



FORENSIC APPLICATIONS CONSULTING TECHNOLOGIES, INC.

March 11, 2008

XXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Denver, CO 80123

RE: 131 South Benton Street, Denver, Colorado

Dear Mr. and Mrs. XXXXX:

During an email correspondence with Mrs. XXXXX, we learned that a consultant had performed additional sampling for methamphetamine at 131 South Benton Street, Denver, Colorado (the subject property). Mrs. XXXXX informed us that the consultant had performed air monitoring and collected an additional 17 samples from the property. We informed Mrs. XXXXX that the information was surprising since a legitimate Industrial Hygienist would not have performed any air monitoring at the property, and based on our site visit, only approximately eight to ten samples would be required for clearance. We informed Mrs. XXXXX that FACTs had encountered several individuals in Colorado falsely claiming to be Industrial Hygienists performing methlab assessments. We explained that their work was generally of extremely poor quality, was not reliable and would not provide the liability immunity afforded by State statutes, even if the local County Health Department “accepted” the report. Mrs. XXXXX forwarded the report to FACTs for review.

We have reviewed the March 5, 2008 letter by Quest Environmental wherein Quest describes additional sampling at 131 South Benton Street, Denver, Colorado. The following discussion is a critical review of the Quest Report.

This document contains two appendices:

- Appendix A FACTs original cursory report dated February 15, 2008
- Appendix B Quest report dated March 5, 2008

EXECUTIVE SUMMARY

Cursory sampling for methamphetamine was performed by FACTs at 131 S. Benton Street, Colorado (the subject property). The samples revealed the presence of methamphetamine at the property. The FACTs cursory assessment was performed pursuant to the intent of Colorado’s Real Estate methamphetamine disclosure and testing statute as described by CRS §38-35.7-103(2)(a).

Pursuant to State regulations, following discovery of methamphetamine at a property, a “Preliminary Assessment” must be performed by an authorized Industrial Hygienist of the “discovered” property. The elements of a “Preliminary Assessment” are delineated by State regulation.

On February 27, 2008, Quest Environmental entered the subject property, performed additional sampling and provided a report of this sampling dated March 5, 2008. Quest presented the report as a “Preliminary Assessment.”

Upon review of the Quest report, FACTs finds the following:

- The report does not meet the minimum requirements for a Preliminary Assessment. Therefore, at this point in time, no Preliminary Assessment has been performed for the property.
- FACTs has identified fatal flaws in the Quest work and failures to comply (errors and/or omissions) with the following areas of the State regulations:
 - Section 4.0 Preliminary Assessment
 - Paragraph 4.1
 - Paragraph 4.2
 - Paragraph 4.3
 - Paragraph 4.4
 - Paragraph 4.5
 - Paragraph 4.6
 - Paragraph 4.7
 - Paragraph 4.8
 - Paragraph 4.9
 - Paragraph 4.10
 - Paragraph 4.11
 - Paragraph 4.12
 - Paragraph 4.14
 - SECTION 6.0
 - Paragraph 6.1
 - Paragraph 6.2
 - Appendix A – Prohibition of Sampling from Porous Materials
 - Paragraph 6.6
 - Appendix A - Soil Contamination
 - Section 8 – Final Documentation
 - Paragraph 8.1
 - Paragraph 8.2
 - Paragraph 8.3
 - Paragraph 8.4
 - Paragraph 8.5
 - Paragraph 8.6
 - Paragraph 8.7
 - Paragraph 8.8
 - Paragraph 8.9
 - Paragraph 8.13
 - Paragraph 8.14
 - Paragraph 8.20
 - Paragraph 8.21
 - Paragraph 8.22
 - Paragraph 8.23
 - Paragraph 8.24



- The Quest personnel who performed the work, to our knowledge, are not Industrial Hygienists and do not meet the definition of an Industrial Hygienist as specified by State statute, and are therefore, not authorized to perform the mandatory work.
- The work, as represented by the March 5, 2008 Quest report, is not a Preliminary Assessment, and cannot be use in lieu of a Preliminary Assessment.
- The report fails to contain the mandatory elements of a Preliminary Assessment.
- The report fails to contain the elements necessary to issue a Decision Statement.
- No “Decision Statement” has been issued pursuant to State regulation.
- At this point in time, entry into the property remains prohibited pursuant to State statutes.
- The Quest report exhibits a profound lack of technical competency.
- The sampling performed by Quest fails to meet the mandatory regulatory sampling requirements; six of the 16 samples were collected from prohibited surfaces; four of the 16 samples were collected from areas expected to have the lowest conceivable levels of contamination. The remaining six samples are not associated with any identifiable functional space.
- Presentations of Quest communications with Colleen Brisnehan, as stated in the Quest report, were not supported by a follow up conversation FACTs had with Ms. Brisnehan on the morning of March 10, 2008.
- The work performed by Quest constitutes gross malfeasance.
- If the XXXXX family purchases the property, they are required by State statutes (§38-35.7-103(2)(c)) to perform a legitimate Preliminary Assessment within 90 days of the date of their purchase, or demolish the property.

