by members of the general population. The Decision Statement must contain specific elements specified by State Regulation.
 - No final clearance testing has been performed for the subject property.
 - The inspection performed by Inspection Perfection is not presented by Inspection Perfection as final clearance sampling related to an illegal drug lab, and is not presented as a Decision Statement, and is not compliant with State regulations and cannot be used in lieu of a Decision Statement.
 - Nowhere in the documentation provided do we find that Inspection Perfection ever misrepresented their work; Inspection Perfection clearly stated that the testing they performed was inconclusive, not definitive and that if there was any evidence of meth manufacturing, sampling should be performed by an Industrial Hygienist.
 - The author of the Inspection Perfection report does not present himself to be an Industrial Hygienist and is not an Industrial Hygienist and would not be authorized to perform final clearance sampling.
 - Inspection Perfection does not present the sampling as compliance sampling. The sampling performed by Inspection Perfection is not consistent with state regulations and cannot be used with regard to methamphetamine cleanup regulations.
 - The analysis used by Inspection Perfection is a qualitative method and is not permitted under State of Colorado Regulations, and cannot be used to determine compliance with State Regulations. State regulations permit only quantitative analysis, performed by an authorized Industrial Hygienist who must use methodologies specified in regulation.
 - Based on the available information, no final testing has been performed, and no Decision Statement has been issued.



- In violation of State Statute 25-18.5-103, the owner of the property failed to meet the clean-up standards as specified. CRS §25-18.5-103 states:

(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 and the property owner has received notice, the owner of any contaminated property **shall** meet the cleanup standards for property established by the board in section 25-18.5-102

- Based on the information available, pursuant to CRS §25-18.5-104, the seller of the subject property violated state statutes by failing to secure the property and by permitting unauthorized persons to enter the property. CRS §25-18.5-104 states:

If a structure or vehicle has been determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination, the owner of the structure or vehicle shall not permit any person to have access to the structure or vehicle unless the person is trained or certified to handle contaminated property pursuant to board rules or federal law.

- Pursuant to CRS §25-18.5-104, since no lawful Preliminary Assessment has been conducted and since no lawful remediation has occurred and since no lawful Decision Statement has been issued, entry into the property is strictly prohibited.
- Based on the best information available, entry into the property exposes that person to toxicologically significant levels of contamination.
- The seller of the property appears to have violated Colorado Revised Statute §38-35.7-103. (*Disclosure - methamphetamine laboratory*). CRS §38-35.7-103(3)(a) explicitly states:

Except as specified in subsection (4) of this section, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.

- CRS §38-35.7-103 further explicitly states:

(b) A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:

(I) Costs relating to remediation of the property according to the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S.;

(II) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and

(III) Reasonable attorney fees for collection of costs from the seller.



- In the absence of valid documentation to the contrary, we conclude that levels of methamphetamine in excess of the State permitted limits continue to exist at the property.

- Colorado Criminal Code CRS §18-3-208 states:

A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment, which is a class 3 misdemeanor.

In this case, the owner of an illegal drug lab (the seller) who permits another to enter their property (which is by itself a violation of state statute) "engages in conduct which creates a substantial risk of serious bodily injury to another person." There are many law enforcement officers, children, and other building occupants who are examples of the serious chemical induced bodily injuries that occur from exposures received in illegal drug labs.

- The property remains in a state of noncompliance with Colorado regulation 6 CCR 1014-3 and Colorado Statutes CRS 25-18.5-101 *et seq.*
- An illegal drug lab, as that term is defined in CRS §25-18.5-101, remains in existence at the subject property.
- A Class 1 Public Nuisance, as defined in CRS §16-13-303(1) remains in existence at the subject property.
- Based on our findings, the seller was, or should have been, fully aware of the fact that the property was confirmed as an illegal drug laboratory that had not been remediated and into which all entry by all persons (including the Home Inspector, Realtors and prospective buyers) was strictly restricted by law and has potentially placed those persons in danger of harm by chemical exposure.

The following sections describe our findings, rationale, methods, observations, conclusions and recommendations.

INTRODUCTION

FACTs was contacted by Sherry Dimick, Prime Properties Realty Real Estate on February 8, 2010. Ms. Dimick had a series of questions regarding methlab issues and regulations in the State of Colorado and asked FACTs to help clarify her questions.

Ms. Dimick provided FACTs with a package of documents related to the subject property. FACTs accepted the documents in good faith as a complete accurate record of pertinent documents regarding potential methamphetamine contamination.



