

# **Meth Labs: An Environmental Bad Dream for Property Owners, Tenants, and Neighbors**

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We all get urgent phone calls from clients late in the day with problems or surprises that need immediate attention; some we can resolve quickly and others may just confound us because of their seeming novelty. Few, for example, probably have had any experience dealing with a meth lab or dump site. So when a client calls because they just found evidence of a clandestine drug lab on a property the client is interested in buying and developing, the attorney's initial response is to start researching. What you'll find is that meth labs and dump sites are anywhere and everywhere — in houses, apartments, trailers, motel units, and even cars — and they present significant safety issues and costly cleanup problems. While tough federal and state restrictions on the access and sale of over-the-counter cold medications, which are used to manufacture illegal methamphetamine, have resulted in a decline of the discoveries of clandestine home labs and dump sites, the numbers still are significant enough to pose serious legal and environmental problems for some time to come.

## **Epidemic of Incidents**

Between 2001 and October 2006, the Washington Department of Ecology listed more than 7,500 meth-lab or meth-dump sites.<sup>1</sup> While one-half to two-thirds of the reported meth-lab incidents were in King, Pierce, Snohomish, and Thurston counties, none of Washington's counties has been immune. Hundreds of labs and dump sites also have been found in Spokane, Benton, Clark, Whatcom, and Yakima counties.<sup>2</sup> Nor is Washington alone in the proliferation of meth labs. Every state has reported multiple incidents. Federal Drug Enforcement Administration statistics listed more than 12,000 sites nationwide in 2005, and between 16,000 and 17,000 each year between 2002 and 2004.<sup>3</sup>

Most meth labs have been the small-time variety — some law enforcement officials call them “Beavis and Butthead” labs — manufacturing a few ounces per day. Because of the highly toxic chemicals used in the process, even a small operation can present a major impact for a property owner and neighbors. The chemicals and their vapors can permeate walls, flooring, furniture, and toys. Cleanup can be expensive and, until clean, the property is rendered unusable. Even after cleanup, the long-term effects from a meth-lab operation are still uncertain. Furthermore, every pound of product produced by a methamphetamine lab results in five to six times as much hazardous waste, which frequently is flushed down toilets, dumped in streams, or deposited on

undeveloped property, and presents a potential environmental nightmare reaching far beyond the immediate confines of the lab.

The problem arises from the simplicity of the manufacturing method and the easy availability of the chemicals used in production. The process involves cooking everyday cold medicine containing pseudoephedrine with combinations of chemicals such as ether, denatured alcohol, lantern fuel, acetone, paint thinner, kerosene, battery acid, lithium, brake cleaner, iodine, red phosphorus, anhydrous ammonia, or lye. It does not take a trained chemist to make methamphetamine, and the cooks rarely take any safety precautions. Consequently, fire or explosions are common ways that a meth lab is discovered. For example, residents of an Arlington apartment complex had to be evacuated after a meth lab in one of the units exploded, spreading contamination throughout the building.<sup>4</sup> One of the tenants apparently had been venting his lab into the attic of the apartments.<sup>5</sup>

## **State Procedures**

When a methamphetamine lab is discovered, whether by happenstance, suspicious activity, fire, or explosion, the first responders often are law enforcement or firefighters who are confronted with an extremely hazardous situation, necessitating full-body protective gear and respirators. After the criminal-investigation phase is completed at a site, the decontamination process begins. Washington law delegates oversight to the local health departments, assisted by the Washington Department of Ecology.<sup>6</sup> The health department is required to post a written warning on the premises within one working day of notification of the contamination.<sup>7</sup> The warning must “inform the potential occupants that hazardous chemicals may exist on, or have been removed from the premises and that entry is unsafe.”<sup>8</sup>

