



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

**APPENDIX A
Industrial Hygiene
Regulatory Audit
Of**

**Clandestine Drug Laboratory Report
For**

**3402 S. Eagle St. #104
Aurora, CO 80014**

**Prepared by: Weecycle
Job Number: 13-08992
Dated: August 17, 2013**

Prepared by:

FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

**185 Bounty Hunter's Lane
Bailey, CO 80421**



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
INTRODUCTION.....	5
Overview of “Meth Testing”	5
Weecycle Report	6
Violation of 6 CCR 1014-3 General Provisions Failure to Provide Authorized Personnel.....	7
Certified Mold Inspectors	7
CRS Title 24 Article 30 – Industrial Hygienist.....	8
AIHA Industrial Hygienist Core Capabilities.....	9
TIG and Arc Welding Operations.....	10
Biohazards.....	10
Ergonomics.....	11
Industrial Ventilation	11
Noise and Hearing Loss Prevention.....	11
Ionizing radiation.....	12
CCR 1014-3 Language on Training.....	12
Fraudulent and Misleading Certifications.....	14
Colorado Methlab Certification	14
Mysterious State of Colorado Consultant Registration.....	14
Meth Lab Clean-up Company.....	15
Montana Cleaning License	15
Utah Cleaning Contractor License.....	15
Violation of §8.21.....	16
Failure to Comply With Mandatory Elements of a Preliminary Assessment	16
Failure to Comply With Paragraph 4.1	16
Violation of §4.1 Adjacent Property	16
Failure to Comply With Paragraph 4.2	17
Failure to Comply With Paragraph 4.3.....	18
Failure to Comply With Paragraph 4.4.....	18
Failure to Comply With Paragraph 4.5	20
Failure to Comply With Paragraph 4.6.....	21
Failure to Comply With Paragraph 4.7	22
Failure to Comply With Paragraph 4.8.....	22
Failure to Comply With Paragraph 4.9.....	23
Failure to Comply With Paragraph 4.10.....	24
Failure to Comply With Paragraph 4.11.....	24
Failure to Comply With Paragraph 4.13.....	25
Failure to Comply With Paragraph 4.14.....	25
Failure to Comply With Section 6.0.....	25
Violation of Section 6.2.1 Prohibited Sampling Technique.....	26
Violation of Section 6.2.1 Prohibited Sampling Technique.....	27
Violation of Appendix A: Prohibited Locations	27
Violation of Appendix A: Prohibited Surfaces	27
Violation of Appendix A: Mandatory Sampling Theory	29
Violation of Appendix A: Blank Submittal.....	30
Violation of 6.1.2 Failure to Address Ventilation System.....	30
Failure to Comply With Paragraph 6.1.....	30
Failure to Comply With Section 8.....	31
Failure to Comply With Paragraph 8.2	31
Failure to Comply With Paragraph 8.3.....	31
Failure to Comply With Paragraph 8.4.....	31
Failure to Comply With Paragraph 8.5.....	32
Failure to Comply With Paragraph 8.6.....	32



Failure to Comply With Paragraph 8.7	32
Failure to Comply With Paragraph 8.13	32
Failure to Comply With Paragraph 8.14	33
Failure to Comply With Paragraph 8.20	33
Failure to Comply With Paragraph 8.21	33
Failure to Comply With Paragraph 8.22	34
Failure to Comply With Paragraph 8.22	34
Colorado Criminal Code – Fraud; Offering a false instrument for recording	35
Colorado Criminal Code CRS 18-5-113. Criminal impersonation	36
CONCLUSIONS.....	37



EXECUTIVE SUMMARY

On or about August 8, 2013, at the request of the Aurora (Colorado) Police Department, Mr. Douglas Ayres (a “certified mold inspector”) collected samples to determine the presence of methamphetamine at 3402 S. Eagle St. #104, Aurora, CO 80014. Mr. Ayres is not an Industrial Hygienist and is not permitted to perform any official sampling in the state of Colorado (by State Statute), and the results of the sampling are of academic value only. Contrary to false statements made in his report, Mr. Ayres’ work did not comply with any regulations. The samples collected by Mr. Ayres purported to contain methamphetamine.

Colorado, like virtually every other State, does not recognize the credentials of a “certified mold inspector” since there is no State Regulatory Board which oversees such “certification.” This “certification” does not carry any indication of proficiency in any field of practice. Typically, “certified” mold inspectors are self-“certified” and generally lack any legitimate training in indoor molds or in any science related field.

Contrary to false statements made in the above referenced report, the report was not valid in the State of Colorado, and failed to comply with mandatory State regulations; failed to comply with mandatory State statutes, and may not be used for regulatory compliance purposes.

Forensic Applications Consulting Technologies, Inc. (FACTs) has not been asked to perform a regulatory audit of the work by Mr. Ayres and his report will not be discussed further.

On August 17, 2013, Ms. Judith E. Sawitsky of Weecycle, Inc., Boulder, Colorado (also a “certified” mold inspector) also collected samples for methamphetamine from the property. Ms. Sawitsky is not an Industrial Hygienist and is not permitted (by State Statute) to perform any official sampling in the state of Colorado, and the results of the sampling are of academic value only. Contrary to false statements made in her report, the work by Ms. Sawitsky did not comply with any regulations. The samples collected by Ms. Sawitsky also purported to contain methamphetamine.

Contrary to false statements made in the above referenced report, the report was not valid in the State of Colorado, and failed to comply with mandatory State regulations; failed to comply with mandatory State statutes, and may not be used for regulatory compliance purposes.

FACTs has been asked, by the registered owner of above mentioned the subject property, to perform a regulatory audit of the work by Ms. Sawitsky of Weecycle, Inc., Boulder, Colorado.



INTRODUCTION

Overview of “Meth Testing”

In Colorado, there are four distinct types of sampling and assessments involving illegal drug laboratories; one non-regulatory level and three regulatory and/or statutory levels.

- 1. Screening evaluation – a voluntary evaluation performed out of curiosity**
There are no regulations or statutes or other criteria that govern a screening test; an untrained 15 year old child (or a “certified mold inspector”) is permitted to perform the “testing,” and the results cannot be used for any regulatory compliance purposes.
- 2. Cursory evaluation – a Real Estate transaction property inspection performed pursuant to CRS §38-35.7-103**
Work performed for a real estate transaction, must be performed by an Industrial Hygienist as defined by CRS 24-30-1402. The testing may be used to meet specific criteria as defined in CRS 38-35.7-103
- 3. Preliminary Assessment – a State mandated assessment following “discovery” performed pursuant to CRS 25-5-101 et seq and Regulation 6 CCR 1014-3**
Following the discovery of an illegal drug laboratory, the property owner must commission a Preliminary Assessment (PA); the PA must be performed by a qualified Industrial Hygienist meeting statutory definition of CRS 24-30-1402. The PA may or may not involve any sampling, and must conform to the mandatory elements as defined in 6CCR 1014-3 Section 4, and Section 6 and the provisions of Colorado Revised Statutes §25-18.5-101 *et seq.*
- 4. Decision Statement - a State mandated declaration of compliance following “discovery” performed pursuant to provision of CRS §25-5-101 et seq and Colorado Regulation 6 CCR 1014-3**
Following the discovery of an illegal drug laboratory, and either in conjunction with, or following, a legitimate PA, the property owner must commission final verification sampling and other activities as defined by 6CCR 1014-3 and CRS 25-18.5-101 *et seq.* The work must be performed by a qualified Industrial Hygienist meeting statutory definition found in CRS 24-30-1402.

Prior to decontaminating a property, a legitimate PA must be performed, and it can only be performed by an Industrial Hygienist, and it can only be performed by a trained Industrial Hygienist. No cleaning may occur in an identified illegal drug laboratory except upon issue of a legitimate PA.