DISCUSSION

Pursuant to Colorado regulations 6 CCR 1014-3,¹ following discovery and notification of a drug laboratory, a comprehensive and detailed “Preliminary Assessment” must be commissioned by the property owner and performed by an authorized and properly trained Industrial Hygienist. The content and context of the “Preliminary Assessment” is explicitly delineated by regulation.

¹ Titled: Colorado Department Of Public Health And Environment, State Board Of Health, *Regulations Pertaining to the Cleanup of Methamphetamine Laboratories.*



On February 7, 2008 FACTs performed cursory methamphetamine sampling at the subject property. The sampling conclusively identified methamphetamine at the property.

Contrary to popular misconception, there is no *de minimis* concentration during a cursory assessment below which a property could be declared “not a meth lab” or “not of regulatory concern” since virtually any concentration of meth present in a sample during a cursory assessment at the property 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.²

In a recent unofficial opinion issued by the State of Colorado Department of Public Health and the Environment, Colleen Brisnehan opined in an email transmission to Mr. Craig Sanders³ that even when the cursory concentrations are far below state mandated limits:

"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."

Following the discovery of a clandestine drug lab (methlab) compliance occurs when:

- 1) A Preliminary Assessment has been performed,
- 2) Remediation, if any, as stipulated by the Preliminary Assessment has been conducted,
- 3) Final verification sampling is performed and compliance is determined.

The Preliminary Assessment, if correctly designed and conducted, may lead directly to a statement of compliance and a Decision Statement may be issued from the Preliminary Assessment if the sampling performed is consistent with the requirements of the final verification sampling, and all other required documentation is provided in accordance with State regulations.

Communications With State Officials

In its report, Quest states:

QUEST contacted Craig Sanders of Jefferson County Health Department (303-271-5759) and Colleen Brisnehan of the Colorado Department of Public Health and Environment (303-692-3357) to discuss the property, sample results and findings. Each of the health department representatives were briefed on the project conditions, and each representative stated that since the samples collected by FACT and QUEST were all

² *Ibid.*

³ Email transmission from Craig Sanders to FACTs, January 31, 2008 regarding a property at 32548 Kinsey Lane Conifer, Colorado.
131 S Benton Street



below the State clearance criteria, the preliminary assessment results meet the State clearance criteria.

According to our conversations with Ms. Brisnehan, Ms. Brisnehan was affirming to Mr. Woellner (Quest) that samples conducted during a (legitimate) Preliminary Assessment could be used to issue a Decision Statement. This opinion is consistent with our position, and State regulations.

However, Ms. Brisnehan was not aware of the fact that **no** Preliminary Assessment had been performed for the property, and Ms. Brisnehan was not aware that the document and sampling produced by Quest did not constitute a Preliminary Assessment.

Furthermore, Ms. Brisnehan was not aware of the fact that the sampling that was performed at the property by Quest, was **NOT** compliant with the sampling protocols found in the State regulations.

Following our discussion with Ms. Brisnehan, FACTs has agreed to forward a copy of this critical review to Ms. Brisnehan. At that point, we consider this review to be a matter of record within the public domain.

At FACTs, we have generated several legitimate Preliminary Assessments of properties, which have ultimately served as the Decision Statement, releasing a property. We would be happy to provide you with copies of such assessments.

Critical Review of the Quest Report

Pursuant to State Regulations, Section 4:

Section 4.0 PRELIMINARY ASSESSMENT

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

Paragraph 4.1 Property Description

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

Nowhere in the Quest report were we able to locate a legal description of the property as required by regulation. Nowhere in the description were we able to identify the square footage of the structure. The square footage of the structure is required to determine the number of samples needed for final verification sampling.

