



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

**Industrial Hygiene
Regulatory Audit
Of**

**FOOTHILLS ENVIRONMENTAL, INC.
SCREENING LEVEL ASSESSMENT REPORTS
4383 Tennyson Street
Denver, Colorado 80212
(Identifying 343 Regulatory Violations)**

Prepared by:

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EXECUTIVE SUMMARY

Forensic Applications Consulting Technologies, Inc. (FACTs) is performing a series of regulatory audits on public domain documents regarding the sampling of methamphetamine affected properties located in Colorado.

This document has been prepared by Forensic Applications Consulting Technologies, Inc. as part of an ongoing Motion for Judicial Review in response to 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*. The level of scrutiny used in this review is that which was established by the CDPHE.

This review pertains to the document identified as:

METHAMPHETAMINE POST REMEDIATION ASSESSMENT

Prepared for:
Ed & Ann McCue
4383 Tennyson Street, Unit 1A
Denver, CO 80212
Project Location:
4383 Tennyson Street, Unit 3A
Denver, CO 80212
Report Date:
April 21, 2015
Foothills Environmental Project Number:
ME15003

That report contained two Appendices titled:

SCREENING LEVEL ASSESSMENT REPORT

Property Location
4383 Tennyson Street, Unit 3A
Denver, Colorado 80212
Prepared For
Ed McCue
4383 Tennyson Street, Unit 1A
Denver, CO 80212
Prepared By
Foothills Environmental, Inc.
1320 Simms Street, Suite 102
Golden, CO 80401
January 12, 2015

and

COMMON AREA ASSESSMENT REPORT

Property Location
4383 Tennyson Street
Denver, Colorado 80212

Prepared For
Gablehouse Granberg, LLC
C/O Berkeley Park Home Owner's Association
4383 Tennyson Street
Denver, CO 80212
Prepared By
Foothills Environmental, Inc.
1320 Simms Street, Suite 102
Golden, CO 80401
January 25, 2015

The occupant of Unit 3G - directly across from the methamphetamine-affected property in Unit 3A of 4383 Tennyson Street, Denver CO (the subject property) contacted FACTs and requested a review the initial two referenced documents, and to render a professional opinion regarding their viability. The final document was obtained through the Colorado Open Records act, and the final document contained the first two as appendices.

The following discussion provides our opinions and provides the rationale upon which those opinions are based.

The consultant in question, Andrea Gonzales with Foothills Environmental, Inc. (FEI), has an history of invalid assessments and regulatory violations.^{1,2,3}

For this regulatory audit of a Screening Level Assessment Report, and a Post Decontamination Clearance Sampling Report by Mr. Andre Gonzales with FEI, FACTs has identified no fewer than 343 regulatory violations.

Falsified Public Record

There was no Preliminary Assessment performed after the Screening Assessment and prior to the Post Decontamination Report, as is required by State regulation. Ms. Brisnehan with the Colorado Department of Public Health and Environment issued a regulatory "Variance" for this property.

The intended client identified for this project is identified as Gablehouse Granberg, LLC. Ms. Melanie Granberg with Gablehouse Granberg, LLC, was identified as a co- Director with Ms. Brisnehan on the private commercial group called "Colorado Association of Meth and Mold Professionals."

¹ See for example: 1170 Garrison Street, Lakewood, Colorado 80215: http://forensic-applications.com/meth/Censored_Compliance_Audit.pdf

² See for example: 767 West Cleveland Circle, Lafayette, Colorado 80026: http://forensic-applications.com/meth/FEH_Screening_Cleveland_RA.pdf

³ Similarly, due to a poor understanding of Colorado's Regulations, on October 7, 2014, FEI, performed sampling at 8640 Jolene Drive in Denver, CO which resulted in the erroneous identification of an illegal drug laboratory that was subsequently unlawfully and unnecessarily subjected to decontamination. Mr. Gonzalez was identified as the "Certified Industrial Hygienist" associated with a document that falsely purported to be a "Preliminary Assessment" for that property.

On April 13, 2015, Ms. Brisnehan, with the intent to obtain unlawful benefits for Ms. Granberg, knowingly issued a false document wherein Ms. Brisnehan granted a “Variance” falsely stating:

The Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment (the Department) has reviewed the Request for Variance at 4383 Tennyson Street, Denver, CO, dated April 11, 2015, submitted in accordance with Section 10, Part 1 of the Regulations Pertaining to the Cleanup of Methamphetamine-Affected Properties, 6 CCR 1014-3 (the Regulations). A variance from Part 1, Sections 6.9.5 and 6.9.6 of the Regulations is sought to allow the use of a composite sample collected during the preliminary assessment to be used for clearance of the ventilation system that services the common hallway.

The request for variance was not submitted in accordance with Section 10, Part 1 of the Regulations, as claimed, and Ms. Brisnehan was fully aware of the fact that, in gross violation of Regulations, no Preliminary Assessment was ever performed at the property at any time. The mysterious request was made after the regulatory violations occurred.

Furthermore, as described in this audit, the samples in question were collected during an invalid Screening Level Assessment (170 regulatory violations), and not, as claimed by The Department, *collected during a Preliminary Assessment*. In fact, the Consultant in question, never even mentioned a Preliminary Assessment in the request - The document containing the samples was an appendix to a Screening Level Assessment report titled:

COMMON AREA ASSESSMENT REPORT
Property Location
4383 Tennyson Street
Denver, Colorado 80212
Prepared For
Gablehouse Granberg, LLC
January 25, 2015

The Regulations (CCR 1014-3 Section 3) explicitly reads:

3.0 Screening Level Assessment of Properties not known to be methamphetamine-affected properties. ... The procedures in this section **are not to be used to make clearance decisions**.

In spite of the 343 regulatory violations, after the violations had occurred, and in violation of the variance protocol, Mr. Gonzales, on April 1, 2015, asked The Department for a variance on just this one aspect regarding the collection of composite samples.

As described in this audit, none of the samples collected by Mr. Gonzales at this property were valid.

According to Colorado Criminal Code:

CRS 18-8-404. First degree official misconduct.

(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly: (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or (b) Refrains from performing a duty imposed upon him by law; or (c) Violates any statute or lawfully adopted rule or regulation relating to his office. (2) First degree official misconduct is a class 2 misdemeanor.

For this property, Ms. Brisnehan, with intent to obtain a benefit for a fellow CAMMP board member, knowingly committed an act relating to her office that constituted an unauthorized exercise of her official function; and simultaneously refrains from performing a duty imposed upon her by law; and violates a lawfully adopted regulation relating to her office.

