



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

**Industrial Hygiene Assessment
of an Unoccupied Property
Resulting in the Discovery of an
Illegal Drug Laboratory
at
1170 Garrison Street
Lakewood, Colorado 80215**

Prepared for:
Xxxxx Xxxxxx
XXXX XXXXXXXX, Xxxxx XXXXX
Golden, CO 80401

Prepared by:

FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.
185 Bounty Hunter's Lane
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January 12, 2009

EXECUTIVE SUMMARY

On Thursday, January 8, 2009, Forensic Applications Consulting Technologies, Inc. (FACTs) was contracted to perform a standard cursory evaluation for the presence of methamphetamine at 1170 Garrison Street, Lakewood, Colorado 80215 (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 two standard five-part composite samples for the quantitative determination of the presence of methamphetamine from ten different locations in the subject property. The sampling data quality objectives (DQOs) employed by FACTs were to determine, within normal analytical confidences,¹ the possibility of methamphetamine presence at the subject property. 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, we conclusively determined the presence of methamphetamine in the residential structure; therefore, based on current statutes and regulations, the property meets the definition of an “illegal drug laboratory” as described below.

According to current State of Colorado Regulations and Statutes, our verbal report to the prospective buyer on Monday, January 12, 2009, served as “Discovery” as that term is found in Colorado Revised Statutes §25-18.5-103 and “Notification” as that term is used in CRS §25-18.5-103 (1)(a).

Based on this finding, after notification, entry into the property is prohibited by statute CRS §25-18.5-104. The prohibition of entry extends to the owner, the owners representatives, bank representatives, home inspectors, Realtors, and anyone else “...unless the person is trained or certified to handle contaminated property pursuant to board rules or federal law.”

Background Information

Structure

The subject property consisted of a single family dwelling approximating 1,900 square feet of interior space, with a detached barn of approximately 900 square feet. At the time of our visit, the structure was unoccupied, devoid of all chattels and was in a generally poor state of repair.

¹ Colorado Department Of Public Health And Environment, State Board Of Health, Regulations Pertaining to the Cleanup of Methamphetamine Laboratories, 6 CCR 1014-3, used merely as a sampling reference.



ASSESSMENT PROTOCOLS

Sampling Protocol

The Industrial Hygiene assessment was performed pursuant to the Colorado's Real Estate methamphetamine disclosure and testing statute as described by CRS §38-35.7-103(2)(a).

According to Colorado revised statutes,² the seller of a property shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.

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

- 1) Costs relating to remediation of the property according to the standards established by rules of the state board of health (6 CCR 1014-3);
- 2) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and
- 3) Reasonable attorney fees for collection of costs from the seller.

During our cursory assessment, the hypothesis was made that the subject property was devoid of methamphetamine 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."

Our DQOs were such that we selected a total sampling area that would result in a reportable quantity limit of 0.09 µg/100cm³. That is, unless the concentration of the methamphetamine in the sample submittal exceeded 0.09 µg/100cm³, the laboratory would report the concentration as "below detection limit."

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

Sample Collection

Using standard industrial hygiene methods, we collected two 5-part composite samples from each of the two primary 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.

² CRS 38-35.7-103(3)(a)



Wipe Samples

The wipe sample media was individually wrapped commercially available *Johnson & Johnson™* 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=63).

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

In the table below, we have presented the result of the sampling in the context of the DQOs.

Sample ID	Sample Location	Methamphetamine Concentration µg/100cm ²
GM010809-1A	Kitchen ceiling above range	8.05
GM010809-1B	Garage fluorescent light fixture	
GM010809-1C	Living room top of door bell casing	
GM010809-1D	Bathroom top of medicine chest	
GM010809-1E	Furnace supply in living room	
GM010809-1	Composite	
GM010809-2A	Den top of closet	2.98
GM010809-2B	Barn - garage louvered door	
GM010809-2C	Barn garage shelving	
GM010809-2D	Barn horse's stall	
GM010809-2E	Boy's Room S wall top of W corner	
GM010809-2	Composite	

Table 1
Results of Methamphetamine Samples

The submitted composites conclusively contain methamphetamine. If the 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 at least eighty (80) times greater than the statutory clean-up limit permitted by regulation. A copy of the laboratory report is included with this discussion as Appendix A.



Field Observations

The property contained several visual indicators consistent with a methamphetamine laboratory. For example, during our assessment, FACTs located hypodermic syringes hidden above the closet in the den. We also observed indicators of violent outbursts and antisocial behavioral traits by the previous occupants.

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 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,³ 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 §25-18.5-101 as the 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*. The definitions of an illegal drug lab includes smoking methamphetamine, since smoking is a process, and its mere presence in the context of illegal possession constitutes *storage* and therefore, an "illegal drug lab" as defined by State statutes.

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.

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.

³ CRS §25-18.5-103



In this case, the conclusive presence of methamphetamine is a reasonable indicator that the property was used to manufacture methamphetamine. In any event, the manufacturing of methamphetamine, *per se*, is a moot point as described below.

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 can **not** 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 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.

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 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:”

Mr. Craig Sanders
Environmental Protection Supervisor
Jefferson County Department of Health and Environment
1801 19th Street
Golden, CO 80401



FACTs will forward a copy of this report to the Governing Body on Wednesday, January 14, 2009.

State Regulations

Pursuant to Colorado regulations 6 CCR 1014-3,⁴ 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 definition of a “Preliminary Assessment” and cannot be used or otherwise substituted for a Preliminary Assessment.

Furthermore, no retesting of the property can challenge these data and provide regulatory relief unless the retesting is performed as part of the Preliminary Assessment, and a Decision Statement is subsequently issued pursuant to state regulations.

Mandatory Contamination Thresholds

The actual methamphetamine *concentrations* found in a sample taken at the subject property, are not germane, are not within our stated data quality objectives, and therefore, are not required to be reported. FACTs has reported the meaningless units in this report as an academic pursuit.

A recurring myth amongst unauthorized consultants fraudulently presenting themselves as Industrial Hygienists in methlab related issues is that if sampling (such as that performed at the Garrison Street 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 a methlab.⁵ 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.

⁴ Titled: Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories.*

⁵ *Ibid.* Appendix A



In any event, contrary to erroneous statements frequently made by consultants fraudulently representing themselves as Industrial Hygienists, 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 members of the general public, applies exclusively as *prima facie* evidence of decontamination at the end of a project⁶ 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 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.*⁷

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.

FOLLOW-UP ACTIONS

Colorado State statutes do not prohibit a prospective buyer from purchasing a property identified as an illegal drug lab. However, those same statutes require any such purchaser of the property to bring the property into compliance within 90 days.

From this point forward, there is only one of two legal paths the property owner can take:

- 1) A Preliminary Assessment must be performed.
- 2) The property must be demolished.

CONCLUSIONS

Based on our objective sample results collected during our January 8, 2009 visit, the subject property contains methamphetamine.

Based on the presence of methamphetamine, the property meets the definition of an illegal drug lab and Class 1 public nuisance as defined in State statutes.

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

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

⁷ *Ibid.*



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. Pursuant to CRS §38-35.7-103(2)(a), the buyer must promptly give written notice to the seller of the results of the testing, and the buyer may terminate the contract. We recommend that the registered owners (the buyer) notify the seller in writing, by certified mail, of the results of the methamphetamine tests performed at the property.

Prepared by:



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Reviewed by:



Christine A. Carty
President



APPENDIX A LABORATORY REPORT



APPENDIX B CONSULTANT'S SOQ