Pursuant to State regulations (mandatory Appendix A):

- An additional 100 cm² must be sampled for every additional 500 square feet of structural floor space. *[exceeding 1,500 square feet]*

Without documenting the square footage of the property in question, there is no way to know if the sampling is appropriate or meets the regulatory requirements.



Regarding the subject property description, the Quest report merely states:

131 South Benton Street in Lakewood, Colorado. The property includes a single-family stand-alone residence and yard in a residential setting. The property is surrounded by residences to the north, south and west and Benton Street to the east.

Paragraph 4.2 Law Enforcement Documentation

Pursuant to State regulations, the Industrial Hygienist is required to provide a:

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.

FACTs was not able to find any such information in the Quest report. In its report, Quest merely states:

No police report was provided to QUEST at the time of this report generation.

It is not the responsibility of others to provide desired information to the consultant, it is the consultant's **responsibility and obligation** to perform the necessary searches and determine which law enforcement documentation may be available for the property being assessed; Quest has entirely failed to fulfill this mandatory requirement. A search of available law enforcement documents can provide a wealth of information regarding the property that assists the Industrial Hygienist in the assessment, and the Industrial Hygienist has the regulatory and professional obligation to perform this duty. We did not find any information that would indicate that Quest made any attempt to fulfill this mandatory obligation.

Paragraph 4.3 Identification of Functional Spaces

Pursuant to this section, the Industrial Hygienist is required to include:

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

FACTs was unable to locate an inventory of functional spaces in the property. Quest entirely failed to perform this necessary phase of the assessment. Furthermore, the mandatory Appendix A of the State regulations states:

- For any given *functional space*, at least 500 cm² of surface shall be sampled, unless the area is assumed to be non-compliant.

Therefore, since no functional spaces are identified in the Quest report, there is no way to know if the samples have in fact been collected.



Paragraph 4.4 Identification of Manufacturing Methods

Pursuant to State regulations, the Industrial Hygienist is required to provide:

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

As already mentioned, Quest made no attempt to review law enforcement documents, and therefore, they were not able to determine, based on those documents, what information regarding methlab manufacturing may have taken place. In its report, Quest indicates that it made no attempt to determine the method (if any), rather, Quest states:

No information regarding any meth production was provided to QUEST at the time of this report generation. It is unknown if meth manufacturing or any use took place at the property.

It is not the obligation of others to provide that information to the Industrial Hygienist, rather, it is the sole obligation and responsibility of the Industrial Hygienist to make that professional determination. Only an Industrial Hygienist with appropriate training can perform that function, since, according to State regulations,

The strength of evidence needed to reject the [*initial pre-decontamination*] 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.

Since Quest's field personnel, (Ms. Leah Ledenbach) does not appear to be an Industrial Hygienist, nor have any demonstrable or documented training in industrial hygiene or methlab related issues, nor does it appear that she or any Quest employee reviewed available law enforcement documentation, FACTs, concludes that at this point in time, the determination still has not been made. Quest has entirely failed to perform this mandatory requirement.

Paragraph 4.5 Identification of Chemical History

Pursuant to Paragraph 4.4 of the State regulations, the Industrial Hygienist is required to provide:

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

Quest personnel have failed to meet this mandatory element. As already noted, Quest failed to review available law enforcement documents. Quest also failed to document, as required by State regulations, their experience in methlab related issues as required by State regulations (§8.21).

Since Quest failed to review the required law enforcement documents, and the field personnel have no demonstrable knowledge of methlabs there is no way to determine if the field personnel would be competent to identify a chemical history based on knowledge of manufacturing methods.



Paragraph 4.6 Identification of Areas of Contamination

Pursuant to State regulations the Industrial Hygienist is required to provide:

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.

Since Quest failed to review available law enforcement documents, Quest cannot use this source for the basis of their conclusions.

Since Quest failed to identify possible areas of wastes (as required by regulations, see below), Quest cannot use this source for the basis of their conclusions.

Since Quest failed to identify possible storage areas (as required by regulations, see below), Quest cannot use this source for the basis of their conclusions.

Since Quest failed to identify possible cook areas (as required by regulations, see below), Quest cannot use this source for the basis of their conclusions.

Since Quest personnel, by virtue of the grossly incompetent work exhibited in this report, and by the lack of mandatory documentation of qualifications, failed to demonstrate competency, Quest cannot rely on “professional judgment” for the basis of their conclusions.

