



**FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.**

**Regulatory Audit  
of**

**Quality Environmental Services  
Joe Boatman**

**Preliminary Assessment  
502C West South Boulder Road  
Louisville, CO  
80027  
April 28, 2015**

**(357 Regulatory Violations)**

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## EXECUTIVE SUMMARY

FACTs is performing a series of regulatory audits on public domain documents. This document has been prepared by Forensic Applications Consulting Technologies, Inc. in response to the Boulder County Department of Health, and as part of an ongoing Motion for Judicial Review in response to unlawful actions by personnel employed by the Colorado Department of Public Health and Environment (CDPHE), and pursuant to the provisions of C.R.S. 18-8-115 *Duty to report a crime - liability for disclosure*.

This is our regulatory audit of the public domain document titled:

Quality Environmental Services  
Joe Boatman  
Preliminary Assessment  
(April 28, 2015)  
Including the  
Screening Level Assessment  
(April 18, 2015)  
502C West South Boulder Road  
Louisville, CO 80027

The purpose of this review is to document regulatory violations associated with regulatory work regarding the assessment of methamphetamine affected properties (6 CCR 1014-3). The level of scrutiny employed in this review is that which has been established by Mr. Michael Richen (Boulder County Department of Health) in his review of work performed by FACTs, Inc.

The Contractor in question, Mr. Joe Boatman, Quality Environmental Services (QES), has a long history of technical incompetence, in valid assessments, and regulatory violations.<sup>1,2,3, 4,5</sup>

For this regulatory audit, FACTs has identified no fewer than 355 total individual regulatory violations.

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<sup>1</sup> 189 Violation for 769 Cleveland Circle, Lafayette, CO 80026, February 10, 2015 , CO :  
[http://www.forensic-applications.com/meth/Boatman\\_Cleveland\\_PA\\_RA.pdf](http://www.forensic-applications.com/meth/Boatman_Cleveland_PA_RA.pdf)

<sup>2</sup>344 violations for 731 Excelsior Place, Lafayette, CO 80026: [http://forensic-applications.com/meth/Boatman\\_Excelsior\\_PA\\_RA.pdf](http://forensic-applications.com/meth/Boatman_Excelsior_PA_RA.pdf)

<sup>3</sup> 2330 Wedgewood Ave., Building 7, Longmont, CO 80503, March 15, 2015 (345 Regulatory Violations):  
[http://forensic-applications.com/meth/Boatman\\_Screening\\_Wedge7\\_RA.pdf](http://forensic-applications.com/meth/Boatman_Screening_Wedge7_RA.pdf)

<sup>4</sup> Screening Assessment 1815 Regal Ct., Unit B, Louisville, CO 80027 (90 Regulatory violations):  
[http://www.forensic-applications.com/meth/Boatman\\_Screening\\_Regal\\_RA.pdf](http://www.forensic-applications.com/meth/Boatman_Screening_Regal_RA.pdf)

<sup>5</sup> Preliminary Assessment 1815 Regal Ct., Unit B, Louisville, CO 80027 (234 Regulatory violations):  
[http://www.forensic-applications.com/meth/Boatman\\_Regal\\_PA\\_RA.pdf](http://www.forensic-applications.com/meth/Boatman_Regal_PA_RA.pdf)



## REVIEW OF THE DOCUMENT

During the performance of a Preliminary Assessment of a methamphetamine affected property, the Consultant is required by regulations to perform specific mandatory tasks and provide specific mandatory documentation. In reviewing the report associated with 502C West South Boulder Road, Louisville, CO 80027, FACTs has identified the following deficiencies.

### ***Violation of Section 4.0 Preliminary Assessment.***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform and fulfill specific elements that constitute a Preliminary Assessment. For this project, QES failed to perform those activities. As such, as delineated below, no valid Preliminary Assessment was ever performed for this subject property.

### ***Violation of Section 4.1***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific mandatory information, including:

- 4.1 Subject 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.

In their report, QES provided two completely different legal descriptions (and two completely different property owners) for the same property.

The Preliminary Assessment states:

*Its legal description as given by the Boulder County Government is LOT 40 JOSEPHINE COMMONS RPLT 1. The property is owned by JOSEPHINE COMMONS II LLC.*

Then, in Appendix 2 of the QES Preliminary Assessment, we see:

*Its legal description as given by the Boulder County Government is LOT 1 HILLSIDE SQUARE LESS MINERALS. The property is owned by HOUSING AUTHORITY OF THE COUNTY OF BOULDER, PO BOX 471, BOULDER, CO 80306.*

As described later, we also find different references to the structure itself and the square footage of the subject property.

### ***Violation of Section 4.2***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific mandatory information, including:



4.2 Summary of information from review of available law enforcement reports regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and areas of contamination, or waste disposal.

Nowhere in the reviewed report has QES documented any attempt to obtain law enforcement documents or ascertain the availability of such documents. Therefore, the locations of pertinent areas within the structure, as may have been identified by law enforcement personnel, have not been provided.

### ***Violation of Paragraph 4.3 (2 Violations)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.3 Description of structural features in all buildings, such as attics, false ceilings, crawl spaces, and basements, including:

The QES report states that the subject property has no attic, then also states the property has an attic. The County Assessor's photographs appear to identify an attic at the structure. Furthermore, a Screening Assessment for this property completed by the same consultant (QES), explicitly stated the property does have an attic, and that the attic is a shared attic:

*The subject property contained a Crawl Space beneath it and an Attic above it. There were attached condominium units to the East (Unit 502B) and to the West (Unit 502D) of this home. They shared a common Crawl Space and Attic Space.*  
Joe Boatman, Quality Environmental Services, April 11, 2015

Also in their report, QES makes the following statement:

*10. 2nd Floor Closet.*  
*11. 1st Floor Dining Room.*  
**12. Outside Shed Walls.**

Nowhere in the Preliminary Assessment has the Shed, as a structure or its sampling, been addressed.

### ***Violation of Paragraph 4.3.1 (3 Violations)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.3.1 If the building has an attic, a description of the integrity of the building ceiling (i.e., attic floor), any signs of access, storage, manufacturing, or venting into the attic (e.g., holes cut in ceiling for the purpose of venting gases from a cook),



The QES report contains photographs of penetrations in the ceiling, including penetrations in the second floor ceiling (bathroom vent). Nowhere in the QES report is there any description of the following mandatory elements:

Building ceiling conditions  
Attic Storage  
Attic Venting

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.3.1 ...a description of observations of the ducting associated with all bathroom and kitchen exhaust vents.

Throughout the QES report, the author mentions nondescript exhausts as being present. In violation of §4.3.1, there is no description of the bathroom or kitchen vents or where these vents go or terminate.

### ***Violation of Paragraph 4.3.2 (7 Violations)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.3.2 A description of the integrity of the building floor, and if there is a crawl space, a description of any signs of **access, storage, venting, or disposal** related to methamphetamine manufacturing, **integrity of any vapor barriers**, and any signs of disposal onto the soil of the crawl space. ...

QES was required to describe the following:

Signs of access  
Existence and/or condition of vapor barrier  
Evidence of storage  
Venting (the photographs provided by QES clearly show some kinds of vents)  
Disposal related to methamphetamine manufacturing  
Integrity of any vapor barriers  
Signs of disposal onto the soil of the crawl space

Nowhere in the QES report, do we see where QES has provided any of these descriptions as required by regulations.

### ***Violation of Paragraph 4.5***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.5 Identification of manufacturing methods based on the Consultant's observations and law enforcement reports, if available.



As already documented, there is no evidence that QES attempted to ascertain the availability of or obtain any law enforcement documents. There is no documentation to indicate that the author of the report as ever received any kind of training in illegal drug laboratories or their assessment and therefore would not be expected to possess the necessary skills needed to identify signs of illegal dumping, if they were present.

Indeed, there is no indication that the author of the QES report is an Industrial Hygienist (a mandatory requirement for the Interim Authorization granted by the Colorado Department of Public Health and Environment (CDPHE) to perform assessments of methamphetamine affected properties, and claimed to have been secured by the QES author). Based on previous work by this consultant, Dr. Boatman has exhibited a lack of training and knowledge in the science of Industrial Hygiene. There is nothing in the documentation that would indicate that Dr. Boatman would meet the mandatory qualifications as identified in the Colorado Revised Statutes §24-30-1402 definition of an “Industrial Hygienist.”