Over the last several years, a serious problem has been created by fraudulent consultants and incompetent Industrial Hygienists, who have been performing invalid assessments in illegal drug laboratories. Since local governments were not receiving support in compliance, many local jurisdictions did not enforce any aspect of the regulations.

As a result of the serious problems created by unauthorized and incompetent consultants, Senator Lois Tochtrop introduced senate bill SB13-219 which, among other changes, would impose heavy fines on incompetent Industrial Hygienists and fraudulent



consultants. The Act was signed by the Governor of Colorado on May 28, 2013 and most of the provisions of the bill became effective on August 7, 2013. However, the regulatory certification of qualified consultants will not be finalized until approximately March of 2014. Therefore, several fraudulent and unauthorized individuals continue to perform invalid assessments with impunity.

Weecycle Report

The August 17, 2013 document identified by Weecycle Environmental Consulting, Inc. (WEC) as a “Clandestine Drug Lab Preliminary Assessment” does not meet the definition of a Preliminary Assessment, is fatally flawed, and cannot be used in lieu of a legitimate Preliminary Assessment.

The document identified as a Preliminary Assessment for this subject property was not prepared by an individual documented as being an Industrial Hygienist.

The document identified as a Preliminary Assessment for this subject property was not prepared by an individual documented as being capable or qualified under regulation to perform such work.

The document identified as a Preliminary Assessment for this subject property exhibited gross technical incompetence in regulatory compliance and illegal drug laboratory assessment.

FACTs identified no fewer than 46 violations and/or omissions of Colorado’s Regulations including:

- Failure to Provide Authorized Personnel
- Failure to Comply With Mandatory Elements of a Preliminary Assessment
- Fraudulent and Misleading Certifications
- Violation of §8.21
- Failure to Comply With Mandatory Elements of a Preliminary Assessment
- Failure to Comply With Paragraph 4.1
- Violation of §4.1 Adjacent Property
- Failure to Comply With Paragraph 4.2
- Failure to Comply With Paragraph 4.3
- Failure to Comply With Paragraph 4.4
- Failure to Comply With Paragraph 4.5
- Failure to Comply With Paragraph 4.6
- Failure to Comply With Paragraph 4.7
- Failure to Comply With Paragraph 4.8
- Failure to Comply With Paragraph 4.9
- Failure to Comply With Paragraph 4.10
- Failure to Comply With Paragraph 4.11
- Failure to Comply With Paragraph 4.13
- Failure to Comply With Paragraph 4.14
- Failure to Comply With Section 6.0
- Violation of Section 6.2.1 Prohibited Sampling Technique
- Violation of Section 6.2.1 Prohibited Sampling Technique
- Violation of Appendix A: Failure to provide field blanks
- Violation of Appendix A: Prohibited Locations



- Violation of Appendix A: Prohibited Surfaces
- Violation of Appendix A: Mandatory Sampling Theory
- Violation of 6.1.2 Failure to Address Ventilation System
- Failure to Comply With Paragraph 6.1
- Failure to Comply With Section 8
- Failure to Comply With Paragraph 8.2
- Failure to Comply With Paragraph 8.3
- Failure to Comply With Paragraph 8.4
- Failure to Comply With Paragraph 8.5
- Failure to Comply With Paragraph 8.6
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- Failure to Comply With Paragraph 8.20
- Failure to Comply With Paragraph 8.21
- Failure to Comply With Paragraph 8.22
- Failure to Comply With Paragraph 8.22
- Colorado Criminal Code – Fraud; Offering a false instrument for recording
- Colorado Criminal Code CRS 18-5-113. Criminal impersonation

For this review, we have ignored the many, many smaller errors found in the WEC report, such as the statement:

Field blanks are under the contamination limit according to the CDPHE.

(CDPHE does not have any contamination limits for field blanks.)

Violation of 6 CCR 1014-3 General Provisions Failure to Provide Authorized Personnel

One of the mandatory provisions, pursuant to state regulations promulgated by the Colorado State Board of Health and designated as “6 CCR 1014-3, *Regulations Pertaining To The Cleanup Of Methamphetamine Laboratories*” states that assessments of properties within the scope of the regulation can only be performed by an Industrial Hygienists meeting the definition of Section 24-30-1402 of the Colorado Revised Statutes.

Certified Mold Inspectors

For this property, on the cover of the report, WEC does not even pretend the author is an Industrial Hygienist and instead identifies the author as “Judith E Sawitsky, CMC”

The designation “CMC” is a make-believe “certification” that is not recognized as carrying weight or validity in the legitimate field of microbiology or Industrial Hygiene. The term “CMC” usually indicates some kind of certified mold inspector and often means “Certified Mold Contractor” or “Certified Microbial Contractor,” or other meaningless “certification” in mold related issues.

These “certifications” are not recognized, and in Colorado, a child of 12 years old could sit down at their computer and print out a “certificate” identifying themselves as a ‘CMC’ and run around collecting mold samples - however that does not make them an



Industrial Hygienist, and such a person will not meet the statutory definition of an Industrial Hygienist.¹

In fact, Ms. Sawitsky is not even knowledgeable in indoor molds, but rather practices fear-based, junk science, pretending to perform Industrial Hygiene work. FACTs has been involved in reviewing other reports from WEC involving indoor mould issues wherein WEC cooperated with a “toxic mould” remediation contractor and relied on junk-science, and nonsensical sampling to frighten an homeowner into expensive, fear-based “mould remediation.” (See for example: <http://www.forensic-applications.com/moulds/elizcensorecritical.pdf>). As demonstrated in that report, WEC clearly has no legitimate experience or training in indoor moulds, basic science, air monitoring protocols or Industrial Hygiene.

CRS Title 24 Article 30 – Industrial Hygienist

In their report, WEC claims their field technician was an Industrial Hygienist by virtue of having “...*AT LEAST 5 years of experience in Industrial Hygiene prior to the July 1, 1997 date as set out in DEFINITION II.*”

However, there is no such provision in Colorado State statutes under which an individual may claim to be an Industrial Hygienist. The Colorado Revised Statutes actually require something completely different than the provision claimed by WEC; the statutes actually read:

CRS 24-30-1402 (c)(2)(II) Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in this subsection (2.2).

As it is, according to the WEC report, in the five years prior to July 1, 1997, the WEC technician was not practicing as an Industrial Hygienist, but rather WEC describes their technician’s experience as working at “*an environmental consulting firm located in Denver, CO as an intern and then as an Environmental Biotechnologist staff member from 1990 through 1994.*” Being an “intern” with an environmental firm is not practicing Industrial Hygiene and there is no definition of an “Environmental Biotechnologist” and, therefore, a janitor at a school legitimately can claim to be an “Environmental Biotechnologist.”

According to Colorado statutes:

24-30-1402. Definitions.

(2.2) "Industrial hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university. The special studies and training of such individual shall be sufficient in the cognate sciences to provide the ability and competency to:

¹ It is interesting to note that the original contractor who collected samples at the property, Mr. Douglas Ayers, contacted FACTs two years ago and asked FACTs to sign off on his methamphetamine testing results stating that “Since I collect mold samples, I’m essentially an Industrial Hygienist.” (FACTs rejected the argument and declined to do the work).
Appendix A Regulatory Audit, Weecycle Report



(a) Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

(b) Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

(c) (l) Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

This reviewer (Connell) was the legislative technical advisor for promulgation of CRS 24-30-1402, and crafted some of the legislative language. The intent of the legislation was to recognize those Industrial Hygienists who were already practicing Industrial Hygiene for five years prior to July 1, 1997. WEC has not provided any documentation indicating that Ms. Sawitsky was a practicing Industrial Hygienist five years prior to July 1, 1997.