Furthermore, as already noted, since the sampling performed by Quest was not performed pursuant to Appendix A, we do not know how Quest has fulfilled this mandatory requirement.

Indeed, in its report, as already noted above, Quest merely makes the statement that nobody provided them with this information. To reiterate, it is not the obligation of any person or entity to provide the Industrial Hygienist with information, it is the statutory and regulatory obligation of the Industrial Hygienist to locate that information and use the information for their assessment.

Paragraph 4.7 Identification Chemical Storage Areas

Pursuant to State regulations the Industrial Hygienist is required to provide:

Identification and documentation of chemical storage areas.

In its report, Quest addresses this regulatory obligation thusly:

No information was provided to QUEST regarding any chemical storage areas at the time of this report generation.



To reiterate, it is not the obligation of any person or entity to provide the Industrial Hygienist with this information, it is the statutory and regulatory obligation of the Industrial Hygienist to make that assessment.

Paragraph 4.8 Identification of Waste Disposal Areas

Pursuant to State regulations the Industrial Hygienist is required to provide:

Identification and documentation of waste disposal areas.

In its report, Quest addresses this regulatory obligation thusly:

No information was provided to QUEST regarding any waste disposal areas at the time of this report generation.

FACTs has already address this language and discussed its merit and validity.

Paragraph 4.9 Identification of Cook Areas

Pursuant to State regulations the Industrial Hygienist is required to provide:

Identification and documentation of cooking areas.

Quest addressed this obligation thusly:

No information was provided to QUEST regarding any cooking areas at the time of this report generation.

The sole purpose of a properly trained Industrial Hygienist performing an on-site assessment is make these kinds of determinations. It is not the responsibility of others to make the determinations and pass that information to the Industrial Hygienist. Quest has failed to fulfill this requirement.

Paragraph 4.10 Identification of Visual Indicators

Pursuant to State regulations, the Industrial Hygienist is required to provide:

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

Quest, in its report, addresses their regulatory obligations thusly:

No noticeable red phosphorus staining was observed in the property. There were no signs of waste burial or distressed vegetation on the property.

During the Quest visit (February 27, 2008), the grass and all other vegetation in the property was in its dormant state. We do not know how Quest determined that there was no “distressed” vegetation on the property.



We are concerned that on Page 3 of its report, Quest contradicted itself and stated that disposal possibly occurred in exterior soils. However, this is inconsistent with the above statement. Quest made no attempt in their report to reconcile either of the problems with their observations and their statements.

During our cursory visit (February 7, 2008), FACTs identified patently obvious fire damage in the residence. Quest failed to make note of this obvious condition.

It is similarly not known why Quest mentions red phosphorous specifically, when Quest has already stated that it had no knowledge of the manufacturing process. However, during our cursory evaluation of the subject property, FACTs collected approximately 50 photographs. Several of the photos clearly demonstrate chemical staining, chemical burns, thermal burns and **profound** staining consistent with the red phosphorous method, all consistent with methlab activity.

For example in the photo below, taken by FACTs in one of the bedrooms, we see the staining on the carpet.



Photograph 1
Indicator Staining on Carpet

Similarly in the next photograph (also taken by FACTs during our cursory sampling visit), we see the staining on the living room wall; the staining is consistent with the red phosphorous method.





Photograph 2
Indicator Staining on Living Room Wall

Similarly, other yellow/red staining occurred throughout the property such as the staining on the southeast bedroom wall depicted in the FACTs photograph below.



Photograph 2A
Indicator Staining on Bedroom Wall

Furthermore, Quest has demonstrated that they lack any legitimate training in methlab issues in that they apparently entirely fail to recognize that the red staining most often associated with the “red phosphorous” method is **NOT** due to red phosphorous.

We conclude that the on-site Quest personnel entirely failed to identify these areas since

- 1) Quest personnel have no legitimate training in methlab related issues;
- 2) Quest personnel are not Industrial Hygienists;
- 3) Quest personnel are not competent to perform the work at hand.

Paragraph 4.11 Evaluation of the Plumbing System

Pursuant to State regulation, the Industrial Hygienist is required to provide:

Inspection of plumbing system integrity and identification and documentation of potential disposal into the sanitary sewer or an individual sewage disposal system (ISDS). If the consultant determines that field screening and/or sampling of an ISDS is necessary to determine if methamphetamine lab wastes have been disposed of into an ISDS, such field screening and/or sampling shall be conducted in accordance with the field screening and sampling protocols presented in Appendix D. Sample analysis shall be conducted in accordance with the method requirements presented in Appendices B and D.

