

TRI-COUNTY HEALTH DEPARTMENT

REGULATION IDL-06 FOR THE CLEAN-UP OF ILLEGAL DRUG LABORATORIES

Adopted by the Board of Health of the
Tri-County Health Department on February 14, 2006
Amended by the Board of Health of the
Tri-County Health Department on April 5, 2011.
Effective April 6, 2011

Section 1. Definitions

As used herein, the definitions adopted in C.R.S. §25-18.5-101, relating to Illegal Drug Laboratories, and the definitions adopted by the Colorado State Board of Health in the Regulations Pertaining to the Clean-up of Methamphetamine Laboratories, 6 CCR 1014-3, are hereby adopted by reference (some of which are restated herein for convenience).

1.1 “Act” shall mean the Illegal Drug Laboratory Act, C.R.S. §25-18.5-101, et. seq.

1.2 “Board of Health” shall mean the Board of Health of the Tri-County Health Department.

1.3 “Building Department” shall refer to the Building Departments of the various cities and counties contained within Adams County, Arapahoe County and Douglas County, and where applicable, shall mean the Building Department with jurisdiction over a property with suspected or confirmed Contamination, including all of its authorized agents and employees.

1.4 “Certificate of Compliance” shall mean an official document prepared by TCHD that certifies that a property has met the clean-up levels required in the Act, the State Regulations and this Regulation IDL-06, and that all fees have been paid.

1.5 “City” or “County” shall refer to Adams County, Arapahoe County and Douglas County, and all of the cities and local jurisdictions within said counties, and where applicable, shall mean the specific City or County with jurisdiction over a property with suspected or confirmed Contamination.

1.6 “Closure Placard” shall mean a sign posted on a property, or any portion thereof, by the Building Department having jurisdiction over the property, and which indicates that no person may lawfully occupy or use the property, except for the purpose of decontamination or demolition.

1.7 “Consultant” shall mean an Industrial Hygienist as defined in C.R.S. §24-30-1402.

1.8 “Contamination” or “Contaminated” shall mean a property contaminated by the manufacturing, processing, cooking, disposing, use, or storing of Controlled Substances, and/or which contains the presence of chemical residues which may present an immediate or long-term threat to human health or the environment, as more fully set forth in Section 3.0 of the State Regulations.

1.9 “Contractor” shall mean one or more individuals or commercial entities hired to perform the clean-up and/or remediation of a Contaminated property in accordance with the State Regulations.

1.10 “Controlled Substances” shall mean those substances as defined by C.R.S. §18-18-102(5).

1.11 “Default Governing Body” If no agency or office is designated by the Cities or Counties to act as the Governing Body, then the Default Governing Body shall be TCHD, the applicable Building Department and the applicable Law Enforcement Agency with jurisdiction over a property with suspected or confirmed Contamination.

1.12 “Fit For Use” shall mean a property where contaminant levels do not exceed the clean-up levels specified by the State Regulations, either because of (1) a lack of Contamination, or (2) because a property has been decontaminated or demolished in accordance with the Act, State Regulations and this Regulation IDL-06, and that all applicable fees have been paid.

1.13 “Governing Body” shall mean the agency or office, other than the Default Governing Body, as defined herein, designated by the Cities or Counties to act as the Governing Body.

1.14 “Illegal Drug Laboratory” shall mean the areas where Controlled Substances have been manufactured, processed, cooked, disposed of, used, or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

1.15 “Initial Observation” shall mean a determination by a Law Enforcement Agency, Building Department or Consultant that a property may be Contaminated.

1.16 “Law Enforcement Agency” shall refer to the Law Enforcement Agencies of the various cities and counties contained within Adams County, Arapahoe County and Douglas County, and where applicable, shall mean the Law Enforcement Agency with jurisdiction over a property with suspected or confirmed Contamination, including all of its authorized agents and employees.

1.17 “Notice of Contamination” shall mean a notification letter sent by TCHD to a Property Owner, as well as the applicable Building Department and Law Enforcement Agency, stating that a property is suspected of being Contaminated based on an Initial Observation, and if Contaminated, must be demolished or decontaminated in accordance with the Act, the State Regulation and this Regulation IDL-06.

