New Mexico’s Clandestine Drug Lab Cleanup Rule

Hazardous Waste Bureau
New Mexico Environment Department
Outline

• New Mexico’s CDL Cleanup Rule
• The Cleanup Process
• How the Proposed Rule Compares with the City of Albuquerque’s Ordinance
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Scope of Rule

- Found at 20.4.5.2 in proposed rule
- Law Enforcement Agencies (LEA) that discover Clandestine Drug Labs (CDL)
- Owners of properties with CDLs
- Persons who clean up CDLs
Objective

- Found at 20.4.5.6 of the proposed rule
- Residual contamination is a serious threat
- Remediation is essential to protect human health and the environment
- Residual contamination affects a considerable number of members of the public
- Crucial elements of the rule
  - Notice of contamination
  - Occupancy prohibition until cleanup complete
  - Cleanup standards
  - Disclosure
Definitions

- Found at 20.4.5.7 of the proposed rule
- “Clandestine Drug Laboratory” – focused on unlawful manufacture of controlled substances
- “Property” – real property or a vehicle
- “Remediation Firm” – performs remediation or preliminary assessments
- “Residual Contamination” – contamination left after bulk chemicals and lab equipment is removed
- “Residually Contaminated Portion of the Property”
  - House, mobile home, or vehicle – entire property
  - Detached shed or garage – just that portion
  - Hotel or motel room – just that room and affected adjacent rooms
Notice of Contamination

- Found at 20.4.5.200 of the proposed rule
- Upon identification of CDL by LEA
  - Post notice
  - Deliver copy of notice to owner
  - Document proof of posting (notice delivery to owner sufficient)
  - Notify NMED
- Upon notification of CDL, NMED must send copy to owner if not done by LEA
- Unsuspecting public must be aware of the potential for residual contamination in their midst
Contents of Notice

• Found at 20.4.5.201 of the proposed rule
  – English and Spanish
  – “WARNING”
  – Location of CDL
  – LEA information
  – Statement that site may still be dangerous
  – Statement that no one other than owner may enter premises
  – Statement that the notice shall not be disturbed
  – Statement that the owner shall cleanup up the property
  – Statement that owner must disclose to any transferees
  – Information about penalties for noncompliance
  – NMED contact information
• Owners and the unsuspecting public must know of the hazards of CDLs and the responsibilities of the owner
Removing the Notice

• Found at 20.4.5.202 of the proposed rule
• Owner responsible for providing proof of cleanup
• Owner may remove notice after NMED approves cleanup
• Important provision to allow owners to timely “move on” after a cleanup is complete
Use of the Contaminated Property

- Found at 20.4.5.300 of the proposed rule
- Owners may not sell or transfer unless
  - Notice to transferee that property had a CDL
  - Acknowledgement of receipt of notice
  - Copy to NMED
- Anyone other than owner, agent, NMED, LEA, or cleanup firm may not enter, occupy, or use property until cleanup is complete
- Crucial to ensure children, families, and other members of the public do not come in contact with contaminated properties and suffer ill effects
- Restrictions removed after NMED vacates notice
Clandestine Drug Lab Cleanup Process

Discovery

LEA Notifies NMED

7 days

Add Site To Website

NMED Notifies Owner

7 days

30 days

Retain Firm to Conduct Preliminary Assessment

Complete Preliminary Assessment: Is Remediation Required?

Yes

14 days

No

7 days

Retain Firm to Conduct Remediation

Remediation Complete

Retain Firm to Conduct Post-Remediation Assessment

Post-Remediation Assessment

Meets Clearance Levels?

Yes

Submit Report to NMED

Vacate Notice

Remove Notice

Notate Website

No

90 days after owner notified

NMED Reviews Report: Approve?

Yes

30 days

No

7 days

21 days after owner notified

7 days

Law Enforcement

NMED

Owner

Remediation Firm

7 days

21 days after owner notified

30 days

7 days

10 days

90 days after owner notified

7 days

10 days

90 days after owner notified

7 days
Website

- Found at 20.4.5.400 of the proposed rule
- NMED shall maintain a list of CDL sites
- Consistent with other lists of contaminated sites NMED maintains
- Appropriate counterbalance to DEA website
  - NMED will note site cleaned up (changed provision)
- Crucial information to future occupants and state licensure authorities
### National Clandestine Laboratory Register - New Mexico

