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Questions and Answers Regarding the Meth Lab Cleanup Regulations

Background

On April 21, 2004, Governor Owens signed House Bill 04-1182 (the Bill) requiring the Board of Health to set cleanup standards for properties used as clandestine methamphetamine (meth) labs. The Bill provides that a property owner who cleans up a property under these standards will have immunity from civil lawsuits by future owners, occupants, or neighbors for alleged health-based losses related to the meth lab. Verification testing must be conducted by a Certified Industrial Hygienist or industrial hygienist as defined by 24-30-1402, C.R.S., and a copy of the results must be provided to the Governing Body, in order for immunity to be established. The term Governing Body is not defined in the Bill. For reference, the definitions of Certified Industrial Hygienist and industrial hygienist are provided at the end of this document.

The Bill does not provide for regulatory agency involvement in the cleanup process, nor does it include a mechanism to ensure that cleanup contractors or consultants are qualified to perform, or experienced in, meth lab cleanup. Therefore, the cleanup standards must be self-implementing, and provide a clear and detailed process to ensure that the property is properly decontaminated and that adequate documentation of the decontamination process is provided to support the immunity from civil lawsuits.

Some local agencies have independent authority to require cleanup of meth labs. This authority is usually based on occupancy of the structure, and may be tied to local health or building codes. The requirement for cleanup established by the Bill does not add to nor diminish this independent authority because the Bill does not address re-occupancy standards. Local agencies may choose to incorporate the standards set by the cleanup regulations into their local requirements, or they may require that additional measures be taken before they will allow re-occupancy.

When reviewing the meth lab cleanup regulations, it is important to understand that the immunity shield established by the Bill is independent of any local requirements based on re-occupancy.

Questions Regarding the Cleanup Regulations

Following are answers to general questions regarding the meth lab cleanup regulations, also referred to herein as the “cleanup regulations”. These questions address general topics associated with House Bill 04-1182, the cleanup regulations, and meth lab cleanup in general. As defined in section 3.0 of the cleanup regulations, references in the following discussion to “cleanup contractor” are intended to mean the contractor hired to perform the cleanup, and references to “consultant” are intended to mean the Certified Industrial Hygienist or industrial hygienist that conducts verification testing and certifies that cleanup standards have been met.

What are the responsibilities of the property owner under the cleanup regulations?

In order to receive the immunity from health-based civil lawsuits afforded by House Bill 04-1182, the property owner is responsible for:

- Ensuring that the cleanup standards are met and the results certified by a Certified Industrial Hygienist or industrial hygienist as defined in Section 24-30-1402, and
- Providing a copy of the cleanup report to the "Governing Body," or
- In lieu of decontamination, the property owner may elect to demolish the property.

The property owner must also ensure that cleanup is conducted in accordance with existing Federal, State and local requirements. These include, but are not limited to, requirements for the proper handling of asbestos, lead-based paint, contaminated material and debris, and contents of septic systems.

What are the responsibilities of local agencies and/or governing bodies with regard to the meth lab cleanup regulations?

Section 25-18.5-101(2) creates a liability shield for property owners who clean their properties up to the standards set in the cleanup regulations and provide a copy of the test results to the governing body. Although this section does not create an explicit requirement for the governing body to maintain records of the test results, such a requirement is implicit.

In addition, both HB 04-1182 and the cleanup regulations are public health laws of the State. Various provisions of Title 25 provide local governments and CDPHE the authority to enforce public health laws. See, e.g., §§ 25-1-109; 25-1-506(1); 25-1-508(1); 25-1-512; and 25-1-708, C.R.S.

What is law enforcement's role in notifying property owners of meth labs requiring cleanup?

In accordance with the Bill, the requirement to meet cleanup standards set forth in the cleanup regulations is established upon notification by law enforcement that chemicals, equipment, or supplies indicative of a meth lab are located on a property, or when a meth lab is otherwise discovered and the property owner has been given notice.

What about rental properties and personal property?

The owner of the real property is ultimately responsible for the cleanup of the property. However, the owner of the real property would only be responsible for decontaminating the tenant's personal property if it were to remain at the property. If the personal property is not removed by the tenant, the landlord may have to go through an eviction process in order to remove the personal property and dispose of it. The issue of how to handle contaminated personal property that is not owned by the real property owner is not addressed by the Bill, and is outside the scope of the cleanup regulations. Additional action by the legislature may be necessary to address this issue.

