



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

Regulatory Audit

**Preliminary Assessment Report
Koch Environmental Health, Inc.
Ranch At Bear Creek
Building 10, Unit 183
3324 S Field Street
Lakewood, Colorado**

Prepared by:

FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

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EXECUTIVE SUMMARY

Forensic Applications Consulting Technologies, (FACTs) has performed a series of regulatory audits on public domain documents. This is FACTs' regulatory audit of the public domain document titled:

POTENTIAL METHAMPHETAMINE-AFFECTED PROPERTY PRELIMINARY ASSESSMENT
REPORT

PREPARED FOR:

RANCH AT BEAR CREEK
3324 S. FIELD STREET
LAKEWOOD, COLORADO

PROJECT:

RANCH AT BEAR CREEK APARTMENTS
BUILDING 10, UNIT 183
3324 S. FIELD STREET LAKEWOOD, COLORADO
KEH PROJECT NUMBER 07006-013
JANUARY 21, 2015

According to mandatory State regulations, a Preliminary Assessment of a methamphetamine affected property **must** be conducted pursuant to the mandatory provisions of Colorado Regulations 6 CCR 1014-3.

This particular consultant, Koch Environmental Health, Inc., has an extended history of regulatory violations under the previous State regulations, which were in effect until December 14, 2014. For example, regarding the residence located at 1533 N. Monroe Street, in Loveland, CO, FACTs was asked to perform a regulatory audit wherein we identified no fewer than 42 violations of regulations. These violations were known to the State and subsequently ignored by the State.

For this regulatory audit, FACTs has identified no fewer than 29 violations of regulations; all of which have been documented in Koch's report, submitted to and ignored by Ms. Brisnehan of the CDPHE. If we included each individual sample violation, the actual number of violations would exceed that amount.

VIOLATIONS

According to mandatory State regulations 6 CCR 1014-3 (Amended), when performing a Preliminary Assessment, an authorized consultant is required by regulation to perform specific actions and protocols as specified below:

Violation of Paragraph 4.1

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.



Nowhere in the KEH report for 3324 S. Field Street, Bldg, #10, Unit #183, Lakewood, CO (the subject property) do we find the number and type of structures present, or a description of adjacent and/or surrounding properties.

Violation of Paragraph 4.2

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 KEH report, do we see where KEH attempted to identify the availability of law enforcement documents for the subject property. In his report, Mr. Koch stated:

KEH is unaware of the existence of an El Paso Intelligence Center or EPIC form related to methamphetamine manufacturing at this address. KEH reviewed the US Department of Justice National Clandestine Laboratory Database and found the subject address not listed at the time of generation of this report.

The El Paso Intelligence Center (EPIC) has nothing to do with the property in question, and EPIC is not a law enforcement agency with jurisdiction over the property. The El Paso Intelligence Center (EPIC) is a Federal DEA and U.S. Customs Service Center assisting in the identification of drug traffickers and illegal alien trafficking along the U.S. - Mexico border and is headquartered at Biggs Army Airfield in Texas.

By contrast, the subject property in question is located in Lakewood, Colorado, which is in Jefferson County, Colorado. As such, the law enforcement agencies with jurisdiction over this subject property are the Lakewood Police Department and the Jefferson County Sheriff's Office. We do not see anywhere in the KEH report where Mr. Koch documented any attempt to contact these law enforcement agencies to determine if any law enforcement documents were available for review.

Violation of Paragraph 4.3

4.3 Description of structural features in all buildings, such as attics, false ceilings, crawl spaces, and basements, 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), and a description of observations of the ducting associated with all bathroom and kitchen exhaust vents. If preliminary assessment sampling is conducted, include the results of sampling in accordance with Section 6 of this Part 1.



Nowhere in his report, has Mr. Koch complied with this requirement. In his report, Mr. Koch states:

The property is a residential rental property with no attic or crawlspace; thus, no soil samples were collected.