AIHA Industrial Hygienist Core Capabilities

In 2012, the American Industrial Hygiene Association,² in conjunction with the American Conference of Governmental Industrial Hygienists,³ and the American Board of Industrial Hygiene, published a document called “Core Competencies for the Practice of Industrial /Occupational Hygiene” The document identified those core competencies as:

- Air Sampling and Instrumental analysis
- Basic Science
- Biohazards
- Biostatistics and Epidemiology
- Chemical Hazards
- Community Exposures
- Engineering Control and ventilation
- Ergonomics
- Health Risk Analysis and Hazard Communication
- Ionizing radiation
- Management
- Noise and Hearing loss prevention
- Non engineering controls
- Non ionizing radiation
- Thermal stressors
- Toxicology
- Work Environments and Industrial Processes

² Of which this reviewer (Connell) is a member and currently sits on the Clandestine Drug Laboratory Working Group

³ Which this review (Connell) is a member
Appendix A Regulatory Audit, Weecycle Report



There is no documentation that would suggest that the WEC field technician, Ms. Sawitsky has any training or experience or knowledge in ANY of the above listed core capabilities. Furthermore, previous work by WEC clearly demonstrates gross incompetence in several of these areas, such as toxicology, biohazards and air sampling.

A part-time FACTs field Technician, is a supervisor at a heavy industry steel manufacturing facility. FACTs asked our technician to contact WEC, and identifying himself and identify his role in heavy industry and to inform WEC he was asked to contact WEC regarding their capabilities to provide Industrial Hygiene services. Specifically, our technician was asked to inquire as to the capabilities of WEC to perform the following Industrial Hygiene services:

- Air Sampling and Instrumental analysis
- Biohazards
- Chemical Hazards
- Engineering Control and ventilation
- Ergonomics
- Health Risk Analysis and Haz Comm
- Ionizing radiation
- Noise and Hearing loss prevention
- Non ionizing radiation
- Toxicology
- Work Environments and Industrial Processes

Our technician was informed by WEC, that they were not able of providing ANY of the above listed services. Therefore, out of the 17 core capabilities that constitute Industrial Hygiene, WEC was incapable of providing at least 11 of those services.

TIG and Arc Welding Operations

Specifically, WEC was asked about their capabilities to provide air monitoring exposures assessment for TIG and stick arc welding operations which incorporates the following industrial Hygiene aspects:

- Air Sampling and Instrumental analysis
- Chemical Hazards
- Health Risk Analysis and Haz Comm
- Ionizing radiation
- Non ionizing radiation
- Toxicology
- Work Environments and Industrial Processes

WEC informed us they were not able to perform this industrial hygiene function.

Biohazards

Specifically, WEC was asked about their capabilities to provide an assessment of biohazards related with the Mycobacteria associated with metal cutting fluids which incorporates the following industrial Hygiene aspects:



Air Sampling and Instrumental analysis
Basic Science
Biohazards
Engineering Control and ventilation
Health Risk Analysis and Haz Comm
Non engineering controls
Toxicology
Work Environments and Industrial Processes

Ergonomics

Specifically, WEC was asked about their capabilities to provide an ergonomic assessment for grinders and buffers which incorporates the following industrial Hygiene aspects:

Basic Science
Biohazards
Ergonomics
Health Risk Analysis and Haz Comm
Non engineering controls
Work Environments and Industrial Processes

WEC informed us they were not able to perform this industrial hygiene function.

Industrial Ventilation

Specifically, WEC was asked about their capabilities to provide design criteria for industrial ventilation which incorporates the following industrial Hygiene aspects:

Basic Science
Chemical Hazards
Community Exposures
Engineering Control and ventilation
Health Risk Analysis and Haz Comm
Management
Noise and Hearing loss prevention
Work Environments and Industrial Processes

WEC informed us they were not able to perform this industrial hygiene function.

Noise and Hearing Loss Prevention

Specifically, WEC was asked about their capabilities to provide sound and noise monitoring services for a factory floor wherein steel fabrication occurs, which incorporates the following industrial Hygiene aspects:

Basic Science
Engineering Control and ventilation



Health Risk Analysis and Haz Comm
Noise and Hearing loss prevention
Non engineering controls
Work Environments and Industrial Processes

WEC informed us they were not able to perform this industrial hygiene function.

Ionizing radiation

Specifically, WEC was asked about their capabilities to provide ionizing radiation assessments for sealed source devices, which incorporates the following industrial hygiene aspects:

Basic Science
Community Exposures
Engineering Control and ventilation
Health Risk Analysis and Haz Comm
Ionizing radiation
Management
Non engineering controls
Work Environments and Industrial Processes

WEC informed us they were not able to perform this industrial hygiene function.

WEC, which is not an Industrial Hygiene firm, was not able to provide any of the above, basic Industrial Hygiene services.

There is no documentation suggesting that the WEC field technician, Ms. Sawitsky has any special training or studies in the core cognate sciences that constitute Industrial Hygiene, or that speak to the ability and competency to anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being. In fact, as already referenced, in the document found at <http://www.forensic-applications.com/moulds/elizcensoredcritical.pdf> FACTs demonstrated that WEC entirely rejects known air sampling and instrumental analysis techniques, and rejects basic science in evaluating biohazards, and rejects basic science of toxicology and rejects basic science in biostatistics and rejects the science of biohazards and therefore, rejects basic science.

Furthermore, there is no indication that Ms. Sawitsky has any knowledge of the assessment of illegal drug laboratories, and there is no documentation in the WEC report that would indicate that Ms. Sawitsky has any experience or training that would equip her to perform an assessment of an illegal drug laboratory.

CCR 1014-3 Language on Training

Not only do the State regulations and pertinent standards mandate the use of an Industrial Hygienist for an identified illegal drug laboratory, the regulations repeatedly



allude to the necessity of that IH being trained and knowledgeable in clandestine drug laboratory operations and contamination.

For example, regarding pre-remediation assessments wherein the hypothesis of compliance is tested, the regulations explicitly state:

6CCR 1014-3
Attachment to Appendix A
Methamphetamine Laboratories Sampling Methods and Procedures
Sampling Theory

...The strength of evidence needed to reject the hypothesis is low, and is only that which would lead a reasonable person, **trained in aspects of methamphetamine laboratories**, to conclude the presence of methamphetamine, its precursors as related to processing, or waste products.

And:

Other outdoor surfaces should be evaluated based on **best professional judgment**. Wipe samples and destructive samples may be required.

And:

Composite sampling is permitted by this regulation, as described herein. The consultant may not use composite sampling unless in their **professional judgment**, contamination is expected to be relatively evenly dispersed throughout a given area, such that the sampling will accurately represent the conditions of the drug laboratory.

Similarly, regarding contamination migration, the regulations explicitly state:

6 CCR 1014-3 Section 3.0: "Functional space" means a space where the spread of contamination may be expected to occur relatively homogeneously, compared to other functional spaces. The "functional space" may be a single room or a group of rooms, designated by a consultant who, **based on professional judgment**, considers the space to be separate from adjoining areas with respect to contaminant migration. Other typical examples of functional spaces include a crawl space, an attic, and the space between a dropped ceiling and the floor or roof deck above.

And:

6 CCR 1014-3 §4.6 Identification and documentation of areas of contamination. This identification may be based on visual observation, law enforcement reports, proximity to chemical storage areas, waste disposal areas, or cooking areas, or **based on professional judgment** of the consultant; or the consultant may determine that assessment sampling is necessary to verify the presence or absence of contamination.

The allusion to an appropriately trained IH is woven intrinsically into the State's regulation's application of "professional judgment" and is needed for compliance. If an individual has never received any kind of legitimate training in the manufacturing of illegal drugs, it would be impossible for that individual to apply "professional judgment" during the assessment. If an individual has never received any kind of training in the assessment of illegal drug laboratories, how could that individual possibly exercise "professional judgment"?