Quest explicitly has shrugged responsibility for completing this regulatory obligation thusly:

A detailed plumbing inspection is outside QUEST's scope of work.

At FACTs, we cannot understand how on the one hand, accepting the responsibility to perform a Preliminary Assessment, (which explicitly includes a plumbing inspection), and at the same time state that such an inspection is “outside the scope of work.” We similarly cannot understand how Quest can claim that a Preliminary Assessment was performed when explicitly required functions are not performed or are “outside the scope of work.”

Remarkably, Quest states:

The basement bathroom shower and main floor bathroom sink were sampled as potential disposal areas. No meth concentrations were detected in either of the potential disposal areas sampled.

The methamphetamine species under investigation is primarily methamphetamine hydrochloride; a water soluble compound. A competent Industrial Hygienist, trained in rudimentary sampling techniques (and certainly one trained in methlab issues) would know that one would not look for a water soluble salt on the surface of a water basin. And yet, Quest claims in its report that:

Leah Ledenbach of QUEST conducted a preliminary assessment inspection and sampling survey for meth in the residence. As detailed below, the sixteen samples collected from likely “worst case” locations throughout the property



In fact, the samples were collected from the LEAST likely place one would expect to find residual methamphetamine. State regulations clearly and explicitly state:

As described later in this protocol, the aim of the consultant performing postdecontamination sampling is to demonstrate the worst-case scenario in the drug laboratory.

Quest has entirely ignored this requirement and performed sampling in areas where a legitimate Industrial Hygienist would not sample since the areas do not represent a worst-case scenario, but in fact, represent a best-case scenario. The lack of a plumbing inspection, and the gross technical incompetency exhibited in the sampling conspire to indicate the personnel are technically incapable of performing this type of work.

More alarming, in another part of the Quest report, Quest makes the statement that:

Possible disposal areas include the kitchen sink, bathroom sinks, toilets, showers/tubs, floor drains and exterior soil areas.

However, Quest did not include that statement in the plumbing section, and made no attempt to characterize the effect to the plumbing, or, as required by State regulation, how to address the contamination.

Pursuant to State regulation, the Industrial Hygienist is required to provide the above information; its omission constitutes a fatal flaw.

Paragraph 4.12 Contamination Migration

Pursuant to State regulations, the Industrial Hygienist is required to provide:

Identification of adjacent units and common areas where contamination may have spread or been tracked.

Quest entirely has omitted any discussion of this section from their report. In their report Quest has identified, in one sentence, two distinct routes of migration that needed to be adequately addressed:

Possible disposal areas include the kitchen sink, bathroom sinks, toilets, showers/tubs, floor drains and exterior soil areas.

However, Quest entirely failed to further address these areas.

Paragraph 4.13 Common Ventilation System

We believe that this section is the only paragraph in Section 4 with which Quest exhibited compliance. Pursuant to State regulations, the Industrial Hygienist is required to provide:

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

In its report, Quest addresses this requirement in its entirety by stating:

The ventilation system is an individual system.



Quest successfully and accurately identified the residential ventilation system as a residential ventilation system.

Paragraph 4.14 Photographic Record

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

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

Quest entirely failed to fulfill this regulatory obligation. The Quest report contains 16 photographs; each photograph is a close-up of a sampling template. Quest entirely failed to photograph:

- 1) property conditions, (self explanatory)
- 2) cooking areas, (not addressed in the Quest report)
- 3) chemical storage areas (not addressed in the Quest report)
- 4) waste disposal areas which were identified by Quest as
 - a. *kitchen sink*
 - b. *bathroom sinks*
 - c. *toilets*
 - d. *showers/tubs*
 - e. *floor drains*
 - f. *and exterior soil areas*
- 5) and areas of obvious contamination; which would include:
 - a. each and every area whose sample was positive for methamphetamine,
 - b. the yellow staining in the living room
 - c. the yellow staining in the upstairs southeast bedroom
 - d. the yellow staining in the upstairs southwest bedroom
 - e. the odd and indicative chemical staining in the utility room
 - f. the yellow staining on the carpets, etc.