According to Colorado Revised Statute §18-5-114 (*Offering a false instrument for recording*),

18-5-114. Offering a false instrument for recording

(1) A person commits 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.

(2) Offering a false instrument for recording in the first degree is a class 5 felony.

On April 13, 2015, knowing that a written instrument relating to and affecting real property contained materially false statements or material false information, and with intent to defraud, she presents the document with the knowledge it would become a part of the records of that public office or public employee.

CHRONOLOGY

According to the documentation, FEI performed a Screening Level Assessment on January 8, 2015 in the property located at 4383 Tennyson Street, Denver, CO. During that assessment, FEI identified elevated concentrations of methamphetamine in the structure, and thus the property was "discovered."

On January 15, 2015, FEI returned to the property and appeared to attempt to conduct clearance sampling in a manner that is not permitted by regulations.

On January 30, 2015, at the request of the occupant of Unit 3G, FACTs performed sampling in Unit 3G at 4383 Tennyson Street, Denver, CO and identified methamphetamine in that unit at levels greater than the trigger level specified in Colorado Regulations 6 CCR 1014-3 §3.6.

REVIEW OF THE SCREENING LEVEL DOCUMENT

During the performance of a Screening Level Assessment for methamphetamine contamination in a property, the Consultant is required by regulations to perform specific mandatory tasks and provide specific mandatory documentation.

Colorado Regulations 6 CCR 1014-3 states:

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.

In reviewing the report by FEI at 4383 Tennyson Street, Unit 3A, Denver, CO 80212 (the subject property), the following deficiencies have revealed 343 regulatory violations of 6 CCR 1014-3.

Failure to Comply with Paragraph 3.0

In their second report, in violation of Section 3.0, FEI used a Screening Level Assessment to make decisions regarding the exclusion for remediation of the areas FEI referred to as “common areas.” However, such a decision is a violation of Section 3.0 which states:

...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.**

In their report, FEI returned to the subject property, and for reasons unknown, conducted “testing” that A) Did not meet mandatory sampling requirements for a Preliminary Assessment as required, B) Did not meet Clearance Sampling requirements.

And yet, the results were effectively used to exclude the “common areas” from the need for inclusion in the Preliminary Assessment and associated decontamination procedures.

Throughout the report, FEI incorrectly relates their Screening Level Assessment with the *Clearance* Level thresholds:

The results of the sampling indicate all common areas were below the Colorado Department of Public Health and Environment (CDPHE) cleanup standard of 0.5 ug/100 cm²...

A properly trained consultant would know that the “CDPHE” clean-up standard of 0.5 µg/100cm² **does not apply** during Screening Level Assessments. According to State regulations, during Screening Level Assessments, the decision threshold of 0.2 µg/100cm² must be applied and not, as falsely stated by FEI, 0.5 µg/100cm².

A properly trained consultant, knowledgeable in the assessment of clandestine drug laboratories would have known the value of 0.5 µg/100cm² is **only** applicable provided samples are collected pursuant to the Clearance Level Sampling provisions of Section 6.0, which, based on available documentation, was never performed at this property.

Failure to Comply with Paragraph 3.5

State regulations establish minimum standards and elements necessary to comply with the regulations. According to mandatory State regulations:

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, FEI failed to collect samples in accordance with Section 6 of Part 1 of the mandatory regulations.

Failure to Comply with Paragraph 3.6

According to State Regulations, once a property is identified as a methamphetamine affect property, the property owner may only choose one of two courses of action:

3.6 ...If any of the composite sample results are above 0.2 ug/100cm², 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

For this property, neither one of those courses of action were taken. Instead, for some areas, the consultant attempted to clear the areas during the Screening Assessment, and the property was then subject to decontamination activities in the absence of any Preliminary Assessment as required.

Failure to Comply with Paragraph 3.7

According to mandatory State regulations, the Consultant is required to include specific information in their report.

3.7 Information collected during the Screening Level Assessment shall be documented in a Screening Level Assessment Report and shall include, but not be limited to, the following, to the extent available and applicable:

Inability to Comply Paragraph 3.7.4

According to mandatory regulations, the Consultant is required to provide:

3.7.4 Summary of observations made during inspections.

At no time has Mr. Gonzalez been able to document any training of any kind in clandestine drug lab assessments. Therefore, when, in their report, they state:

No obvious signs of Methamphetamine (sic) production were observed in the common areas. No staining or discoloration of any surfaces other than normal wear and tear. No signs of chemical storage were observed.

There is nothing in the documentation that would indicate Mr. Gonzalez has ever received any recognized training in the assessment of illegal drug laboratories or their assessment. As such, there is no expectation that Mr. Gonzalez would have the necessary competence or skill set to identify signs associated with illegal drug laboratories.

Failure to Comply with Paragraph 3.7.6

According to mandatory regulations, the Consultant is required to provide specific information in the final report. As specified below, the following mandatory information was missing from the FEI report. State regulations require:

3.7.6 Documentation of Screening Level sampling shall include:

Failure to Comply with Paragraph 3.7.6.2 (2 violations)

According to mandatory regulations, the Consultant is required to provide

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;...

Nowhere in the FEI report is the specific analytical method identified. Instead, FEI simply included a laboratory report which identified the instrumentation used - a "GCMS". Nowhere in the report has FEI identified the analysis method. A "GCMS" is an instrument, not a method.

As described later, FEI failed to provide a chain-of-custody with the mandatory elements.

Failure to Comply with Paragraph 3.7.6.3 (1 violation)

According to mandatory regulations, the Consultant is required to provide:

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.....

Nowhere in the report do we find a "...a computer generated figure illustrating the layout of the building(s)" as required.

Violation of 6.0 Sampling and Analytical Procedures.

During the Screening Level Assessment, the consultant is required to perform sampling pursuant to mandated protocols. According to the Regulations:

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.

The Consultant on this subject property failed to follow the mandatory sampling procedures. We discuss these in detail below.

Failure to comply with 6.1.3.2

According to the Regulations, during the assessment, the consultant is required to perform

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.

The Consultant for this property has no documented training in the assessment of illegal drug laboratories (for the purposes of this discussion also known as “methamphetamine affected properties”). As a result, the Consultant has an history of botched assessments,^{4,5} wherein he has failed to identify obvious indicators. For this property, there is no mention or even a discussion of the regulatory requirements to assess the property for this aspect. There is no documentation the Consultant considered any manufacturing process, and there is no expectation the consultant would have possessed the necessary skill set to identify a P2P laboratory or the associated contamination due to lack of documented training.