According to the *Colorado Department Of Regulatory Agencies, Office Of Policy And Research, Industrial Hygienists, And Safety Professionals 2001 Sunrise Review* (October 15, 2001) Mr. M. Michael Cooke, Executive Director stated:

Another avenue of redress is the Colorado Consumer Protection Act. This law prohibits individuals from misrepresenting their certification, abilities, and associations, and making false or misleading statements concerning the price of goods, services, or property. In addition, §6-1-707(1)(a)(I), C.R.S., prohibits an individual from claiming “either orally or in writing, to possess either an academic degree or an honorary degree of the title associated with said degree, unless the person has, in fact, been awarded said degree.” While this Act does not prevent individuals from performing industrial hygiene work, it does prohibit individuals from claiming that they have education or background that they do not possess. An individual who misrepresents his or her qualifications may be in violation of this Act. 18 C.R.S. § 6-1-105(1)(b), (c), (e) and (l), C.R.S.

It is the opinion of FACTs that this audited report of work performed at 502C West South Boulder Road, Louisville, CO 80027 demonstrates consultant incompetence, and demonstrates the problems created by the CDPHE when the CDPHE permitted literally anyone, without any kind of documented training and without any documentation of being an Industrial Hygienist, to perform such assessments.

Since QES made no documented attempts to obtain any pertinent law enforcement documents from appropriate law enforcement agencies, and QES has no documented training in the assessment of illegal drug laboratories, QES could not have complied with this requirement.

### ***Violation of Paragraph 4.6***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

4.6 Identification of chemicals used, based on the Consultant’s observations and knowledge of manufacturing method(s), and if available, identification and documentation





of any methamphetamine lab wastes or precursor chemicals discovered at the subject property.

As already described, QES failed to determine the availability of law enforcement documents and there would be no expectation that the consultant would have the necessary professional skills to identify manufacturing methods, if they were present at the property.

### ***Violation of Paragraph 4.7***

According to mandatory State regulations, the consultant is required to perform specific tasks including:

4.7 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, cooking areas, use areas, or the professional judgment of the Consultant.

As already demonstrated, the consultant failed to obtain law enforcement documents and failed to identify those contamination indicators that were present at the property.

If the Consultant determines that assessment sampling is appropriate, such sample collection and analysis shall be conducted in accordance with the assessment level sampling protocols and other requirements of Section 6 of this Part 1.

As described below, the consultant failed to perform such sample collection and analysis in accordance with the assessment level sampling protocols of Section 6. Part 1.

### ***Violation of Paragraph 4.9***

According to mandatory State regulations, the consultant is required to perform specific tasks including:

4.9 Identification and documentation of signs of contamination such as staining, etching, or fire damage.

As mentioned above, the consultant has no documented training or specialized knowledge in the assessment of illegal drug laboratories, and therefore, there is no information to indicate the consultant would possess the skills necessary to identify such signs. Nowhere in the report, does QES even mention “fire damage” or that they looked for such or would know what to look for.

### ***Violation of Paragraph 4.11.1 (2 Violations)***

According to mandatory State regulations, the consultant is required to perform specific tasks including:

4.11.1 If contamination above the standard is identified in any unit in a multi-unit structure with shared attics (i.e., open space with no fire walls), the shared attic spaces **shall** be investigated to determine whether they are also contaminated. If access is not available to inspect or sample shared attic spaces, the owner of the contaminated unit or their



representative shall give notice to the owner(s) of the shared attics and the owners and tenants of the units that are immediately below the shared attic spaces that methamphetamine contamination may be present. Notice shall also be given to the homeowners' association (HOA), if one has been established. The consultant shall document any limitations on access in the final report.

In their April 18, 2015 report, QES clearly and explicitly identifies a shared attic:

*There were attached condominium units to the East (Unit 502B) and to the West (Unit 502D) of this home. They shared a common Crawl Space and Attic Space.*

QES does not appear to have inspected the attic (as required), and should have notified the owner, as they were required to

...give notice to the owner(s) of the shared attics and the owners and tenants of the units that are immediately below the shared attic spaces that methamphetamine contamination may be present. Notice shall also be given to the homeowners' association (HOA), if one has been established.

Nowhere in the QES report, do we see where this information has been addressed.

### ***Violation of Section 4.14 (3 Violations)***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties, including:

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

Nowhere in the reviewed Preliminary Assessment do we see photographs of site conditions. All of the photographs (except for the close-up of sample tubes), appear to have been taken at a much earlier date (April 9th, 2015). Yet, the Preliminary Assessment was dated April 28, 2015 -- and the Preliminary Assessment site visit appears to have been April 22, 2015.

Regardless of the dates of the reports, there are no photographs showing the conditions of the following:

- 1) crawl space
- 2) Shed
- 3) Attic

### ***Violation of Section 4.15***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties, including:

4.15 If assessment sampling is conducted, it shall be conducted in accordance with Section 6 of this Part 1. Documentation of assessment sampling shall include:



As discussed below, sampling was not conducted pursuant to the requirements of Section 6 and none of the samples collected were collected pursuant to Section 6 and **none of the samples collected by QES were valid, and none may be used for regulatory purposes.**

### ***Violation of Section 4.15.1***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties, including:

4.15.1 a description of the sampling procedures used, including sample collection, handling, and QA/QC;

In their report, QES states:

*The sampling procedures, sample collection, sample handling, and QA/QC were conducted in general conformance with the Colorado Department of Public Health and Environment Regulations Pertaining to the Cleanup of Methamphetamine-Affected Properties (6 CCR 1014-3) Section 6.*

As documented below, the Quality Assurance/Quality Control (QA/QC) employed by QES failed to meet “conformance with the Colorado Department of Public Health and Environment Regulations Pertaining to the Cleanup of Methamphetamine-Affected Properties (6 CCR 1014-3) Section 6.”

Otherwise, nowhere in the QES report is QA/QC even mentioned, and nowhere in the report has QES described their QA/QC procedures or why they failed to meet the QA/QC field blank requirements. According to Mr. Richen (Boulder County Department of Health) failure to “resolve” field blank issues warrants rejection of the entire report.

### ***Violation of Section 4.15.3 (Layout of Buildings)***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.15.3 ... a computer generated figure illustrating the layout of the building(s) ...

Nowhere in their report has QES provided a computer generated figure of the layout of the buildings. Nowhere in the QES report is the layout of the buildings(s) given. The QES report only provides a floor plan purporting to be 502C, but does not include a drawing of layout of the building itself.

### ***Violation of Section 4.15.3 (Shed)***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.15.3 ... a computer generated figure illustrating the layout of the building(s) ...

Nowhere in the Preliminary Assessment do we see the figure that addresses the Shed.



The QES report states:

*Tables 1 and 2 as well as Figures 29 through 34 summarize the results of Methamphetamine (sic) sampling within Unit 502C along with the analytical methods used, the laboratory QA/QC requirements, and the laboratory analytical report from Methamphetamine (sic) sampling within the home.*

We were not able to locate Figure 29, 30, 31, 32, 33 or 34 in the QES report.

### **Violation of Section 4.15.3 (Sample Locations 13 Violations)**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.15.3 results of sampling, including a description of sample locations and a computer generated figure illustrating the ... sample locations and identification.

In their report, QES identifies the following samples:

502C West South Boulder Road, Louisville, CO 80027					4/22/15
Sample Number	Sample Location	Sample Time	Sample Size (sq cm)	Concentration (ug/sample)	Concentration (ug/100 sq cm)
1A	Living Rm Wall, Wall, Flr, Flr	1338	400	0.27	0.07
1B	Dining Rm Wall, Wall, Flr, Flr	1350	400	0.49	0.12
1C	Kitchen Wall, Wall, Flr, Flr	1358	400	0.10	0.03
1D	Bath Wall, Wall, Flr, Flr	1405	400	0.11	0.03
1E	Lndry Wall, Wall, Flr, Flr	1415	400	0.11	0.03
1F	Hall Wall, Wall, Flr, Flr	1419	400	0.32	0.08

Nowhere in the QES can we find the computer generated figure for the following Samples:

- Samples 1D (four sample locations)
- Samples 1E (four sample locations)
- Sample 1F (four sample locations)
- Shed

### **Violation of Section 4.17**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.17 If clearance sampling is conducted during the preliminary assessment, it shall be conducted in accordance with Section 6 of this Part 1. Documentation of clearance sampling shall include:



In his report, Mr. Boatman erroneously states:

*This was a Methamphetamine Preliminary Inspection. Clearance sampling will be completed at a later date.*

And yet, QES performed clearance sampling during the Preliminary Assessment. For example, in their report QES explicitly stated:

*The following rooms and locations were found not to contain Methamphetamine at concentrations above the trigger limit.*

- 1. Crawl Space.*
- 2. 1st Floor Kitchen.*
- 3. 1st Floor Bath.*
- 4. 1st Floor Laundry.*
- 5. 2nd Floor NW Bedroom.*
- 6. 1st Floor Living Room.*
- 7. 2nd Floor Bath.*
- 8. 1st Floor Hall.*
- 9. 2nd Floor SW Bedroom.*
- 10. 2nd Floor Closet.*
- 11. 1st Floor Dining Room.*
- 12. Outside Shed Walls.*

Therefore, QES cleared those areas with samples.