Fraudulent and Misleading Certifications

Colorado Methlab Certification

Based on information provided to FACTs by the Registered Owner of the subject property, WEC verbally and explicitly informed the Registered Owner that WEC was Certified by the State of Colorado to perform the work at the subject property. Presently, there is NO such certification in Colorado, and there has never been any such certification in Colorado.

As of November 9, 2013, on their website, WEC makes the patently fraudulent claim that they are explicitly **certified** in the State of Colorado for performing testing in clandestine drug laboratories. On their web site, WEC falsely claims:



Figure 1
Language from the Weecycle Internet Site⁴

Weecycle, Inc. is not now and has never been certified in the State of Colorado or by the State of Colorado to perform clandestine lab testing for methamphetamine contamination; the claim is fraudulent and as a result of that fraudulent claim, the Registered Owner of the subject property believed WEC was in fact certified by the State of Colorado to perform the work.

Mysterious State of Colorado Consultant Registration

In their report, WEC also claims they hold

State of Colorado Consultant Registration, Reg. #5417

FACTs is entirely unaware of this “registration” or how it may be alluding to this project. FACTs searched the Official State of Colorado Registry and found there is only exclusively one listing for “Judith Sawitsky” who is exclusively certified to collect asbestos air samples. We could find no reference to a Consultant Registration or Consultant Registration Number 5417.

⁴ Copyright Weecycle 2013, used here without permission under the “fair use” doctrine as described in US Code, Title 17 Section 107 “criticism,” “teaching,” “reporting,” and “scholarship.”
Appendix A Regulatory Audit, Weecycle Report



Meth Lab Clean-up Company

On the WEC internet page, they claim to have a certification in “Clandestine Drug Lab Decontamination Training” and they falsely claim they are certified for performing clandestine drug laboratory assessments in Colorado.

WEC claims the certification is from a meth-lab cleanup company who is known for multiple violations of State regulations.⁵

Montana Cleaning License

In the documentation provided, WEC claims it is a Montana Certified Methamphetamine Cleanup Supervisor (MCP11-0039-S) – FACTs went to the following internet page:

<http://www.deq.mt.gov/Meth/MethContractors.mcpX>



Figure 2
Language from the State of Montana Internet Site

Nowhere in the roster of Certified Meth Lab Cleanup Contractors does the State of Montana recognize or list the name of “Sawitsky” (or Judith or Judy) and nowhere on that roster do they list WEC as being certified in any way whatsoever.

Utah Cleaning Contractor License

In the documentation provided, WEC claims it is a “*Certified Clandestine Drug Lab Decontamination Specialist*” but fails to note that certification is exclusively a State of Utah license needed to CLEAN a property in Utah, not to assess a property in Colorado. The Utah certification has no recognition in Colorado and has no probative value in the assessment of Illegal Drug Laboratories in Colorado.

Considering the gross incompetence exhibited by WEC, and numerous violations of regulations documented, it is clear WEC failed to provide a legitimate Industrial

⁵ See for example http://forensic-applications.com/meth/Critical_review_Race.pdf
Appendix A Regulatory Audit, Weecycle Report



Hygienist who was trained in the aspects of illegal drug laboratories and had any knowledge of the mandatory Colorado regulations which they were required to follow.

Violation of §8.21

Specific mandatory information is required to be included in the final verification documentation for the assessment of a clandestine drug laboratory. Many elements of that final documentation must be included in the initial Preliminary Assessment, or it will not be available for inclusion in the final documentation. One of the items that must be included in the Preliminary Assessment for subsequent inclusion in the final documentation is:

8.21. Consultant statement of qualifications, including professional certification or qualification as an industrial hygienist as defined in section 24-30-1402, C.R.S., and description of experience in assessing contamination associated with methamphetamine labs.

The WEC documentation entirely failed to identify what training or capabilities the WEC technician has in the assessment of illegal drug laboratories or why she thinks she is an Industrial Hygienist. The WEC report merely states:

...industry specific training in conducting methamphetamine assessments.

There are no certifications presented, no references to any training courses, not an allusion as to whom performed the training, or when or where. Based on the profound incompetence exhibited and previously demonstrated fraud by WEC, Ms. Sawitsky, does not possess any of the skills necessary to perform the work.

Failure to Comply With Mandatory Elements of a Preliminary Assessment

According to Colorado State regulation 6 CCR 1014-3, when a Preliminary Assessment is conducted:

6 CCR 1014-3 4.0 Preliminary Assessment. A preliminary assessment shall be conducted by the consultant, in accordance with section 6.7 of this regulation, prior to the commencement of property decontamination. ... Information collected during the preliminary assessment shall include, but not be limited to, the following:

Failure to Comply With Paragraph 4.1

According to State regulations, the Preliminary Assessment shall include a property description containing specific elements.

4.1. 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.

Violation of §4.1 Adjacent Property

WEC failed to perform its regulatory and professional duty by failing to comply with this requirement. Nowhere within the documentation do we see where WEC has



provided a description of adjacent and/or surrounding buildings. In their report, WEC merely notes:

There are similar residential properties surrounding the subject site.

This “description” could applied to virtually any location in Colorado and fails to note that the subject property is in fact, part of a condominium complex, sharing common walls and common plumbing with other adjoining units.

Thus, in reality, and importantly, the subject property shares a common west wall, and communicates immediately with Unit Number 101. The subject property communicates immediately with, and shares a ceiling/floor structure with Unit Number 203, directly above. The subject property shares a common entry way with Unit Number 103 to the north.

This becomes extremely important since the mandatory regulations state:

Where the drug laboratory is located in a structure other than a single-family dwelling, the potential of fugitive emissions must be considered.

It appears that WEC merely issues “boiler-plate” reports without considering actual site conditions. Later in their report, WEC did identify the potential for fugitive emissions at this subject property.

Failure to Comply With Paragraph 4.2

According to State regulations, during the Preliminary Assessment, the Industrial Hygienist shall perform specific duties regarding law enforcement documentation:

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

WEC failed to perform its duties and fulfill regulatory requirements by failing to determine if law enforcement documents were available.

In its report, WEC merely stated:

There were no law enforcement reports provided for this property from the customer.

There is no requirement for the customer to provide the Industrial Hygienist with law enforcement reports. The Industrial Hygienist is required by regulation to determine if law enforcement documents are available and what information law enforcement personnel have for the property.

There is no evidence in their report, that WEC made any attempt to contact any law enforcement office or obtain any law enforcement documents associated with the property as required by regulations. WEC had the regulatory duty to attempt to identify and, if available, review, and provide the mandatory documentation in its report.



Nowhere in the WEC report does WEC document any attempts to comply with State regulations and apparently made no attempt to obtain or review any law enforcement documents as required by regulation.

Failure to Comply With Paragraph 4.3

According to State regulations, during the Preliminary Assessment, the Industrial Hygienist shall perform specific duties that determine the potential for contamination migration, establish the grounds for decontamination and prepare the foundation for post clearance sampling by determining functional spaces. The Regulations explicitly require the Industrial Hygienist to include:

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

WEC failed to perform its duties and fulfill regulatory requirements by failing to identify functional spaces within the subject property that may be associated with unique contamination, as required by regulation. Pursuant to this section of the regulations, the Industrial Hygienist is required to consider:

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

In their report, WEC demonstrates a lack of understanding of this requirement by identifying specific walls as functional spaces, and by completely neglecting to identify actual Functional Spaces. For example, in their report, WEC inexplicably identified the following as Functional Spaces:

...Living Room Ceiling, Dining Room Wall, Living Room Wall

Walls and ceiling are not Functional Spaces; walls and ceilings are surfaces *within* Functional Spaces. And yet, in their report, WEC entirely failed to identify actual Functional Spaces such as the storage room on the patio, and the entrance portico.