Specifically, FACTs received and reviewed the following:

- 1) PRELIMINARY ASSESSMENT METHAMPHETAMINE LAB INVESTIGATION FOR 4690 WEST 76TH AVENUE WESTMINSTER COLORADO, Prepared by Peter Cappel, Gobbell Hays Partners, Inc. August 29, 2007.
- 2) Confidential Inspection Report: 4690 W 76TH AVE. Prepared by Carl Brahe, Inspection Perfection Inc. November 24, 2009

Regulatory Framework

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

In its report, GHP makes the following bizarre statement:

Methamphetamine Contamination Disclosure is now required due to the passage of Assembly Bill 1025 (Methamphetamine Contaminated Property Cleanup Act of 2005). It is now required for a property owner to disclose in writing to a prospective buyer or tenant if local health officials have issued an order prohibiting the use or occupancy of a property contaminated by methamphetamine laboratory activity. The owner must also give a copy of the pending order to the buyer to acknowledge receipt in writing. The bill also establishes remediation and re-occupancy standard for determining when a property, contaminated as a result of methamphetamine activity, is safe for human occupancy. Local health officials, after conducting an investigation, are also required to issue an order prohibiting the use or occupancy and to post the order on the property, in addition to the property owner taking specific actions. Failure to comply with these, and all requirements of AB 1025, may subject an owner to, among other things, a civil penalty up to \$5000. Aside from disclosure requirements, AB 1025 also outlines procedures for local authorities to deal with methamphetamine contaminated properties, including filing of a lien against a property until the owner cleans up contamination or pays for cleanup costs.

The statement made by Gobbell Hays Partners is bizarre since:

- There is no such thing as “Assembly Bill 1025” in Colorado
- There is no such thing as the “Methamphetamine Contaminated Property Cleanup Act of 2005” in Colorado
- None of the provisions in the paragraph apply
- None of the provisions in the paragraph exist in Colorado
- None of the provisions in the paragraph are pertinent to the subject property

The statement underscores GHP’s complete lack of understanding of Colorado regulations and statutes. The statement is also bizarre since it appears to have been plagiarized from the internet from a company called HomeGuard Inc. found at “<http://www.homeguardnhd.com/ourreport.html>”

The inclusion of the false and bizarre language indicates that Gobbell Hays Partners merely have a boiler plate report that is reproduced for all properties regardless of regulatory requirements and regardless of site conditions.



Colorado State Statutes

Environmental Statutes

Colorado has one of the country's most comprehensive clandestine drug laboratory regulations. The Colorado regulations become applicable when the owner of a property has received "notification" from a peace officer that chemicals, equipment, or supplies indicative of a "drug laboratory" are located at the property, **or when a "drug laboratory" is otherwise discovered,**¹ and the owner of the property where the "drug laboratory" is located has received notice.

In turn, "drug laboratory" is defined in Colorado Revised Statutes §25-18.5-101as

"Drug laboratory" means the areas where controlled substances, as defined by section 18-18-102, C.R.S., 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 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.

A common public misconception is that an illegal drug lab is exclusively where methamphetamine was manufactured; however that is a myth.

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 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.

¹ CRS §25-18.5-103
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Property Statutes

Pursuant to CRS §38-35.7-103 (1), a buyer of residential real property has the right to test the property within three years of purchase 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 combined with the law enforcement documentation referenced by GHP are reasonable indicators that the property was used to at least store or possess methamphetamine. In any event, the manufacturing of methamphetamine, *per se*, is a moot point for the above referenced reasons.