According to the regulations:

§4.8 In the case of single-family dwellings, all rooms, attics, crawl spaces, and forced air ventilation systems of all buildings on the subject property must be assumed to be contaminated above the cleanup standards of Section 7, unless sampling conducted in accordance with the clearance level sampling protocols of Section 6 demonstrates the absence of such contamination in a given room, attic, crawl space, or ventilation system.

A consultant trained in the aspects of illegal drug laboratory assessments would not have conducted the sampling as performed by QES at this property since the results were a foregone conclusion anyway. That is, a legitimately trained consultant would have been able to conduct limited sampling to ascertain the compliance status of the property.

A trained consultant would not have wasted the financial resources of the Boulder County Housing Authority by collecting and analyzing samples that were not required by regulations.

Sampling in each room, etc, as performed by QES would have only been performed on the extremely rare chance of identifying a specific room as compliant. As it is, there is no rationale to the conclusion QES applied to their results.



Furthermore, QES has cleared the major appliances in the structure, and yet has not collected **any** samples from **any** of the appliances.

### **“Screening Level Assessment”**

In their Preliminary Assessment report, QES appended a report of an earlier “Screening Level Assessment” of the same subject property. The Screening Level Assessment completely failed to comply with minimum regulatory requirements.

For example, none of the samples collected during the QES “Screening Level Assessment” were valid, and none of the samples may be used in lieu of a Preliminary Assessment or for any other regulatory purposes. It would appear that QES has attempted to use some of the invalid “screening” samples to clear areas in the residence. However, even if the sample were valid, and even if the Screening Level Assessment was legitimate, State regulations specifically prohibit the application of Screening Level Assessments to make clearance decisions.

Since QES has appended their “Screening Level Assessment” report to the Preliminary Assessment report and has represented the “Screening Level Assessment” as an integral part of the Preliminary Assessment, we have reviewed the Screening Level Assessment below.

### **Violation of Section 3.0 Clearance Sampling**

During the performance of a Screening Level Assessment, the consultant is prohibited from using the Screening Level procedures to clear a property.

**3.0 Screening Level Assessment of Properties not known to be methamphetamine-affected properties.** This section establishes procedures and standards for testing residential real property pursuant to § 38-35.7-103, C.R.S. Screening level assessments pursuant to this section are for the purpose of determining if the subject property is a methamphetamine-affected property. The procedures in this section are not to be used to make clearance decisions.

### **Inability to Comply with Section 3.3**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

3.3 The Consultant shall document any observed signs that the subject property is a methamphetamine-affected property. If any signs of a methamphetamine-affected property are observed, then the preliminary assessment requirements of Section 4 and Section 6 of this Part 1 apply in lieu of this section.

The regulations were revised in 2014 to counter the serious problem created by fraudulent and incompetent consultants who were performing invalid assessments. Forensic Applications Consulting Technologies, Inc. (the author of this review), helped the State Legislature write the statutory language that eventually became codified and required the Colorado Department of Public Health and Environment (CDPHE) to revised the regulations. Unfortunately, the task for the revision was given to the CDPHE



regulator who, in violation of Colorado's criminal statutes, had helped create the problem in the first place.<sup>6</sup>

The regulations required the CDPHE to restrict Interim Authorization for performing assessments under the regulations exclusively to those consultants who were A) *bona fide* Industrial Hygienists, and B) had an history of performing valid assessments under the old regulations. Instead, the CDPHE gave *carte blanc* Interim Authorization to anyone who applied, including the fraudulent consultants who had created the serious problems in the first place.

For this subject property, the consultant in question has never provided any documentation indicating that he has any knowledge of illegal drug laboratories or their assessment. Indeed, there is nothing in the documentation that would support the argument that the consultant would qualify as an Industrial Hygienist under the State statutes. As such, there is no expectations that the consultant would possess the necessary skills or knowledge to fulfill these requirements. This opinion is validated by apparent incompetence and regulatory violations by the consultant as documented in this review.

### **Violation of Section 3.5**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

3.5 The Consultant shall conduct limited composite wipe sampling of the structure(s) for methamphetamine (including fixtures, as appropriate), in accordance with Section 6 of this Part 1.

As delineated below, for this subject property, QES failed to comply with this section by failing to comply with Section 6.

### **Violation of Section 3.6**

Based on the findings of a Screening Level Assessment, the property owner is required to perform specific mandatory functions including:

3.6 The analytical laboratory's Practical Quantitation Limit (PQL) for methamphetamine may not exceed 0.1ug. If any of the composite sample results are above 0.2 ug/100cm<sup>2</sup>, the property owner must choose between the following two courses of action:

3.6.1 The subject property may be assumed to be a methamphetamine-affected property, with no further sampling, and thus must comply with the preliminary assessment and decontamination requirements of this Part 1; **or**

3.6.2 A full clearance sampling protocol as specified in Section 6 may be conducted. If the clearance sampling results demonstrate that concentrations of methamphetamine do not exceed the cleanup standards in Section 7 of this Part 1, the subject property is considered compliant with the clearance requirements of these

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<sup>6</sup> See for example, the discussion here: [http://www.forensic-applications.com/meth/Addendum\\_7\\_Woellner\\_11767\\_Grant.pdf](http://www.forensic-applications.com/meth/Addendum_7_Woellner_11767_Grant.pdf)



regulations. If the clearance sampling fails to demonstrate that methamphetamine concentrations are below the specified cleanup standards, then the subject property must be decontaminated in accordance with the requirements of this Part 1.

For this property neither course of action was followed; that is the owner (through reliance on their consultant QES) failed to perform a full clearance and failed to perform a valid Preliminary Assessment.

### **Violation of Section 3.7.1**

During the performance of a Screening Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

3.7.1 Subject property description including physical address, number and type of structures present.

As already described, the legal description provided in the Screening Level Assessment and the actual square footage of the property is different from that same information provided in the Preliminary Assessment.

The Screening Level Assessment describes the property thusly:

*The structure was a two-story condominium building with a crawl space beneath it and an attic above it. It was completed in about 2983 (sic). Unit 502C was about 1,016 sq ft in size.*

The Preliminary Assessment (prepared by the same consultant) states:

*The structure was a two-story condominium with a Crawl Space beneath it. It was completed in about 2013 and was about 1,117 sq ft in size.*

Without calling into question the competency of the consultant, it is difficult to know what is really going on at the property or what the correct property description might be.

### **Violation of Section 3.7.5**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

3.7.5 Photographic documentation of property conditions.

Although QES identifies a crawlspace, an attic and a shed, there are no photographs of these areas. Furthermore, each of the photographs presented are merely partial photos of select rooms and not "documentation of property conditions" as required..

### **Violation of Section 3.7.6.2**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:





3.7.6 Documentation of screening level sampling shall include:

3.7.6.2 documentation of the analytical methods used and laboratory QA/QC requirements, including the laboratory analytical report and chain-of-custody documentation; and

QES failed to include an appropriate blank as required (described in detail below), and failed to describe their QA/QC and the use of the noncompliant blank in the body of their report as required.

### **Violation of Section 3.7.6.3**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

3.7.6.3 results of sampling, including a description of sample locations and a computer generated figure illustrating the layout of the building(s) and sample locations and identification. Sample results shall be presented as reported by the analytical laboratory, and shall not be adjusted, changed, or manipulated in any way. Spiked samples submitted for analysis shall not be used for purposes of compliance with the regulation.

The report for the Screening Level Assessment contains no “computer generated figure illustrating the layout of the building(s),” as required.

### **Violation of Section 6.1.3**

During the performance of a Screening Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

6.1.3 The following sample collection procedures **shall** be followed **for screening level sampling**, preliminary assessment sampling and clearance sampling, except as provided in Section 6.8.2 of this Part 1.