Failure to comply with 6.1.3.3

According to the Regulations, during the assessment, the consultant is required to perform

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.

The Consultant for this property has no documented training in the assessment of methamphetamine affected properties. For this property, there is no mention of iodine staining, and there is no documentation the Consultant considered iodine contamination, and there is no expectation the consultant would have possessed the necessary skill set to identify iodine contamination due to lack of documented training.

Failure to comply with 6.1.3.5

According to the Regulations, during the assessment, the consultant is required to perform:

⁴ See for example: 1170 Garrison Street, Lakewood, Colorado 80215: http://forensic-applications.com/meth/Censored_Compliance_Audit.pdf

⁵ See for example: 767 West Cleveland Circle, Lafayette, Colorado 80026: http://forensic-applications.com/meth/FEH_Screening_Cleveland_RA.pdf

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.

The Consultant for this property has no documented training in the assessment of methamphetamine affected properties. For this property, there is no mention of the possibility of mercury contamination, and there no documentation the Consultant considered any manufacturing process, or considered mercury contamination, and there is no expectation the consultant would have possessed the necessary skill set to identify iodine contamination due to the lack of documented training.

Failure to comply with 6.2 (35 violations)

According to the Regulations, during the assessment, the consultant is required to use specific sampling materials 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:

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.

There is no documentation the Consultant has used the correct sampling media. FACTs has fist hand knowledge of the sampling media used buy this Consultant in the past, wherein the Consultant has employed isopropyl impregnated blended rayon-polypropylene prep pads. As already described above, in violation of §3.7.6.1, the Consultant failed to describe the sampling procedures used. In his report, the Consultant states:

All samples were collected using 2x2 inch polyester blend gauze pads.

However, the consultant failed to state with what the pads were blended. FACTs has firsthand knowledge that the pads identified by the Consultant on this project were not 2X2 as claimed. Therefore, none of the 35 aliquots taken from this property as samples collected during the Screening Level Assessment (January 8, 2015 through February 10, 2015) were valid.

Failure to comply with 6.2 (1 violation)

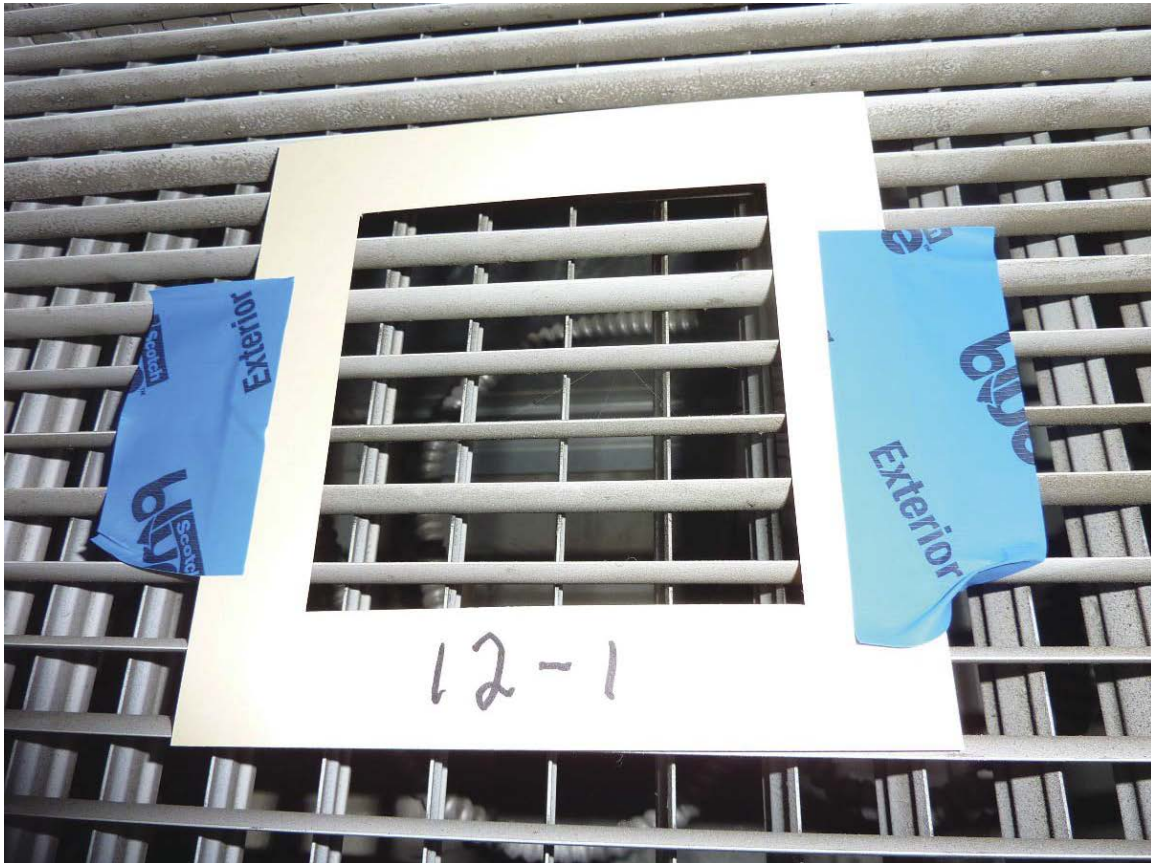
According to the Regulations, during the assessment, the consultant is required to use specific sampling protocols including:

6.2.2 Delineate a 100 cm² 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 cm².** Physical templates may not be re-used.

For this property, FEI exhibited a failure to comply with regulations and also exhibited a lack of knowledge in sampling procedures. In their report, FEI indicates they knowingly provided false information to the analyzing laboratory, and to the client.

In their report, and on their analytical chain-of-custody, FEI identified the sample area of Sample 12, collected from the hallway duct grate as 100 cm². However, the photograph of the sample location indicates that the area was mostly air (literally).

In the photograph below, FEI depicts a 10 cm X 10 cm template.