Within 14 days of the health department receiving notification, it must inspect the property to determine whether the site is contaminated.<sup>9</sup> The inspection evaluates the length of time the property was used for the manufacture or storage of illegal drugs, the size of the site, what chemical process was used, what chemicals were removed, the location of the manufacturing or storage site in relation to living spaces of the property, the presence of chemical stains, evidence of releases or spillage of hazardous chemicals on the property, and whether there is any glassware or other paraphernalia associated with the manufacture of illegal drugs on site.<sup>10</sup> The health departments can coordinate with the Department of Ecology, which has a Spill Response Program that dispatches regional response teams available around the clock to provide response and disposal services.<sup>11</sup>

Once a health department makes a determination of contamination, the property is posted prohibiting the use of all or portions of the property.<sup>12</sup> The health department must notify the state health department verbally within one working day of the determination and in writing within 10 working days.<sup>13</sup> The contamination determination also must be served on all known occupants of the property and persons having a recorded right, title, estate, lien, or interest in the

property.<sup>14</sup> The health-department determination must contain a description of the department's intended course of action, including measures the property owner must take to have the property decontaminated.<sup>15</sup> A property owner on the receiving end of such an order has the right to request a hearing before the local health officer or local health board, but the request must be made within 10 days of service of the order and a hearing held within 20 to 30 days after service of the order.<sup>16</sup> In any such hearing, the property owner bears the burden of showing that the property is decontaminated and meets the standards for decontamination.<sup>17</sup> If the property is not contaminated, the health department is required to document its findings.<sup>18</sup>

Washington law requires the use of a contractor authorized to clean up a meth lab and approval of the work plan by the local health officer.<sup>19</sup> The property owner is responsible for the costs of any property testing and decontamination.<sup>20</sup> Cleanup of a 1,200-square-foot home averages \$6,500,<sup>21</sup> the bulk of which may have to come from the owner's pocket, since many homeowners' insurance policies do not cover meth-lab decontamination. Although the Washington Department of Ecology has a grant program for investigation and cleanup assistance, the funds are available only to state and local governments to help defray their costs.<sup>22</sup>

After completing cleanup, the property owner is responsible for petitioning the local health officer to review the cleanup records and declare the property decontaminated.<sup>23</sup> The health department must perform the review within 10 days after receipt of a request and may require the property owner to perform more extensive testing and assessment.<sup>24</sup> If the health department determines the site is decontaminated according to standards, then a release for reuse is recorded and a copy sent to the property owner, state department of health, and local building or code-enforcement department.<sup>25</sup>

### **How Clean Is Clean?**

Washington is one of only a few states to set specific decontamination standards in statute, regulation, or guideline.<sup>26</sup> The existence of a cleanup standard, however, does not mean there is general agreement on how clean a site needs to be in order for it to be considered habitable. Washington's 0.1 microgram per 100 square centimeters is one of two generally accepted standards.<sup>27</sup> Other states, such as Oregon, have a more restrictive standard of 0.5 micrograms per square foot, but there is no agreement whether either standard or perhaps some other is more protective of human health and the environment.

Congress passed legislation, the Methamphetamine Remediation Research Act of 2006, that would establish a federal research program and a program to develop voluntary guidelines to help states clean up and deal with the environmental consequences of meth labs.<sup>28</sup> Testimony at a House of Representatives committee hearing on the measure described a wide spectrum of clean-up and remediation procedures among the states — from simply directing that a property be aired out for a few days and scrubbing with ordinary household cleaning products, to detailed

procedures for preliminary assessment, decontamination, and confirmation sampling.<sup>29</sup> Washington falls towards the latter end, but the testimony on the bill indicated that the core issue remains how clean is clean for reoccupation purposes.<sup>30</sup> Dr. John Martyny, a senior industrial hygienist in the Division of Environmental and Occupational Health Sciences at the National Jewish Medical and Research Center, testified that it is well understood meth contaminates virtually every area in and around a lab, but no one knows how long it persists, what effect activities such as vacuuming might have, and what cleanup methods work best.<sup>31</sup> The measure would give the federal Environmental Protection Agency \$3 million over the next two fiscal years to develop voluntary decontamination guidelines for states to use.<sup>32</sup>

## **Legal Liability**

In addition to a property owner's obligation to pay for assessment and cleanup, a host of other legal issues arise when a meth lab is found on a property. Federal and state environmental laws may come into play, as well as statutory and common-law nuisance, premises liability, landlord-tenant, tort, and contract.