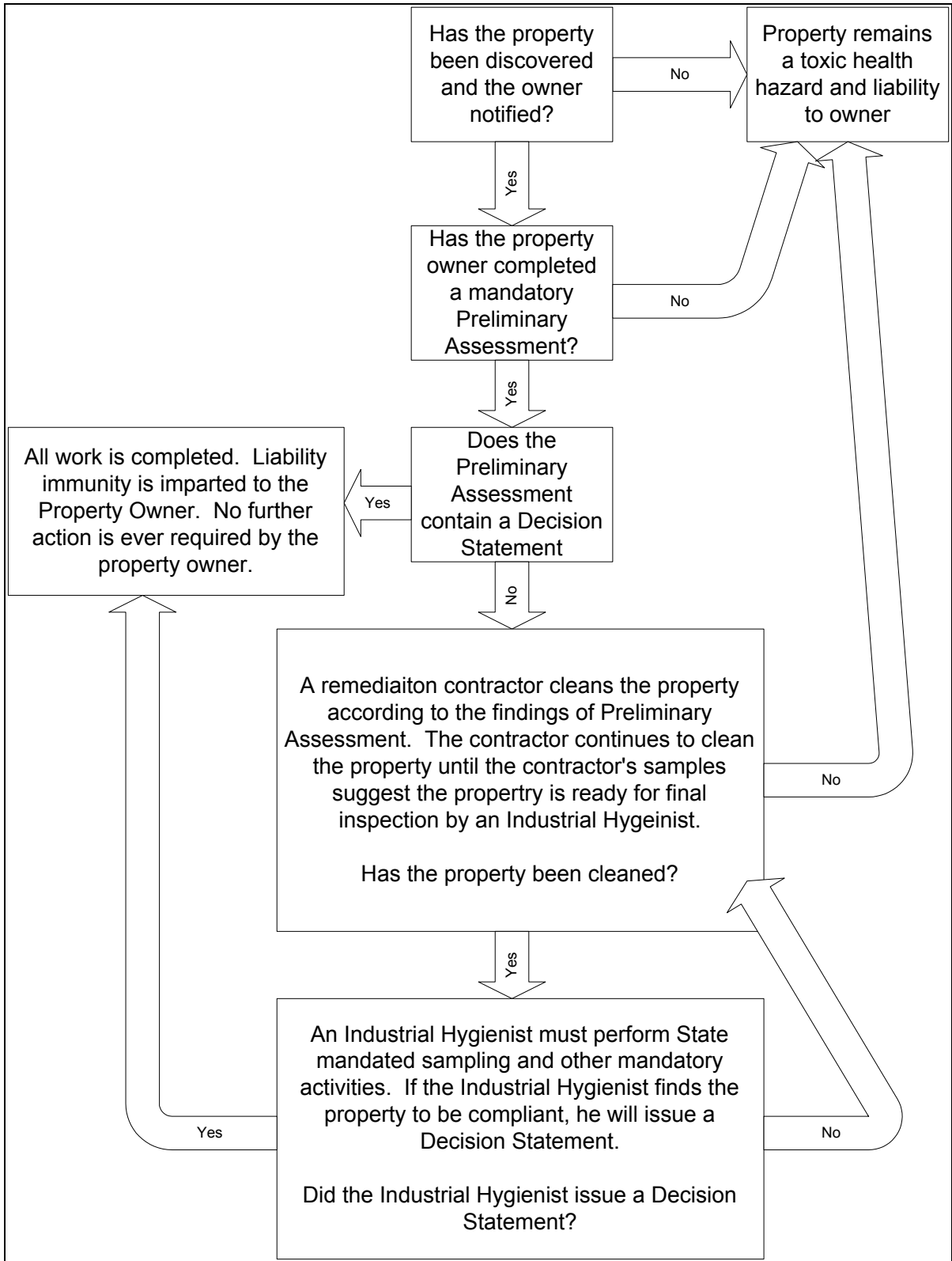
Contrary to common misconception, any second test (such as that performed by Inspection Perfection or even an authorized Industrial Hygienist) performed pursuant to CRS §38-35.7-103(2)(b) that fails to confirm the presence of methamphetamine may **not** be used to provide regulatory relief or otherwise 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 outside the context of a Preliminary Assessment 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.

Colorado State Regulations 6 CCR 1014-3

State Regulation 6 CCR 1014-3 is titled *Colorado Department Of Public Health And Environment, State Board Of Health, Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*; the requirements of 6 CCR 1014-3 are mandatory.

This regulation specifies the three primary phases of the compliance process of an illegal drug lab which can be summarized in the following flow chart:





**Figure 1
Compliance Flow Chart**



The content and context of the “Preliminary Assessment” is explicitly delineated by regulation. If the assessment work does not contain the minimum mandatory elements, or if the work is not performed by an authorized Industrial Hygienist, the work is fatally flawed, and cannot be used as a Preliminary Assessment.

In an unofficial opinion issued by the State of Colorado Department of Public Health and the Environment,² the state opined that even if the cursory evaluation 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.”

Any remediation or cleaning of the property must be based on the Industrial Hygienist’s Preliminary Assessment, and cleaning cannot occur until such assessment has been conducted.