### **Violation of Section 6.1.3.2**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

6.1.3.2. Wipe sampling shall be used to determine the extent of lead contamination on all surfaces at properties whenever the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacture was used on the property.

Nowhere in their documentation has QES addressed this issue and nowhere in their documentation does QES indicate they would have the necessary skills to identify a P-2-P laboratory or any of the various alternative pathways used during a P-2-P production of methamphetamine.

### **Violation of Section 6.1.3.3**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:



6.1.3.3 Wipe sampling shall be used to determine the extent of iodine contamination whenever there is visible evidence of iodine staining on surfaces that will not be removed.

Nowhere in the QES documentation is this issue addressed; furthermore, nowhere in their documentation has QES indicated they would have the necessary skills to identify a Red-P laboratory or a tincture reduction laboratory or any of the various alternative pathways using iodine in the production of methamphetamine.

### **Violation of Section 6.1.3.5**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to perform specific mandatory functions including:

6.1.3.5 Vapor sampling shall be used to determine the extent of mercury contamination whenever the preliminary assessment indicates the P2P method of methamphetamine manufacture was used on the property.

Nowhere in their documentation has QES addressed this issue and nowhere in their documentation does QES indicate they would have the necessary training or skills to identify a P-2-P laboratory or any of the various alternative pathways used during a P-2-P production.

### **Violation of Paragraph 6.2.1 (21 Wipe Violations)**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols, including:

6.2 Discrete Wipe Sample Collection Procedures. The following procedure shall be used for collecting discrete wipe samples:

6.2.1 Sample media shall consist of 2x2 inch wipes made of one of the following:

As discussed later, in detail, QES uses sampling media that is not permitted by regulations.

### **Violation of Paragraph 6.2.2 (21 Template Violations)**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols, including:

6.2.2 Delineate a 100 cm<sup>2</sup> area on the surface to be sampled, either by attaching a physical template to the surface (being careful not to touch the area within the template), or by an equivalently reliable and accurate method. The area within the template (i.e., the sample area) shall be 100 cm<sup>2</sup>. Physical templates may not be re-used.

As discussed later in this discussion under a major rubric, QES does not comply with this requirement for any of its samples.



### **Violation of Section 6.2.7 (21 Violations)**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols, including specific wiping protocols. As describe later under a major rubric, QES does not follow the mandatory wiping protocols.

### **Violation of Paragraph 6.2.12.5**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols, including:

6.2.12.5 Field blanks shall be representative of the majority of samples collected for every sample group (i.e., discrete or composite).

QES submitted four 4-parted composite samples; one 3-parted composite sample, and one 2-parted composite sample to the laboratory for analysis. Therefore, QES was required to submit at least one 4-parted composite field blank. QES failed to submit the correct blank.

### **Violation of Paragraph 6.2.14.3 (Sampler Identified)**

According to mandatory State regulations, during the performance of a Screening Level Assessment, the consultant is required to include specific information in the Screening Level report including:

6.2.14.3 sampler name and contact information;

Nowhere on the chain-of-custody is the mandatory information included. Nowhere on the chain-of-custody has the sampler been identified.

### **Violation of Paragraph 6.2.14.6 (21 Violations- Number of Aliquots)**

According to mandatory State regulations, during the performance of a Screening Level Assessment, the consultant is required to include specific information in the Screening Level report including:

6.2.14.6 number of sample aliquots;

This information is missing for 21 samples on the chain of custody.

### **Violation of Paragraph 6.2.14.7 (21 Violations- Number of Containers)**

According to mandatory State regulations, during the performance of a Screening Level Assessment, the consultant is required to include specific information in the Screening Level report including:

6.2.14.7 number of containers for each sample;

This information is missing for 21 samples on the chain of custody.



### **Violation of Paragraph 6.2.14.9 (21 Violations- Matrix)**

According to mandatory State regulations, during the performance of a Screening Level Assessment, the consultant is required to include specific information in the Screening Level report including:

6.2.14.9 sample matrix;

This information is missing for 21 samples on the chain of custody.

### **Violation of Paragraph 6.2.14.11**

According to mandatory State regulations, during the performance of a Screening Level Assessment, the consultant is required to include specific information in the Screening Level report including:

6.2.14.11 sample preservatives, if applicable; and

This information is missing from the chain-of-custody.

### **Violation of Section 6.3.6**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.3.6 Collect all individual aliquots from 100 cm<sup>2</sup> sampling areas.

As already documented above, QES failed to use a reliable method to delineate the sample locations and cannot state with any degree of accuracy that QES collected 100 cm<sup>2</sup> for the samples.

### **Violation of Section 6.7.1.2 (Failure to Sample Kitchen Exhaust)**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols for composite samples including:

6.7.1.2 All exhaust fans (including, but not limited to, kitchen, bathrooms, attic vent fans, or whole house exhaust fans) must also be sampled.

QES failed to comply with this provision, and failed to collect a sample from the kitchen exhaust.

### **Violation of Section 6.7.1.2 (2 Violations - Failure to Sample Bathroom Exhausts)**

During the performance of a Screening Level Assessment, the Consultant is required by regulations to follow specific sampling protocols for composite samples including:

6.7.1.2 ... Exhaust fan samples **shall** be collected from **inside** the fan compartment, the fan blade, or the back side of the fan grill.



QES documented in their report they collected invalid samples from the **outside** of the fan compartments, in violation of regulations.

This ends the section on the Screening Level Assessment report. We continue now with the remainder of the regulatory violations identified in the Preliminary Assessment *per se*.

### **Violation of Section 4.17.1 (Two Violations)**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.17 If clearance sampling is conducted during the preliminary assessment, it shall be conducted in accordance with Section 6 of this Part 1. Documentation of clearance sampling shall include:

4.17.1 A description of the sampling procedures used, including sample collection, handling, and QA/QC.

As will be described later, none of the sampling performed at this subject property by QES was performed pursuant to 6 CCR 1014-3 and none of the sampling can be used for regulatory purposes.

Nowhere in their report has QES described their QA/QC, and failed to mention that the QA/QC apparently used by QES failed to meet the State regulation (described later).

### **Violation of Section 4.17.3**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.17.3 Results of clearance sampling, including a description of sample locations **and a computer generated figure with sample locations** and identification,

Nowhere in their report, has QES provided the computer generated figures for the sample purported to have been collected in the shed.

### **Violation of Section 4.17.4**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to provide specific information including:

4.17.4 Documentation of variations from standard practices.

Nowhere in his report for this subject property has QES documented the many deviations and variations from the standard practices (regulations) as identified in this review.

### **Violation of Section 4.17.5**

During the performance of a **Preliminary Assessment**, the Consultant is required by regulations to provide specific information including:



4.17.5 A certification statement, signed by the Consultant, in substantially the following form:

"I hereby certify that I conducted **clearance sampling** of the subject property in accordance with 6 CCR 1014-3, Part 1, § 6. I further certify that the cleanup standards established by 6 CCR 1014-3, Part 1, § 7 [**choose one:** have/have not] been met as evidenced by testing I conducted."

For this assessment, QES performed clearance testing, however, nowhere in the QES report, does QES certify the clearance sampling.

### ***Review of Section 6 Violations***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols. For this property one cannot know why QES wasted the client's money re-sampling some surfaces during a Preliminary Assessment whose Screening Level Assessment samples had already indicated contamination.

### ***Violation of Paragraph 6.1.3***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties including:

6.1.3 The following sample collection procedures shall be followed for screening level sampling, preliminary assessment sampling and clearance sampling, except as provided in Section 6.8.2 of this Part 1.

As described below the mandatory elements were not performed as required.

### ***Violation of Paragraph 6.1.3.2***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties including:

6.1.3.2. Wipe sampling shall be used to determine the extent of lead contamination on all surfaces at properties whenever the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacture was used on the property

As documented earlier in this report, law enforcement documents were not obtained, and therefore, the production process (if any at all) was not determined by the QES.

Furthermore, as already documented, the QES consultant has no documented training in the assessment of illegal drug laboratories (as evidenced by the technical incompetence exhibited by QES as documented in this review) and therefore, there is no expectation that the author of the QES report would possess the necessary skill set to determine if the P2P process was used at the property. Therefore, compliance with this section could not have been met.