Photograph 1
FEI Photograph Sample 12-1

The laboratory calculates the concentration of contaminant from the area provided by the consultant thusly:

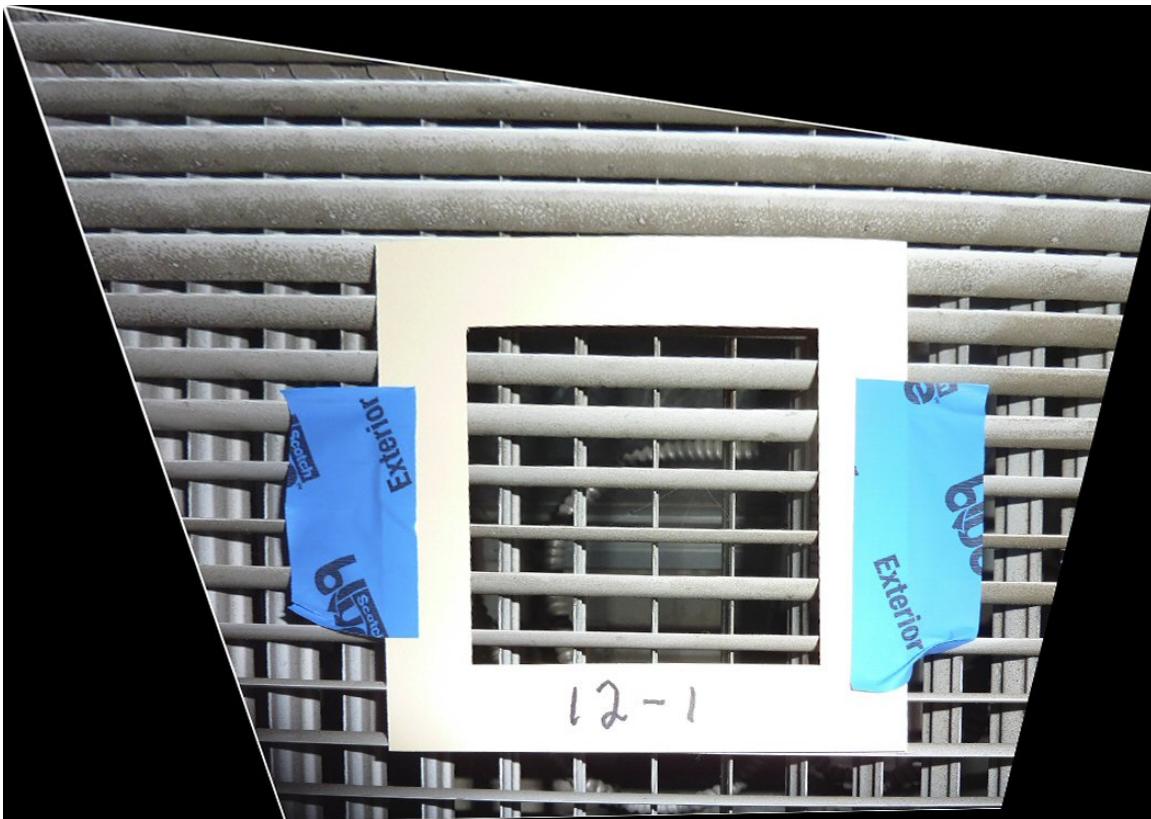
$$\text{Concentration} = \frac{\text{Mass recovered } \mu\text{g}}{\left(\frac{\text{Area sampled cm}^2}{100}\right)} = \mu\text{g}/100 \text{ cm}^2$$

If the area reported by the consultant is incorrect, the laboratory result is incorrect. Thus for the sample in this example, the laboratory used the following:

$$\text{Concentration} = \frac{3.21 \mu\text{g recovered}}{\left(\frac{\text{Reported area} = 100 \text{ cm}^2}{100}\right)} = 3.21 \mu\text{g}/100 \text{ cm}^2$$

However, as documented in the photograph, a large portion within the template is air and not surface.

Since FEI uses a 10 cm X 10 cm template this allows FACTs to use perspective and distortion correcting software, to measure the actual surface area that was sampled using the template as the reference scale. Thus the distortion corrected photograph for the above sample is depicted below:



Photograph 2
Distortion Corrected FEI Sample 12

When we measure the area that was actually sampled, we see that there is only 48 cm² of facing surface available, and not 100 cm² as reported by FEI. When we use the correct surface area in the calculation, we see the following:

$$\text{Concentration} = \frac{3.21 \mu\text{g recovered}}{\left(\frac{\text{Actual area} = 48 \text{ cm}^2}{100}\right)} = 6.69 \mu\text{g}/100 \text{ cm}^2$$

This is significant for a number of reasons, especially when it comes to discussing the appropriateness of FEI's selection of sample locations. Under the new amendments, the regulations actually allow a consultant to make *a priori* decisions on contamination.

That is, under the new regulations (effective December 15, 2014), an unethical Consultant is permitted to decide that he wants to demonstrate a particular location is not contaminated, and collect samples from low-probability areas to "prove" the lack of contamination.

Under the old regulations (in effect from 2005 until December 15, 2014), this was not permitted, since unlike the new regulations, the old regulations were scientifically valid hypothesis testing protocols.

Thus, for example, in this case, if one wanted to demonstrate that a contaminated area was not contaminated, an unethical Industrial Hygienist would collect samples from the walls of the stairway, or the walls of the hallway, knowing that those surfaces are poor sample locations and are likely to be biased low (that is, indicating low contamination for an otherwise contaminated area). For this property, that is precisely what FEI did – they collected samples from those areas that have the *lowest* probability of exhibiting contamination.

It is for this reason that one can report finding "compliant" levels in an hallway that contains an air vent with a contamination level of approximately thirty three times over the regulatory limit specified in Section 3.6. It is probable that legitimate sampling in the hallway would indicate the hallway is not compliant.

Failure to comply with 6.2.3 (11 violations)

According to the Regulations, during the screening assessment, the consultant is required to maintain specific documentation including:

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

There are no locations identified on the drawings for 11 samples.

Failure to comply with 6.2.7 (33 violations)

According to the Regulations, during the screening assessment, the consultant is required to perform sampling in a specific 3-pass manner.

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).

In the report, the Consultant states that he only performed one pass using the “S” method.

Failure to comply with 6.2.11 (5 violations)

According to the Regulations, during sampling, the consultant is required to provide photographic documentation of each sample. According to the Regulations:

6.2.11 ... Photograph each sample location.

Photographs are missing for five samples.

Failure to comply with 6.2.12.5 (3 violations)

According to the Regulations, during the screening assessment, the consultant is required to provide specific blanks.

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

The consultant, in violation of §6.2.14.6, failed to identify the number of aliquots on the chain of custody, and it would appear he submitted only single blanks instead of composite blanks, as required.

Failure to comply with 6.2.14

According to the Regulations, during the screening assessment, the consultant is required to provide specific documentation.