1.18 “personal property” shall mean any property that is not real property, including but not limited to: vehicles, clothing, appliances, furniture and electronics.

1.19 “Preliminary Assessment” shall mean a documented evaluation of a property with suspected Contamination by a Consultant to determine the current condition of Contamination, including the nature and extent of observable and detectable Contamination, chemical storage and disposal.

1.20 “property” shall mean anything that may be the subject of ownership, including, but not limited to, land, buildings, structures and vehicles.

1.21 “Property Owner”, for the purposes of real property, shall mean the person holding record fee title to the real property, and also shall mean the person holding title to a manufactured home. With respect to personal property, the term shall mean the person who lawfully owns such property.

1.22 “State Regulations” shall mean the Regulations Pertaining to the Clean-up of Methamphetamine Laboratories, 6 CCR 1014-3, adopted by the State Board of Health in the Colorado Department of Public Health and Environment.

1.23 “TCHD” shall mean the Tri-County Health Department, including all of its authorized agents and employees.

1.24 “Verification Testing” shall refer to the testing conducted by TCHD of a Contaminated property.

1.25 “Work Plan” shall mean a plan written by a Consultant or a Contractor that documents the actions to be taken to decontaminate a Contaminated property pursuant to the requirements of the State Regulations.

Section 2. Purpose

This Regulation IDL-06 will outline the regulatory function of TCHD as a member of the Default Governing Body. In addition to the foregoing, it is the intent of this Regulation IDL-06 to better define the various roles of TCHD and the Building Departments and Law Enforcement Agencies within Adams County, Arapahoe County and Douglas County, who make up the Default Governing Body.

Section 3. Authority

3.1 The Illegal Drug Laboratory Act, C.R.S. §25-18.5-101, et. seq., sets forth a regulatory structure for the clean-up of Illegal Drug Laboratories and other Contaminated property.

3.2 The State Board of Health in the Colorado Department of Public Health and Environment has adopted Regulations Pertaining to the Clean-up of Methamphetamine Laboratories, 6 CCR 1014-3 (pursuant to the authority granted in C.R.S. §25-18.5-102), which establishes the standards for the clean-up of Illegal Drug Laboratories and other Contaminated properties.

3.3 Pursuant to C.R.S. §25-18.5-105(2) and C.R.S. §25-1-507(d), the Board of Health of the Tri-County Health Department is authorized and empowered to adopt rules and regulations for the clean-up of Illegal Drug Laboratories and other Contaminated properties.

Section 4. Powers and duties

4.1 TCHD shall have the power and authority to administer this Regulation IDL-06, and may:

4.1.1 Make appropriate investigations, inspections, reviews and evaluations of properties with suspected or confirmed Contamination.

4.1.2 Maintain records regarding properties with suspected or confirmed Contamination within the jurisdiction of TCHD, and the subsequent clean-up of said properties.

4.1.3 Issue notices to Property Owners, Building Departments, Law Enforcement Agencies and other interested parties regarding properties with suspected or confirmed Contamination, and the clean-up, or lack thereof, of said properties in accordance with the Act, the State Regulations, and this Regulation IDL-06.

4.1.4 Provide the regulatory oversight of decontamination activities required by the Act, the State Regulations, and this Regulation IDL-06.

4.1.5 Issue Certificates of Compliance to Property Owners and Building Departments regarding the successful clean-up of Contaminated properties, and maintain copies of said Certificates of Compliance in the files of TCHD.

4.1.6 Charge fees as approved by the Board of Health for the regulatory oversight services provided by TCHD in accordance with this Regulation IDL-06.

4.1.7 Establish additional procedures for the clean-up of Contaminated properties not inconsistent with the Act, State Regulations or this Regulation IDL-06.