### **Violation of Paragraph 6.1.3.3**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties including:

6.1.3.3 Wipe sampling shall be used to determine the extent of iodine contamination whenever there is visible evidence of iodine staining on surfaces that will not be removed

As documented earlier in this report, law enforcement documents were not obtained, and therefore, the production process (if any at all) was not determined by the QES. Furthermore, as already documented, the QES consultant has no documented training in the assessment of illegal drug laboratories and therefore, there is no expectation that the author of the report would possess the necessary skill set to determine what process, if any, was used at the property. Therefore, compliance with this section could not have been met.

### **Violation of Paragraph 6.1.3.5**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties including:

6.1.3.5 Vapor sampling shall be used to determine the extent of mercury contamination whenever the preliminary assessment indicates the P2P method of methamphetamine manufacture was used on the property.

As already documented, law enforcement documents were not obtained, and therefore, the production process (if any at all) was not determined by the QES. Furthermore, as already stated, the QES consultant has no documented training in the assessment of illegal drug laboratories and therefore, there is no expectation that the author of the report would possess the necessary skill set to determine what process, if any, was used at the property. Therefore, compliance with this section could not have been met.

### **Violation of Paragraph 6.2.1 (49 Wipe Violations)**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform specific duties including:

6.2 Discrete Wipe Sample Collection Procedures. The following procedure shall be used for collecting discrete wipe samples:

6.2.1 Sample media shall consist of 2x2 inch wipes made of one of the following:

According to QES in their report:

*All the samples were collected using Methamphetamine (sic) sampling wipes moistened with isopropyl alcohol (supplied by Reservoirs Environmental, Incorporated).*

The wipes provided by Reservoirs Environmental are not compliant with State regulations and may **not** be used for regulatory sampling. It was not the obligation of the



analyzing laboratory to supply the correct sampling materials, rather, it was the obligation of QES to use the correct sampling materials in compliance with the regulations.

Furthermore, the photographs provided by QES in their report clearly document the sampling tubes as standard 50 ml centrifuge tubes, and by standard design, the inside diameter of the tubes is approximately 1.75 cm. The sampling pads QES documented in their photographs (inside the tubes) are not allowed by State regulations.

Therefore the wipes used by QES for sampling are not allowed by regulations. Since none of the sampling media used during the sampling at this subject property was permitted by regulations, **none of the samples collected by QES were valid.** Since there were 49 individual aliquots, each with the unlawful media, there are 49 violations of this section.

### ***Violation of Paragraph 6.2.1 (49 Media Violations)***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform sampling pursuant to mandated protocols including:

6.2 Discrete Wipe Sample Collection Procedures. The following procedure shall be used for collecting discrete wipe samples:

6.2.1.1 Cotton gauze material.

6.2.1.2 4-ply non-woven cotton/polyester blend.

6.2.1.3 Tightly knitted continuous filament polyester.

Not only were the size of the pads used by QES not compliant with mandatory regulations, there is nothing in the QES report to indicate that sampling media itself was compliant to the extent that according to Section §6.2.14.9 QES was required to identify the matrix, and failed to do so. As it is, there is nothing in the document to demonstrate QES used required sampling materials.

Since there were 49 aliquots, each with the unlawful media, there are 49 violations of this section.

### ***Violation of Paragraph 6.2.2 (49 Template Violations)***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to perform sampling pursuant to mandated protocols including:

6.2.2 Delineate a 100 cm<sup>2</sup> area on the surface to be sampled, either by attaching a physical template to the surface (being careful not to touch the area within the template), or by an equivalently reliable and accurate method. The area within the template (i.e., the sample area) shall be 100 cm<sup>2</sup>. Physical templates may not be re-used.

In their report, QES documented that they did not follow this mandatory protocol when they stated:





A new 100 sq cm template was held to all surfaces for sampling.

The regulations require the template to be attached, since holding a template to a surface with one hand and attempting to wipe the surface with the other allows the template to slip and thus, one cannot know if they actually collected 100 cm<sup>2</sup>. Therefore, the method described by QES in their report cannot meet either requirement of §6.2.2 in that the template was neither attached as required, nor was it an equivalently reliable and accurate method.

### **Violation of Section 6.2.3**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.2.3 Prepare a rough sketch of the area(s) to be sampled and indicate sample location(s).

Nowhere in the QES report is there any indication that a sketch was prepared to indicate the location of the shed sample.

### **Violation of Section 6.2.7 (49 Violations)**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.2.7 Wipe the surface using one of the following methods:

6.2.7.1 **Square method: Start at the outside edge and progress toward the center of the surface area by wiping in concentric squares of decreasing size.**

6.2.7.2 "S" method: Wipe horizontally from side-to-side in an overlapping "S"- like pattern as necessary to completely cover the entire wipe area.

6.2.8 Without allowing the sample media to come into contact with any other surface, fold the sample media with the sampled side in.

6.2.9 Use the same sample media to repeat the sampling of the same area using the same method. If using the "S" method, the second pass shall be sampled by wiping with overlapping "S"-like motions in a top-to-bottom direction.

6.2.10 Fold sampled side in. Using the same sample media, sample the same area a third time. **The third pass shall be sampled by wiping using the method not previously used (i.e., use the square method if the "S" method was originally used).**

According to Mr. Richen, with the Boulder County Department of Health, failure to comply with this requirement necessarily invalidates the entire assessment.

In the QES report we see that QES has explicitly documented they did not follow this mandatory sampling protocol:



*The “S” method was used to collect the samples in accordance with 6 CCR 1014-3 Part 1, Section 6.2.7 through 6.2.11.*

Since there were 49 individual wipes, each was a violation.

On February 19, 2015, FACTs officially requested a variance from the provisions of §§6.2.7 through 6.2.10, especially where it was physically impossible to comply with this sampling requirement. In her response to our request,<sup>7</sup> Ms. Brisnehan with the CDPHE explicitly rejected this variance from the regulations:

The Regulations, as amended, merely add a third pass to increase sample recovery. The sample collection procedure included in the Regulations is based on wipe sample collection procedures developed by the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). The sample collection procedure using the “S” method is also referenced in the NIOSH analytical methods for methamphetamine.

The Department does not consider the deviations proposed by FACTs to be *de minimis* variations from standard sampling requirements. The Department is not willing to provide FACTs a “blank check” to determine when it will or will not comply with the sample collection requirements. Therefore, the Department has determined that approval of this variance may result in substantial deviation from the intent of the regulatory requirement. This variance request is denied.

Based on the February 27, 2015, letter from Ms. Brisnehan (CDPHE,) the method used by QES at the subject property is prohibited, and therefore, ALL of the samples thus collected by the QES consultant are invalid.

### **Violation of Section 6.2.12**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.2.12 Submit at least one field blank, prepared and handled in the same fashion but without wiping, for every 10 samples collected, according to the following:

As described below, this provision was not met by QES.

### **Violation of Section 6.2.12.4 (3 Violations)**

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.2.12.4 For projects with greater than 10 samples collected, sample 11 shall be a field blank, every 10th subsequent sample shall be a field blank, and the last sample of any sample group with fewer than 10 samples shall be a field blank.

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<sup>7</sup> February 27, 2015, letter from Colleen Brisnehan, Hazardous Waste Corrective Action Unit, Hazardous Waste Program, to Mr. Caoimhín P. Connell, Forensic Applications Consulting Technologies, Inc., 185 Bounty Hunter’s Lane, Bailey, Colorado 80421, RE: Request for Variance under 6 CCR 1014-3, 788 West Lois Court, Louisville, Colorado, cc: Mr. Dan Miller - Colorado Attorney General Office, Michael Richen - Boulder County Public Health



Nowhere in the QES report do we see where QES complied with this requirement. In violation of § 4.15.1, nowhere in the QES report has QES discussed this issue as required.

### ***Violation of Paragraph 6.2.12.5 (Two Violations)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.12.5 Field blanks shall be representative of the majority of samples collected for every sample group (i.e., discrete or composite).

In their assessment, QES collected 13 samples with four aliquots and therefore, QES was required by regulations to submit a minimum of two field blanks with four aliquots each. In violation of §6.2.12.5, QES failed to perform this mandatory obligation.