PRELIMINARY ASSESSMENT

According to Colorado State Regulation 6-CCR 1014-3, following the discovery of an illegal drug lab, as that term is defined in CRS §25-18.5-101, and following “notification,” the property must either be demolished or a “Preliminary Assessment” must be conducted at that property to characterize extant contamination (if any), and to direct appropriate decontamination procedures (if any). Pursuant to these regulations, information obtained in the Preliminary Assessment, must be used as the basis for remediation, and must be the basis for any final clearance sampling.

The Preliminary Assessment must be conducted according to specified requirements³ by an authorized Industrial Hygienist as that term is defined in CRS §24-30-1402. Implicit in the regulations is the requirement that the Industrial Hygienist has been trained in aspects of clandestine drug labs. According to the regulations, during the assessment, the Industrial Hygienist is to perform hypothesis testing wherein:

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.

To ensure that the Industrial Hygienist is properly authorized to perform the necessary work, State regulations⁴ require the Industrial Hygienist to include in the final report a ...

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.

² Email transmission from Craig Sanders to FACTs, January 31, 2008, quoting Coleen Bresnahan, CDPHE, regarding a property at 32548 Kinsey Lane Conifer, Colorado.

³ Section 4 of 6 CCR 1014-3

⁴ 6 CCR 1014-3 §8.21
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To our knowledge, the author of the GHP report has no specific knowledge of methamphetamine laboratories to the extent that the author failed to include the mandatory Statement of Qualifications as required by regulation.

A review of the documents by GHP indicates a lack of technical competence in methlab assessments and in understanding Colorado regulations for reasons described below. Although FACTs did not perform a thorough review, in addition to the lack of an SOQ, as required by regulation, we have made a list of fatal flaws associated with the GHP report.

Failure to Comply with Mandatory Elements of a Preliminary Assessment

Pursuant to State regulations, specific information must be included in the Preliminary Assessment (PA). Section 4.0 of 6 CCR 1014-3 clearly states:

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

Section 4.1 of 6 CCR 1014-3 states that the Industrial Hygienist must provide:

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.

Based on the available documentation, Gobbell Hays Partners failed to comply with this mandatory requirement. Nowhere in their report were we able to locate where GHP provided

- 1) the legal description for the property, or
- 2) the number of structures present and
- 3) the types of structures
- 4) or a description of adjacent properties
- 5) or a description of surrounding properties

Furthermore, nowhere has GHP identified the size of the property. The square footage of the property plays a key role in the final clearance protocol.

Paragraph 4.2 Law Enforcement Documentation

GHP failed to perform its duties and fulfill regulatory requirements by failing to determine if law enforcement documents were available. Instead, GHP states that they limited their review to a police document provided to them by the property owner. Pursuant to State regulations, the Industrial Hygienist is required to provide a:

Review of available law enforcement reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.



In its report, GHP failed to obtain current law enforcement records and limited their review to a law enforcement document that was four years old. GHP appears to have made no attempt to seek out the existence of current law enforcement documents as required by regulation. Furthermore, legitimate experts in the field of assessing clandestine drug laboratories are cognizant of the fact that Westminster is a participant of the North Metro Drug Task Force, who is responsible for maintaining most of the information associated with clandestine drug labs for the area wherein the subject property is located. Nowhere in the GHP report, do we see where GHP contacted the Westminster Police Department or the NMDTF or the County Sheriff's office to determine if law enforcement documents were in fact available for this property.

GHP failed to perform their duties by failing to review available law enforcement documents that may provide "...information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal."

Paragraph 4.3 Identification of Functional Spaces

GHP failed to perform its duties and fulfill regulatory requirements by failing to identify functional spaces within the property. Pursuant to this section of the mandatory regulation, the Industrial Hygienist is required by regulation to include:

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

According to State regulations 6 CCR 1014-3 (Section 3)

"Functional space" means a space where the spread of contamination may be expected to occur relatively homogeneously, compared to other functional spaces. The "functional space" may be a single room or a group of rooms, designated by a consultant who, based on professional judgment, considers the space to be separate from adjoining areas with respect to contaminant migration. Other typical examples of functional spaces include a crawl space, an attic, and the space between a dropped ceiling and the floor or roof deck above.

In its report, GHP failed to perform the regulatory mandated identification of structural features that may indicate separate functional spaces, such as attics, false ceilings and crawl spaces, basements, closets, and cabinets. Instead, GHP merely identified various rooms in the structure that may or may not be single or separate functional spaces. Based on the report, GHP has made final clearance sampling impossible since according to State regulations one sample must be collected from each functional space. However, since GHP failed to identify specific functional spaces, there is no way to know how final clearance sampling should be conducted.