Although we would not expect soil samples to be collected from an attic, Mr. Koch has failed to note that the structure does, in fact, have an attic. Mr. Koch failed to note if the attic in the structure is a common attic or isolated by firewalls.

There is no description of the building ceiling as required.

There is no description of "...ducting associated with all bathroom and kitchen exhaust vents."

Violation of Paragraph 4.3.2

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.

One of the photographs taken by Mr. Koch at the subject property clearly shows a floor penetration for a duct. Therefore, the ductwork must necessarily run through some kind of sub-floor conduit or crawlspace, and yet, Mr. Koch has failed to describe how this is so.

Violation of Paragraph 4.5

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

Since Mr. Koch made no documented attempts to obtain any pertinent law enforcement documents from appropriate law enforcement agencies, Mr. Koch could not have complied with this requirement.

Violation of Paragraph 4.11 Common Areas

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.

For this property, there is a common, covered, stairway and common entry way where contamination may have spread or been tracked.



Violation of Paragraph 4.11.1 Shared Attic

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.

As already discussed, Mr. Koch failed to note the building in question does have an attic. As will be described below, Mr. Koch failed to comply with the mandatory sampling requirements for this property, and failed to obtain any samples pursuant to regulations. Therefore, while it is now established that the property does contain methamphetamine, and the building does have an attic, it is impossible to know if "... *contamination above the standard is identified in any unit in a multi-unit structure with shared attics...*" since that determination must be based on lawful samples. According to State regulations:

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.

Violation of Paragraph 4.15

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

The consultant is required to conduct assessment sampling in accordance with Section 6. Mr. Koch failed to comply with this requirement as delineated below.

Violation of Paragraph 6.2.7, 6.2.9, 6.2.10

According to State regulations:

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. Koch in his report:

KEH employed the “S” method of wipe sampling described in section 6.2.7 of 6 CCR 1014-3.

That is, Mr. Koch failed to employ the “concentric” method, or indeed any second pass at all, and also failed to employ a third pass over the sample area..

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 bizarre sampling requirement. In her response to our request,¹ Ms. Brisnehan *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.

Therefore, while Ms. Brisnehan has stated that FACTs cannot use a single pass “S” method without being in violation of the regulations, Ms. Brisnehan simultaneously, capriciously and arbitrarily has allowed Mr. Koch to use the method.

¹ February 27, 2015, letter from Colleen Brisnehan, Hazardous Waste Corrective Action Unit, Hazardous Waste Program, to Mr. Caoimhin 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



Based on the February 27, 2015, letter from Colleen Brisnehan, CDPHE, the method used by Mr. Koch at the subject property is prohibited, and therefore, ALL of the samples thus collected by Mr. Koch at the subject property are **invalid**.

Violation of Paragraph 6.2.14

According to mandatory State regulations:

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:

Violation of Paragraph 6.2.14.2

6.2.14.2 subject property address;

On the submitted chain-of-custody, MR. KOCH failed to place the property address, and instead used the address of just the building wherein the residence is located. Indeed, the address provided by Mr. Koch in his report is individually applicable for 105 residences at the same location!

Violation of Paragraph 6.2.14.6

6.2.14.6 number of sample aliquots

This information is missing from Mr. Koch's chain of custody.

Violation of Paragraph 6.2.14.9

6.2.14.9 sample matrix

This information is missing from Mr. Koch's chain of custody.

Violation of Paragraph 6.2.14.11

6.2.14.11 sample preservatives

This information is missing from Mr. Koch's chain of custody.

Violation of Paragraph 4.15.1 via 6.3.1

According to regulations



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

6.3.1 A single pair of gloves may be used to collect each aliquot that will be part of a single composite sample. Use a new pair of gloves for each set of composite samples.

Nowhere in the KEH report, does Mr. Koch identify that he even used the required gloves.

Violation of Paragraph 6.9.7

In his report, Mr. Koch has explicitly claimed he performed clearance sampling in accordance with 6 CCR 1014-3, Part 1, § 6.

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 have been met as evidenced by testing I conducted.