### ***Violation of Paragraph 6.2.14***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14 Maintain a Chain-of-Custody Record covering the time of sample collection through final disposition. Document sample(s) collected from a single methamphetamine-affected property on one Chain-of-Custody Record. Every transfer of custody shall be noted and signed for and a copy of the record shall be kept by each individual who has signed it. Samples shall be sealed, labeled, and secured. All samples collected shall be transported directly to the laboratory. Shipping samples overnight is considered direct transport, and the shipping label shall be considered part of the Chain-of-Custody Record. Retain all sample documents for the project record and include them in the project reports. At a minimum, the Chain-of-Custody Record shall include the following:

### ***Violation of Paragraph 6.2.14.3 (Sampler Identified)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14.3 sampler name and contact information;

Nowhere on the chain-of-custody is the mandatory information included. Nowhere on the chain-of-custody has the sampler been identified.

### ***Violation of Paragraph 6.2.14.6 (15 Violations- Number of Aliquots)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14.6 number of sample aliquots;

This information is missing for 15 samples on the chain of custody.



### ***Violation of Paragraph 6.2.14.7 (15 Violations- Number of Containers)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14.7 number of containers for each sample;

This information is missing for 15 samples on the chain of custody.

### ***Violation of Paragraph 6.2.14.9 (15 Violations- Matrix)***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14.9 sample matrix;

This information is missing for 15 samples on the chain of custody.

### ***Violation of Paragraph 6.2.14.11***

According to mandatory State regulations, the consultant is required to include specific information in the Preliminary Assessment including:

6.2.14.11 sample preservatives, if applicable; and

This information is missing from the chain-of-custody.

### ***Violation of Section 6.3.6***

During the performance of a Preliminary Assessment, the Consultant is required by regulations to follow specific sampling protocols including:

6.3.6 Collect all individual aliquots from 100 cm<sup>2</sup> sampling areas.

As already documented above, QES failed to use a reliable method to delineate the sample locations and cannot state with any degree of accuracy that QES collected 100 cm<sup>2</sup> for each of the samples.

### ***Violation of Paragraph 6.5***

According to mandatory State regulations, the consultant is required to perform the sampling pursuant to specific protocols including:

6.5 Vapor Sample collection procedures. If the preliminary assessment indicates the phenyl-2-propanone (P2P) method of methamphetamine manufacturing was used, vapor samples for mercury shall be collected in accordance with the procedures for sample collection described in NIOSH Method 6009 as incorporated in Section 9 of this Part 1.



As already documented, there is no evidence that QES attempted to ascertain the availability of or obtain any law enforcement documents, and there is no documentation to indicate that the author of the report as ever received any kind of training in illegal drug laboratories or their assessment and therefore would not be expected to possess the necessary skills needed to identify if a P2P process had occurred. Therefore, since QES does not address the process, or even describe how or why the contamination was present, it remains possible that a P2P process occurred in the property, and the issue remains unresolved.

### ***Violation of Paragraph 6.8.1***

According to mandatory State regulations, the consultant is required to perform the sampling pursuant to specific protocols including:

6.8.1 Except as provided in Section 6.8.2 below, the Consultant shall conduct sampling for methamphetamine that meets the clearance level sampling protocols of Section 6.9 in all rooms of a methamphetamine-affected property as part of the preliminary assessment.

There is no documentation included in the Preliminary Assessment regarding the location of the samples for the shed.

### ***Violation of Paragraph 6.9.1***

According to mandatory State regulations, the consultant is required to perform the sampling pursuant to specific protocols including:

6.9.1 Except as provided in Section 6.9.1.1, at least 400 cm<sup>2</sup> of surface area shall be sampled from every room, attic, and crawl space.

In the QES report, there is no indication that 400 cm<sup>2</sup> was collected from the attic.

### ***Violation of Paragraph 6.9.7***

According to mandatory State regulations, the consultant is required to perform the sampling pursuant to specific protocols including:

6.9.7 The interior of major appliances (microwaves, refrigerators, freezers, ovens, and dryers) **must** be sampled using **discrete** samples.

Although the QES photographs clearly demonstrate the presence of major appliances, none of the appliances were addressed in the Preliminary Assessment.

The QES photographs include:

- 1) Clothes Washer
- 2) Clothes dryer
- 3) Stove
- 4) Microwave oven
- 5) Upstairs bedroom refrigerator
- 6) Kitchen refrigerator



### **Violation of Paragraph 6.9.11.1**

According to mandatory State regulations, the consultant is required to perform the sampling pursuant to specific protocols including:

6.9.11.1 Areas expected to have the highest levels of contamination, such as cooking areas, chemical storage areas, and waste disposal areas.

Since QES has no documented training in the assessment of illegal drug laboratories, QES was unaware of the fact that virtually all of his samples were collected from areas expected to have the lowest levels of contamination (for example, middle of walls).

### **Colorado Consumer Protection Act**

In Colorado, consumers are protected against deceptive trade practices as delineated in the Colorado Consumer Protection Act, CRS Title 6, Article 1. According to those statutes, a person engages in a deceptive trade practice when, in the course of such person's business or occupation, that person knowingly makes a false representation as to the certification of their services, and/or knowingly makes a false representation as to the characteristics of their services and/or represents their services are of a particular standard, quality, or grade if he knows or should know that they are not as specified.

We believe that Mr. Boatman has violated the Colorado Consumer Protection Act, and as a result, the registered owner of this subject property (and several others named in previously audited QES reports), and the general public, have been harmed.

We recommend that the situation be forwarded to the District Attorney for proper evaluation, and to determine if the case rises to the level of criminal conduct.

### **Colorado Criminal Code CRS 18-5-113. Criminal impersonation**

Mr. Boatman has repeatedly held himself out to be an Industrial Hygienist. As documented in this review (and in other historical documents referenced in this review) there is nothing in the present documentation that would indicate that Mr. Boatman is an Industrial Hygienist meeting the State definition.

The incompetence demonstrated in the current report should be sufficient to demonstrate that Mr. Boatman is not an Industrial Hygienist and is not competent to perform the work and may be falsely representing himself as an Industrial Hygienist (interim authorization notwithstanding).

Colorado Case law defines criminal impersonation as knowingly assuming a false or fictitious identity or capacity, and in that identity or capacity, doing any act with intent to unlawfully gain a benefit or injure or defraud another (*People v. Brown*, 193 Colo. 120, 562 P.2d 754 (1977); *People v. Borrego*, 738 P.2d 59 (Colo. App. 1987)). To falsely impersonate means to pretend to be a particular person without lawful authority ( *People v. Horkans*, 109 Colo. 177, 123 P.2d 824 (1942); and to perform an act in assumed



character for benefit. It is an offense under the code to falsely impersonate another, and in such assumed character to do any act whereby any benefit might accrue to the offender or to another person. (*People v. Horkans*, 109 Colo. 177, 123 P.2d 824 (1942)). Venue is not an element of the crime of criminal impersonation (*People v. Perez*, 129 P.3d 1090 (Colo. App. 2005)). Although the code does not require two overt acts to be committed, (rather the code requires assuming a false identity and doing an act with the intent to gain a benefit (*People v. Johnson*, 30 P.3d 718 (Colo. App. 2000))), Mr. Boatman has repeatedly performed these acts. The requisite intent to gain a benefit may be inferred from the accused's knowing use of a false identity and the acknowledged intent to secure some advantage from the impersonation (*People v. Borrego*, 738 P.2d 59 (Colo. App. 1987)). The common meaning of "assumes a false or fictitious identity" is not to hold oneself out as someone that he or she is not; it requires the assumption of the identity of another person, whether that other person is real or fictitious (*People v. Jones*, 841 P.2d 372 (Colo. App. 1992)). For example, an attorney with a suspended license who continues to practice law is guilty of criminal impersonation for practicing law. The courts have held that "continuing to represent himself as an attorney and performing legal work when he was aware that he had no valid license to do so amounts to the assumption of a false or fictitious capacity for purposes of the criminal impersonation statute." (*People v. Bauer*, 80 P.3d 896 (Colo. App. 2003)).

## **Colorado Criminal Code – Fraud; Offering a false instrument for recording**

According to Colorado Revised Statute §18-5-114 (*Offering a false instrument for recording*), a person commits a class 5 felony when offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee.

One of two mental states necessarily must have been present in the performance of the QES work at this subject property: 1) Either Mr. Boatman knew that the work he was performing was grossly incompetent and not in compliance with State Regulations (as demonstrated above) or, 2) Mr. Boatman was unaware of the fact that his work was deviating from mandatory State requirements.

If Mr. Boatman did not know that his work was deviating from mandatory State requirements, then that is sufficient to surmise that he lacked the technical competency and therefore authority to perform the work in the first place since it was his professional obligation to conform to those regulations and perform work pursuant to those regulations.