Therefore, GHP appears to identify only one large functional space, the entire residence, but does not explain why it believes that contamination is homogenous. Or alternatively, GHP has collected several samples from within areas a legitimate expert would have presumed to be a single functional space – therefore, why did GHP collect these samples except to indicate each was a separate functional space? Finally, GHP described the presence of an attic – and although GHP collected unnecessary samples from many other



locations, nowhere did GHP collect a sample from the attic; why? How would a contractor know if GHP intended to include the attic as part of the remediation? Did GHP intend to exclude the attic? GHP failed to perform its duties by failing to perform the mandatory assessment.

The fact that GHP collected several unnecessary samples for reasons unknown and failed to identify mandatory functional spaces indicates a gross lack of technical competence.

Paragraph 4.4 Manufacturing Methods

GHP failed to perform its duties by identifying the manufacturing methods used that resulted in the presence of the contamination identified at the property. According to mandatory State regulations, the Industrial Hygienist is required to provide

Identification of manufacturing methods based on observations and law enforcement reports

In their report, GHP makes no attempt to fulfill their regulatory obligations and entirely failed to meet this requirement. In their report, regarding manufacturing methods, GHP merely states:

Manufacturing Methods: The attached police report does indicate that evidence of meth was found in the home at the time of the documented arrest on August 26, 2003.

The statement does not, in any way, even address manufacturing. The statement merely confirms what was already known - which was that police confiscated meth from the property at the time of the 2003 arrest. Instead of reviewing current law enforcement documents that may have been present, and by interviewing the occupant of the house and by making visual observations at the property to determine the manufacturing method, GHP relied exclusively on a four year old document that apparently provided no information to the question being asked.

By entirely failing to meet their regulatory obligation, GHP also entirely fails to provide sufficient information to the remediation contractor on how to remediate the property. For example, the mandatory remediation and final clearance sampling will be different if the manufacturing method was a P-2-P lab, or an isosafrole production, or a Red P lab or a Nazi Lab.

Finally, since as already described, GHP failed to provide a Statement of Qualifications as required by regulation, we have no evidence that GHP possesses the necessary technical competency to know what the manufacturing process may have been. GHP has not demonstrated knowledge of clandestine drug manufacturing processes.

Paragraph 4.5 Identification of chemicals used

Colorado Regulations require the Industrial Hygienist to provide:

Identification of chemicals used, based on observations, law enforcement reports, and knowledge of manufacturing method(s).



By way of response, GHP makes the following statement in their report:

The attached police report does not indicate that chemicals/products used in the manufacturing of meth were found at the time of the arrest on August 26, 2003.

The statement in the Gobbell Hays report entirely fails to address the mandatory regulatory requirement. Nowhere in Colorado regulation is there a provision that requires an Industrial Hygienist to exclusively use a four year old police report to determine what was or was not found by the police during an arrest. Instead, the regulation is explicitly clear with regard to the mandatory duty of the Industrial Hygienist which is to provide:

Identification of chemicals used, based on observations, law enforcement reports, and knowledge of manufacturing method(s).

Nowhere in their report has GHP identified what their observations with regard to manufacturing may be. Nowhere in their report has GHP made any attempt to review extant or current law enforcement documents for additional information and nowhere in their report did GHP express any knowledge of manufacturing methods. GHP entirely failed to perform their duty by failing to meet their regulatory obligation in the completion of this task.

Paragraph 4.6 Identification of Areas of Contamination

GHP entirely failed to perform its duties and fulfill regulatory requirements by failing to identify or recognize signs of contamination. Pursuant to State regulations the Industrial Hygienist is required to provide:

Identification and documentation of areas of contamination. This identification may be based on visual observation, law enforcement reports, proximity to chemical storage areas, waste disposal areas, or cooking areas, or based on professional judgment of the consultant; or the consultant may determine that assessment sampling is necessary to verify the presence or absence of contamination. If the consultant determines that assessment sampling is necessary, such sampling shall be conducted in accordance with the sampling protocols presented in Appendices A and D. Sample analysis shall be conducted in accordance with the method requirements presented in Appendices B and D.

In this case, GHP merely performed wonton and apparently misguided and unnecessary sampling instead of meeting their regulatory obligations. Furthermore, GHP indicated its lack of technical competency by making several false statements in their report in the section ostensibly dealing with this aspect of regulatory compliance.