By these inclusions and omissions, WEC exhibits a gross lack of understanding of not only the concepts involved, but the actual regulatory requirements.

Failure to Comply With Paragraph 4.4

According to State regulations, during the Preliminary Assessment, the Industrial Hygienist shall identify the methamphetamine manufacturing process used on site. The information is imperative and indispensable during the Preliminary Assessment, since the decontamination efforts may be incumbent on the type of process used. Furthermore, the post decontamination sampling shall be incumbent on the type of process used. The state regulations explicitly require the Industrial Hygienist to:



4.4. Identification of manufacturing methods based on observations and law enforcement reports.

Inherent in this requirement is the presumption that the consultant would be capable of actually having some knowledge of manufacturing processes, and some training which would allow the recognition of observations to be linked to some kinds of manufacturing.

As already stated, there is no documentation in the WEC report which indicates that the work was performed by an Industrial Hygienist, but rather, the work was performed by a “certified microbial consultant” with no documentable training in clandestine drug operations. Therefore, it would be impossible for Mr. Sawitsky to be capable of describing the method of manufacturing or chemicals used, especially since WEC failed to contact law enforcement agencies for information regarding the subject property.

In their report, WEC merely states:

Manufacturing methods were not specifically identified.

But WEC does not explain why they did not comply with the regulations that state the Industrial Hygienist **shall** provide:

4.4. Identification of manufacturing methods based on observations and law enforcement reports.

Since WEC failed to attempt to obtain law enforcement records as required, WEC could not have complied with this provision. Similarly, since WEC has no documented knowledge or training of manufacturing processes and WEC has otherwise demonstrated gross technical incompetency in clandestine drug lab assessments, there is no reason to expect WEC to have sufficient competency in recognizing, or knowing the significance of any such observations to discern which method(s) may have been involved.

State Regulations explicitly require the following:

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

Therefore, since WEC has not determined why the contamination is present, or the type of process that may have been used, their recommended decontamination suggestions may have been entirely inappropriate for the property. WEC entirely failed to perform its regulatory duties, and entirely failed to grasp the importance of this determination and WEC states:

Visual inspection revealed etching and residue on the walls that are typically associated with clandestine drug manufacturing.



If WEC was capable of identifying etching and residue “typically associated with drug manufacturing,” then presumably WEC would have known that different manufacturing methods result in different kinds of etching and staining – why then did WEC ignore the regulations and fail to identify the method? Why, as described elsewhere in this report did WEC fail to comply with the regulations and fail to photograph those areas?

It is difficult to understand how the property could be contaminated with methamphetamine, yet, WEC cannot make a representation as to whether or not the property was, at some time, the site of clandestine drug activity.

Failure to Comply With Paragraph 4.5

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

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

WEC entirely failed to perform its professional, regulatory duties by failing to obtain law enforcement documents, and failing to determine what chemicals may have been used or stored on the subject property. Since WEC failed to attempt to obtain law enforcement records as required, WEC could not have complied with this provision.

In their report, WEC merely states:

Chemicals were not found on the property.

And yet, in their own photographs, WEC took photographs of chemicals being stored at the property. Apparently, WEC is so poorly trained they are unaware that the chemicals typically found at a clandestine drug laboratory are in fact, normal, “everyday” ordinary chemicals, that are commonly found in almost every home.

In fact, the photograph below was taken at a local supermarket. In that one photograph is depicted all the equipment and all the reagents necessary to open, run and operate a clandestine drug laboratory.





**Photograph 1
One-Stop Shopping Meth Lab⁶**

In their report, when WEC states:

Chemicals were not found on the property.

They indicate they have absolutely no concept of what constitutes a clandestine drug laboratory or the chemicals found therein.

Failure to Comply With Paragraph 4.6

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

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

⁶ © 2005 FACTs, Inc. All rights reserved
Appendix A Regulatory Audit, Weecycle Report



WEC failed to perform its duties and fulfill regulatory requirements by failing to identify or recognize signs of contamination. Since, as described later, WEC failed to comply with Section 4.14 of the regulations (4.14. Photographic documentation of property conditions, including cooking areas, chemical storage areas, waste disposal areas, and areas of obvious contamination) the mandatory photographs are not available to objectively assess WEC's observations.

Failure to Comply With Paragraph 4.7

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.7. Identification and documentation of chemical storage areas.

As already noted, in spite of the chemical storage WEC identified on site, WEC mysteriously ignores its own photographs and states:

Chemicals were not found on the property.

However, since WEC failed to determine the availability of law enforcement documents, as required by regulation, WEC could not have complied with this section.

Similarly, since the field personnel (Ms. Sawitsky) has no documented training in the assessment of illegal drug laboratories, there is no reason to believe that she would be capable of recognizing chemical storage (as is evidence in her report).

Failure to Comply With Paragraph 4.8

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.8. Identification and documentation of waste disposal areas.

In their report, WEC states:

Waste disposal areas were not identified, as the house had been cleaned prior to our initial sampling. A walk through of the exterior of the house did not reveal any areas suspected to be waste disposal areas.

It would appear that WEC merely includes the same language for all of its properties; the subject property is not an house. The subject property is a condominium unit within a multifamily superstructure.

As already noted, WEC entirely lacks any documentable training in the manufacturing of controlled substances, and entirely lacks any documentable training in the assessment of illegal drug laboratories. Therefore, there is no reason to believe that they would be capable of recognizing such indicators if they were present.

In fact, there were indicators present, including indicators from the exterior, which WEC entirely failed to note – for example, in the photograph below, we see the following:





**Photograph 2
Stressed Vegetation – Waste Disposal Indicator**

The above is important since according to the regulations, the Industrial Hygienist is required by regulation to provide:

4.10. Identification and documentation of signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation.

Therefore, the comments by WEC are doubly inexplicable, since WEC failed to note such an obvious area of outdoor dead vegetation.

In any event, considering the overt errors, omissions and false representations made in their report, clearly by an assessor with no documented experience or knowledge in performing such work, it is not surprising that WEC similarly lacked the knowledge to recognize those signs.

Failure to Comply With Paragraph 4.9

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.9. Identification and documentation of cooking areas.



This is imperative information, where available, since it helps to direct proper decontamination as well as final clearance sampling activities.

Since WEC failed to comply with Sections 4.2 (Law Enforcement Documentation) and Section 4.14 of the regulations (Photographic documentation) and since the field personnel have no documented training in the assessment of illegal drug laboratories, and since the remainder of the report exhibits gross technical incompetence, there is no reason to believe the on-site individual would be capable of recognizing such areas.

Failure to Comply With Paragraph 4.10.

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.10 Identification and documentation of signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation.

As already discussed above, there is no indication that WEC conducted the assessment of the exterior grounds, otherwise WEC would not have missed the obvious areas of dead vegetation.

In their report, WEC merely stated:

Staining and etching were found on the walls in the house.

Since WEC has no documented training in the assessment of illegal drug laboratories, and otherwise has no documentable training in Industrial Hygiene, WEC failed to understand the importance of the staining, and what the staining could have been telling them, and failed to meet mandatory regulations and failed to provide "... documentation of signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation."

Failure to Comply With Paragraph 4.11

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.11. Inspection of plumbing system integrity and identification and documentation of potential disposal into the sanitary sewer or an individual sewage disposal system (ISDS). ... *et seq.*

In their report, WEC entirely failed to perform any kind of inspection of the plumbing. In fact, in their report, they entirely failed to even mention the plumbing except to say:

Inspection of plumbing system integrity and identification and documentation of potential disposal into the sanitary sewer or individual sewage disposal system (ISDS).

That is the only mention of the plumbing system in their report.