What about waste disposal? Is meth lab waste hazardous waste?

The chemical wastes produced by the process of manufacturing meth are often hazardous wastes. These chemicals are generally removed by law enforcement at the time of the meth lab seizure. There is an established process for the removal and disposal of these chemical wastes; therefore, these wastes are not the subject of the cleanup regulations. The cleanup regulations are intended to address residual contamination left behind after law enforcement and emergency responders have left the property, or

when the meth lab and associated chemicals and wastes are otherwise removed (e.g., by the meth cook). That being said, there are several types of wastes that may be generated during the cleanup process. These include:

- Debris and contaminated material that may be disposed of as solid waste with notification made to the landfill for meth lab contaminated material.
- Wash water from the decontamination process that may be disposed of as solid waste or to the sanitary sewer if allowed by the local POTW (discussed in the following question).
- Contents of septic tanks that may be disposed of as either hazardous or solid waste depending on waste characterization.

Contaminated Material or Debris

Based on best professional judgment and knowledge of meth labs, the Department has determined that material and debris that are contaminated with residual concentrations of meth lab chemicals and wastes can be managed as solid waste. This determination is based on the following analysis:

> In the case of contaminated material (waste) or debris from the cleanup of residual contamination at meth labs, the primary contaminants are typically meth and iodine, which are not hazardous wastes, and acids and/or bases, which could exhibit the hazardous waste characteristic of corrosivity (pH<2 or >12). When characterizing debris for disposal, the sample would include a composite of the material, so in the case of pH, even if the surface pH of the material is 1, a sample of the entire material could have a pH of 4, which would not be a hazardous waste. Likewise, in a situation where a solvent has been spilled on a porous material, the material would probably not exceed the Toxicity Characteristic (TC) limit and be considered a characteristic hazardous waste. This is similar to waste characterization of construction debris with lead-based paint. Although the paint itself may fail the TC test, a composite of the whole wall usually does not, so it is disposed of as solid waste.
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> It is highly unlikely that a situation would arise involving a listed hazardous waste, most of which are defined based on specific industrial processes. But in cases where a hazardous waste listing was attached to the chemical waste that may have been spilled on a surface, the concentration of that chemical in the debris would probably not be high enough to retain the listing. This determination is consistent with the "Contained-Out" determination procedure referenced below.

Contents of Septic Tanks

Liquid wastes removed from septic tanks would only be considered to be hazardous if they were to exhibit a characteristics of hazardous waste, or if they included a listed waste. The liquid would generally only exhibit the characteristics of hazardous waste if the liquid had a very high or low pH, or had a very high concentration of a solvent with a TC value, such as benzene. It is even more unlikely that the liquid would exhibit the characteristics of ignitability or reactivity. Since the waste determination would be based on the entire contents of the tank, it is unlikely that the contents would exhibit a hazardous waste characteristic if the volume of meth waste in the tank were small in comparison to the volume of common household waste. Similarly, if the contents of the tank included a listed hazardous waste, it is likely that the volume of the listed waste would be small in comparison to the volume of household waste, resulting in a relatively low concentration of the chemical that was the basis of the listing. It may then be possible to make a "Contained-Out" determination to remove the listing from the septic tank contents, in accordance with the "Contained-Out Determination Procedure for Environmental Media Contaminated with RCRA Hazardous Waste", provided as Appendix 2 in the Department's "Corrective Action Guidance Document," http://www.cdphe.state.co.us/hm/caguidance.pdf.

There are existing State and local requirements for maintaining septic systems and handling wastes from septic systems. Likewise, there are existing regulations that establish the disposal requirements for solid and hazardous waste. The cleanup regulations do not create a new regulatory mechanism to address septic systems. Language included in the cleanup regulations is intended to aide property owners, cleanup contractors and consultants in ensuring that they comply with existing requirements.

How do you get approval to dispose of wash water to the sanitary sewer and how should this be documented?