Nowhere in State regulation is sampling required during a Preliminary Assessment. So it is strange that GHP would have collected 17 samples from a property that was already otherwise known to be contaminated, and collected those samples from redundant locations, but failed to collect samples from areas that truly needed characterization (such as the attic).

In its report, GHP makes the following false statement:

Eight (8) of the methamphetamine wipe samples were above the Colorado regulation cleanup level of 0.5 µg/100 cm².



The statement is false since the Colorado cleanup level is not, as stated by GHP, 0.5 µg/100 cm². Contrary to popular belief among poorly trained consultants, the mere value of “0.5 µg/100cm²” 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 µg/100cm²,” frequently misquoted by poorly trained consultants such as GHP, applies exclusively as *prima facie* evidence of decontamination at the end of a project⁵ and is that attainment threshold occasionally needed to issue a “decision statement” (final clearance).

In fact, there is no *de minimis* concentration during a Preliminary Assessment below which a property could be declared “not a meth lab” or “not of regulatory concern” since any sampling performed during a Preliminary Assessment is merely to test the primary hypothesis, and virtually any concentration of meth present in a sample (even below the magical “0.5 µg/100cm²,”) 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.*⁶

A recurring myth amongst poorly trained consultants such as GHP, 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 (µg/100cm²) 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 performs non-mandatory sampling (such as that GHP performed at the subject property) during an industrial hygiene evaluation, and those samples result in ANY contamination, even below the value of 0.5 µg/100cm², then the property must, by state regulation, be declared a methlab. 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 µg/100cm²” value is based.

GHP furthermore appears to be unaware of State regulations since the methamphetamine cleanup level in some cases may be as low as 0.1 µg/100cm², and not the cited 0.5 µg/100cm². Finally, GHP entirely failed to recognize that depending on the manufacturing method used, (which was never identified by GHP as required), the concentration of methamphetamine may be entirely unimportant since according to State regulations,

§7.2. If there is evidence of iodine contamination on materials or surfaces that will not be removed, surface wipe samples for iodine shall not exceed a concentration of 22 µg/100 cm².

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

⁶ *Ibid.*



§7.3. If the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, surface wipe samples for lead shall not exceed a concentration of 40 µg /ft², and vapor samples for mercury shall not exceed a concentration of 1.0 µg /m³.

GHP appears to be entirely oblivious to these State requirements.

GHP further makes another false statement in their report when they state:

Sampling was done in accordance with the Colorado Department of Health and Environment (CDPHE) regulations 6CCR 1014-3 Regulations pertaining to the cleanup of methamphetamine laboratories.

As described in this report, sampling, as performed by GHP, was performed in spite of 6 CCR 1014-3 Regulations Pertaining to the Cleanup of Methamphetamine Laboratories, and with apparent disregard for the regulations.

Paragraph 4.7 Identification and documentation of chemical storage areas

GHP entirely failed to perform their regulatory duty to comply with this section of the regulation. In their report, GHP merely relied on a four year old police report that may not have had anything to do with controlled substances, and which may not have had anything to do with chemical storage. In their report GHP states:

The attached police report does not indicate chemicals/products used in the manufacturing of meth were found storage (sic) at the property at the time of the arrest on August 26, 2003.

GHP apparently made no attempt whatever to fulfill their regulatory, ethical and professional obligations and determine extant or historical conditions as required by law and identify and document chemical storage areas at the property.

The comment in the GHP report makes the unfounded and unsupportable argument that a four year old police report somehow would represent a standard of extant or historical chemical storage conditions. In fact, it is not the responsibility of the Westminster Police Department to document chemical storage areas at the subject property – it is explicitly and exclusively the responsibility of GHP. GHP relied on an irrelevant four year old document to satisfy its extant regulatory obligations.

The gross incompetence exhibited by GHP in this regard cannot be overstated. Current aerial photography of the subject property reveal that the exterior grounds of the property exhibit potential for widespread chemical storage to have been present at the time of the GHP site visit. It would appear that GHP made no attempt whatsoever to investigate the grounds, or the property to identify or document chemical storage areas as required by regulation.



Paragraph 4.8 Identification and documentation of waste disposal areas

GHP appears to have entirely failed to perform their duties by entirely failing to fulfill their regulatory obligation by identifying or documenting waste disposal areas as required by regulation.

In their report, GHP states:

The occurrence of waste disposal occurring with meth manufacturing could not be determined either from interviews or subsequent investigations conducted by GHP.