6.2.14 Maintain a Chain-of-Custody Record covering the time of sample collection through final disposition. ... At a minimum, the Chain-of-Custody Record shall include the following:

During the screening process, the Consultant submitted three chains-of-custody:

1. January 8, 2015 – five samples
2. January 14, 2015 – seven samples
3. February 10, 2015 – five samples

The Consultant failed to comply with the mandatory documentation as follows:

Failure to comply with 6.2.14.3 (3 violations)

6.2.14.3 sampler name and contact information;

There is nothing on the chain-of-custody that identifies the person who collected the samples for the following chains-of-custody

4. January 8, 2015
5. January 14, 2015
6. February 10, 2015

Failure to comply with 6.2.14.6 (17 violations)

6.2.14.6 number of sample aliquots;

The number of aliquots was missing for the following chains-of-custody:

1. January 8, 2015 – five samples
2. January 14, 2015 – seven samples
3. February 10, 2015 – five samples

Failure to comply with 6.2.14.7 (17 violations)

6.2.14.7 number of containers for each sample;

The number of containers was missing for the following chains-of-custody:

1. January 8, 2015 – five samples
2. January 14, 2015 – seven samples
3. February 10, 2015 – five samples

Failure to comply with 6.2.14.8 (12 violations)

6.2.14.8 sample collection times...;

The sample collection times were missing for the following chains-of-custody:

1. January 14, 2015 – seven samples
2. February 10, 2015 – five samples

Failure to comply with 6.2.14.8 (12 violations)

6.2.14.8 sample collection ...date;

The sample collection dates were missing for the following chains-of-custody:

1. January 14, 2015 – seven samples
2. February 10, 2015 – five samples

Failure to comply with 6.2.14.9 (3 violations)

6.2.14.9 sample matrix;

The sample matrix is missing from the following chains-of-custody:

1. January 8, 2015
2. January 14, 2015
3. February 10, 2015

Failure to comply with 6.2.15

According to the Regulations, during the screening assessment, the consultant is required to provide specific documentation including:

6.2.15 Painted-over surfaces. Estimate the concentration of methamphetamine present below a painted-over surface (as defined in Section 2 of this Part 1) by one of the following methods:

Nowhere in the screening reports is the issue of painted surfaces even addressed.

Failure to comply with 6.7.1.2 (3 violations)

According to the Regulations, during the screening assessment, the consultant is required to perform sampling from specific locations 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. Exhaust fan samples shall be collected from inside the fan compartment, the fan blade, or the back side of the fan grill. A separate surface sample does not need to be collected from any room from which a fan or ventilation system sample is collected.

For this project the consultant failed to collect the prescribed samples; and no samples were collected from inside the fan compartment, the fan blade, or the back side of the fan grill for either of the two bathrooms or the kitchen.

REVIEW OF THE PRELIMINARY ASSESSMENT

Violation of Section 4.0

According to the regulations,

4.0 Preliminary Assessment. A preliminary assessment of all methamphetamine-affected properties shall be conducted in accordance with this section and Section 6.1.2 of these regulations, unless the property owner elects to demolish the property in lieu of assessment and decontamination pursuant to § 25-18.5-103(1)(a), C.R.S.

No Preliminary Assessment for this property is found within the public domain.

Failure to Comply with Paragraph 4.1

According to the Regulations,

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.

There is no Preliminary Assessment on record for this property.

Failure to Comply with Paragraph 4.2 (7 violations)

According to the Regulations,

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.

There is no Preliminary Assessment on record for this property.

1. There was no information regarding availability of law enforcement documents.
2. There was no information regarding manufacturing methods that may be in those documents.
3. There was no information regarding chemicals present that may be in those documents.
4. There was no information regarding cooking areas that may be in those documents.
5. There was no information regarding chemical storage areas that may be in those documents.
6. There was no information regarding areas of contamination that may be in those documents.
7. There was no information regarding waste disposal that may be in those documents.

Failure to Comply with Paragraph 4.3 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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

There is no Preliminary Assessment on record for this property.

There is no description of structural features in the building including the basement.

Failure to Comply with Paragraph 4.3.2 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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. ...

There is no Preliminary Assessment on record for this property. There is no description of the integrity of the building floor.

Failure to Comply with Paragraph 4.4 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.4 Description of outdoor areas, including notation of the following:

There is no Preliminary Assessment on record for this property. There is no description of outdoor areas.

Failure to Comply with Paragraph 4.4.1 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.4 Description of outdoor areas, including notation of the following:

4.4.1 Factors limiting the inspection, such as snow cover or heavy vegetation.

There is no Preliminary Assessment on record for this property. There is no description of factors limiting the inspection, such as snow cover or heavy vegetation.

Failure to Comply with Paragraph 4.4.2 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.4 Description of outdoor areas, including notation of the following:

4.4.2 Conditions indicative of contamination.

There is no Preliminary Assessment on record for this property. There is no description of conditions indicative of contamination.

Failure to Comply with Paragraph 4.5 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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

There is no Preliminary Assessment on record for this property. There is no indication any attempt was made to ascertain the availability of law enforcement documents.

Failure to Comply with Paragraph 4.6 (4 violations)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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.

There is no Preliminary Assessment on record for this property.

1. There is no identification of chemicals used.
2. There is no indication the consultant would possess the necessary skills to identify the manufacturing method.
3. There is no identification of any methamphetamine lab wastes.
4. There is no identification of any methamphetamine lab precursor chemicals.

Failure to Comply with Paragraph 4.7 (7 violations)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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. 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. The Consultant may determine that assessment level sampling is appropriate to verify the presence of contamination in a given room to assist in selecting an appropriate decontamination strategy. 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.

There is no Preliminary Assessment on record for this property.

1. There is no identification and documentation of areas of contamination.
2. There is no expectation the consultant would have the necessary skill set needed to make the identification based on visual observation.
3. No law enforcement reports were discussed, and no attempt to ascertain their availability is provided.
4. Proximity to chemical storage areas was not discussed.
5. Proximity to waste disposal areas was not discussed.
6. Proximity to cooking areas was not discussed.
7. Proximity to use areas was not discussed.

Failure to Comply with Paragraph 4.8 (4 violations)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.8 Identification and documentation of chemical storage areas, waste disposal areas, cooking areas, and/or use areas, if known.

There is no Preliminary Assessment on record for this property.

1. No identification or documentation of chemical storage areas was provided.
2. No identification or documentation of waste disposal areas was provided.
3. No identification or documentation of cooking areas was provided.
4. No identification or documentation of use areas was provided.

Failure to Comply with Paragraph 4.9 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

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

There is no Preliminary Assessment on record for this property. No identification or documentation of signs of contamination such as staining, etching, or fire damage was provided. There is no expectation the consultant would possess the necessary skill set to make such an identification due to the lack of documented training.