The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)<sup>33</sup> and the Washington Model Toxics Control Act (MTCA)<sup>34</sup> both impose strict joint and several liability on the owner or operator of a facility from which a release of a hazardous substance occurs. Many of the chemicals used in meth production fall within the definition of a "hazardous substance" under CERCLA and MTCA. A "release" for purposes of liability under both statutes can come from the actual cooking process, from the disposal of the wastes, or from improper storage and handling of the chemicals. Finally, almost any place where meth is made can constitute a "facility" for CERCLA and MTCA purposes, but particularly a home, apartment, or motel room would fall within this definition.

Since CERCLA and MTCA liability is based on status, such as ownership, rather than causation, a property owner can face strict liability for 100 percent of the costs to clean up a meth lab. This has particularly onerous consequences for owners of rental property, where half of the residential drug labs are found, if the owner is not aware that a drug lab is operating on the site.<sup>35</sup>

In addition to the environmental statutes, liability also can arise under statutory or common-law nuisance and negligence.<sup>36</sup> Either a local government or neighbors of a meth lab can bring an action to have a property declared a nuisance, seek an injunction, require abatement, and collect damages.<sup>37</sup>

Where an apartment building or mobile-home park is affected by a meth lab, tenants who are dispossessed by an order to decontaminate could have claims against the landlord under the landlord-tenant statutes, including claims for termination of the lease and refunds for any diminished rental value of the property.<sup>38</sup> Furthermore, tenants might have claims for negligence

against a landlord for other damages they may incur, such as health impacts arising from exposure to meth-lab chemicals.

A meth lab can also present a major complication for a real-estate transaction. Washington law requires sellers of residential property to disclose certain environmental problems, such as the presence of underground storage tanks,<sup>39</sup> but Washington does not require specific disclosure that a meth lab was found at a property. Oregon, by contrast, has a statute that prohibits transfers of property where illegal drugs were manufactured unless the site was determined fit for use or, if not fit for use, the seller has made full written disclosure to the prospective purchaser.<sup>40</sup> Because of the proliferation of meth labs, prudence suggests including a search for evidence of meth-lab activity as part of the pre-closing due diligence, including checking the available databases for lists of meth-lab addresses and having environmental site assessors look for evidence of any such activities during a Phase I inspection.<sup>41</sup> The presence of a former lab also can have an adverse impact on the value of the property, both as a result of the actual contamination and from the stigma arising from perceptions of impairment.

## Conclusion

The meth-lab epidemic, while slowing somewhat, shows little sign of going away and every indication that it will continue presenting environmental problems for property owners, tenants, and neighbors. Landlords can protect themselves, their tenants, and their property by being vigilant in the rental process — making sure prospective tenants complete an application; doing a full background check of a tenant’s rental and employment history, credit, and criminal records; meeting every adult who will be living on the premises; and being aware of a renter’s appearance and behavior.<sup>42</sup> While this is time-consuming and expensive, it may save a great deal of headache and legal expense later. However, even the best of precautions cannot prevent every meth lab. While no one asks for a meth lab on their property or next door, when a meth lab is discovered, the mechanisms of the law in Washington are intended to ensure that the property is returned quickly to productive use.