In the presentation of their report, as delineated above, GHP has exhibited gross technical incompetence in the performance of its duties. Since Gobbell Hays Partners did not make any attempt to determine manufacturing methods (and indeed appears to be unaware of manufacturing methods) how can GHP say with any confidence “The occurrence of waste disposal occurring with meth manufacturing could not be determined...” when GHP was incapable of determining manufacturing methods and nowhere in their report did they indicate interviewing anyone. It must be remembered that GHP, in violation of state regulations, entirely failed to document their qualifications to perform an assessment of an illegal drug lab in the first place, and the gross technical incompetence exhibited throughout their report strongly supports the argument that they had no ability to identify waste disposal areas even if they were present.

Paragraph 4.9 Identification and documentation of cooking areas

GHP entirely failed to perform their regulatory and professional duties by failing to comply with this section. In their report, GHP relied on a four year old, irrelevant document and stated:

The attached police report does not indicate evidence of meth cooking in the home at the time of the arrest on August 26, 2003.

According to State regulations, it is not the responsibility of the Westminster Police Department to document cooking areas at a subject property four years earlier. Indeed, a full-blown meth cook may have been occurring in every room of the house at the time of the arrest on August 26, 2003, and Westminster Police Department would have had absolutely no obligation to document the presence of those operations. Instead, according to State regulation 6 CCR 1014-3, it is exclusively and solely the responsibility of the Industrial Hygienist to determine and to document cooking areas by any means available. The fact that GHP did not even bother to determine if newer documents were available suggests gross professional malpractice.

4.10. Identification and documentation of signs of contamination such as staining, etching, fire

According to State regulations, the Industrial Hygienist is required to provide identification and documentation of signs of contamination such as staining, etching, and fire. GHP entirely failed to perform their professional and regulatory obligations by entirely ignoring this duty. We do not find anywhere in the GHP report where GHP has



even addressed any of these issues. And yet our cursory review indicates visual signs that were overlooked; for example, public domain aerial photography clearly shows areas of stressed vegetation on the property that was entirely ignored by GHP. The stressed vegetation could indicate contamination migration from the property onto adjoining properties.

4.11 Plumbing Inspection

State regulations require the Industrial Hygienist to identify and assess the plumbing associated with the structure. State regulations explicitly require:

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.

We do not see where GHP has identified whether the property even has an ISDS. Regarding their regulatory obligations, GHP merely stated:

Visual inspection of various sinks and floor drain did not reveal staining indicative of previous waste disposal.

A legitimate expert, trained in the aspects of clanlab assessment would know that staining is not exclusively the indicator used to determine the integrity of the plumbing system. Specifically, the plumbing system could have been completely corroded away with hydrochloric acid, hydroiodic acid, hypophosphorous acid, or a variety of other acids or corrosives, without any staining occurring. GHP failed to meet their regulatory obligation regarding this requirement.

4.12. Identification of adjacent units and common areas where contamination may have spread

GHP failed to meet their regulatory requirement regarding adjacent properties and the potential spread of contaminant.

Regarding this requirement, GHP merely stated:

The property is a single family home and there are no attached adjacent structures that would be impaired by activities in the home or garage.

However, there is no language within the State regulations that allow the Industrial Hygienist to merely limit their assessment to “attached” adjacent structures, or to just structures, or just to “impairment.” Rather, the State regulations required GHP to identify adjacent units and common areas where contamination may have spread or been tracked.

As previously described, there are two adjacent properties to the subject property. Aerial photography indicates stressed vegetation to the south west of the subject property that



could indicate migration of contaminants. This possibility was entirely overlooked during the work by GHP.

4.14. Photographic documentation

State regulations require the Industrial Hygienist to provide a photographic record of property conditions, including cooking areas, chemical storage areas, waste disposal areas, and areas of obvious contamination. We do not see where GHP fulfilled this regulatory obligation. We do not see where GHP collected any photographs and no photographs are referenced in the GHP report.

8.7 Figure of signs of contamination

State regulations require that the final document include a description of areas with signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation, with a figure documenting location(s). The only way that information can be included in the final document is if the Industrial Hygienist provides it in the Preliminary Assessment. GHP failed in its duties by failing to provide this mandatory information and figures of the stressed vegetation, and other areas of contamination.

8.11. Sampling procedures

State regulations require that the final document include a description of the sampling procedures used, including sample collection, handling and QA/QC. We do not find anywhere in the GHP report where they have provided this information. The only way that information can be included in the final document is if the Industrial Hygienist provides it in the Preliminary Assessment.