4.2 Because of the regulatory and enforcement power, authority and experience of Law Enforcement Agencies, TCHD will rely on Law Enforcement Agencies for the following enforcement and regulatory functions under the Act and State Regulations:

4.2.1 The discovery and initial inspection of Illegal Drug Laboratories, and other properties with suspected Contamination.

4.2.2 The restriction of access to Illegal Drug Laboratories, and other properties with suspected or confirmed Contamination.

4.2.3 The enforcement of the Act or State Regulations.

4.3 Because of the regulatory and enforcement power, authority and experience of Building Departments, TCHD will rely on Building Departments for the following enforcement and regulatory functions under the Act and State Regulations:

4.3.1 Ordering the closure of any property with suspected or confirmed Contamination, or ordering the closure of any Contaminated property that fails to meet any of the clean-up requirements of the Act, State Regulations or this Regulation IDL-06.

4.3.2 The placement of a Closure Placard on any property with suspected or confirmed Contamination.

4.3.3 The regulation and/or restriction of access to any property with suspected or confirmed Contamination.

4.3.4 The encumbrance of title to a Contaminated property, the condemnation of a Contaminated property, or the revocation of a Certificate of Occupancy for a Contaminated property.

4.3.5 The enforcement of the Act, State Regulations or this Regulation IDL-06.

Section 5. Contamination

5.1 A Contaminated property is a public health nuisance until it has been restored to a condition that is Fit For Use in accordance with the standards of the State Regulations as described in C.R.S. §25-18.5-103(1).

5.2 A Property Owner may be required by a Building Department to restore a Contaminated property to a condition that is Fit For Use in order to obtain a Certificate of Occupancy for the property or remove an encumbrance to the title of the Property.

5.3 A Property Owner is required by the Act and State Regulations to restore a Contaminated property to a condition that is Fit For Use by either decontamination or demolition, at the option of the Property Owner, in order to obtain immunity for future alleged health-based civil actions as described in C.R.S. §25-18.5-103(2).

5.4 In order to obtain a Certificate of Compliance from TCHD, certifying that a property is Fit For Use, a Property Owner shall comply with the requirements of this Regulation IDL-06.

5.5 The processing by a Law Enforcement Agency of an Illegal Drug Laboratory or other property with suspected Contamination does not constitute decontamination.

Section 6. Notice

6.1 No action shall be taken by TCHD under this Regulation IDL-06 until the following have occurred:

- a. TCHD has been notified by a Law Enforcement Agency, a Building Department, a Property Owner or a third party that a property may be Contaminated; and
- b. The potentially Contaminated property has been investigated and processed, an Initial Observation has been made and TCHD has received notice thereof.

In the event TCHD is notified of a property with suspected Contamination by a Property Owner or third party, TCHD will then notify the applicable Law Enforcement Agency and Building Department of such fact.

6.2 Notice of Contamination

After the receipt of notice of a property with suspected Contamination by a Law Enforcement Agency, Building Department, Property Owner or third party, and after an Initial Observation has been made, TCHD will then send a Notice of Contamination to the following:

- a. the Property Owner (by certified mail, return receipt requested);
- b. the applicable Building Department; and
- c. the applicable Law Enforcement Agency.

The Notice of Contamination will state that the property is suspected of being Contaminated based on an Initial Observation, and will require the Property Owner to

comply with this Regulation IDL-06, the State Regulations and C.R.S. §25-18.5-103(1). The Notice of Contamination will describe the clean-up procedure for a Contaminated property.

6.3 Notice Encouraged

6.3.1 Law Enforcement Agencies and Building Departments are encouraged to report to TCHD the presence of Illegal Drug Laboratories and other properties suspected of being Contaminated.

6.3.2 If a Property Owner knows, or reasonably suspects, that his or her property has been Contaminated, the Property Owner is encouraged to report the existence of the suspected Contamination to TCHD.

6.3.3 Any person who knows, or reasonably suspects, that a property has been Contaminated is encouraged to file a report with TCHD or the applicable Law Enforcement Agency, of the existence of the suspected Contamination.