SECTION 6.0 SAMPLING AND ANALYTICAL PROCEDURES

Paragraph 6.1 Locations of Samples

Pursuant to State regulations:

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

As discussed elsewhere in this critical review, the mandatory sampling requirements could not be fulfilled by Quest since no law enforcement records were reviewed which may have shed light on where to sample. As it is, Quest merely stated that nobody told



them where any of these areas were located. Therefore, how did Quest determine the location of the samples?

As already described, the Industrial Hygienist is required by regulation to sample from those areas that are expected to have the highest levels of contamination. Yet Quest collected samples from areas that are expected to have the **LOWEST** levels of contamination including:

- Basement bathroom shower
 - As already mentioned, the species of meth under consideration is water soluble. Therefore, surfaces likely to be wet are similarly those same surfaces that are least likely to exhibit contamination. Although nowhere in the report does Quest actually describe what kind of a surface was sampled the report contains a photograph that appears to be a tile floor by a floor drain. Collecting a sample from this area does not just indicate gross technical incompetency, but borders on malpractice – clean water flowing into the shower stall, combined with detergent (soap and shampoo) would effectively wash away any surface methamphetamine, thus biasing the results low, where methamphetamine may otherwise be present. The sampling location indicates either disingenuous intent or gross incompetence.

- Sample 8, Bathroom sink
 - See our comments above. This sample, remarkably, was collected at the stopper for the sink – this locations would be expected to be the **LOWEST** conceivable location to collect a sample; in violation of State regulations.

- Basement main room floor
 - A trained consultant would have noticed that a significant water loss had occurred in the basement, in the area where the sample had been collected, wherein extensive flooding had taken place (See the flood cuts and water staining, for example, in the photograph below, taken by FACTs, during our cursory visit).





Photograph 3
Photograph of Basement Water Loss Indicators

The flood cuts in the wall (bottom right of photograph) indicate a significant loss. The concrete floor in the photograph exhibits the location of floor tiles that were lifted or removed as a result of the flooding. Therefore, based on our cursory visit alone, FACTs can conclude that the floor of the basement would constitute an area that would be expected to have one of the **LOWEST** possible levels of methamphetamine in the house; the meth having been washed away by the flood.

- Bottom of Kitchen Cabinet (ostensibly Sample 10)
 - Considering even a basic, rudimentary understanding of sampling theory and mechanics of methamphetamine migration it is difficult to understand how this location could be expected to exhibit the highest level of contamination. Instead, as water condenses from coking and washing, the liquid droplets (visually evident in Quest's own photograph) would wash the residual contamination to the lowest point and then – drip.

Paragraph 6.2 Number and Type of Samples

Pursuant to State regulations:

The number and type of samples shall be based on the size of the area or material, the chemical or contaminant being tested for, and the purpose of the sample (i.e., initial assessment or final clearance).

As already stated above, Quest entirely failed to identify the area of the lab, and therefore, one cannot determine compliance with the area requirements.



Similarly, since Quest entirely failed to attempt to review law enforcement documents, Quest entirely failed to consider other potential contaminants. For example, Section 7.3 of the State regulations explicitly require:

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 $\mu\text{g}/\text{ft}^2$, and vapor samples for mercury shall not exceed a concentration of 1.0 $\mu\text{g}/\text{m}^3$.

Since Quest made no attempt to review available documents, it is possible that the law enforcement documents identify a P2P lab present at the property and therefore, Pb and Hg should have been considered in the final verification sampling. However, Quest explicitly shrugged the responsibility of determining the method of production by claiming that nobody gave them that information.

Pursuant to State regulations:

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 already discussed, Quest entirely failed to identify or inventory functional spaces as required. Therefore, there is no way to know which samples collected apply to the unidentified functional spaces in the residence. Since Quest entirely failed to identify functional spaces, it is impossible to know if all functional spaces were sampled.

Appendix A – Prohibition of Sampling from Porous Materials

Appendix A of the regulations explicitly states:

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

Yet six of the sixteen samples were collected from porous surfaces, including rough wood and cinderblock. Therefore, none of these samples are compliant with the sampling protocol and cannot be used for final verification purposes.

Statement on Final Sampling – Number, Location and Type

Of the sixteen samples collected, six were collected from prohibited surfaces, and four were collected from areas expected to have the lowest level of contamination.

Therefore, ten of the sixteen samples collected for final verification cannot be used for those purposes.

The remaining six samples cannot be associated with any identified functional space and therefore, do not represent any knowable, definable functional space.



Therefore, none of the samples collected by Quest may be used to determine compliance with State regulations.