Failure to Comply With Paragraph 4.13

According to State Regulations, during the Preliminary Assessment, the Industrial Hygienist is required to perform specific duties including:

4.13. Identification and documentation of common ventilation systems with adjacent units or common areas.

WEC failed to comply with this provision and actually misidentified the ventilation system in the structure. In their report, WEC falsely claimed:

The site is one of four (4) adjoining condominium residences with shared walls and a shared ventilation system.

The subject property most definitely **did not** have a shared ventilation system. The subject property had a standalone single family forced air system that exclusively serviced Unit 104.

Failure to Comply With Paragraph 4.14

During the Preliminary Assessment, the Industrial Hygienist is required to provide:

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

WEC entirely failed to meet this responsibility by failing to provide any photographs of any site conditions. In their report, WEC provided 36 photographs – 26 of those photographs (72%) were close-ups of sampling templates that provide absolutely no value whatever to an assessment and entirely fail to document site conditions.

WEC failed to provide any photographs of the exterior, the shed, contaminated areas, areas of staining or waste disposal areas. The close-up photographs of their templates could have been collected from any property, and there is no way of knowing if the photographs are even from the subject property.

Failure to Comply With Section 6.0

The sampling performed by WEC was not compliant with State regulations; (and indeed, the vast majority of sampling conducted by WEC was both useless, unnecessary and a waste of financial resources).

State Regulations explicitly provide that:

6.0.1 Except as provided in 6.0.2, assessment sampling shall be conducted as part of the preliminary assessment to characterize the nature and extent of contamination. Assessment sampling and laboratory analysis shall be conducted in accordance with Appendices A, B and D of these regulations.

None of the sampling performed by WEC met the regulatory requirements for such sampling. According to Colorado Regulations:



Violation of Section 6.2.1 Prohibited Sampling Technique

Mandatory Colorado regulations require:

6.2.2. Composite sampling may only be conducted in situations where contamination is expected to be relatively evenly dispersed throughout a given area, and composite sampling will provide an accurate representation of the area sampled, as described in Appendix A.

A legitimate Industrial Hygienist, trained in the aspects of illegal drug laboratory assessments would have known that contamination under these circumstances exhibits very large sampling error; a legitimate Industrial Hygienist would have known that field data from fully characterized properties exhibit a lognormal distribution (large variations of concentration). That is, the contamination under the circumstances of the subject property will never be "...expected to be relatively evenly dispersed throughout a given area..." and the geometric standard deviations can be as large as 3.0. This distribution is similar to that reported elsewhere.^{7, 8}

Indeed, if we simply look at the WEC data, we see exactly the type of lognormal variation expected; the geometric standard deviation of the WEC data is 4.78 and the concentrations reported by WEC have a Shapiro-Wilks W-Test one-tailed percentage point of 0.8180; the normal (Gaussian) W-Test is only 0.6155 whereas the lognormal W-test is 0.9594 indicating that the Gaussian distribution is rejected and the lognormal distribution is the better fit. That is to say, the property could not have been "...expected to be relatively evenly dispersed throughout a given area..." a legitimate Industrial Hygienist would have known that fact, and composite sampling was prohibited.

In spite of this, in their report, WEC states:

Composite samples were collected from no more than five (5) areas per composite sample in each functional area.

A legitimate Industrial Hygienist would have known the anticipated distribution of data and would have known that the composite sampling employed by WEC was prohibited by state regulations for this very reason. However since WEC failed to provide a trained, qualified Industrial Hygienist for this assessment, WEC not only violated State regulations by using prohibited sampling techniques, they exhibited a lack of knowledge in basic science and mathematics and basic practice of Industrial Hygiene.

⁷ Washington State Department of Health: Summary Results from a Pilot Study to Evaluate Variability and Distribution of Methamphetamine Residue in Remediated Residential Illegal Drug Labs, as reported in NIOSH Method 9106 (DRAFT)

⁸ Martyny JW, Arbuckle SL, McCammon CS, Esswein EJ, Erb N, *Chemical Exposures Associated with clandestine Methamphetamine Laboratories*, (http://www.njc.org/pdf/chemical_exposures.pdf , May 10, 2004).



Violation of Section 6.2.1 Prohibited Sampling Technique

WEC failed to comply with the composite sampling techniques as described in Regulations. According to regulations:

APPENDIX A METHAMPHETAMINE LABORATORIES SAMPLING METHODS AND PROCEDURES

Any composite sampling must consist of like media, matrices or substrates. The mixing of media, matrices or substrates is not permitted.

And, in their report WEC stated:

The composite materials consisted of like media, matrices and /or substrates. Each area sampled, as part of the composite sample, was collected from distinct 100 cm² area.

However, when we look at the actual samples, we see that WEC in fact did mix matrices; for example, Sample D14 is a mixture of metal and painted drywall.

Violation of Appendix A: Prohibited Locations

According to Colorado Regulations:

Pre-decontamination sampling

In pre-decontamination sampling, the assumption (hypothesis) is made that the area is clean i.e. "compliant," and data will be collected to find support for the hypothesis. Data (such as samples) are collected to "prove" the area is compliant. Sampling, if it is performed, is conducted in the areas with the highest probability of containing the highest possible concentrations of contaminants.

For this property, not only did WEC use a prohibited sampling technique (composite sampling), but WEC also collected samples from locations expected to have the lowest probability of contamination.

Since WEC lacks any documentable knowledge of clandestine drug lab assessments, and their work exhibits a lack of knowledge in basic Industrial Hygiene sampling theory, WEC has demonstrated they lack any knowledge of the thermophoretic mechanisms involved in contamination migration and deposition. It is precisely for this reason WEC has collected samples from inappropriate surfaces (ignoring the fact that WEC collected prohibited composites that included prohibited porous surfaces described below).

Thus for example, WEC collected samples primarily from side-walls and other areas that would have the lowest probability of demonstrating contamination. A legitimate, trained Industrial Hygienist would not have sampled these areas since they would have understood the deposition mechanisms and known these areas have the lowest probability of being contaminated.

Violation of Appendix A: Prohibited Surfaces

During an assessment, the Industrial Hygienist must either 1) presume a material is noncompliant or 2) sample that material to prove it is compliant. In this case, the



original samples collected by Mr. Ayres (however invalid for regulatory purposes), clearly demonstrated that the entire residence was heavily contaminated. Therefore, a legitimate Industrial Hygienist would not have wasted financial resources by collecting additional samples. The only rationale reason for collecting additional samples from surfaces would have been to challenge the compliance status of the surface, and demonstrate compliance.

State Regulations read:

Wipe sampling shall not be used to demonstrate that cleanup levels have been met on porous surfaces.

As such, WEC would have been prohibited from collecting samples from prohibited surfaces. However in reviewing their report, we see that of the 15 sample locations, fully one third of the samples were collected from porous surfaces:

Sample D15 – bare concrete
Sample D13.2 - carpet
Sample D13.2 (apparently a different D13.2) - carpet
Sample D13.1- carpet
Sample B.5- unpainted drywall

As already mentioned, previous sampling clearly indicated that the entire structure was heavily contaminated. The samples collected by Mr. Ayres, indicated that the furnace system contained at least 18.9 µg/100cm².

It is well established knowledge in the Industrial Hygiene professions that the use of methamphetamine in a home results in elevated exposures to the occupants via airborne migration. When methamphetamine is smoked, between 80%⁹ and half¹⁰ of the substance is released from the user's device. Of that material which is inhaled, between 33%¹¹ and 10%¹² of the nominal dose is not absorbed into the body, but rather exhaled back into the ambient air.

⁹ Cook CE, *Pyrolytic Characteristics, Pharmacokinetics, and Bioavailability of Smoked Heroin, Cocaine, Phencyclidine, and Methamphetamine* (From: Methamphetamine Abuse: Epidemiologic Issues and Implications Research Monograph 115, 1991, U.S. Department Of Health And Human Services Public Health Service Alcohol, Drug Abuse, and Mental Health Administration National Institute on Drug Abuse)

¹⁰ Cook CE, Jeffcoat AR, Hill JM, et al. *Pharmacokinetics of Methamphetamine Self-Administered to Human Subjects by Smoking S-(+)-Methamphetamine Hydrochloride*. Drug Metabolism and Deposition Vol. 21 No 4, 1993 as referenced by Martyny JW, Arbuckle SL, McCammon CS, Erb N, Methamphetamine Contamination on Environmental Surfaces Caused by Simulated Smoking of Methamphetamine (The publication of this study is currently pending. Copies of the study are available from the Colorado Alliance for Drug Endangered Children.)

¹¹ Harris DS, Boxenbaum H, Everhart ET, Sequeira G, et al, *The bioavailability of intranasal and smoked methamphetamine*, Pharmacokinetics and Drug Disposition, 2003;74:475-486.)

¹² Cook CE, Jeffcoat AR, Hill JM, Pugh DE, et al *Pharmacokinetics of methamphetamine self-administered to human subjects by smoking S-(+)-methamphetamine hydrochloride* Drug Metabolism and Disposition, Vol 21, No. 4, pp. 717-723, 07/01/1993



Unpublished work conducted by Industrial Hygienists at the National Jewish Hospital¹³ in Denver, CO, indicate that a single use of methamphetamine, by smoking, could result in an average residential area ambient airborne concentration of methamphetamine ranging from 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to over 130 $\mu\text{g}/\text{m}^3$. These authors found that smoking methamphetamine just once in the residence can result in surfaces being contaminated with methamphetamine. The authors concluded:

*"If methamphetamine has been smoked in a residence, it is likely that children present in that structure will be exposed to airborne methamphetamine during the "smoke" and to surface methamphetamine after the 'smoke.'"*¹⁴

Since it is the purpose of the forced air ventilation system to move air throughout the structure, and the ventilations system (as evidenced by the sample collected from the ventilation system by Mr. Ayres) conclusively contained elevated concentrations of methamphetamine, a legitimate Industrial Hygienist would have concluded there was an effective mechanism of dissemination of methamphetamine contamination throughout the property.

Since the furnace system is connected to and communicates with all portions of the occupiable spaces of the condominium, the results of just the ventilation system alone would have lead a legitimate Industrial Hygienist, trained in aspects of methamphetamine laboratories, to conclude the *presence* of widespread elevated methamphetamine contamination throughout the entire occupied space, all other sample results notwithstanding, even in the absence of any sample result for any specific location. That is, that single sample alone would have been sufficient for a legitimate Industrial Hygienist to reasonably conclude widespread methamphetamine contamination throughout the entire residence, without the need to waste financial resources on superfluous sampling that had no apparent design and was not collected according to regulatory requirements anyway.

Violation of Appendix A: Mandatory Sampling Theory

According to Colorado's mandatory sampling protocols, the Industrial Hygienist is required to follow the specified sampling theory:

The type of sampling used for stationary structures and vehicles described in this protocol is a type of sampling recognized as "authoritative" sampling. Authoritative sampling is a nonstatistical sampling design that does not assign an equal probability of being sampled to all portions of the population. Consultants using this protocol will have *a priori* knowledge of the property to be sampled. The *a priori* knowledge, in the hands of a competent consultant, permits immediate inclusion/exclusion of sampling areas, based

¹³ Martyny JW, Arbuckle SL, McCammon CS, Erb N, *Methamphetamine Contamination on Environmental Surfaces Caused by Simulated Smoking of Methamphetamine* (The publication of this study is currently pending. Copies of the study are available from the Colorado Alliance for Drug Endangered Children.)

¹⁴ Martyny JW, Arbuckle SL, McCammon CS, Erb N, *Methamphetamine Contamination on Environmental Surfaces Caused by Simulated Smoking of Methamphetamine* (The publication of this study is currently pending. Copies of the study are available from the Colorado Alliance for Drug Endangered Children.)



on professional judgment. As such, the weight of validity of the data gathered with authoritative sampling is largely dependent on the knowledge and competency of the sampler.

Instead of using the mandatory authoritative biased judgmental sampling theory, WEC appears to have collected willy-nilly grab samples with no rational basis for the selection of the areas, and with complete disregard for the regulations.

Violation of Appendix A: Blank Submittal

According to Colorado's mandatory sampling protocols, the Industrial Hygienist is required to follow the specified sampling submittal:

Wipe sampling shall be used to determine the extent of contamination on non-porous surfaces. Wipe samples shall be collected in accordance with the procedures set forth below for either discrete or composite samples.

10. At least one sample media blank, treated in the same fashion but without wiping, should be submitted for every 10 samples collected.

Although WEC collected 15 samples, WEC failed to submit the required number of field blanks.

Violation of 6.1.2 Failure to Address Ventilation System

According to mandatory regulations, when samples are collected during the Preliminary Assessment, they must be collected from:

6.1.2. Areas where contamination may have migrated, such as adjacent rooms or units, common areas, and ventilation systems.

In this case, WEC entirely failed to address the ventilation system. Although they claim to have collected a sample from the ventilation system, there are no photographic records of the supposed sample, and there is no location for the sample as required on the drawings. WEC cannot document in any way they complied with this regulatory requirement, and they cannot document they even collected the sample they claim to have collected.

Failure to Comply With Paragraph 6.1

State regulations require that samples be collected from:

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

WEC failed obtain law enforcement documents which may have spoken to the issue of cooking, disposal and storage areas. WEC entirely failed to demonstrate any technical ability to properly assess an illegal drug laboratory, and therefore, WEC failed to identify such areas. Therefore, WEC could not have complied with this section.



Failure to Comply With Section 8

State Regulation 6 CCR 1014-3 contains several required elements to be included in the final documentation at the end of a project. Many of those elements that must be included in the final documentation must necessarily come from the Industrial Hygienist performing the Preliminary Assessment otherwise there is no way the information is available for inclusion in the final documentation. Specifically, information for the following sections must be included in the Preliminary Assessment documentation, or they are not available for inclusion in the final documentation:

- Section §8.11
- Section §8.12
- Section §8.13
- Section §8.14
- Section §8.20
- Section §8.21
- Section §8.22
- Section §8.23

Failure to Comply With Paragraph 8.2

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.2. Description of manufacturing methods and chemicals used, based on observations, law enforcement reports and knowledge of manufacturing method.

Nowhere in the WEC report, do we find the information as required by State regulations.

Failure to Comply With Paragraph 8.3

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

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

Nowhere in the WEC report, do we find the information as required by State regulations.

Failure to Comply With Paragraph 8.4

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.4. A description of chemical storage areas, with a figure documenting location(s).

Nowhere in the WEC report, do we find the information as required by State regulations; it is impossible for FACTs to provide that information after the fact, since the property has now been completely disturbed. WEC's failure to comply with this regulation makes it impossible for anyone else to provide the information after the fact.



Failure to Comply With Paragraph 8.5

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.5. A description of waste disposal areas, with a figure documenting location(s).

Nowhere in the WEC report, do we find the information as required by State regulations; it is impossible for FACTs to provide that information after the fact, since the property has now been completely disturbed. WEC's failure to comply with this regulation makes it impossible for anyone else to provide the information after the fact.

Failure to Comply With Paragraph 8.6

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.6. A description of cooking areas, with a figure documenting location(s).

Nowhere in the WEC report, do we find the information as required by State regulations; it is impossible for FACTs to provide that information after the fact, since the property has now been completely disturbed. WEC's failure to comply with this regulation makes it impossible for anyone else to provide the information after the fact.

Failure to Comply With Paragraph 8.7

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.7. A description of areas with signs of contamination such as staining, etching, fire damage, or outdoor areas of dead vegetation, with a figure documenting location(s).

Nowhere in the WEC report, do we find the information as required by State regulations; it is impossible for FACTs to provide that information after the fact, since the property has now been completely disturbed. WEC's failure to comply with this regulation makes it impossible for anyone else to provide the information after the fact.

Failure to Comply With Paragraph 8.13

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.13. A description of the location and results of initial sampling (if any), including a description of sample locations and a figure with sample locations and identification.

WEC failed to provide description and locations of the initial sampling. As already pointed out, nowhere in the drawings or description do we find where WEC identified the location or nature of E14. We also know that some locations, such as D14, could not have been collected from the indicated location since that surface does not exist. That is, WEC claims D14 was collected from the floor of the bathroom – however the location indicated by the drawing is the location of a shower stall. Yet the photo for D14 shows a wall (with a mixed matrix of metal and drywall).



Failure to Comply With Paragraph 8.14

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.14. A description of the health and safety procedures used in accordance with OSHA requirements.

Nowhere in the WEC report, do we find the information as required by State regulations.

Failure to Comply With Paragraph 8.20

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.20. Photographic documentation of pre- and post-decontamination property conditions, including cooking areas, chemical storage areas, waste disposal areas, areas of obvious contamination, sampling and decontamination procedures, and post-decontamination conditions.

Nowhere in the WEC report, do we find the information as required by State regulations; it is impossible for FACTs to provide that information after the fact, since the property has now been completely disturbed. WEC's failure to comply with this regulation makes it impossible for anyone else to provide the information after the fact.

Failure to Comply With Paragraph 8.21

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.21. Consultant statement of qualifications, including professional certification or qualification as an industrial hygienist as defined in section 24-30-1402, C.R.S., and description of experience in assessing contamination associated with methamphetamine labs.

As already stated, nowhere in the WEC documentation is there any indication that any individual used on this project is A) An Industrial Hygienist, B) in possession of any training, skill or experience of illegal drug laboratory assessment. In their report WEC gives lengthy and useless information on asbestos inspections, and lead inspections, and underground storage tank inspection training. Where WEC mentions methamphetamine, the references are either not germane to assessments such as:

Clandestine Drug (Meth) Lab Decontamination Training and Refresher (16 hr.)

or the references are mysterious and unsupported such as:

Clandestine Drug (Meth) Lab pre and post clean up testing and clearances

or the WEC claim is just fraudulent such as:



<h2 style="margin: 0;">Clandestine Labs Testing</h2> <p style="margin: 0;">Certified to test for Clandestine Lab (testing for Methamphetamine Contamination) existence in Colorado, Montana, Wyoming, and Idaho.</p>
<p>Copyright © 2013 Weecycle Environmental Consulting - All Rights Reserved - Site Created and Maintained by www.OutsourceLocally.com Powered by WordPress & Atahualpa</p>

Figure 3
Language from the Weecycle Internet Site¹⁵

WEC has provided no information on qualifications, including professional certification or qualification as an industrial hygienist as defined in section 24-30-1402, C.R.S., and description of experience in assessing contamination associated with methamphetamine laboratories as required.

Failure to Comply With Paragraph 8.22

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.22. Certification of procedures and results, and variations from standard practices.

In the preceding document, FACTs has identified scores of deviations from standard practices, and yet not a single one of these deviations has been identified by WEC in their report, as required by regulations.

Failure to Comply With Paragraph 8.22

According to State Regulations, the Industrial Hygienist is required to provide specific information to be included in the final document including:

8.23. A signed certification statement in one of the following forms, as appropriate:

“I do hereby certify that I conducted a preliminary assessment of the subject property in accordance with 6 CCR 1014-3, § 4, and that I conducted post-decontamination clearance sampling in accordance with 6 CCR 1014-3, § 6. I further certify that the property has been decontaminated in accordance with the procedures set forth in 6 CCR 1014-3, § 5, and that the cleanup standards established by 6 CCR 1014-3, § 7 have been met as evidenced by testing I conducted.”

“I do hereby certify that I conducted a preliminary assessment of the subject property in accordance with 6 CCR 1014-3, § 4. I further certify that the cleanup standards established by 6 CCR 1014-3, § 7 have been met as evidenced by testing I conducted.”

¹⁵ Copyright Weecycle 2013, used here without permission under the “fair use” doctrine as described in US Code, Title 17 Section 107 “criticism,” “teaching,” “reporting,” and “scholarship.”
 Appendix A Regulatory Audit, Weecycle Report



Unless the mandatory statement appears in the Preliminary Assessment, it cannot possibly be provided in the final documentation. In the WEC report, WEC failed to comply with the mandatory language and instead invented their own language:

I do hereby certify that I conducted the preliminary sampling in accordance with 6CCR 1014-3, S6 without any variations from the standard practices. I have reviewed the analytical procedures, certifications and QA/QC protocol from the laboratory Reservoirs Environmental and confirm that there were no variations from the standard practices regarding the analysis of the samples.

For a start, WEC is so poorly trained that they confused 6 CCR 1014-3, S6 (sic) – which is final verification sampling with 6 CCR 1014-3, §4 (Preliminary Assessment provisions); but WEC also, remarkable, failed to note the numerous variations from standard, and fraudulently claimed there were no variations.

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

During the last few years, Colorado has seen a rash of fraudulent, unlawful and grossly incompetent consultant performing meth-lab assessments. The problems these individuals have caused has become so serious and so many Colorado citizens have been injured by the incompetent and fraudulent work by these individuals, that a new Bill was introduced into the Colorado Senate by Senator Louis Tochtrop (SB 13-219). That new Bill will impose heavy fines (\$15,000 per day) on individuals perpetrating these fraudulent activities and regulatory misconduct. Although the bill has passed, the training certification provisions are not yet in place; therefore, fraudulent and incompetent firms continue to create serious problems in Colorado.

One of two mental states necessarily must have been present in the performance of the WEC work: 1) Either WEC knew that the work it was performing was grossly incompetent and not in compliance with State Regulations (as demonstrated above) or, 2) WEC was unaware of the fact that their work was deviating from mandatory State requirements.

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

However, WEC has specifically referenced 6 CCR 1014-3 and specifically referenced CRS 24-30-1402, WEC apparently knowingly and willingly performed work that deviated from mandatory State requirements.

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.

Pursuant to State statute, and state regulations, elements of the “Preliminary Assessment” and the final report on post remediation sampling of an illegal drug lab is filed with the “Governing Body” with jurisdiction wherein the property is located.

WEC explicitly states they possess knowledge of the regulations and the statutes, and therefore, establish the fact that they are aware of such recording.

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

Ms. Sawitsky has explicitly held herself out to be an Industrial Hygienist. Yet, there is nothing provided in the documentation that would indicate that any of the WEC individuals involved in this property were in fact Industrial Hygienists meeting the State definition.

There was nothing provided in the WEC report that documented any of their personnel were qualified to perform the work or sign the signature page in lieu of a legitimate Industrial Hygienist and there is no Statement of Qualifications indicating qualifications as required by regulation. The incompetence demonstrated in the WEC report is sufficient to demonstrate that Ms. Sawitsky is clearly NOT an Industrial Hygienist and is NOT competent to perform the work and may be falsely representing herself as an Industrial Hygienist.

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))), Ms. Sawitsky 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)).

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

We also recommend the Governing Body for this subject property perform an historical review of all other assessments performed by this organization in their jurisdiction to determine if similar violations have occurred.

CONCLUSIONS

- Until our involvement, no Preliminary Assessment had been performed at 3402 S. Eagle St. #104 Aurora, CO 80014 as required by regulation.
- None of the samples collected by WEC were required.
- None of the samples collected at the subject property were collected in a manner that complies with mandatory state requirements.
- FACTs identified no fewer than 46 regulatory violations and/or omissions.
- The work by WEC cannot be used for any regulatory purposes.