8.12. A description of the analytical methods used

State regulations require that the final document include a description of the analytical methods used and laboratory QA/QC requirements. We do not see where GHP fulfilled this mandatory obligation. The only way that information can be included in the final document is if the Industrial Hygienist provides it in the Preliminary Assessment. GHP has failed to perform its duty by failing to provide this information.

8.13 Figures of sampling locations

State regulations require that the final document include a description of the location and results of initial sampling (if any), including a description of sample locations and a figure with sample locations and identification. The only way that information can be included in the final document is if the Industrial Hygienist provides it in the Preliminary Assessment. GHP failed to meet this regulatory obligation by failing to include a full description of sampling locations with figures and photographs.



8.14. Health and safety procedures used in accordance with OSHA requirements.

State regulations require that the final document include a statement that the work was in compliance with OSHA requirements. The only way that information can be included in the final document is if the Industrial Hygienist provides it in the Preliminary Assessment. GHP failed to meet this regulatory obligation.

8.21. Consultant statement of qualifications

As previously addressed, the State requirements require the Industrial Hygienist to include a 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. GHP failed to perform their duty by failing to include this mandatory information.

8.22. Certification of procedures and results

State regulations require that the final document include a certification of procedures and results, and variations from standard practices. GHP failed to perform their duty by failing to provide this mandatory certification.

8.23. Mandatory certification language

State regulations require that the Industrial Hygienist include the following mandatory language:

~~"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."~~

We did not find that information in the GHP report. GHP failed to perform this mandatory duty.

8.24. Signature of the consultant

State regulations require the Industrial Hygienist to provide a signature page. We did not find that information in the GHP report. GHP failed to perform this mandatory duty.

INSPECTION PERFECTION

The work product included by the home inspection company, Inspection Perfection, appears to have been included as an attempt to circumvent State regulations, and to fraudulently present the work by Inspection Perfection as a Decision Statement.

In performing its work, Inspection Perfection has not violated any work ethic, or any State statute and has similarly not violated any State regulation. Inspection Perfection is a home inspection company that is not authorized to perform any illegal druglab related regulatory compliance activities. Furthermore, Inspection Perfection does not present itself or its work as authorized to perform regulatory compliance issues.



In their letter dated November 24, 2009, Inspection Perfection clearly and explicitly states that their tests are inconclusive and Inspection Perfection recommends the services of an Industrial Hygienist.

The “testing” performed by Inspection Perfection is not intended to comply with State regulations, does not comply with State regulations and cannot be used to comply with State regulations. The “testing” performed by Inspection Perfection does not demonstrate the property is in compliance or that the property can be reoccupied.

CONCLUSIONS

The subject property remains an illegal drug laboratory as defined in Colorado revised statute.

Entry into the property is unlawful.

A serious chemical hazard continues to exist in the property.

All items now in the property are considered contaminated and it is unlawful for the new owner to remove any chattels or property without complying with State regulations.

All property removed from the property after August 29, 2007, were removed unlawfully.

All persons who entered the property after August 29, 2007 entered the property unlawfully and were subject to unknown and potentially harmful chemical hazards.

No valid Preliminary Assessment has been prepared for the property.

No lawful remediation has been performed in the property.

No Decision Statement has been issued for the property.

RECOMMENDATION

We recommend that State regulations are followed.

We recommend that the purchaser seek legal advice.

This discussion was prepared *gratis* by FACTs at the request of Sherry Dimick, Prime Properties Realty Real Estate, as a public service to the People of Colorado. The discussion was not subject to the normal FACTs internal peer review. FACTs retains all rights to the materials contained herein, and reserves all rights to make any necessary corrections as to form, style, misspellings, etc.

Prepared by:



Caoimhín P. Connell
Forensic Industrial Hygienist



APPENDIX A 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:	Dimick	Form # M L15 (Nov. 2009 version)
Date:	February 8, 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; 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 (Certification Number B-10670); he is a member of the Colorado Drug Investigators Association, the American Industrial Hygiene Association, Department of Defense/FBI InterAgency Board peer subject matter expert for the Health, Medical, and Responder Safety SubGroup, and the Occupational Hygiene Society of Ireland. Mr. Connell will be conducting the AIHA 2010 Clandestine Drug Lab Professional Development Course.

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 150 assessments in illegal drug labs, and collected over 1,400 samples during assessments (a detailed list of clandestine 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 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.

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