Paragraph 6.6 QA/QC

Pursuant to Paragraph 6.6, the Industrial Hygienist, in accordance with good sampling practice and mandated by State regulation, is required to comply with sampling and analysis protocols presented in Appendices A, B and D of those regulations. Appendix A explicitly states:

The following procedure is for collecting discrete wipe samples from non-porous surfaces.

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

Quest failed to comply with the requirement and submitted only one blank for 16 samples. Furthermore, normal standard industry practice and good industrial hygiene protocols dictate that lot numbers of sampling media be provided with sampling materials as a QA/QC check. We did not see where Quest followed good, normal, standard industry practices in this regard.

Appendix A - Soil Contamination

On Page 3 of its report, Quest identifies the soils as possible locations of disposal. Therefore, pursuant to State regulations:

For laboratories with outdoor components, or laboratories which are exclusively outdoors, the following sampling shall be performed when conditions indicate the potential for soil contamination. Sampling shall be conducted in accordance with the grid sampling method as described in the Midwest Research Institute's publication titled "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup" (referenced in 40 CFR § 761.130),

Quest Environmental entirely failed to comply with this mandatory requirement.

Section 8 – Final Documentation

The State regulations require that specific documents be provided in the Preliminary Assessment, and require that specific function be documented. In its report, Quest failed to meet various aspects of the documentation process.

Paragraph 8.1 Registered Owner and Legal Description

According to this paragraph:

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 Quest report have they identified the property owner, and as already described elsewhere, Quest failed to include the legal description.



Paragraph 8.2 Manufacturing and Chemical History

According to State regulations, the Industrial Hygienist is required to document:

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

As already addressed, Quest failed make the required determinations, and subsequently was incapable of providing the mandatory documentation.

Paragraph 8.3 Law Enforcement Documentation

According to State regulations, the Industrial Hygienist is required to document:

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 addressed, Quest made no apparent attempt to obtain or review law enforcement documentation and subsequently Quest was incapable of providing the mandatory documentation.

Paragraph 8.4 Chemical Storage

According to State regulations, the Industrial Hygienist is required to document:

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

As already addressed, Quest failed make the required determinations, and subsequently, Quest was incapable of providing the mandatory documentation.

Paragraph 8.5 Waste Disposal

According to State regulations, the Industrial Hygienist is required to provide:

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

As already addressed, Quest failed make the required determinations, and subsequently, Quest was incapable of providing the mandatory documentation.

Paragraph 8.6 Cooking Areas

According to State regulations, the Industrial Hygienist is required to provide:

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

As already addressed, Quest failed make the required determinations, and subsequently, Quest was incapable of providing the mandatory documentation.



Paragraph 8.7 Visual Indicators

According to State regulations, the Industrial Hygienist is required to provide:

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 already addressed, Quests failed to make the required observations, in spite of the profound evidence of signs of staining and fire damage present at the property.

Paragraph 8.8 Plumbing Inspection

According to State regulations, the Industrial Hygienist is required to provide:

The results of inspection of plumbing system integrity and identification of sewage disposal mechanism.

Since Quests failed to perform the required plumbing inspection, Quest was similarly incapable of meeting the reporting requirements.

Paragraph 8.9 Contamination Migration

According to State regulations, the Industrial Hygienist is required to provide:

A description of adjacent units and common areas where contamination may have spread or been tracked.

In its report, Quest informs the reader that wastes were possibly dumped into the surrounding soil. Quest failed to document the location and the foundation of their observations and the extent of the contamination.

Paragraph 8.13 Locations of Initial Sampling

According to State regulations, the Industrial Hygienist is required to provide:

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.

Although Quest was provided with this information, Quest entirely failed to provide the required information in their report; Quest similarly failed to provide a drawing of the location of the initial samples, as required by State regulation.

Paragraph 8.14 Health and Safety Affidavit

According to State regulations, the Industrial Hygienist is required to provide:

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

Nowhere in its report do we find an assertion by Quest that its practices and procedures were in accordance with OSHA requirements.



Paragraph 8.20 Photographic Record

According to State regulations, the Industrial Hygienist is required to provide:

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 addressed, Quest failed to provide the required photographic record, failed to document property conditions, failed to photograph areas of obvious contamination, and failed to photograph burns, stains, etc..

Paragraph 8.21 Statement of Qualifications

According to State regulations, the Industrial Hygienist is required to provide:

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.