Failure to Comply with Paragraph 4.10 (2 violations)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.10 Description of plumbing system, including identification and documentation of potential disposal into the sanitary sewer or an on-site wastewater treatment system (OWTS). ...

There is no Preliminary Assessment on record for this property.

1. There is no description of plumbing system.
2. There is no identification or documentation of potential disposal into the sanitary sewer.

Failure to Comply with Paragraph 4.11 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.11 For properties with multi-unit buildings, identification and documentation of other units and common areas where contamination may have spread or been tracked.

On January 30, 2015, at the request of the occupant of Unit 3G, FACTs performed a “basic methamphetamine survey”⁶ at Unit 3G, 4383 Tennyson Street, Denver, Colorado 80212. The 3G is the unit directly across the hallway from the subject property. During the BMS, FACTs objectively confirmed the presence of methamphetamine above the levels specified in 6 CCR 1014-3 §3.6.

There is no discussion of such migration in the Preliminary Assessment report, since no Preliminary Assessment on record for this property.

⁶ The term “basic methamphetamine survey” was coined by Daniel S. Miller, Senior Assistant Attorney General, Natural Resources and Environment Section, State of Colorado Department of Law, February 2, 2015. According to the Senior Assistant Attorney General for the Natural Resources and Environment Section, a “basic methamphetamine survey” is not subject to any regulatory constraints and none are implied in this work.

Failure to Comply with Paragraph 4.12 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.12 For properties with multi-unit buildings, identification and documentation of any common ventilation systems connected to other units or common areas. If contamination above the standard is identified in any unit in a multi-unit building, the units and common areas that are connected to the unit by ventilation systems shall be investigated to determine whether they are also contaminated. If access is not available to inspect or sample the connected units or common spaces, the owner of the contaminated unit or their representative shall give notice to the owners and tenants of the units and common areas that are connected to the contaminated unit that methamphetamine contamination may be present. Notice shall also be given to the HOA, if one has been established. The consultant shall document any limitations on access in the final report.

There is no Preliminary Assessment on record for this property. Screening level sampling was performed in the ventilation system. The sampling was not performed pursuant to mandatory State regulations.

Failure to Comply with Paragraph 4.13 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.13 Identification of surfaces that are known or suspected to have been painted or sealed after the cessation of contamination-causing activities (painted-over surfaces).

There is no Preliminary Assessment on record for this property. Nowhere in any of the documentation provided is the issue of painted-over surfaces discussed.

Failure to Comply with Paragraph 4.17.4 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.17.4 Documentation of variations from standard practices.

There is no Preliminary Assessment on record for this property. Nowhere in the documentation provided is the issue of why there were variations from standards.

Failure to Comply with Paragraph 4.20 (1 violation)

According to State Regulations, during the performance of a Preliminary Assessment, the consultant is required to provide:

4.20 The Consultant shall provide an electronic copy of the Preliminary Assessment Report to the Department within thirty (30) days of completing the report.

According to the Public Records obtained through CORA, no Preliminary Assessment report was submitted to The Department.

REVIEW OF CLEARANCE REPORT

During the performance of a compliance clearance assessment or compliance post-decontamination clearance assessment, the Consultant is required to perform specific tasks in a specific manner and provide specific documentation. FACTs has identified the following violations of regulations.

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.

Failure to comply with 6.1.3.2

According to the Regulations, during the clearance assessment, the consultant is required to perform

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.

The Consultant for this property has no documented training in the assessment of methamphetamine affected properties. As a result, the Consultant has an history of botched assessments,^{7,8} wherein he has failed to identify obvious indicators. For this property, there is no mention or even a discussion of the regulatory requirements to assess the property for this aspect. There is no documentation the Consultant considered any manufacturing process, and there is no expectation the consultant would have possessed the necessary skill set to identify a P2P laboratory or the associated contamination.

Failure to comply with 6.1.3.3

According to the Regulations, during the clearance assessment, the consultant is required to perform

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.

The Consultant for this property has no documented training in the assessment of methamphetamine affected properties. For this property, there is no mention of iodine staining, and there is no documentation the Consultant considered iodine contamination, and there is no expectation the consultant would have possessed the necessary skill set to identify iodine contamination.

⁷ See for example: 1170 Garrison Street, Lakewood, Colorado 80215: http://forensic-applications.com/meth/Censored_Compliance_Audit.pdf

⁸ See for example: 767 West Cleveland Circle, Lafayette, Colorado 80026: http://forensic-applications.com/meth/FEH_Screening_Cleveland_RA.pdf

Failure to comply with 6.1.3.5

According to the Regulations, during the clearance assessment, the consultant is required to perform

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.

The Consultant for this property has no documented training in the assessment of methamphetamine affected properties. For this property, there is no mention of the possibility of mercury contamination, and there no documentation the Consultant considered any manufacturing process, or considered mercury contamination, and there is no expectation the consultant would have possessed the necessary skill set to identify iodine contamination.

Failure to comply with 6.2 (21 violations)

According to the Regulations, during the clearance assessment, the consultant is required to use specific sampling materials 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:

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.

There is no documentation that the Consultant has used the correct sampling media. FACTs has fist hand knowledge of the sampling media used buy this Consultant in the past and on this project, where in the Consultant has employed isopropyl impregnated blended rayon-polypropylene prep pads. As already described above, in violation of §3.7.6.1, the Consultant failed to describe the sampling procedures used. In his report, the Consultant states:

All samples were collected using 2x2 inch polyester blend gauze pads.

However, the consultant failed to state with what the pads were blended. FACTs has firsthand knowledge the pads identified by the Consultant on this project were not 2X2 as claimed. Therefore, none of the 21 aliquots taken from this property as samples collected during the Clearance Assessment were valid.

Failure to comply with 6.2.3 (7 violations)

According to the Regulations, during the clearance assessment, the consultant is required to maintain specific documentation including:

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

There are no locations identified on the drawings for 7 samples.

Failure to comply with 6.2.7 (20 violations)

According to the Regulations, during the clearance assessment, the consultant is required to perform sampling in a specific 3-pass manner.

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).

In the report, the Consultant states that he only performed one pass using the “S” method.

Failure to comply with 6.2.11 (4 violations)

According to the Regulations, during sampling, the consultant is required to provide photographic documentation of each sample. According to the Regulations:

6.2.11 ... Photograph each sample location.

Photographs are missing for four samples.

Failure to comply with 6.2.12.5 (1 violation)

According to the Regulations, during the assessment, the consultant is required to provide specific blanks.