However, since Mr. Boatman has specifically referenced 6 CCR 1014-3 and explicitly stated that he was aware of those requirements and since FACTs has identified hundreds



of similar regulatory violations in the past regarding Mr. Boatman's work, one must conclude that Mr. Boatman knowingly and willfully performed work that deviated from mandatory State requirements.

Pursuant to State statute and state regulations, the “Preliminary Assessment Report” must be filed with the State of Colorado (indeed the report we reviewed was obtained from the State of Colorado through the Colorado Open Records Act) Therefore, we believe the facts objectively establish that Mr. Boatman was aware of such recording and was aware of the false statements made therein.

## **CONCLUSION**

For this regulatory audit, FACTs has identified no fewer than 357 total individual regulatory violations; including the 211 individual regulatory violations in the Preliminary Assessment portion, and 144 individual regulatory violations in the “Screening Level Assessment” portion.

As of the date of this review, February 12, 2016, FACTs has documented 1,916 regulatory violations in just eight report referenced in this audit.





# **Appendix A**

## **Reviewer's Statement of Qualifications**





## Forensic Applications Consulting Technologies, Inc. Consultant Statement of Qualifications

FACTs project name:	General Distribution	Form # ML15
January 19, 2016		

Caoimhín P. Connell, has been involved in clandestine drug lab investigations and assessments since 2002 and meets the Colorado Revised Statute §24-30-1402 definition of an "Industrial Hygienist." He has been a practicing Industrial Hygienist since 1987. Mr. Connell is a recognized authority in drug-lab operations and is a Certified Instructor in Meth-Lab Safety through the Colorado Regional Community Policing Institute, CRCPI (Colorado Division of Criminal Justice) and was the lead instructor for the CRCPI through the Colorado Division of Criminal Justice, providing over 260 hours of methlab training for over 45 Colorado Law Enforcement Agencies, federal agents, probation and parole officers throughout Colorado judicial districts. He has provided meth-lab lectures to the US Interagency Board, US Air Force, the National Safety Council, and the American Industrial Hygiene Association (of which he is a member and served on the Clandestine Drug Lab Work Group and for whom he conducted the May, 2010, Clandestine Drug Lab Course, and is a coauthor of the AIHA methlab assessment publication.)

Mr. Connell is a member of the American Conference of Governmental Industrial Hygienists, the Occupational Hygiene Society of Ireland, the Colorado Drug Investigators Association, an appointed Member of the National Fire Protection Association, and the ASTM International Forensic Sciences Committee, (where he was the sole sponsor of the draft ASTM E50 *Standard for the Assessment of Suspected Clandestine Drug Laboratories*).

From 2009, Mr. Connell served as the Industrial Hygiene Subject Matter Expert on the Federally funded Interagency Board (Health, Medical, and Responder Safety SubGroup), and was elected full member of the IAB-HMRS in 2011 where he now serves. He is the only private consulting Industrial Hygienist in Colorado 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 has received over 194 hours of highly specialized law-enforcement sensitive training in drug lab operation, and under supervision of the US DEA, he has manufactured methamphetamine using a variety of street methods. He has received highly specialized drug lab assessment training through the Iowa National Guard, Midwest Counterdrug Training Center and the Florida National Guard Multijurisdictional Counterdrug Task Force, St. Petersburg College, Rocky Mountain HIDTA, as well as through the US NHTSA, and the U.S. Bureau of Justice Assistance (US Dept. of Justice) and he is currently ARIDE Certified.

Mr. Connell is a current sworn law enforcement officer 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 613 assessments of illegal drug labs in CO, SD, NE, OK, and collected over 5,565 samples during assessments (a partial 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, and was an original team member on two of the legislative working-groups which wrote the original regulations for the State of Colorado and he was the primary author of Appendix A (*Sampling Methods And Procedures*) and Attachment to Appendix A (*Sampling Methods and Procedures Sampling Theory*) of the original Colorado regulations. Mr. Connell strongly objected to the unscientific, unfounded and inappropriate amendments now found in regulation.

Recommended by the US NIOSH as Peer Review Expert for the NIOSH 9109 Method, *Methamphetamine*, he has been admitted as a drug lab expert in Colorado, and an Industrial Hygiene Expert in Colorado in both civil and criminal courts as well as Federal Court in Pennsylvania. He has provided expert testimony in several criminal cases including Grand Jury testimony and testimony for US Bureau ATF and he 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 Investigators, and Federal Investigators, and provided testimony regarding criminal activities of staff members at the Colorado Department of Public Health Environment.





# Multijurisdictional Counterdrug Task Force Training

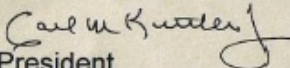


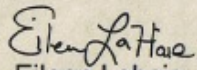
This is to certify that  
**Caoimhin P. Connell**

Has satisfactorily completed the following 24 hour MCTFT training course held at  
**DIVIDE, CO**

**Rural Patrol**

Training held 9/27/2004 through 9/29/2004

  
President  
St. Petersburg College

  
Eileen Lahaie  
MCTFT Director

A partnership between The Florida National Guard and St. Petersburg College

Midwest Counterdrug Training Center



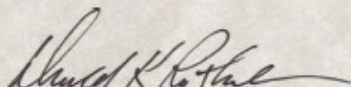
# Certificate of Training

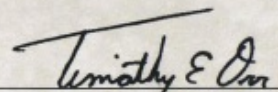
This certifies that

**Caoimhin Connell**

Has successfully completed the  
**Clandestine Laboratory Certification**

Cheyenne, WY  
40 Training Hours  
2-6 August 2004

  
Network Environmental Systems, Inc.

  
LTC Timothy E. Orr  
Commandant





# Center *for* Task Force Training™

THIS IS TO CERTIFY THAT

*Caoimhin P. Connell*

HAS SUCCESSFULLY COMPLETED 20 HOURS OF TRAINING IN

**METHAMPHETAMINE INVESTIGATION MANAGEMENT**

MARCH 20-22, 2006

DENVER, COLORADO

Domingo S. Herraiz  
Director, Bureau of Justice Assistance

Training coordinated by the  
Institute for Intergovernmental  
Research® on behalf of BJA



## State and Local Anti-Terrorism Training

THIS IS TO CERTIFY THAT

**Caoimhin P. Connell**

HAS SUCCESSFULLY COMPLETED AN 8-HOUR  
STATE AND LOCAL ANTI-TERRORISM TRAINING PROGRAM  
NARCOTICS TASK FORCE ANTI-TERRORISM BRIEFING

June 1, 2006

Denver, Colorado

Domingo S. Herraiz  
Director, Bureau of Justice Assistance



Training coordinated on behalf of BJA  
by the Institute for Intergovernmental Research

*Rocky Mountain  
High Intensity Drug Trafficking  
Area*



*Certifies that*



*Caoimhín Connell*

*has attended*

*4 hours of*

*Hash Oil Extraction: The Scene and The Patient*

*Aurora, CO*

*July 25, 2014*

*Training Manager, Rocky Mountain HIDTA*

*Director, Rocky Mountain HIDTA*



[www.nesglobal.net](http://www.nesglobal.net)

*Certificate of Completion*

*Caoimhin Connell*

*has successfully completed training in*

*Advanced Clan Labs: Beyond the Basics*

*presented by*

*NES, Inc.*

*1141 Sibley Street Folsom, CA 95630*

*Instructor - Brian Escamilla*

*04/28/14 04/30/14*

*Date*

*Contact Hours:24*



This certifies that

*Caoimhin P Connell*

Has met the requirements for the online course

*Expert Testimony Training for the Prosecutor and Scientist*



11-07-2012

Certificate Number: 1109778763

For more information please visit <http://www.rti.org/forensiced>



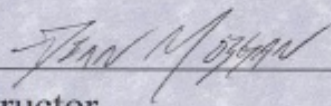
## Park County Sheriff's Office Certificate of Completion

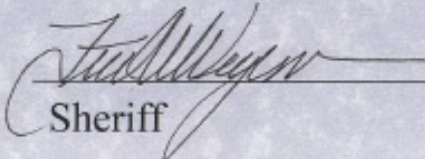
# Caoimhin Connell

has completed an 8 hour course in:

### Crime-scene Approach and Evidence Collection

Completed this 29th day of April, 2009

  
Instructor

  
Sheriff

***Rocky Mountain  
High Intensity Drug Trafficking  
Area***



*Certifies that*



**Caoimhín P. Connell**

*has attended  
2 hours of  
Hash Oil Explosions  
Woodland Park, CO  
May 31, 2014*