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## NOTES

1. Washington Department of Ecology, Environmental Report Tracking System, Publ. Nos. 06-08-001, 05-08-010 and [www.ecy.wa.gov/programs/spills/hottopics/druglabs/yearly%20Summary04.pdf](http://www.ecy.wa.gov/programs/spills/hottopics/druglabs/yearly%20Summary04.pdf).
2. Id.
3. [http://www.dea.gov/concern/map\\_lab\\_seizures.html](http://www.dea.gov/concern/map_lab_seizures.html).
4. Seattle Times, December 22, 2004.
5. Id.

6. RCW 64.44.020; WAC 246-205-510.
7. Id.; WAC 246-2055-520(1).
8. Id.
9. Id.; WAC 246-205-520(2) & -530.
10. Id.; WAC 246-205-530(1) & (2).
11. WAC 246-205-530(3); Ecology Spill Scene, WDOE Pub. 03-08-103, at p. 3 (Fall/Winter 2003) (available at [www.ecy.wa.gov/pubs/0308013.pdf](http://www.ecy.wa.gov/pubs/0308013.pdf)).
12. WAC 246-205-540.
13. WAC 246-205-550.
14. WAC 246-205-560.
15. WAC 246-205-560(4).
16. WAC 246-205-560(6).
17. WAC 246-205-560(6)(d).
18. WAC 246-205-540(3).
19. WAC 246-205-570.
20. Id.
21. Washington Department of Health, Office of Environmental Health and Safety, "Information for Landlords and Property Owners about Clandestine Drug Labs." Available at [www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm](http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm).
22. The Washington Model Toxics Control Act, RCW 70.105D.070, authorizes grant funds to, among other things, "assist local government in the assessment and cleanup of sites of methamphetamine production activities, but not to be used for the initial containment of such sites." Grants cover a wide range of costs for activities delegated to the health departments, including inspections, assessment, contractor fees for public sites, disposal fees, equipment, posting, notification, and review. Grants are not available for agencies' initial site containment, legal fees, destruction or landfill materials, or administrative proceedings. See, Ecology Solid Waste & Financial Assistance Program, Remedial Action Program Guidelines, Pub. No. 99-505, at 26-29 (June 2003).
23. WAC 246-205-570(5)(d).
24. WAC 246-205-580.
25. WAC 246-205-590.
26. RCW 64.44.070(2); WAC 246-205-541.
27. WAC 246-205-580.
28. H.R. 798.
29. Statement of Sherry L. Green, Hearing Before House Committee on Science, at 25 (March 3, 2005).
30. Id.
31. Testimony of Dr. John W. Martyny, Hearing Before House Committee on Science, at 32 (March 3, 2005).
32. H.R. 798, Section 3.
33. 42 U.S.C. § 9601, et seq.
34. RCW 70.105D
35. Division of Environmental Health, Office of Environmental Health and Safety, Landlord Tips. Available at [www.doh.wa.gov/ehp/ts/CDL/-landlordtips.htm](http://www.doh.wa.gov/ehp/ts/CDL/-landlordtips.htm).
36. RCW 7.48.010, et seq.
37. Id.; see also, RCW 7.43.010, et seq. (drug nuisances).

38. RCW 59.18.090 (residential tenant’s remedies for landlord’s failure to remedy defective condition); RCW 59.20.220 (manufactured/mobile home tenant remedies).
39. RCW 64.06.020 (residential real-property transfer disclosure statement).
40. ORS 453.867 & .870 (transfers without disclosure are voidable at the option of the purchaser).
41. King County, for example, maintains a list of meth-lab addresses with their cleanup status (see, [www.metrokc.gov/health/methlabs/meth-cleanup-reports.pdf](http://www.metrokc.gov/health/methlabs/meth-cleanup-reports.pdf)). Pierce County also maintains a web-accessible database at [www.tpchd.org/files/library/a2174ff2f8263882.pdf](http://www.tpchd.org/files/library/a2174ff2f8263882.pdf).
42. Washington Department of Health, Office of Environmental Health and Safety, “Information for Landlord and Property Owners about Clandestine Drug Labs.” Available at [www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm](http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm).