FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

March 9, 2010

Sherry Dimick
Prime Properties Realty Real Estate
4950 W. 71st Place
Westminster, CO 80030

RE: 4690 West 76th Ave., Westminster Colorado (subject property)

Dear Ms. Dimick:

We received and reviewed the letter from Ms. Colleen Brisnehan with Colorado's Hazardous Waste Corrective Action Unit. We also took the liberty of performing a critical review of the February 8, 2008 report titled "Final Report Methamphetamine Remediation Project," by Gobbell Hays Partners, Inc.(GHP). What we found is that in addition to the fatal flaws and other deficiencies we identified in our critical review of their Preliminary Assessment, the second report by GHP again entirely failed to comply with mandatory State regulations. In fact, we have found that the above referenced property was never cleared by clearance sampling as required by regulation. The objective observations supporting our conclusions are found in this document.

For reference, we have placed the original critical review in a secure folder on our server:

http://forensic-applications.com/meth/westminster/DimickCriticalReview.pdf

The document can be accessed via
User name: westminster
Password: 4690

FACTs was not initially aware that the State's Hazardous Materials and Waste Management Division hired GHP with Brownfields funding to perform services at the above referenced address. This fact partially explains why the Brisnehan letter contained much rhetoric, but otherwise failed to address the gross deficiencies in the GHP documents regarding the subject property.

The HMWMD has strived to set itself in the public eye as the definitive office for interpretation of the Board of Health methamphetamine regulations. If the public media should get wind of the fact that the HMWMD hired a private consultant who was so grossly technically incompetent that he not only entirely failed to comply with those regulations, but he was so unfamiliar with those regulations he failed to distinguish California regulations from Colorado regulations, and referenced California regulations for a Colorado property, the HMWMD would suffer a serious blow to their credibility – especially if it were realized that they then attempted to gloss over those deficiencies, or use bully tactics to silence private reviewers.

The embarrassment for the HMWMD grows further since they entirely failed to note those deficiencies in the first GHP report and they hired the same consultant again, almost a year later. And again, that consultant failed to comply with the State regulations and again referenced California regulations as being pertinent in Colorado. The HMWMD failed to recognize gross deficiencies not just once, but twice for the same property by the same consultant.

PERSONAL CONFLICT OF INTEREST

The situation begs the question of "How could this happen?" How could the division, wanting to be seen as the watchdog for the Colorado meth regulations, hire a consultant who, as it turns out couldn't distinguish between California regulations and a Colorado regulation? Hiring such a consultant once, could be forgiven, if then, a legitimate consultant was hired to correct the deficiencies. But to hire that same obviously incompetent consultant twice?

The answer lies in a larger embarrassment for Ms. Brisnehan and the HMWMD. Ms. Brisnehan is personally listed a Board Member for a private, commercial organization called the "Colorado Association of Meth and Mold Professionals" (CAMMP). This is an organization that has attempted (unsuccessfully) to gain credibility amongst legitimate professionals associated with methamphetamine and mould related issues. Generally, CAMMP is viewed by legitimate Industrial Hygienists and others involved in the indoor mould issue as irrelevant and a fringe group. We have included with this discussion a print out of the web site identifying CAMMP board members.

However, Mr. Brisnehan's association as a board member becomes an issue since the author of the faulty GHP report under discussion, Mr. Peter Cappel, is a fellow board member with her on that private, commercial venture. It would be another blow and an embarrassment to Ms. Brisnehan, and her fledgling private, commercial organization if it were discovered that, like it's membership, even one of the board members lacked the professional competency to follow the State of Colorado methamphetamine regulations and, as demonstrated in his reports, cannot even differentiate California's regulations from Colorado's regulations.

FACTs is one of those legitimate Industrial Hygiene organizations that has expressed suspicion about the credibility of CAMMP and its membership. Therefore, there appears to be a conflict of interest in Ms. Brisnehan's involvement in even reviewing our work, since she is placed in a position to defend the GHP author to protect not only her governmental office, but now the credibility of her private, commercial organization, upon whose Board both she and Mr. Cappel sit.

This partially explains why the letter from Ms. Brisnehan lacks objectivity and is so vitriolic , but otherwise fails to address the deficiencies of the GHP report we outlined in our initial critical review.

As described in detail later, we note that in other cases,[1] Ms. Brisnehan, through her office has "turned a blind eye" to regulatory compliance problems and gross technical incompetence in other cases when the offending consultant happens to be a member of her private, commercial enterprise, CAMMP.

Having established this, FACTs has no vested interest in this case. As you know, the review of the GHP work for the referenced subject property was performed *gratis*, in the interest of the public good.

DIVISIONAL CONFLICT OF INTEREST

Based on the information provided to us, the August 29, 2007, report prepared by GHP was originally sent to Mr. Fonda Apostolopoulos, with the HMWMD. Since the HMWMD was the beneficiary and client of GHP, like any other beneficiary, in order to deviate from the regulations they are supposedly overseeing, the HMWMD had a regulatory obligation to follow the regulations. Where they had a controversy or problem with another agency's regulations, (in the case the regulations promulgated by the Colorado Board of Health), the HMWMD had recourse through the Board of Health Regulation 6 CCR 1014-1 (*Declaratory Orders Procedures*) to petition the Colorado Board of Health to "…to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the Colorado Board of Health."

We do not see where that was done. Instead, we see when the HMWMD's consultant grossly deviated from regulation, the HMWMD has merely excused itself from the requirements and upon challenge by FACTs sent its own report to itself to determine if it needs to take action; thus the letter from Ms. Brisnehan. We see this as a serious conflict of interest. Further, this would obviously be an embarrassed if the public realized that HMWMD's own consultant failed to comply with mandatory Colorado *Board of Health* regulations.

LACK OF STATUTORY AUTHORITY

It is important to note that the regulation under discussion is 6 CCR 1014-3, which is codified under the Colorado State Board of Health (not the HMWMD). Historically, Ms. Brisnehan and her office have adamantly and correctly maintained that they have no statutory authority to override any of the provisions of 6 CCR 1014-3, or provide regulatory relief for any of the provisions found in 6CCR 1014-3. Therefore, the comments found in the Brisnehan's letter are Ms. Brisnehan's personal opinions that do not carry any regulatory authority and are not binding on your client or FACTs.

INTRODUCTION

A Colorado citizen has been harmed wherein they purchased a property, the seller of which had a statutory obligation, under Colorado Revised Statutes §38-35.7-103 to

[1] FACTs March 11, 2008, Critical Review of Fatal Flaws and Errors of QUEST Environmental report on methamphetamine contamination at 131 South Benton Street, Denver, Colorado available at: http://forensic-applications.com/meth/censoredcriticalreview.pdf

disclose the fact that the property was a former methlab (we use the term here loosely for the sake of brevity).

According to §38-35.7-103(4):

> If the seller became aware that the property was once used for the production of methamphetamine and the property was remediated *in accordance with the standards established pursuant to section 25-18.5-102, C.R.S.*, and evidence of such remediation was received by the applicable governing body in compliance with the documentation requirements established pursuant to section 25-18.5-102, C.R.S., then the seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer…

The key issue here is that, as already described in our critical review of the first GHP report, and as described below in our additional critical review, the actions taken at the subject property were **not** performed in accordance with the standards established pursuant to Section 25-18.5-102, C.R.S. As a result, the seller did not have the option of non-disclosure and as a result, your client purchased a non-compliant property.

Throughout Ms. Brisnehan's letter, she refers to herself as "The Department" and so we have adopted that language here. In the letter, in an effort to avoid addressing FACTs' objective observations of deficiencies, "The Department" adopts a practice of mischaracterizing what FACTs said, imbuing to FACTs positions not stated, and then impugning the mischaracterization. This is a logical fallacy tactic known as a "straw man fallacy." Attacking a straw man can give the illusion of a strong attack or good argument, without having to actually address any of the issues.