Quest failed to provide a statement of qualifications. Quest failed to include the mandatory description of experience in assessing contamination associated with methamphetamine labs. Quest so poorly understands the regulatory field in which they operate, that they misidentify the statutory citation for Industrial Hygienists and provide a web-link to a site that apparently has nothing to do with industrial hygiene.

In a previous review⁴ of Quest's work related to methamphetamine issues (a copy of which was provided to Mr. Craig Sanders), FACTs made the following observation:

Perhaps it is interesting to note that in Colorado,⁵ a person commits criminal impersonation if he knowingly assumes a false or fictitious capacity, and in such capacity he does any act with intent to unlawfully gain a benefit for himself and that "criminal impersonation" is a class 6 felony. Case law exists⁶ wherein the false assumption of a professional status for pecuniary gain has been found to be criminal impersonation.

It has been our first hand experience, on another project, where Quest Environmental personnel have represented themselves as "experts" in other areas of Industrial Hygiene wherein their work in those areas has also exhibited a gross lack of technical competency indicating a very poor knowledge of even the most basic Industrial Hygiene tenets. In that particular case, the City Health Department has rejected Quest's "expertise." Elsewhere, we have seen Quest completely disregard standard Industrial Hygiene practices in favor of "junk science" including using nonsensical sampling (such as using combustible gas analyzers to determine the presence of indoor mould in buildings.)

⁴ October 26, 2007, FACTs review of a report falsely claiming to be a Preliminary Assessment for 16275 Mt. Vernon Road in Golden, CO 80401

⁵ CRS §18-5-113 *Criminal impersonation*

⁶ *People v. Bauer*, 80 P.3d 896 (Colo. App. 2003)
131 S Benton Street



We continue to maintain this position, in that we have not seen any documentation that indicates that either of the two Quest personnel associated with this project meet the statutory definition of “Industrial Hygienist.” Due to the continued egregious actions and misrepresentations of Quest, we strongly recommend that the issue be delivered either to the State Attorney’s office or the District Attorney for the First Judicial District (Jefferson County) for consideration of felony charges against the Quest personnel.

Furthermore, as discussed in the section for Paragraph 8.23, below, Quest identified one party who performed the work, but another party signed the document assessing that they performed the work.

We believe that the Governing Body, or the Colorado Department of Public Health and Environment has the obligation to protect Colorado citizens when they become aware of possible criminal activity by individuals purporting to exercise functions of regulation.

Paragraph 8.22 Certification and Variations

According to State regulations, the Industrial Hygienist is required to provide:

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

Nowhere in its report does Quest identify each of the variations from the regulatory requirements as discussed in this review.

Paragraph 8.23 and 8.24 Certification– Mandatory Language and Signature

Pursuant to State regulations, the Industrial Hygienist performing the work is required to sign a statement, an affidavit, attesting to the fact that they performed the work. State regulations are as follows:

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.”

In its report, Quest makes the following statement:

At your request, on February 27, 2008; Leah Ledenbach of QUEST conducted a preliminary assessment inspection and sampling survey for meth in the residence.



Yet nowhere, as required by regulation, has Ms. Ledenbach signed the required statement. Instead, the signature of Robert A. Woellner appears. There is no indication that Robert A. Woellner performed any work on the project, there is no indication that Robert A. Woellner is an Industrial Hygienist, there is no indication that Robert A. Woellner is qualified to perform the work and there is no Statement of Qualifications for Robert A. Woellner.

Quest has entirely failed to comply with the certification process.

CONCLUSION

- No preliminary Assessment has been performed for the subject property.
- The Quest “report” is fatally flawed and cannot be used as a Preliminary Assessment.
- There is no indication that the individuals performing the work were qualified.
- None of the sampling performed by Quest can be used for final verification purposes as defined by State regulation.
- If the property transaction completes as scheduled, the seller (the unknown owner) will not receive liability immunity.
- If the property transaction completes as scheduled, the buyer (XXXXX) must complete a Preliminary Assessment, and any necessary remediation, and obtain a Decision Statement within 90 days of closing.

RECOMMENDATION

We recommend that the case be brought to the attention of the State Attorney or the District Attorney for the First Judicial District (Jefferson County) for consideration of felony charges against the Quest personnel.



Caoimhín P. Connell
Forensic Industrial Hygienist

CC: Colleen Brisnehan, CDPHE
Craig Sanders JCDHE