6.4 Notice to Personal Property Owner

It shall be the responsibility of the Property Owner of real property to notify any Property Owners of Contaminated personal property that said personal property has been Contaminated. TCHD will not notify a Property Owner of personal property suspected of Contamination.

6.5 Notice to Vehicle Owner

If TCHD is notified of a vehicle suspected of being Contaminated, TCHD may, at its discretion, notify the registered owner or owners of said vehicle by certified mail.

6.6 Notice to Third Parties

TCHD may, in its discretion, notify affected third parties of a property with suspected or confirmed Contamination, including, but not limited to, homeowners associations and property managers.

Section 7. Property Closure

7.1 It shall be the responsibility of the Building Department where the property is located to post a Closure Placard when an Initial Observation has been made, and close the property suspected of being Contaminated.

7.2 The closure of a property suspected of being Contaminated, and the placement of a Closure Placard, shall be regulated by each Building Department where such property is located.

7.3 Any person entering a property posted with a Closure Placard shall wear appropriate personal protective equipment to protect himself or herself from inhalation and dermal Contamination.

7.3.1 Any person entering a property posted with a Closure Placard does so at his/her own risk. TCHD takes no responsibility for any injury incurred at any time by any person entering a property posted with a Closure Placard.

7.3.2 TCHD takes no responsibility for securing a property posted with a Closure Placard.

7.4 The applicable Building Department or Law Enforcement Agency may take additional measures to ensure that access to a property with suspected or confirmed Contamination is secured, including, but not limited to, requiring perimeter fencing.

Section 8. Demolition

8.1 A Property Owner who chooses to cause his or her property to be Fit For Use by demolition shall complete such demolition pursuant to the demolition regulations of the applicable Building Department, and shall comply with the requirements of the Act and State Regulations.

8.2 The demolition of a Contaminated property shall be completed by the Property Owner within the time period set by the Building Department.

8.3 The oversight of the demolition of a Contaminated property by TCHD shall be limited, except that technical expertise of the disposal of Contaminated personal property and demolition debris may be requested by a Property Owner or a Building Department for the applicable fee, to be paid by the Property Owner, set forth in the Fee Schedule described in Section 06.

8.4 A Property Owner may request a Certificate of Compliance certifying that the property was demolished in accordance with the requirements of the Act and State Regulations for the applicable fee set forth in the Fee Schedule described in Section 06.

Section 9. Personal Property

9.1 No personal property may be removed from a Contaminated structure or vehicle unless it is thereafter promptly disposed of, or appropriately decontaminated, in accordance with the State Regulations.

9.2 The oversight of the decontamination of Contaminated personal property by TCHD shall be limited, except that technical expertise of the decontamination of personal

property may be requested by a Property Owner for the applicable fee, to be paid by the Property Owner, set forth in the Fee Schedule described in Section 11.

9.3 A Property Owner may request a Certificate of Compliance certifying that personal property was decontaminated in accordance with the requirements of the Act and State Regulations for the applicable fee set forth in the Fee Schedule described in Section 11.

Section 10. Real Property – Decontamination Procedure

If a Property Owner chooses to decontaminate real property with suspected or confirmed Contamination, the following procedure shall be followed:

10.1 The Property Owner shall obtain a Preliminary Assessment prepared by a Consultant in accordance with the State Regulations. The Preliminary Assessment shall be used by TCHD to determine if the property is Fit For Use.

10.1.1 If the Preliminary Assessment reasonably indicates that contaminant levels do not exceed the clean-up levels specified in the State Regulations, TCHD shall designate the property Fit For Use, and issue a Certificate of Compliance to the Property Owner and Building Department. This Certificate of Compliance shall be kept on file at TCHD for a minimum period of ten (10) years, or as directed by the State Archivist.

10.1.1.1 TCHD may, in its discretion, inspect the property and/or require additional Verification Testing prior to issuing a Certificate of Compliance for a property with a favorable Preliminary Assessment.

10.1.2 If the Preliminary Assessment reasonably indicates that contaminant levels do exceed the clean-up levels specified in the State Regulations, TCHD shall notify the Property Owner that a Work Plan must be prepared and submitted to TCHD by the Property Owner's Consultant or Contractor in accordance with the State Regulations.