Referenced Documents

In her letter, "The Department" states:

> *…the Department would like to point out that the subject property was remediated between November 2007 and January 2008. Initial clearance sampling was conducted in December 2007, with follow-up sampling, after additional cleaning, conducted in February 2008. A final report documenting property remediation was issued on February 28, 2008. Therefore, your conclusions regarding the state of subject property based on the August 2007 Preliminary Assessment are neither accurate nor relevant.*

"The Department" presumes that our sole source of information was the GHP document titled "Preliminary Assessment." In fact, as you are aware, the presumption is erroneous and we also had a copy of the "final clearance" sampling report referenced above. As we mentioned, we did not review the document since these reviews take time, and FACTs is providing this information without fee as a public service.

However, now to satisfy these issues, we have reviewed the final GHP clearance report, which also demonstrated technical incompetence and was similarly fatally flawed, in that the consultant, GHP, similarly failed to follow mandatory State regulations.

Specifically, we have identified the following deficiencies in the February 8, 2008 report titled "Final Report Methamphetamine Remediation Project," by GHP:

Appendix A Mandatory Final Clearance Sampling
1. GHP failed to sample each functional space as required by regulation
2. GHP failed to collect minimum mandatory surfaces areas from each area
3. GHP failed to clear even a single area according to regulatory requirements

Paragraph 4.14
Section 8.0
Paragraph 8.1
Paragraph 8.2
Paragraph 8.3
Paragraph 8.4
Paragraph 8.5
Paragraph 8.6
Paragraph 8.7
Paragraph 8.11
Paragraph 8.13
Paragraph 8.14
Paragraph 8.15
Paragraph 8.16
Paragraph 8.18
Paragraph 8.19
Paragraph 8.20
Paragraph 8.23

The sections listed above are not all inclusive. Since the documents by GHP were so grossly deficient , it is possible that a closer inspection would reveal even more deficiencies than those described here. The following sections describe the deficiencies in detail.

8.0 Reporting

According to 6 CCR 1014-3, the consultant shall prepare a report whose contents are delineated by regulation.

> Section 8.0 Reporting A final report shall be prepared by the consultant to document the decontamination process and demonstrate that the property has been decontaminated to the cleanup levels listed in Section 7.0 of these regulations. The final report shall include, but not be limited to, the following:

Section 8.1

In its final report, GHP failed to comply with the following specific requirements:

> 8.1. Property description including physical address, legal description, ownership, number and type of structures present, description of adjacent and/or surrounding properties, and any other observations made.

Nowhere in the final report do we find that GHP provided the following mandatory information:

1. Legal description
2. Ownership

3. Description of adjacent and/or surrounding properties

Section 8.2

As pointed out in our February 8, 2010 critical review, GHP failed to comply with Section 4.2 of 6 CCR 1014-3, and therefore, could not have complied with Section 8.2 in the final report. GHP failed to perform its duties and fulfill regulatory requirements by failing to determine if law enforcement documents were available. Instead, GHP stated that they limited their review to a police document provided to them by the property owner. Pursuant to State regulations, the Industrial Hygienist is required to provide a:

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

Furthermore, since, as described in our February 8, 2010 critical review, GHP failed to demonstrate any working knowledge in methamphetamine issues and in their documentation, under "training", the author failed to identify even a single class received in methamphetamine issues (as required by regulation). GHP failed to demonstrate knowledge in the subject, and failed to determine available law enforcement documents, and therefore, could not have complied with this mandatory section.

Section 8.3

GHP failed to comply with the mandatory provisions of the final documentation which states that the final documentation must contain:

> Section 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.

As already pointed out, GHP failed to determine what law enforcement documents may have been available for inclusion. Although GHP provided one set of law enforcement documents, this was only what was provided to them by the previous owner. GHP has not documented that it made any attempt to fulfill its regulatory obligations and contact law enforcement to determine what else may have been available.

Section 8.4

According to regulation, the consultant is <u>required</u> to provide:

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

Nowhere in the final documentation, provided by GHP do we see where GHP complied with this provision of the mandatory regulation and no figures were provided.

Section 8.5

According to Colorado regulation 6-CCR 1014-3, the final documentation <u>must</u> include:

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

Nowhere in the final document do we find where GHP fulfilled this mandatory regulatory obligation. Not only are there no drawings or figures , as required, as already described in our critical review, we do not see where GHP even bothered to examine the exterior grounds to determine if waste disposal even took place.

Section 8.6

GHP failed to comply with the following provision by failing to include mandatory information in the final document. Specifically, the consultant was required by regulation to provide the following:

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

Nowhere in the final document do we see where this information was provided. Yet, in their initial report, GHP states:

> ***Based on information provided by the owner, it was reported to GHP that the use and possible manufacture of methamphetamines had previously taken place in the house.***

Therefore, GHP had some idea that "*possible manufacture of methamphetamines had previously taken place in the house.*" Why then was this information not included in the final documentation as required? Where is the mandatory figure indicating where this possible manufacture of methamphetamine may have taken place?

Section 8.7

In its final report, GHP failed to comply with mandatory regulation by failing to provide the following mandatory information in the final documentation:

> 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).

As stated in our critical review, there is no indication that GHP ever assessed the exterior grounds of the property. Public domain aerial photography, available to GHP at the time, clearly shows areas of stressed vegetation on the property. The stressed vegetation could indicate waste disposal. There is no description of this in either of the GHP reports, and there are no figures provided as required by regulation.

Section 8.11

GHP failed to include specific mandatory information in the final document. Specifically, 6 CCR 1014-3, Section 8.11 states:

> 8.11. A description of the sampling procedures used, including sample collection, handling, and QA/QC.

Nowhere, in the final documents, do we see where GHP has provided this mandatory information.

Section 8.13

Pursuant to Colorado regulations, 6 CCR 1014-3, Section 8.13, the consultant is required to provide, in the final document, mandatory information. Specifically, the regulations state:

> 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.

Nowhere, in the final documentation provided, do we see where this mandatory information is provided and no figures were found. Instead, we merely see the following comment about preliminary samples:

> ***Preliminary Sampling Procedures:***
> ***Fifteen (17)*****(sic)** ***wipe samples, including two field blanks, were collected in the home. Refer to the Preliminary Report dated August 29th 2007 for the complete sampling information.***

As already described in our critical review, there was no "complete" sampling information provided, and there were no figures provided, as required by regulation.

Section 8.14

GHP failed to comply with the reporting requirements of 6 CCR 1014-3 and specifically Section 8.14 which states:

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

Nowhere in the final document do we see where this mandatory information has been provided.

Section 8.15

GHP failed to comply with the reporting requirements of 6 CCR 1014-3 and specifically Section 8.15 which states that the final document must contain a description of the decontamination procedures used and a description of each area that was decontaminated.

> 8.15. A description of the decontamination procedures used and a description of each area that was decontaminated.

Nowhere in the final documentation provided by GHP do we not see where that information was included. Instead, GHP provided, as Appendix A for the final document, a description of what was *supposed* to have occurred. This information, while useful, is not required, and the required information was not included.

Section 8.16

GHP failed to comply with the reporting requirements of 6 CCR 1014-3 which states:

> 8.16. A description of the removal procedures used and a description of areas where removal was conducted, and the materials removed.

Since, pointed out above, no description of the remediation was provided as required, this information could not have been provided. As such it is not known if any materials were removed.

Section 8.18

GHP failed to comply with the reporting requirements of 6 CCR 1014-3 which states:

> 8.18. A description of the waste management procedures used, including handling and final disposition of wastes.

Nowhere in the final report or documentation do we find where GHP complied with this mandatory provision of regulation.

Section 8.19

GHP failed to comply with the reporting requirements of 6 CCR 1014-3 Section 8.19 which states:

> 8.19. A description of the location and results of post-decontamination samples, including a description of sample locations and a figure with sample locations and identification.

Nowhere in the final documentation do we find any figures of any kind as required by regulation.

Section 8.20

GHP failed to comply with the reporting requirements of 6 CCR 1014-3, Section 8.20 which requires the consultant to provide photographs of pre and post property conditions.

> 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.

As already noted in our critical review, GHP failed to provide a photographic record of property conditions as required in Section 4.14, in that the photographic record was incomplete and provided no photographs of exterior conditions or exterior grounds.