Yet according to State regulations if one is conducting clearance sampling:

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

In his report, Mr. Koch has presented the following photograph:





In this photograph, we can clearly see:

- 1) A dishwasher
- 2) A stove
- 3) A refrigerator

Yet, in violation of regulations, there are no samples collected from

- 1) the dishwasher
- 2) the stove
- 3) the refrigerator

Violation of Paragraph 6.9.4

In his report, Mr. Koch stated:

The property is heated by a gas forced air system which is located in a utility closet.

According to regulations

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.

Violation of Paragraph 6.9.4 Violation of Minimum Surface Area

Mr. Koch failed to collect a minimum of 400 cm² from the ventilation system.

Violation of Paragraph 6.9.4 Heat Exchanger Unit not Sampled

Mr. Koch failed to collect a sample from within the heat exchanger unit.

Violation of Paragraph 6.9.4 Cold Air Return not Sampled

Mr. Koch failed to collect a sample from within the cold air return system.

Violation of Paragraph 6.9.4 Supply Air not Sampled

Mr. Koch failed to collect a sample from the supply air.

Violation of Paragraph 6.9.4 Photo-documentation not Provided

Nowhere in his written documentation do we see where Mr. Koch visually inspected accessible portions of the ventilation system or reviewed photo documentation to verify that the system had been cleaned and is free of debris.

Violation of Paragraph 6.9.11

As already described, none of the samples collected by Mr. Koch at the subject property were valid, however, according to regulations:

6.9.11 ...Samples shall be collected from surfaces that have a reasonable potential to contribute to human exposure, 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.

In his report, Mr. Koch has documented that he collected samples from areas expected to have the lowest levels of contamination, such as the areas under door handles, kitchen sink basin, bathroom sink basin and bathroom tub basin.



Violation of Paragraph 4.15.3

According to regulations

4.15.3 results of sampling, including a description of sample locations and a computer generated figure illustrating the layout of the building(s) ...

The situs represented by the address given contains approximately 13 buildings and yet, nowhere in the KEH report has Mr. Koch provided a computer generated figure illustrating the layout of the buildings.

Violation of Paragraph 4.17.4

In his report, Mr. Koch has explicitly claimed he performed clearance sampling in accordance with 6 CCR 1014-3, Part 1, § 6.

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 have been met as evidenced by testing I conducted.

Yet according to State regulations if one is conducting clearance sampling:

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:

4.17.4 Documentation of variations from standard practices.

Nowhere in the documentation do we see where Mr. Koch has identified any of variations as identified in this Appendix.

Violation of Paragraph 8.6.5

In his report, Mr. Koch has explicitly claimed he has conducted a Preliminary Assessment at the property:

Koch Environmental Health, Inc. (KEH) conducted a preliminary assessment of a potential methamphetamine-affected property at building 10 Unit 183 at the Ranch at Bear Creek Apartments located at 3324 S. Field Street, Lakewood, Colorado (the Site)

PRELIMINARY ASSESSMENT PROCEDURES

The preliminary assessment was performed in accordance with section 4.0 of CDPHE Regulations Pertaining to the Cleanup of Methamphetamine Laboratories 6 CCR 1014-3.

And Mr. Koch has explicitly stated he conducted clearance sampling at the property:



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 have been met as evidenced by testing I conducted.

According to State regulations,

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:

4.18 Evidence of Consultant certification under Part 2 of these regulations.

Nowhere in the provided documentation do we see there Mr. Koch provided the information as required.

CONCLUSION

In our review, FACTs has identified no fewer than 29 regulatory violations, in the referenced work. If we were to include each individual sample violation, the number of violations would greatly exceed 29.

According to Colorado Regulations, 6 CCR 1014-3

3.0 Notification and Imposition

3.1 Whenever the Department has reason to believe that a person has violated any requirement of these regulations, the Department shall notify the person, specifying the requirement alleged to have been violated and the facts alleged to constitute the violation.

To our knowledge, the Department has ignored all of the violations identified in this review.



Appendix A

Statement of Qualifications