Requirements of the local Publicly Owned Treatment Works (POTWs) may vary across the State. The cleanup regulations do not establish or incorporate requirements for disposal to the sanitary sewer, it simply puts property owners, cleanup contractors and consultants on notice that they must comply with local requirements if wastes are to be disposed of into the sanitary sewer. Enforcement of POTW requirements is the responsibility of the POTW, and the cleanup regulations do not establish an independent enforcement mechanism. If disposal of wash water is necessary at a cleanup site, contacting the local POTW should provide the needed answers. Usually, the POTW will be willing to write a brief letter recording their acceptance of the wash water.

Who will be trained and authorized to allow re-occupancy?

The Bill and the cleanup regulations do not address re-occupancy, only cleanup for the purpose of establishing an immunity from health-based civil lawsuits. Any requirements for, or decisions regarding re-occupancy would be based on independent local authority and would be made by the regulatory body with such authority.

Do the references in the cleanup regulations to the Colorado Hazardous Waste Regulations make these regulations fully applicable to property owners?

References to the Colorado Hazardous Waste Regulations (CHWR) do not create additional regulatory authority where it doesn't already exist. References to the CHWR, as well as the Colorado Solid Waste Regulations and to Water Quality Control Regulations are included in the cleanup regulations in order to put property owners, cleanup contractors and consultants on notice that they must conduct the cleanup in a manner that does not violate these existing regulations. The cleanup regulations do not create a new mechanism to enforce these existing regulations.

Who is responsible for conducting the Preliminary Assessment?

The Preliminary Assessment is to be conducted by the consultant that will certify that the cleanup standards have been met.

It seems like there should be some oversight of the cleanup contractors and consultants to prevent property owners from being taken advantage of.

The Bill did not create a mechanism for contractor or consultant oversight. The Bill did create a liability shield, but did not establish regulatory oversight or enforcement programs. The Bill attempted to create some protection for the property owner by requiring that an industrial hygienist certify the cleanup.

Cleanup contractors and consultants must comply with the detailed standards and procedures set forth in the cleanup regulations. These regulations may assist the property owner in determining whether a cleanup is being conducted in an appropriate manner, and whether the contractor or consultant is including all of the steps in the cleanup process, or is attempting to do more work than is necessary.

If cleanup is also required under independent local authority, the agency with this authority may have the ability to establish qualification and performance requirements for cleanup contractors and consultants.

If the cleanup contractor or consultant fails to comply with the cleanup regulations, is the property owner liable?

Section 25-18.5-103(1) establishes an affirmative obligation for the owner of property that was used to manufacture methamphetamine to either clean up the property to the standards established in the cleanup regulations, or demolish the property. As noted above, this obligation may be enforced by the State or by local government. Additionally, if the cleanup contractor or consultant fails to comply with the cleanup regulations, the immunity from civil lawsuits may not be established, and the property owner may be subject to health-based civil lawsuits.

The cleanup regulations specify that a negative air unit, equipped with HEPA filtration system, be used throughout the decontamination process to reduce airborne particulates. HEPA filtration would not protect against volatile organic compounds (VOCs), is this a concern?

Based on the results of testing conducted by the National Jewish Medical and Research Center, VOCs were not found at former meth lab properties at levels above what would commonly be detected at properties that had not been used as meth labs. The intended use of HEPA filtration is to capture any particulates, specifically meth, that may be stirred up during decontamination.

How do the cleanup regulation deal with shared ventilation systems in multi-unit properties?

The cleanup regulations require that common ventilation systems, common areas, and adjacent units be identified and documented as part of the Preliminary Assessment. If contamination of ventilation systems, common areas or adjacent units is identified, these areas must be decontaminated to meet the cleanup standard in order for the liability shield to apply.

If adjacent units are not owned by the owner of the unit where the meth lab was located, access would need to be obtained from that property owner in order to conduct testing and decontamination. In addition, local agencies may have authority to require testing and cleanup of adjacent units; however, this authority would be independent of the cleanup regulations.

Definitions

As defined in the meth lab regulations, “Certified Industrial Hygienist” means an individual who is certified by the American Board of Industrial Hygiene or its successor.

As defined in 24-30-1402, C.R.S, “Industrial Hygienist” means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university. The special studies and training of such individual shall be sufficient in the cognate sciences to provide the ability and competency to:

> (a) Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;
>
> (b) Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

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

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

(III) Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in this subsection (2.2).