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

The consultant, in violation of §6.2.14.6, failed to identify the number of aliquots on the chain of custody. However, it would appear he submitted only a single aliquot blank instead of composite blank, as required.

Failure to comply with 6.2.14

According to the Regulations, during the assessment, the consultant is required to provide specific documentation.

6.2.14 Maintain a Chain-of-Custody Record covering the time of sample collection through final disposition. ... At a minimum, the Chain-of-Custody Record shall include the following:

Failure to comply with 6.2.14.3 (1 violation)

6.2.14.3 sampler name and contact information;

There is nothing on the chain-of-custody that identifies the person who collected the samples.

Failure to comply with 6.2.14.6 (6 violations)

6.2.14.6 number of sample aliquots;

The number of aliquots was missing for six samples on the chain-of-custody.

Failure to comply with 6.2.14.7 (6 violations)

6.2.14.7 number of containers for each sample;

The number of containers was missing for six samples on the chain-of-custody.

Failure to comply with 6.2.14.8 (6 violations)

6.2.14.8 sample collection times...;

The sample collection times were missing for six samples on the chain-of-custody.

Failure to comply with 6.2.14.8 (6 violations)

6.2.14.8 sample collection ...date;

The sample collection dates were missing for six samples on the chain-of-custody.

Failure to comply with 6.2.14.9 (1 violation)

6.2.14.9 sample matrix;

The sample matrix is missing from the chain-of-custody.

Failure to comply with 6.2.15

According to the Regulations, during the clearance assessment, the consultant is required to provide specific documentation including:

6.2.15 Painted-over surfaces. Estimate the concentration of methamphetamine present below a painted-over surface (as defined in Section 2 of this Part 1) by one of the following methods:

Nowhere in any of the reports was the issue of painted surfaces even addressed.

Failure to comply with 6.9

According to the Regulations, during the clearance Assessment, the consultant is required to follow specific sampling protocols.

6.9 Clearance level sampling protocols for buildings and personal property. The Consultant shall conduct clearance level sampling of any subject property that meets the definition of a methamphetamine-affected property, or that is suspected of being a methamphetamine-affected property as provided in Sections 3.2, 3.3 or 3.4 of this Part 1, to verify that cleanup standards have been met.

Failure to Comply with 6.9.1 (3 Violations)

During the clearance assessment, the Consultant is required to perform clearance sampling pursuant to specific requirements.

6.9.1 Except as provided in Section 6.9.1.1, at least 400 cm² of surface area shall be sampled from every room, attic, and crawl space.

The minimum surface areas have not been sampled. For example – although the results of the sampling of the personal belongings in the garage were profoundly elevated, (2.35µg/100 cm²), the Consultant failed to collect any clearance samples in the garage, failed to identify the fate of the personal items and failed to discuss if the garage had even been cleaned or otherwise addressed.

Similarly, no clearance samples of any kind were collected in the Common Hallway in spite of the fact that one of the *Screening Assessment* samples in the Common Hallway was profoundly contaminated (3.21 µg/100cm.) According to Regulations:

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.**

For this property, the Consultant failed to collect Clearance Samples during a Preliminary Assessment (there was no Preliminary Assessment performed, as required), and failed to collect Post Decontamination samples from the common area and, in violation of regulations, the Consultant exclusively relied on Screening Level Assessment samples to clear the Common Hallway.

The Consultant falsely claimed the elevated sample came from the ventilation system; however, the sample was not a ventilation system sample as claimed – the sample was collected from the exhaust fan for the Hallway. According to Screening Regulations:

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. Exhaust fan samples shall be collected from inside the fan compartment, the fan blade, **or the back side of the fan grill.** A separate surface sample does not need to be collected from any room from which a fan or ventilation system sample is collected.

The sample collected by the Consultant was a hallway surface sample not a ventilation system sample:



There were no clearance samples otherwise collected from the hallway.

Furthermore, after the duct was cleaned, no clearance sample was collected, as required

No Clearance samples were collected from the Common Lobby.

Failure to Comply with 6.9.1 (3 Violations)

During Clearance Assessment, the Consultant is required to perform clearance sampling pursuant to specific requirements.

6.9.4 For buildings and structures that have forced air ventilation systems, at least 400 cm² of surface area of the ventilation system shall be sampled, unless the entire ventilation system is removed. Samples shall be collected from accessible areas within the heat exchanger unit, inside the cold air return system, from inside the supply air system, and from one other location selected at the Consultant's discretion. The Consultant will visually inspect accessible portions of the ventilation system and review photo documentation to verify that the system has been cleaned and is free of debris.

For this property, no clearance samples were collected from the ventilation system during a Preliminary Assessment or Clearance Sampling – Instead, the Contractor, using prohibited sampling media and failing to use proscribed sampling protocols, collected samples during a screening evaluation, and collected samples claiming the samples were compliant with 6 CCR 1014-3.

Failure to Comply with 6.9.11 (21 Violations)

During Clearance Assessment, the Consultant is required to perform clearance sampling pursuant to specific requirements.

6.9.11 Locations of clearance samples shall be based on information gathered during the preliminary assessment.

Since the Consultant failed to perform a Preliminary Assessment at this property, the locations of the clearance samples collected in the unit could not be based on the Preliminary Assessment. Therefore, the collection of 21 aliquots was not based on information gathered during the preliminary assessment.

Failure to Comply with 6.9.11.1 (12 Violations)

During Clearance Assessment, the Consultant is required to perform clearance sampling pursuant to specific requirements.

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 the Consultant has no documented training in this field, the Consultant collected 12 sample aliquots from those areas that have the lowest expectation of contamination.

Failure to Comply with Section 7

According to Section 7 -

7.0 Cleanup standards. The following cleanup standards shall be used to determine if a subject property has been adequately decontaminated.

Four of the clearance aliquots collected by the Consultant were collected in compliance with §6.9.11.1:

- Sample 4-1
- Sample 4-2
- Sample 4-3
- Sample 4-4

The above indicated the room was still profoundly contaminated (10.98 µg/100cm²). Following further decontamination, no confirmation samples were collected as required.

Failure to Comply with 8

According to the Regulations, the Consultant is required to prepare a Post-Decontamination Report, in conjunction with the Contractor, to document the decontamination process and demonstrate that the entire subject property meets the cleanup standards listed in Section 7.0 of this Part 1. The Post-Decontamination Report must include the following:

Failure to Comply with Paragraph 8.1

According to Regulations, the Post Decontamination report must contain specific information including:

8.1 A copy of the Preliminary Assessment Report or a summary of the information and findings presented therein.

Since no Preliminary Assessment was performed at this property, the Consultant could not supply a copy nor could the Consultant summarize the Preliminary Assessment. In fact, it would appear that the Consultant ignored his own recommendation where, in his report, he recommends:

FEI recommends completing the Preliminary Assessment for this property as required.

Failure to Comply with Paragraph 8.2 (1 Violation)

According to Regulations, the Post Decontamination report must contain specific information including:

8.2 Photographic documentation of post-decontamination property conditions, including previously identified cooking areas, chemical storage areas, waste disposal areas, areas of obvious contamination and sample locations.

Since no Preliminary Assessment was performed, there were no previously identified cooking areas, chemical storage areas, waste disposal areas, areas of obvious contamination and sample locations.

Failure to Comply with Paragraph 8.5 (6 Violations)

According to Regulations, the Post Decontamination report must contain specific information including:

8.5 Results of post-decontamination clearance sampling, including a description of sample locations and a computer generated figure with sample locations and identification, and a copy of each laboratory report of post-decontamination sample results.

There are no computer generated figures showing the sample locations for six aliquots.

There are no computer generated figures for any of the samples collected from the ventilations system the Consultant falsely identified to the state as “Preliminary Assessment” samples.

Violation of the AIHA/ABIH Code of Ethics

It is also our opinion that the work performed by Mr. Andre Gonzales with Foothills Environmental constitute a violation of the Code of Ethics of the American Board of Industrial Hygienists and the American Industrial Hygiene Association and fails to meet a minimum standard of professional care. Specifically, it appears that Mr. Gonzales has violated the following professional Codes of Ethics:

- Violation of ABIH (I)(A)(1)
- Violation of AIHA (I)(A)(1)
- Violation of ABIH (I)(A)(5)
- Violation of ABIH (I)(A)(6)
- Violation of AIHA (I)(A)(5)
- Violation of ABIH (II)(A)(1)
- Violation of AIHA (II)(A)(1)
- Violation of ABIH (II)(A)(2)
- Violation of AIHA (II)(A)(2)
- Violation of ABIH/AIHA (II)(A)(3)
- Violation of ABIH/AIHA (II)(A)(5)
- Violation of ABIH/AIHA (II)(A)(6)
- Violation of ABIH/AIHA (II)(C)(1)
- Violation of AIHA (II)(C)(2)

Violation of ABIH (I)(A)(1)

Comply with laws, regulations, policies and ethical standards governing professional practice of industrial hygiene and related activities.

Violation of AIHA (I)(A)(1)

Comply with laws, regulations, policies, and ethical standards governing professional practice of industrial hygiene and related activities, including those of professional associations and credentialing organizations.

Clearly, as described above, Mr. Gonzales failed to comply with the mandatory Colorado Regulations in the performance of this work.

Violation of ABIH (I)(A)(5)

Report apparent violations of the ethics code by certificants and candidates upon a reasonable and clear factual basis.

To our knowledge, Mr. Gonzales has failed to report his violations to the ABIH.

Violation of ABIH (I)(A)(6)

Refrain from any public behavior that is clearly in violation of accepted professional, ethical or legal standards.

We believe the clearly deviant behavior of Mr. Gonzales is a violation of accepted professional standards.

Violation of AIHA (I)(A)(5)

Refrain from any public behavior that is clearly in violation of accepted professional, ethical or legal standards.

Clearly, as described above, Mr. Gonzales failed to refrain from public behavior that is in violation of the accepted professional and legal standards, by performing work in the public arena that appears to be in violation of environmental regulations and criminal statutes.

Violation of ABIH (II)(A)(1)

Deliver competent services with objective and independent professional judgment in decision-making.

As described in this review, Mr. Gonzales failed to perform the necessary work in a competent manner.

Violation of ABIH (II)(A)(2)

Recognize the limitations of one's professional ability and provide services only when qualified. The certificant/candidate is responsible for determining the limits of his/her own professional abilities based on education, knowledge, skills, practice experience and other relevant considerations

Mr. Gonzales has no documented training in this area of practice.

Violation of AIHA (II)(A)(2)

Recognize the limitations of one's professional ability, and provide services only when qualified. The member is responsible for determining the limits of his/her own professional abilities based on education, knowledge, skills, practice experience, and other relevant considerations.

As described above, Mr. Gonzales has clearly performed work for which he was not capable or qualified.

Violation of ABIH/AIHA (II)(A)(3)

Make a reasonable effort to provide appropriate professional referrals when unable to provide competent professional assistance.

Mr. Gonzales failed to refer the work to a competent Industrial Hygienist.

Violation of ABIH/AIHA (II)(C)(1)

Follow appropriate health and safety procedures, in the course of performing professional duties, to protect clients, employers, employees and the public from conditions where injury and damage are reasonably foreseeable.

By performing grossly deficient work, as described above, one can reasonably foresee that any occupants of the property, Mr. Gonzales's client, and the general public, are now placed at a higher risk of chemical and financial injury and damage due to his lack of technical competency.

Violation of AIHA (II)(C)(2)

Inform appropriate management representatives and/or governmental bodies of violations of legal and regulatory requirements when obligated or otherwise clearly appropriate.

Mr. Gonzales has presented himself as familiar with State Regulation 6 CCR 1014-3. Therefore, Mr. Gonzales must be aware of the fact that his work is in gross violation of those regulations. Therefore, Mr. Gonzales had the professional obligation to bring his regulatory violations to the attention of the Governing Body with jurisdiction over this subject property. The public record does not contain any information to indicate that Mr. Gonzales has reported his violations to anyone.

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 FEI work at the subject property: 1) Either Mr. Gonzales knew that the work he was performing was grossly incompetent and not in compliance with State Regulations (as demonstrated above) or, 2) Mr. Gonzales was unaware of the fact that his work was deviating from mandatory State requirements.

If Mr. Gonzales 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. Gonzales 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 Ms. Gonzales's work, one must conclude that Mr. Gonzales knowingly and willfully performed work that deviated from mandatory State requirements.

Pursuant to State statute and state regulations, the "Post Decontamination 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. Gonzales was aware of such recording and was aware of the false statements made therein.

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.

CONCLUSION

For this regulatory audit for the subject property located, 4383 Tennyson Street, Denver, Colorado 80212, FACTs has identified no fewer than 343 regulatory violations.

In the absence of contradictory information, as of June 21, 2016, the property remains a noncompliant illegal drug laboratory into which entry is restricted.

Appendix A

Statement of Qualifications