10.2 Work Plan

When notified of the requirement for a Work Plan, the Property Owner shall submit the Work Plan to TCHD for TCHD's approval. Once the Work Plan has been reviewed and approved by TCHD, with any required modifications by TCHD, the Property Owner may commence decontamination of the property pursuant to the terms of the Work Plan.

10.3 Final Report

Once a property has been decontaminated pursuant to the provisions of the Work Plan, a Final Report, prepared by the Consultant, shall be submitted by the Property Owner to

TCHD. The Final Report shall be prepared in accordance with the requirements of the State Regulations. TCHD shall review the Final Report to determine if the property complies with the clean-up standards in the State Regulations, and is therefore Fit For Use. TCHD shall maintain the Final Report for a minimum period of ten (10) years, or as directed by the State Archivist.

10.3.1 TCHD may, in its discretion, inspect the property and/or conduct Verification Testing prior to issuing a Certificate of Compliance for a property with a favorable Final Report.

10.3.2 TCHD may, in its discretion, require that additional sampling and/or decontamination be performed by the Consultant and/or Contractor.

10.3.3 TCHD shall determine that a property is not Fit For Use if the property has not been decontaminated in accordance with this Regulation IDL-06 and the requirements of the State Regulations, or if the applicable fees have not been paid.

10.3.4 If TCHD determines that a property is not Fit For Use after completion of the Final Report, the Property Owner may do additional clean-up work and have the Consultant submit a re-evaluation in order to come into compliance with the applicable requirements. TCHD shall then re-evaluate its determination.

10.3.5 It is the intention of TCHD that every property be decontaminated to the level required by the State Regulations, and TCHD shall work with each Property Owner to achieve that end.

10.4 Certificate of Compliance

If TCHD determines that a property is Fit For Use and has been decontaminated in accordance with the Act, the State Regulations and this Regulation IDL-06, and that all fees have been paid, then in that event, TCHD shall issue a Certificate of Compliance to the Property Owner and Building Department.

10.4.1 Additional copies of the Certificate of Compliance may be requested for the applicable fee set forth in the Fee Schedule described in Section 11.

10.4.2 TCHD shall maintain a copy of each Certificate of Compliance in its files for a minimum period of ten (10) years, or as directed by the State Archivist.

10.5 Local, State and Federal Regulations

A determination by TCHD that a property meets the requirements of the State Regulations and this Regulation IDL-06 does not supersede the regulatory authority of other local, State or Federal Agencies which may also have required closure of the property.

Section 11. Fees and Costs

The Board of Health has promulgated a Fee Schedule For Environmental Health Services, which sets forth the applicable fee for the regulatory oversight services provided by TCHD. The Fee Schedule For Environmental Health Services may be amended from time to time by the Board of Health.

Section 12. Enforcement

12.1 TCHD shall not issue a Certificate of Compliance to a Property Owner for a Contaminated property unless it has been demolished or decontaminated in accordance with the Act, the State Regulations and this Regulation IDL-06.

12.2 TCHD shall rely on each Building Department to follow its own enforcement procedure for any Property Owner who refuses to decontaminate a property in accordance with the Act, the State Regulations and this Regulation IDL-06.

Section 13. Opt Out Election

Pursuant to the Act, specifically C.R.S. §25-18.5-101(2.5) and the State Regulations, this Regulation IDL-06 shall govern the clean-up of all Contaminated properties located in both incorporated and unincorporated areas of Adams County, Arapahoe County and Douglas County, unless a City or County has internal statutes and/or procedures that supercede or “opt-out” of all or any portion of this Regulation IDL-06. Any City or County may elect to appoint a “Governing Body” other than the Default Governing Body, as provided in C.R.S. §25-18.5-102(2.5). Notwithstanding the foregoing, no City or County shall appoint TCHD as the sole Governing Body, or require TCHD to take any actions other than those authorized by this Regulation IDL-06.