Training Manager, Rocky Mountain HIDTA

Director, Rocky Mountain HIDTA

***Certificate of Completion***

*This Will Certify That*

***Caoimhín P. Connell***

*Successfully Completed*

**Prescription Drug Crimes**

7 Hours Completed

At: CO Law Enforcement Officers Assn. On: September 30, 2010  
Greeley, Colorado



**P. Ritch Wagner**  
Instructor

Director, Law Enforcement Liaison & Education





# Certificate of Training

This is to certify that  
Caoimhin Connell

(Name)

Park County Sheriff's Office

(Agency)

If the bearer of this document possesses a 40 Hour certificate pursuant to 29 CFR §1910.120, this certifies the above named has met the refresher training requirements of 29 CFR §1910.120(e)(8) and is hereby **RECERTIFIED** in Clandestine Laboratory Safety / HazWoper

Sponsored by  
Rocky Mountain High Intensity Drug Trafficking Area  
Colorado Regional Community Policing Institute

Caoimhin P. Connell 4/12/10  
Caoimhin P. Connell, Instructor/Date  
Glean HARDEY



## Colorado Law Enforcement Officers' Association



This is to certify that

**CAOIMHIN CONNELL**

Completed **ARIDE (Advanced Roadside Impaired Driving Enforcement)**

hosted by **Loveland Police Department**

on **February 28 – March 1, 2011**

Tom Finelle  
Tom Finelle, CLEOA President

M. A. [Signature]  
ARIDE Instructor



# State of Colorado



THE BOARD ON PEACE OFFICER STANDARDS AND TRAINING  
HEREBY AWARDS THIS CERTIFICATE  
AS INSPECTOR OF VEHICLE IDENTIFICATION NUMBERS  
TO

**CAOIMHIN PADRAIG CONNELL**

**August 27, 2008**

Date

VIN INSP— **0952**

Number

*For fulfilling the prescribed requirements as an Inspector of Vehicle Identification Numbers and as a peace officer in Colorado, pursuant to Title 42, Article 5, Section 206 Colorado Revised Statutes.*

*Bill Ritter Jr.*

Governor

*John W. Suthers*

Attorney General, Board Chairperson

## Certificate of Completion Intoxilyzer 9000 Operator Certification Course

*The Evidential Breath Alcohol Testing Program of the  
Colorado Department of Public Health and Environment certifies that*

**Caoimhin P Connell**

User ID: **841645**

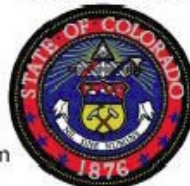
*has successfully completed the "Intoxilyzer 9000 Operator Certification Course"  
to determine the alcohol concentration in breath specimens pursuant to the  
State Board of Health Rules Pertaining to Testing for Alcohol and Other Drugs (5 CCR 1005-2)  
Training was provided by the Evidential Breath Alcohol Testing Program  
of the Colorado Department of Public Health and Environment.*

**February 21, 2013**

Certificate Date

*Jeffrey A. Groff*

Jeffrey A. Groff, Program Manager  
Evidential Breath Alcohol Testing Program



*David A. Butcher*

David A. Butcher, Director  
Laboratory Services Division  
Colorado Department of Public Health  
and Environment

Certification expires 180 days from certificate date. Recertification must be per 5 CCR 1005-2.





# Certificate of Achievement

awarded to:

**Caoimhin P. Connell**

Has successfully completed Methamphetamine Lab Cleanup Management and Supervision training in accordance with 29 CFR 1910.120 and State Regulations Pertaining to the Cleanup of Methamphetamine Laboratories (8Hrs.)

June 1st, 2005

Date

Signed

HAZMAT Plans & Programs, Inc. 30 S. Havana St. Suite 304F Aurora, Colorado 80012 (303) 360-9801  
"Safety Plans, Programs and Training Tailored To The Needs Of Your Business"

## CERTIFICATE OF COMPLETION

COLORADO LAW ENFORCEMENT ASSOCIATIONS TRAINING PROJECT

*This Certifies That*

**Caoimhin Connell**

Has Attended the

**CLEAT 40-HOUR**

**Train the Trainer Course**

Hosted by Breckenridge Police Department  
August 14-18, 2006

Karen M. Renshaw, CAE  
Executive Director  
Colorado Association of Chiefs of Police



John L. Kammerzell  
Executive Director  
Police Officer Standard & Training



Donald E. Christensen  
Executive Director  
County Sheriffs of Colorado







**SINCE 1973**

*This is to certify that*

**Caoimlin P. Connell**

*Has completed a 24 hour training program in Vehicle Identification Number  
Inspection*

*Presented this 24th day of May, 2008*

CATI President

VIN Inspector Training Coordinator

# State of Colorado



THE BOARD ON PEACE OFFICER STANDARDS AND TRAINING  
AWARDS THIS CERTIFICATE  
TO

**CAOIMHIN PADRAIG CONNELL**

**May 6, 2004**

Date

B- 10670

Number

*For fulfilling the prescribed requirements for certification. This certificate expires three years from date of  
issuance unless the certificate holder meets the requirements for continued certification as established by law  
and the P.O.S.T. Board.*

Governor

Attorney General, Board Chairperson



**Rocky Mountain  
High Intensity Drug Trafficking  
Area**



*Certifies that*



**Caoimhín Connell**

*has attended*

*16 hours of*

**MCTC / RMHIDTA Indoor Marijuana Grows**

**Centennial, CO**

**August 28-29, 2014**

*Training Manager, Rocky Mountain HIDTA*

*Director, Rocky Mountain HIDTA*

**CERTIFICATE OF TRAINING**

THIS IS TO CERTIFY THAT

**Caoimhín Connell**

Has completed 4 hours of successful training for

The Hazards of Hash Oil Extraction

Held at IRIS Fire Investigations in Englewood, CO

on this 7<sup>th</sup> day of November, 2014

Robert K. Toth  
IRIS Fire Investigations, President



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

December 30, 2014

Caoimhin Connell  
Forensic Applications Consulting Technologies Inc  
185 Bounty Hunter Ln  
Bailey, CO 80421

**Consultant Interim Authorization Approval**

Dear Caoimhin Connell:

The Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment (the Department) has reviewed the application for Consultant Interim Authorization and has determined the application to be complete and in compliance with 6 CCR 1014-3, Regulations Pertaining to the Cleanup of Methamphetamine-Affected Properties (the Regulations).

The Department approves the application for **Consultant Interim Authorization**. This interim authorization approval shall expire on June 15, 2015.

Assessment and sampling of methamphetamine-affected properties may only be conducted by Consultant Firms that have received interim authorization under Part 2, Section 3.2.4 of the Regulations. Therefore, this interim authorization may only be used to conduct assessment and sampling of methamphetamine-affected properties for a Consultant Firm that has received interim authorization approval from the Department.

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

12/30/2014





**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

December 30, 2014

Forensic Applications Consulting Technologies Inc  
185 Bounty Hunters Ln  
Bailey, CO80421

**Consultant Firm Interim Authorization Approval**

Dear Forensic Applications Consulting Technologies Inc:

The Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment (the Department) has reviewed the application for Consultant Firm Interim Authorization and has determined the application to be complete and in compliance with 6 CCR 1014-3, Regulations Pertaining to the Cleanup of Methamphetamine-Affected Properties (the Regulations).

The Department approves the application for **Consultant Firm Interim Authorization**. The firm shall only utilize individuals who have received interim authorization under Part 2, Section 3.2.1 of the Regulations to conduct assessment and sampling of methamphetamine-affected properties. This interim authorization approval shall expire on June 15, 2015.

The Regulations require submittal of electronic copies of reports to the Department. Electronic copies of reports should be submitted via email to [cdphe\\_methlabdocuments@state.co.us](mailto:cdphe_methlabdocuments@state.co.us). The words "report" or "report submittal" should be included in the email subject line, and the property address should be included in the body of the email.

Alternatively, compact disks with electronic copies of reports may be mailed to:

Colorado Department of Public Health and Environment  
Hazardous Material and Waste Management Division  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
Attn: Colleen Brisnehan or Richard Mruz

Packages may also be hand delivered to the Department's mail room located in the northwest corner of Building B (700 South Ash Street).

Approved By: \_\_\_\_\_

Date: 12/30/2014