This issue, by the way, is a good example of how "The Department" misconstrues our observations. Point Number 13 on Page 5 of "The Department" letter states:

> *Contrary to your assertion in the Critical Review, photographs were taken as part of the Preliminary Assessment, and provided in Appendix D.*

In fact, we **never** made any such assertion. Let's take a look at what FACTs really said in our critical review.

> State regulations require the Industrial Hygienist to provide a photographic record of property conditions, including cooking areas, chemical storage areas, waste disposal areas, and areas of obvious contamination. We do not see where GHP fulfilled this regulatory obligation. We do not see where GHP collected any photographs and no photographs are referenced in the GHP report.

Nowhere did FACTs ever state that GHP did not take photographs, we merely pointed out that in the documentation provided, we did not find the mandatory materials. And indeed, in the document provided to us, there was no Appendix D, no Table of Contents and there was no reference to any photographs. We have since been provided a copy of Appendix D with GHP photographs. However, even with this newer information, we find that GHP still failed to comply with the regulatory provisions. And we would now modify our original statement to read:

4.14. Photographic documentation

State regulations require the Industrial Hygienist to provide a photographic record of property conditions, including cooking areas, chemical storage areas, waste disposal areas, and areas of obvious contamination. We do not see where GHP fulfilled this regulatory obligation. We do not see where GHP collected any photographs of the exterior portion of the property (which may have included areas of waste disposal).

Now, back to Section 8.20 which states:

> 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.

In the final February 8, 2008 document titled "Final Report Methamphetamine Remediation Project," which GHP has presented as a complete record, there are no post remediation photographs whatsoever, as required by regulation, and there is no mention of a photographic log, and indeed, the word "photograph" does not even appear in the final documentation.

"The Department" was aware of this fact. Instead of simply acknowledging the deficiency, "The Department" attempted to use a straw man argument to divert attention away from the objective fact that post remediation photographs were not present as required.

Section 8.22

GHP failed to comply with the provisions of Section 8.22 which states that the consultant must provide specific information in the final document:

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

In this case, GHP failed to identify the many variations and deviations from the regulations. For example GHP failed to explain why they deviated from the mandatory requirement to provide:

1. Legal description as required by Paragraph 4.1
2. Description of Ownership required by Paragraph 4.1
3. Description of adjacent and/or surrounding properties required by Paragraph 4.1
4. Current law enforcement documents required by Paragraph 4.2
5. Identification of Functional Spaces required by Paragraph 4.3

6. Description of Manufacturing Methods required by Paragraphs 4.4 and 4.5
7. Identification of Areas of Contamination as required by Paragraph 4.6
8. Identification and documentation of chemical storage areas as required by Paragraph 4.7
9. Identification and documentation of chemical storage areas as required by Paragraph 4.8
10. Identification and documentation of cooking areas as required by 4.9
11. Identification and documentation of signs of contamination in outdoor areas as required by Paragraph 4.10
12. of dead vegetation
13. Plumbing integrity inspection as required by Paragraph 4.11
14. Identification areas where contamination may have spread as required by Paragraph 4.12
15. Photo documentation of site conditions (such as exterior areas) as required by Paragraph 4.14
16. Function mandated by Appendix A Mandatory Final Clearance Sampling including:
    a. Failure to collect minimum mandatory surfaces areas from each area
    b. Failure to sample each functional space as required by regulation
    c. Failure to clear even a single area according to regulatory requirements
17. Failure to provide specific information required by Paragraph 8.1 including:
    a. Legal description
    b. Description of Ownership
    c. Description of adjacent and/or surrounding properties
18. Description of manufacturing methods in final document as required by Paragraph 8.2
19. Available law enforcement reports in final document as required by Paragraph 8.3
20. Figures and description of chemical storage areas in final document as required by Paragraph 8.4
21. A description of waste disposal areas with figures in final document as required by Paragraph 8.5
22. A description of cooking areas, with figures documenting location(s) in final document as required by Paragraph 8.6
23. Figure locations of signs of contamination in final document as required by Paragraph 8.7
24. Sampling procedures in final document as required by Paragraph 8.11
25. A description of the analytical methods used in final document as required by Paragraph 8.12
26. Figures in final document of the location of initial sampling including a description of sample locations and identification as required by Paragraph 8.13
27. A description in final document of health and safety procedures in accordance with OSHA requirements as required by Paragraph 8.14.
28. A description in final document of the decontamination procedures used and a description of each area that was decontaminated as required by Paragraph 8.15
29. A description in final document of the removal procedures used as required by Paragraph 8.16
30. A description in final document of the waste management procedures used, including handling and final disposition of wastes as required by Paragraph 8.18
31. A description and figures in final document of the location and results of post-decontamination as required by Paragraph 8.19
32. Photographic documentation in final document of pre- and post-decontamination property conditions as required by Paragraph 8.20
33. Consultant statement of qualifications (with training) in final document as required by Paragraph 8.21

FINAL CLEARANCE SAMPLING

FACTs has extensive experience in performing data validation and data quality assurance – quality control validation using, amongst others, US EPA CLP SW846 protocols (SAS as well as RAS). We have reviewed the documentation for the final clearance sampling as presented by GHP. We have concluded the following:

- GHP failed to comply with State regulations by failing to collect sufficient surface area from each functional space
- GHP failed to comply with State regulations by failing to collect final clearance samples from each functional space

In general, the sampling data presented by GHP is totally unorganized. Since GHP failed to identify functional spaces as required, GHP adopted a confusing system of naming areas; however, GHP was inconsistent in the naming process, and the names of areas change throughout the document.

The data presented contains so many technical errors, that it renders the data almost unintelligible.

Appendix A Mandatory Sampling Requirements

In the "final sampling" performance as reported by GHP, GHP failed to comply with the mandatory provisions of Appendix A, SAMPLING METHODS AND PROCEDURES, which states that:

> For any given *functional space*, at least 500 cm_2 of surface shall be sampled, unless the area is assumed to be non-compliant.

As FACTs pointed out in our original critical review, in violation of Section 4.3 of the regulations, GHP failed to identify functional spaces. Therefore, GHP could not conceivably comply with the above mandatory provisions since no functional spaces were identified. How can one demonstrate that at least 500 cm2 was collected from each functional space when the consultant failed to identify functional spaces?

Alternatively, "The Department" may try and make the argument that language found in the GHP report constitutes a functional space inventory. GHP states:

> ***The first floor has a bathroom, kitchen/dining area, living room, two bedrooms and one room addition on the south side of the home. The basement level has a central seating area, large storage area, laundry/furnace room, bathroom and two bedrooms. Heat is provided by a natural gas forced air furnace. There is a detached oversized two-car garage to the south and east of the house. There is an attic space with access through a ceiling access on the west end of the upstairs hall.***

Then if this is the case, (which in our original critical review, we demonstrate why this cannot be the case), GHP has explicitly identified the attic as a functional space.

Yet we do not find that GHP collected a sample from the attic during their final clearance sampling, and therefore, they failed to comply with the mandatory regulatory provision that requires:

> For any given *functional space*, at least 500 cm_2 of surface shall be sampled, unless the area is assumed to be non-compliant.

Therefore, no matter how one tries to spin the deficiency it leads to another deficiency. The objective facts are:

1) GHP failed to identify functional spaces as required by regulation
2) GHP failed to sample each functional space as required by regulation

3) GHP failed to clear even a single area according to regulation requirements

By carefully breaking down the GHP documents, we note they have identified the following seventeen independent areas, which become the *de facto* functional spaces that GHP failed to identify.

We have assigned a space number to each of the spaces identified in the GHP document. Those spaces are as follows:

Number	Unique Identified Space
1	first floor bathroom
2	first floor kitchen/dining area
3	first floor living room
4	first floor bedroom 1 (NW/hall)
5	first floor bedroom 2 (SW)
6	first floor room addition
7	basement central seating area
8	basement large storage area
9	basement laundry/furnace room
10	basement bathroom
11	basement bedroom 1 off laundry
12	basement bedroom 2 large
13	detached two-car garage
14	attic
15	area under basement stairs
16	furnace

Table 1
Summary of Identified Spaces

As stated above, the mandatory regulatory provisions for final clearance sampling state that in order to clear an area:

> For any given *functional space*, at least 500 cm_2 of surface shall be sampled, unless the area is assumed to be non-compliant.

In the table below, we have presented the surface areas sampled for each identified space.

Number	Functional Space	Area Sampled for Final Clearance (cm2)	Note
1	first floor bathroom	100	
2	first floor kitchen/dining area	100	
3	first floor living room	100	
4	first floor bedrooms 1 NW/hall	200	Failed
5	first floor bedroom 2 SW	0	
6	first floor room addition	0	
7	basement central seating area	100	
8	basement large storage area	0	
9	basement laundry/furnace room	0	
10	basement bathroom	100	
11	basement bedroom 1 off laundry	100	
12	basement bedroom 2 SW	100	
13	detached two-car garage	100	
14	attic	0	
15	area under basement stairs	100	
16	Furnace	800	4 failed

Table 2
Summary of Sample Areas

As can be seen, the minimum 500 cm2 surface area required by regulations was not met. Based on the data presented by GHP, there was not a single area in the subject property cleared with the mandatory surface area required by regulation. In some cases, chattels (personal property) was sampled. Personal property that can be removed is not a functional space.

Therefore, based on the language found in Appendix A:

> For any given *functional space*, at least 500 cm_2 of surface shall be sampled, unless the area is assumed to be non-compliant.

Either GHP entirely failed to collect the appropriate samples, OR GHP must conclude that each area is non-compliant.

It would appear that GHP attempted to use furnace interior samples as representations of each functional area. However, even using the furnace samples as constituents of any given space, the summation of the data would have been insufficient to cumulatively reach 500cm2.

Regulations do not allow one to accumulate sample surface areas as one progresses through the project. In other words, if a consultant collected 250 cm2 from a functional space during a Preliminary Assessment, and those samples indicated the area was contaminated at a concentration in excess of regulatory limits, the consultant cannot argue

that they need only to collect another 250 cm2 at the end of the remediation project. It appears from information provided in their report, however, that GHP may have assumed that this approach was valid for the garage and/or the furnace system.

DIRECT RESPONSES

In the following section, FACTs will address the specific statements made in the letter from "The Department".

However, "The Department's" letter primarily consisted of statements which lack foundation, include poor rhetoric, straw man arguments, *ad hominem*, and a variety of other unprofessional devices. We will try to address the concise point "The Department" appears to be making.

False and Erroneous Statements

In "The Department" letter, "The Department" states:

> *Further, you are neither an attorney nor are you representing a regulatory agency with authority over the subject property; therefore you are not in a position to provide legal or regulatory opinions regarding work conducted as the subject property.*

This paragraph contains two types of devices known as an "*ad hominem*" fallacy and the "Appeal to Authority" logical fallacy.

The *ad hominem* argument merely attacks the presenter with an otherwise irrelevant "fault" and then concludes from the fault, the argument is true. In this case, "The Department" diverts attention from the issue by making an irrelevant statement (I am not an attorney, and I do not represent a regulatory agency), and makes the irrelevant *non sequitur* conclusion that I am not in a position to provide regulatory or legal opinions (at FACTs we never provide legal opinions).

An appeal to authority is an argument from the fact that a person judged to be an authority affirms a proposition to the claim that the proposition is true. The appeal to authority falls apart since the corollary necessarily becomes "Only an attorney can provide regulatory opinions."

The problem with the argument is that "The Department" hired a consultant who is also not, to our knowledge, an attorney. However, "The Department" has absolutely no problem with permitting their Industrial Hygienist to provide to them with regulatory opinions *even where those regulatory opinions are from another state*. In this case, GHP provided "The Department" with regulatory opinions on Assembly Bill 1025, (Methamphetamine Contaminated Property Cleanup Act of 2005); which, it appears,, is a California Assembly Bill. It is curious that "The Department" has a problem with FACTs referencing Colorado regulations, but is strangely comfortable with their Industrial Hygienist referencing Colorado regulations and even applying California regulations to Colorado properties.

Also, nowhere in the 6 CCR 1014-3 regulations does the Colorado Department of Health require an attorney to interpret the regulations. Indeed, the regulations specifically require an Industrial Hygienist to interpret the regulations.

This statement by "The Department" demonstrates the ability and willingness of "The Department" to capriciously create restrictions and prohibitions for which "The Department" has no statutory authority.

That I am not an attorney has nothing to do with expertise in the Colorado regulations and does not impact my professional obligations to interpret and provide regulatory interpretations in my area of expertise. I am a Forensic Industrial Hygienist, and critical reviews of regulatory compliance issues are squarely within my realm of professional practice. To argue that an Industrial Hygienist cannot provide an opinion on a regulation that an Industrial Hygienist is required to follow, is patently absurd.

FACTs, and I as a member of FACTs, will professionally opine about any regulation we determine pertinent -at any time we feel it pertinent -without consulting with "The Department" to first obtain "The Department's" permission. "The Department" has no regulatory authority whatever to dictate to me, or any other Industrial Hygienist, upon which statutes or regulations we may or may not opine.

> *To the extent that our opinions and interpretations are in conflict with yours, we believe that our opinions and interpretations would prevail if legally challenged.*

By this statement "The Department" tacitly acknowledges that her letter contained the personal opinions of the author, and not regulatory or statutory authority of the actual Department of Public Health and Environment. Since our observations are objective (for example, we say there are no figures of sampling locations included in the documentation, since there are no figures of sampling locations included in the documentation), "The Department's" "opinion" would hinge on trying to produce those figures. Since "The Department" physically cannot produce the figures (since they don't exist), it is not at all likely that the personal opinions expressed by "The Department" would prevail.

As it is, nowhere has FACTs ever provided legal advice. The language used by "The Department" is coming very close to libel, as defined in Title 18 of the Colorado Revised Statutes thusly:

> 18-13-105. Criminal libel.
> (1) A person who shall knowingly publish or disseminate, either by written instrument, sign, pictures, or the like, any statement or object tending to …impeach the honesty, integrity, virtue, or reputation or expose the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule, commits criminal libel.

No doubt, "The Department" will view any reference to a public domain statute as "practicing law." However, "The Department" has no way to support the argument. And if, in a discussion on State Statutes, FACTs personnel choose to reference a state statute, for example;

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

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

…we shall do so. We are at liberty to reference any public law, regulation, act, bill or statute, and so doing does not constitute "practicing law."

Point Number 1 (Page 2)

"The Department" attempts to make an a straw man argument about the date of the law enforcement activity. The date of the activity is entirely a moot point and FACTs has not made any allusions to the significance of the date. Therefore, we do not know why "The Department" is raising an irrelevant point except to attempt to confuse the issue.

Next, "The Department" states:

> *Although not specifically required, the Preliminary Assessment, remediation, and clearance sampling, conducted at the subject property followed the processes set forth in the Cleanup Regulation.*

"Although not specifically required…"

This statement is a reversal of previous opinions by "The Department". For example, on Wednesday, January 23, 2008 Forensic Applications Consulting Technologies, Inc. (FACTs) was contracted to perform a standard cursory evaluation for the presence of methamphetamine at 32548 Kinsey Lane in Conifer, Jefferson County, Colorado. As a result of that sampling, FACTs identified minute, trace quantities of methamphetamine at the property. The concentrations of methamphetamine identified were extremely low (the highest sample was 0.007 µg/100 cm2), and may have occurred prior to the effective date of the Colorado Regulations.

Mr. Craig Sanders with the Jefferson County Department of Public Health, contacted Ms. Colleen Brisnehan of the Hazardous Waste Corrective Action Unit of the Colorado Department of Public Health and Environment, to determine if the contamination, which was extremely low and which occurred sometime in that past, triggered the mandatory Preliminary Assessment.

On January 31, 2008, Mr. Sanders forwarded to FACTs an email from Ms. Colleen Brisnehan wherein Ms. Brisnehan stated that the work did trigger the regulations and:

> *"Performing a PA [Preliminary Assessment] and clearance sampling is the only way to meet the requirements of the Reg, get the liability shield, and provide protection for future Real Estate transactions."*

Therefore, the testing performed by GHP at the subject property, which similarly demonstrated contamination (although very high contamination), would similarly require

the Preliminary Assessment. If not, then the opinion of Ms. Brisnehan on January 31, 2008 was incorrect. Either the regulations apply, or they don't.

…the Preliminary Assessment, remediation, and clearance sampling, conducted at the subject property followed the processes set forth in the Cleanup Regulation.

Clearly, as described here, and in our February 8, 2010 Critical Review, the regulations (regardless of "required" or not required) were not followed; not even a little bit. To say that the process was followed, is patently false.

Point Number 2 (Page 2)

We do not know why "The Department" is again discussing dates that are not relevant to our discussion or objective observations. That the statutory definitions changed on June 9, 2009, is entirely unimportant. Our review of an August 29, 2007 document referenced regulations that were pertinent on August 29, 2007 and in our review of a February 28, 2008 document, we referenced regulations that were pertinent on February 28, 2008. The June 9th, 2009 date is a red herring.

Point Number 3 (Page 2)

"The Department" makes an indefinite reference to various statutes for reasons that do not appear to be germane to the discussion and concludes with a partial sentence:

> *This is not the role of an industrial hygienist.*

Again, "The Department", without any lawful regulatory authority or statutory authority, attempts to dictate prohibitions on private industry and private consultants and private practices about which regulations an Industrial Hygienist may or may not reference in their discussions. We would challenge "The Department" to demonstrate her lawful authority to dictate our practices in this regard, and until such time "The Department" can demonstrate such lawful authority, we reject the statement as not having any foundation.

It is curious that while "The Department" criticized FACTs for referencing pertinent Colorado statutes and regulations in our discussion, is was strangely comfortable (and silent) with their Industrial Hygienist not only also referencing regulation, but was comfortable with their Industrial Hygienist referencing **California** regulations as being applicable to Colorado.

In their final report, "The Department's" consultant, GHP, make the following statement:

> **Methamphetamine Contamination Disclosure**
> Methamphetamine contamination disclosure is now required due to the passage of Assembly Bill 1025, (Methamphetamine Contaminated Property Cleanup Act of 2005). It is now required for a property owner to disclose in writing to a prospective buyer or tenant if local health officials have issued an order prohibiting the use or occupancy of a property contaminated by methamphetamine laboratory activity. The owner must also give a copy of the pending order to the buyer to acknowledge receipt in writing. The bill also establishes remediation and re-occupancy standard for determining when a property, contaminated as a result of methamphetamine activity, is safe for human occupancy. Local health officials, after conducting an investigation, are also required to issue an order

> prohibiting the use or occupancy and to post the order on the property, in addition to the property owner taking specific actions. Failure to comply with these, and all requirements of AB 1025, may subject an owner to, among other things, a civil penalty up to $5000. Aside from disclosure requirements, AB 1025 also outlines procedures for local authorities to deal with methamphetamine contaminated properties, including filing of a lien against a property until the owner cleans up contamination or pays for cleanup costs.

The ability of "The Department" to overlook such glaring problems with their consultant's report, and challenge irrelevant minutia in our critical review again speaks to their lack of objectivity and intellectual honesty.

It is clear that in reviewing our critical review of their consultant's reports, "The Department" has lost objectivity and is attempting to prevent an embarrassing situation wherein their consultant so poorly understands Colorado regulations that they continually referenced California regulation as being part of a Colorado property, and "The Department" failed to notice.

Point Number 4 (Page 3)

> *There is no requirement in the Cleanup Regulation that a preliminary assessment* document *be generated.*

Again, in an effort to confuse, "The Department" mischaracterizes our observations. However, in so doing, "The Department" demonstrates that it has forgotten the language of the regulations. For in 6 CCR 1014-3, the Colorado Board of Health states, in section 3.0:

> "Documentation" means preserving a record of an observation through writings, drawings, photographs, or other appropriate means.

The regulation then states (Section 4):

> Information collected during the preliminary assessment shall include, but not be limited to, the following:

The regulation then identifies a litany of mandatory elements which must be in the Preliminary Assessment (such as specific photographs and 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) which were missing from the GHP report.

It would be interesting to ask "The Department" how one could possibly collect and provide the mandatory information and not document it. For example, the Industrial Hygienist is required to provide figures of the sampling locations (which GHP did not do). But we would like to know how "The Department" could imagine a consultant who could comply with those provisions and not document them.

"The Department" again mischaracterizes our comments when she states:

> *Further, you erroneously conclude information required under Section 8 of the Cleanup Regulation in the list of "mandatory" information required for a preliminary assessment. The requirements of Section 8 apply to the final report, not the preliminary assessment…*

We are of course, aware of this, and we went to great pains to explicitly state as much in our initial Critical Review. Either "The Department" intentionally is attempting to mischaracterize our position or they lack the technical to understand our position. We pointed out that if the information was not provided or collected in the preliminary assessment, it was impossible to then present that mandatory information in the final document. Indeed, our argument was borne out in the GHP final document where GHP entirely failed to provide that very information, required by Section 8, in their final document.

It is important to note that when "The Department" wrote the above statements, they were fully aware of the disingenuousness of their statement, since "The Department" was fully aware of the fact the GHP failed to collect the mandatory information as required. This choreography of side-stepping lends the impression that "The Department" fully understands just how seriously they share the responsibility of the collapse of proper regulatory oversight on this project, and are attempting to down-play their extremely poor performance, and that of their consultant.

Point Number 5 (Page 3)

"The Department" states:

> *Throughout the critical review, you use the term "authorized Industrial Hygienist." This is not a defined term in the Cleanup Regulation nor the Cleanup Statute. There is no program in place to authorize an industrial hygienist to perform work under the cleanup regulation.*

In fact, much of this is incorrect. For a start, there is no such thing as a "cleanup statute" in Colorado, "The Department" is probably referring to Title 25 of the Colorado Revised Statutes, Article 18.5 which addresses the liability shield.

Next, 6 CCR 1014-3 explicitly states in the mandatory provisions of the regulation, in Attachment to Appendix A, Sampling Theory, the following:

> 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.

When I originally wrote this draft language (which was subsequently adopted as regulation), it was very clear to the stakeholder committee that the language "trained in aspects of methamphetamine laboratories," was there for a very good reason. That reason was to ensure that Industrial Hygienists with no documentable training whatsoever in aspects of methamphetamine laboratories would not be considered appropriate consultants.

As we have already pointed out, the consultant in question, Mr. Cappel, has entirely failed to document ***any*** training in aspects of methamphetamine laboratories.

The regulations clearly state that the consulting IH is required to provide:

> Section 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.

When we look at Mr. Cappel's attached SOQ, in the GHP report we see the following:

> ***EPA Asbestos Inspector/Management Planner***
> ***EPA Asbestos Contractor/Supervisor/Project Designer***

That is all well and good, if this was an asbestos job. However, this is a methamphetamine job. If we look at the information provided in the GHP documentation we see the following (included here in its entirety):

> ***ADDITIONAL TRAINING: COURSES/SEMINARS***
> ***Practical Industrial Hygiene Seminar - Hager Laboratories***
>
> ***Confronting the Risk: Hazardous Materials - American Hospital Association***
>
> ***Management of Hazardous Wastes Seminar - University of Colorado***
>
> ***Inspection/Management Planning for Asbestos Control - (AHERA) - National Asbestos Training Center***
>
> ***Practices and Procedures in Asbestos Control - (AHERA) - National Asbestos Training Center***
>
> ***Comprehensive Review/Industrial Hygiene - Rocky Mountain Center for Occupational and Environmental Health***
>
> ***Radon Technology for Mitigator's Training Course - USEPA Radon Contractor Proficiency Program***
>
> ***Indoor Air Quality Symposium - Indoor Environment Research Consortium, Georgia Institute of Technology***
>
> ***NIOSH 582e Course - Sampling and Evaluating Airborne Asbestos Dust – Industrial Compliance, Inc.***
>
> ***American Society of Healthcare Engineering - Infection Control: Managing Risk During Construction Operation and Maintenance of Facilities.***

Again, "The Department's" consultant's training would be useful, if this was an asbestos job or a radon job. But this is actually a methamphetamine job. And "The Department"'s consultant entirely failed to provide **ANY** documentation that he has received **any** kind of training whatsoever in methamphetamine operations. (We have included an example of a real SOQ with this discussion for comparison).

Furthermore, as pointed out in the regulation, the consultant must be an Industrial Hygienist as defined in section 24-30-1402, C.R.S. So if we look at that Colorado statute, we see that the statute references the American Board of Industrial Hygiene. Therefore, the standard of care, by regulatory reference is the ABIH. Let's look at what the ABIH says:

> American Board of Industrial Hygiene Code of Ethics
>
> The Code serves as the minimal ethical standards for the professional behavior of ABIH certificants and candidates.
>
> The Code is designed to provide both appropriate ethical practice guidelines and enforceable standards of conduct for all certificants and candidates. The Code also serves as a professional resource for industrial hygienists, as well as for those served by ABIH certificants and candidates.
>
> I. **Responsibilities to ABIH, the profession and the public.**
> A. Certificant and candidate compliance with all organizational rules, policies and legal requirements.
>
> 1. Comply with laws, regulations, policies and ethical standards governing professional practice of industrial hygiene and related activities.

GHP failed to comply with this portion of the ABIH code of ethics, in that, as demonstrated, Mr. Cappel failed to comply with State regulations; not just once or twice or five or six times, but over and over and over.

> 2. Provide accurate and truthful representations concerning all certification and recertification information.

GHP failed to comply with this provision as well.

> Responsibilities to clients, employers, employees and the public.
> A. Education, experience, competency and performance of professional services.
>
> 1. Deliver competent services with objective and independent professional judgment in decision-making

Gross and abject technical incompetence has been repeatedly demonstrated in the performance by "The Department's" Industrial Hygienist.

> 2. Recognize the limitations of one's professional ability and provide services only when qualified. The certificant/candidate is responsible for determining the limits of his/her own professional abilities based on education, knowledge, skills, practice experience and other relevant considerations.

Clearly, the questionable degree of service provided, and the lack of documentable training, indicates that the consultant was not qualified. "The Department" makes the

point of stating that their consultant was involved in the stakeholder process in the promulgation of the regulation. There were many, many names on the stakeholder's list but only an handful of those people actually participated in the process. I, too, was on two of the four committees, (as described later) and don't recall Mr. Cappel showing up to meetings on any regular basis, and neither can I recall any specific or profound input by Mr. Cappel.

"The Department" states that it has confidence in Mr. Cappal's regulatory capabilities. It is frightening to think that "The Department" would put such faith in the work of a consultant who can't even figure out that California regulations don't apply in Colorado.

Therefore, is our use of "authorized Industrial Hygienist" permissible? Well, the regulations say, "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," and require the consultant to show that training. So, where a consultant is not an industrial hygienist or has received no training, we reasonably can state that they are not authorized to do the work.

It is important to note that "The Department" has glossed over other properties where the consultant who performed the work was not even an Industrial Hygienist and did not even claim to be an Industrial Hygienist, and yet it appears that because the consultant was a member of Ms. Brisnehan's private organization (CAMMP), the work was "glossed over."

Point Number 6 (Page 3)

This is an hodge-podge of ideas of uncertain purpose; this appears to be some philosophical point, outside of the regulatory realm of "The Department". We would be happy to address it in detail if requested, but in the interest of expediency, we have passed on making a comment here.

Point Number 7 (Page 3)

"The Department" states:

> *The Department disagrees with your characterization of the sampling conducted during the Preliminary Assessment as "wonton and apparently misguided and unnecessary."*

This is a personal opinion on the part of "The Department". But in their initial assessment GHP collected a whopping 17 samples! Five from just one functional space alone! No legitimate consultant, with legitimate training in aspects of methamphetamine laboratories, would have ever conducted such a large number of useless and unnecessary samples. A legitimately trained Industrial Hygienist could have adequately assessed the property with fewer than six appropriately located samples – since a legitimate IH would understand where and why to sample – as opposed to the "shotgun" approach of sample collection.

In the next statement, "The Department" reveals its lack of understanding of the Colorado regulations and makes an abjectly incorrect statement.

> *Further, your statement that "[n]owhere in the State regulation is sampling required during a Preliminary Assessment" is false.*

In fact, "The Department" demonstrates its ignorance of the Regulations since, and we are to be clear here, we were absolutely correct since, **nowhere in the state regulations is sampling required during a Preliminary Assessment.** If "The Department" knew of such a regulatory requirement then why didn't they cite the regulatory rubric where the requirement is found? Instead, "The Department" quotes the following as support for their false argument:

> *…Section 4.6 of the Cleanup Regulation states that "the consultant may determine that assessment sampling is necessary to verify the presence or absence of contamination."*

This is true, the consultant MAY determine that sampling is necessary and MAY determine that sampling is NOT necessary. In fact, "The Department" disingenuously left out the next sentence in their quote which reads:

> 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.

"If" the consultant… That is a big "if" because it makes it clear that the consultant has a choice. It would appear "The Department" has not taken the time to fully read the State Board of Health's methamphetamine regulations, or does not understand their application.

The regulation does not state that the consultant shall determine that sampling is necessary; "The Department" simply cannot support its argument.

"The Department", then goes on to apparently misconstrue a partial section of regulatory text, taken out of context and states:

> *Section 6.0.1 states: 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.*

So, let's go to Section 6.0.2 and see what the exception is that is being referenced:

> Section 6.0.2
> As provided in Appendix A of these regulations, the consultant may determine that some areas should be deemed to be contaminated based on data other than assessment sampling. Areas that are deemed to be contaminated do not need to be sampled as part of the preliminary assessment.

Therefore, as we correctly stated in our critical review, sampling is NOT required to be part of a Preliminary Assessment. And indeed, as we stated correctly in our critical review, NOWHERE does the regulation require sampling for a Preliminary Assessment. It is possible to complete a fully compliant Preliminary Assessment without the collection of a single sample, personal opinions of "The Department" notwithstanding.

Point Number 8 (Page 4)

"The Department" exhibits its ignorance of the Board of Health's Regulations when it states:

> *The Department disagrees with your statement, on page 15 of the Critical Review, that "[c]ontrary to popular belief among poorly trained consultants, the mere value of '0.5 µg/100cm2' is not the State of Colorado cleanup level, but rather the value upon which the final clearance level is based and which is described in the mandatory Appendix A of the State regulations." This statement is false, and demonstrates your lack of understanding…*

Actually, I understand this section quite well, since I originally wrote the seminal draft language for Appendix A and Attachment to Appendix A for the regulations; I was very clear about the application of the basis for the cleanup values. Indeed, I was so clear that the committee adopted the language almost verbatim, and that language became regulation. It personally upsets Ms. Brisnehan when I make statements such as this, however, my original documents are still available, and one need only to look at the original draft language that I wrote and compare that language to that which now appears in regulation and see that there were very few changes made to my original language.

So "The Department" makes both an *ad hominem* attack and a false statement since the language in our original critical review is absolutely factual and correct, and in order to attack it, one must mischaracterize what we said. The Department then attributes to us things we did not say in our critical review and criticizes those imaginary points that we never actually made.

Point Number 9 (Page 4)

"The Department" again sets up a straw man argument, attributing to us things we never said, and then "The Department" "disagrees" with the assertion. "The Department" states:

> *The Department disagrees with your statements and opinions, provided on page 15 of the Critical Review, regarding sampling conducted during preliminary assessments. Samples collected during a preliminary assessment can be used to demonstrate that a property is not contaminated above Cleanup Levels, as long as….*

"The Department" cannot disagree with us, since that is precisely what we said. In our critical review, we stated that samples collected during a Preliminary Assessment CAN be used to clear a property, when those samples are collected pursuant to the final clearance protocols. So "The Department", asserts that we claimed that the opposite was true – when in fact our language was:

> A recurring myth amongst poorly trained consultants such as GHP, is that if sampling (**such as that performed at the subject property**) finds methamphetamine, but the concentration is less than 0.5 micrograms per one hundred square centimeters (µg/100cm2) of surface area, then the property is "OK," and not covered by the State regulations.
>
> However, this argument is erroneous and no such provisions are found anywhere in State statutes or State regulation. If an Industrial Hygienist performs **non-mandatory sampling** (**such as that GHP performed at the subject property**) during an industrial hygiene evaluation, and those samples result in ANY contamination, even below the value of 0.5 µg/100cm2, then the property

> must, by state regulation, be declared a methlab. This is due to the fact that cursory sampling does not meet the data quality objectives upon which the State clean-up level of "0.5 µg/100cm2" value is based.

Our language is absolutely correct. The samples collected from the subject property by GHP during their initial assessment work was not collected in a manner that was consistent with the final sampling protocols and COULD NOT be used to demonstrate compliance even if those samples were below the cleanup levels. This is because, the protocols used by GHP during their initial assessment were not compliant with regulations.

In order for the samples collected by GHP to be used to clear the property, GHP would have had to meet the following criteria:

> For any given *functional space*, at least 500 cm_2 of surface shall be sampled, unless the area is assumed to be non-compliant.

During their initial assessment, GHP did not collect either a sufficient surface area from each location nor did GHP collect samples from appropriate locations to be used as final clearance. In the table below, we have presented the areas sampled by GHP during their initial assessment.

Space Number	Functional Space	Area Sampled for Final Clearance (cm2)
1	first floor bathroom	0
2	first floor kitchen/dining area	0
3	first floor living room	100
4	first floor bedrooms 1 NW/hall	300
5	first floor bedroom 2 SW	0
6	first floor room addition	0
7	basement central seating area	100
8	basement large storage area	0
9	basement laundry/furnace room	100
10	basement bathroom	0
11	basement bedroom 1 off laundry	0
12	basement bedroom 2 SW	100
13	detached two-car garage	500
14	attic	0
15	area under basement stairs	100
16	Furnace	400

Table 3
Summary of Sample Areas

Therefore, in only one location did GHP collect at least 500 cm2. And they entirely failed to collect samples in eight identifiable areas. Therefore our language, as it appears in our critical review stands, and is correct.

"The Department" has displayed not only a lack of judgment but a disturbing lack of knowledge concerning the Board of Health's regulations.

In the past, FACTs has cleared many, many properties based on sampling performed during Preliminary Assessments – and "The Department" was fully aware of this fact when they made this statement. Several examples of where we have performed this kind of work are available to the public. In fact the afore mentioned Kinsey Lane property is such an example. A copy of that report is available at:

http://forensic-applications.com/meth/KinseyPAandDS.pdf

If you take a look at the above document, it will give you an idea of what a real Preliminary Assessment looks like, and how real final clearance sampling is performed, by a legitimate authorized Industrial Hygiene firm that actually understands the Colorado regulations and takes them seriously for the protection of our clients.

Point Number 10 (Page 4)

Again, "The Department" seems to make some obscure objection without actually explaining how or why it is salient to the deficiencies identified. Instead the comment appears to be another straw man argument designed to distract from the gravamen of the argument.

Had GHP complied with regulation and identified the type of manufacturing process or suspected manufacturing process, and they discovered for example that the property was in fact a P-2-P lab, then the concentration of methamphetamine alone may be a moot point if the mercury contamination (or iodine or lead) is in excess of the state limits. However, since GHP has no demonstrable training in methlab issues, one could not reasonably expect that they would know that a P-2-P lab is, or how to identify one.

Point Number 11 (Page 4)

"The Department" makes an argument without foundation. "The Department" makes several unsupportable statements:

> *As previously stated, the subject property was the location of an arrest for drug pocession (*sic*), with no indications of manufacturing.*

In fact, since a legitimate Preliminary Assessment was never performed at the property, by a consultant with training in methlab issues, and that consultant never investigated the exterior properties and never contacted law enforcement to determine what information may have been currently available, the position by "The Department" is not tenable.

Having been a participating member of many, many drug busts, I am fully aware of the fact that during 99% of all drug busts, where an arrest is made for possession, law enforcement virtually NEVER make a determination of whether or not manufacturing took place, and in most cases, the arresting law enforcement officers would lack the expertise to even identify the signs of manufacturing.

There were no signs of manufacturing because "The Department's" consultant never bothered to look, and appears to lack any expertise in the matter of recognition.

> *Further, there are no methlab seizure reports available from the North Metro Drug Task Force that would indicate manufacturing took place…*

Nowhere in GHP's report did they mention that they even attempted to contact NMDTF. Indeed, GHP clearly indicate in their report that they did NOT make any attempt to contact NMDTF. Therefore, that "The Department" was forced to go and try to find this information out itself, (since their consultant failed to follow regulations and make the determination) is more evidence of the hole "The Department" now finds itself. Finally, "The Department" apparently overlooked the fact that their consultant concluded that manufacturing may have taken place:

In their report, GHP stated:

> ***Based on information provided by the owner, it was reported to GHP that the use and possible manufacture of methamphetamines had previously taken place in the house.***

Therefore, ironically in a desperate attempt to defend their consultant, "The Department" is placed in an untenable position of contradicting their consultant while at the same time agreeing with their consultant. How can this be?

Point Number 12 (Page 5)

"The Department" now speaks of issues that were not in the report and not documented by their consultant, (which were required by regulations), as though mysteriously everyone knew, but nobody documented. It was the responsibility of the consultant to perform their duties with regard to determining areas of stressed vegetation. The consultant failed to do that. It is entirely moot whether "The Department" agrees with our assessment of stressed vegetation or not – The fact remains that their consultant, contrary to regulation, failed to check, and appears to have lacked the expertise to recognize the stressed vegetation.

To now say that "The Department" has since gone back and looked at recent photos, does not relieve the consultant from their failure to have checked and properly documented the site conditions as required by regulation.

Point Number 13 (Page 5)

We have adequately addressed this issue in the text of this discussion.

Point Number 14 (Page 5)

"The Department" disingenuously complains that our references to Section 8 were not relevant since it was not a final document, while at the same time "The Department" was fully aware that those very sections in the final document were in fact deficient, as already described in this document.

Comment on Inspection Perfection (Page 5)

"The Department" makes various complaints about a document that it openly admits it hasn't even read. It is difficult to understand how "The Department" can criticize our assessment of the Inspection Perfection report, when "The Department" hasn't even seen the Inspection Perfection report. "The Department" concludes with:

> *Further, while you, as an industrial hygienist, may be qualified to provide technical opinions, you are not qualified to opine as to legal or regulatory compliance.*

Again, "The Department" reaches way beyond its statutory authority and regulatory authority and has made a statement that it has absolutely no lawful authority to make. This is regulatory arrogance, and FACTs takes no further heed to the matter. "The Department" has no authority to make these statements.

Across this state, and across this country, on a daily basis, private Industrial Hygienists perform reviews of regulatory compliance and compliance with state and federal standards as a matter of fact. Providing these interpretations is clearly and historically within the realm of the professional Industrial Hygienist.

CONCLUSION SUMMARY

In summary we find the following:

- The documentation available to FACTs indicates that the property located at 4690 West 76th Ave., Westminster, CO was conclusively found by law enforcement to meet the definition of an "illegal drug laboratory" as defined in CRS 25-18.5-101.

- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" exhibited gross technical incompetence. The document failed to meet the following regulatory provisions:

    1. Paragraph 4.1 Property Description
    2. Paragraph 4.2 Law Enforcement Documentation
    3. Paragraph 4.3 Identification of Functional Spaces
    4. Paragraph 4.4 Manufacturing Methods
    5. Paragraph 4.5 Manufacturing Methods
    6. Paragraph 4.6 Identification of Areas of Contamination
    7. Paragraph 4.7 Identification and documentation of chemical storage areas
    8. Paragraph 4.8 Identification and documentation of chemical storage areas
    9. Paragraph 4.9 Identification and documentation of cooking areas
    10. Paragraph 4.10 Identification and documentation of signs of contamination such as staining, etching, fire
    11. Paragraph 4.11 Plumbing Inspection
    12. Paragraph 4.12 Identification of adjacent units and common areas where contamination may have spread
    13. Paragraph 4.14 Photographic documentation

The document similarly failed to meet several reporting requirements as described in our original February 8, 2010 critical review (a copy of which has been placed on our server at: http://forensic-applications.com/meth/westminster/DimickCriticalReview.pdf

- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" references legislative standards that don't exist in Colorado.

- The document prepared by Gobbell Hays Partners, Inc. and identified as a "Preliminary Assessment" appears to have been prepared for a property in California pursuant to California regulations.

- The work by Gobbell Hays Partners, Inc. (GHP) lacked credibility, exhibited substandard professional attributes and appears to have violated the code of ethics of the American Industrial Hygiene Association and the American Board of Industrial Hygienists.

- The document prepared by GHP and identified as a "Preliminary Assessment" is not a "Preliminary Assessment" as defined by regulation and does not meet the definition of a "Preliminary Assessment" as defined in Colorado Regulation 6 CCR 1014-3. The work by GHP failed to contain the necessary elements required of a Preliminary Assessment.

- GHP failed to comply with the mandatory regulatory provision found in 6 CCR 1014-3 for final clearance sampling and final documentation as delineated in this discussion.

- The "final clearance sampling" and documentation prepared by GHP was fatally flawed and failed to meet minimum state regulatory requirements. Specifically the work and the final document failed to meet provisions of the following sections of 6 CCR 1014-3:

1. Appendix A Mandatory Final Clearance Sampling including:
    a. GHP failed to collect minimum mandatory surfaces areas from each area
    b. GHP failed to sample each functional space as required by regulation
    c. GHP failed to clear even a single area according to regulatory requirements
2. Paragraph 4.14 Photographic documentation of pre-remediation conditions
3. Paragraph 8.0 Reporting
4. Paragraph 8.1 Property description
5. Paragraph 8.2 Description of manufacturing methods
6. Paragraph 8.3 Law enforcement reports
7. Paragraph 8.4 Figures and description of chemical storage areas
8. Paragraph 8.5 A description of waste disposal areas
9. Paragraph 8.6 A description of cooking areas, with a figure documenting location(s)
10. Paragraph 8.7 Figure of signs of contamination
11. Paragraph 8.11 Sampling procedures
12. Paragraph 8.12 A description of the analytical methods used
13. Paragraph 8.13 Figures of sampling locations
14. Paragraph 8.14 Health and safety procedures used in accordance with OSHA requirements.
15. Paragraph 8.13 Figures of the location of initial sampling including a description
16. of sample locations and a figure with sample locations and identification.
17. Paragraph 8.14 A description of the health and safety procedures used in accordance with OSHA

18. Paragraph 8.15 A description of the decontamination procedures used and a description of each area that was decontaminated.
19. Paragraph 8.16 A description of the removal procedures used
20. Paragraph 8.18 A description of the waste management procedures used, including handling and final disposition of wastes
21. Paragraph 8.19 A description and figures of the location and results of post-decontamination
22. Paragraph 8.20 Photographic documentation of pre- and post-decontamination property conditions
23. Paragraph 8.21 Consultant statement of qualifications
24. Paragraph 8.22 Certification of procedures and results

- No final clearance sampling, as described by regulation has been performed at the property. The sampling performed by GHP as described in this letter is not compliant with regulation.

- The overall work by GHP on this project showed many technical errors and technical incompetence especially in the areas of regulatory compliance.

- We find that "The Department" has gone far beyond its regulatory authority and statutory authority and has attempted to impose restrictions on the Industrial Hygiene profession for which it has no lawful authority.

- We find that "The Department" failed to use those reconciliation options regarding Board of Health regulations, and gave to itself regulatory relief for which it does not appear to have statutory authority.

- We find there are personal conflicts of interest and divisional conflict of interest in the involvement of Ms. Brisnehan and her office.

If you have any questions, please don't hesitate to contact us.

Prepared by:

Caoimhín P. Connell
Forensic Industrial Hygienist

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Colorado Brownfields Foundation
John Suthers, Colo AG
Gary Baughman, Director
Keith Frankl, Attorney

FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

CONSULTANT STATEMENT OF QUALIFICATIONS

(as required by State Board of Health Regulations 6 CCR 1014-3 Section 8.21)

FACTs project name:	**General File**	**Form # M L15**
Date: March 9, 2010		
Reporting IH:	**Caoimhín P. Connell, Forensic IH**	

Caoimhín P. Connell, is a private consulting forensic Industrial Hygienist meeting the definition of an "Industrial Hygienist" as that term is defined in the Colorado Revised Statutes §24-30-1402. He has been a practicing Industrial Hygienist in the State of Colorado since 1987; is the contract Industrial Hygienist for the National Center for Atmospheric Research and has been involved in clandestine drug lab (including meth-lab) investigations since 2002.

Mr. Connell is a recognized authority in methlab operations and is a Certified Meth-Lab Safety Instructor through the Colorado Regional Community Policing Institute (Colorado Department of Public Safety, Division of Criminal Justice). Mr. Connell has provided over 240 hours of methlab training for officers of over 25 Colorado Police agencies, 20 Sheriff's Offices, federal agents, and probation and parole officers from the 2nd, 7th and 9th Colorado judicial districts. He has provided meth-lab lectures to prestigious organizations such as the County Sheriff's of Colorado, the American Industrial Hygiene Association, and the National Safety Council.

Mr. Connell is Colorado's only private consulting Industrial Hygienist certified by the Office of National Drug Control Policy High Intensity Drug Trafficking Area Clandestine Drug Lab Safety Program, and P.O.S.T. certified by the Colorado Department of Law (Certification Number B-10670); he is a member of the Colorado Drug Investigators Association, the American Industrial Hygiene Association, Department of Defense/FBI InterAgency Board peer subject matter expert for the Health, Medical, and Responder Safety SubGroup, and the Occupational Hygiene Society of Ireland. Mr. Connell will be conducting the AIHA 2010 Clandestine Drug Lab Professional Development Course.

He has received over 120 hours of highly specialized law-enforcement sensitive training in meth-labs and clan-labs (including manufacturing and identification of booby-traps commonly found at meth-labs) through the Iowa National Guard/Midwest Counterdrug Training Center and the Florida National Guard/Multijurisdictional Counterdrug Task Force, St. Petersburg College as well as through the U.S. Bureau of Justice Assistance (US Dept. of Justice). Additionally, he received extensive training in the Colorado Revised Statutes, including Title 18, Article 18 "Uniform Controlled Substances Act of 1992."

Mr. Connell is also a current law enforcement officer in the State of Colorado, who has conducted clandestine laboratory investigations and performed risk, contamination, hazard and exposure assessments from both the law enforcement (criminal) perspective, and from the civil perspective in residences, apartments, motor vehicles, and condominia. Mr. Connell has conducted over 160 assessments in illegal drug labs, and collected over 1,400 samples during assessments (a detailed list of clansestine drug lab experience is available on the web at: http://forensic-applications.com/meth/DrugLabExperience2.pdf

He has extensive experience performing assessments pursuant to the Colorado meth-lab regulation, 6 CCR 1014-3, (State Board Of Health *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories*) and was an original team member on two of the legislative working-groups which wrote the regulations for the State of Colorado. Mr. Connell was the primary contributing author of Appendix A (*Sampling Methods And Procedures*) and Attachment to Appendix A (*Sampling Methods And Procedures Sampling Theory*) of the Colorado regulations. He has provided expert witness testimony in civil cases and testified before the Colorado Board of Health and Colorado Legislature Judicial Committee regarding methlab issues. Mr. Connell has provided private consumers, state officials and Federal Government representatives with forensic arguments against fraudulent industrial hygienists and other unauthorized consultants performing invalid methlab assessments.

Mr. Connell, who is a committee member of the ASTM International Forensic Sciences Committee, was the sole sponsor of the draft ASTM E50 *Standard Practice for the Assessment of Contamination at Suspected Clandestine Drug Laboratories*, and he is an author of a recent (2007) AIHA Publication on methlab assessment and remediation.

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