**COUNTY** | **CITY** | **ADDRESS** | **SEIZURE DATE**
---|---|---|---
BERNALILLO | ALBUQUERQUE | 1037 SE DAKOTA | 1/4/2004
BERNALILLO | ALBUQUERQUE | 13004 NE MOUNTAIN VIEW | 1/10/2004
BERNALILLO | ALBUQUERQUE | 2309 NE ALGODONES | 1/26/2004
BERNALILLO | ALBUQUERQUE | 602 SW 14TH | 2/9/2004
BERNALILLO | ALBUQUERQUE | 2421 NE ZENA LONA | 2/28/2004
BERNALILLO | ALBUQUERQUE | 605 NW SAN CLEMENTE | 3/18/2004
BERNALILLO | ALBUQUERQUE | 1613 NE CEDAR RIDGE | 4/19/2004
BERNALILLO | ALBUQUERQUE | 12337 NE EASTRIDGE | 4/20/2004
BERNALILLO | ALBUQUERQUE | 6066 STABAUGH RD | 4/21/2004
CHAVES | ROSWELL | 717 E HENDRICKS | 3/2/2004
CHAVES | ROSWELL | 300 W LINDA VISTA | 3/28/2004
CURRY | CLOVIS | 624 W AVE | 7/27/2004
DONA ANA | CHAPARRAL | 302 COLES AVE | 8/12/2004
DONA ANA | CHAPARRAL | 329 PALOMA BLANCA | 11/23/2004
EDDY | CARLSBAD | 1705 QUAY | 6/26/2004
GRANT | SILVER CITY | 2080 MEMORY LN Apt C-10 | 6/4/2004
LEA | LOVINGTON | 501 TYLER | 6/9/2004
LEA | HOBBES | 200 W MIDWEST | 3/3/2005
OTERO | ALAMOGordo | 13 SAGE | 2/17/2005
OTERO | TULAROSA | 30 WHITE MOUNTAIN RD | 7/12/2006
RIO ARRIBA | LLAVES | 1721 COUNTY RD Apt 41 | 10/8/2004
ROOSEVELT | PORTALES | 1683 S ROOSEVELT RD 7 RD | 3/23/2005
Owners Must Clean Up

- Found at 20.4.5.500 of the proposed rule
- Strict owner liability for cleanup
- Preliminary assessment within 7 days
  - Notify NMED of results
  - Owner may bypass this step
- Owner must retain remediation firm within 14 days of above step
- Remediation complete within 60 days
- Post-remediation assessment required
- Provision drives cleanups that are effective, verifiable, and timely, so property can be used without restrictions
- Changed provisions clarify timeframes and process
Remediation Standards

- Found at 20.4.5.600 of the proposed rule
- Remediation firms, must either
  - Have certified industrial hygienist
  - Be registered or certified elsewhere
  - May be rejected
- Provision ensures consumers (i.e., owners) are protected, and work is conducted in a methodical and scientifically sound manner
Clandestine Drug Lab Cleanup Process

Discovery

LEA Notifies NMED

Add Site To Website

NMED Notifies Owner

Retain Firm to Conduct Preliminary Assessment

Complete Preliminary Assessment: Is Remediation Required?

Yes

14 days

No

7 days

Remediation Complete

Retain Firm to Conduct Remediation

 NMED Reviews Report: Approve?

Yes

30 days

No

90 days after owner notified

Retain Firm to Conduct Post-Remediation Assessment

Post-Remediation Assessment

Meets Clearance Levels?

Yes

Submit Report to NMED

7 days

No

10 days

Vacate Notice

Remove Notice

Notate Website

Owner

Law Enforcement

Remediation Firm

7 days

21 days after owner notified

30 days

14 days

90 days after owner notified

7 days

10 days

30 days

7 days
Remediation Standards

• Preliminary assessment
  – Review of available information (e.g., from LEA)
  – Physical inspection
  – Sampling and testing
  – Work plan for remediation (if necessary)
  – Certification (if remediation is not necessary provided to NMED)

• Crucial provision would eliminate unnecessary work and expense; some CDLs won’t need cleanup
Remediation Standards

• Remediation of Residual Contamination
• Interior
  – Ventilation for volatile organic compounds (VOCs)
  – Decontaminate or dispose of contents
  – Decontaminate heavy use areas
  – Decontaminate HVAC systems and ductwork
  – Remove surfaces that can’t be cleaned
• Provision ensures all sites are protective of members of the public in the event of reoccupation of the property
Remediation Standards

• Exterior
  – Soil sampling from disposal areas
  – On site liquid waste disposal
  – Samples from water supply wells
  – Other sampling if required

• Provision ensures “Tiers 2-4” sites are rendered safe for future use
Remediation Standards

• Special provisions for vehicles
  – Follow interior remediation provisions
  – If the cost is more than the value of the vehicle, scrapping is an option
Clandestine Drug Lab Cleanup Process

Discovery
- LEA Notifies NMED (7 days)
  - NMED Notifies Owner (30 days)
    - Add Site To Website
- Retain Firm to Conduct Preliminary Assessment (7 days)
  - Complete Preliminary Assessment: Is Remediation Required?
    - Yes (14 days)
      - Post-Remediation Assessment
        - Meets Clearance Levels?
          - Yes (7 days)
            - Submit Report to NMED
          - No (7 days)
    - No (7 days)

Remediation
- Retain Firm to Conduct Remediation
  - Remediation Complete (7 days)
    - Retain Firm to Conduct Post-Remediation Assessment
      - 90 days after owner notified
        - NMED Reviews Report: Approve?
          - Yes (30 days)
            - Add Site To Website
          - No (7 days)

Vacate Notice
- Remove Notice
- Notate Website
Remediation Standards

- Post Remediation Assessment
  - Visual Inspection
  - Review of documentation
  - Confirmatory sampling
  - Must meet clearance levels
  - Remediation report generated
  - Three year document retention requirement
- Ensures the cleanup was effective and hazards were mitigated
- Typographical error in 20.4.5.600.D(1) & (2)
- Changed provision in (3) clarifies timeframes and process
Clandestine Drug Lab Cleanup Process

Discovery
- LEA Notifies NMED
  - Retain Firm to Conduct Preliminary Assessment
    - Complete Preliminary Assessment: Is Remediation Required?
      - Yes: 21 days after owner notified
      - No: 7 days

NMED Notifies Owner
- Retain Firm to Conduct Remediation
  - Remediation Complete
    - 7 days
    - Post-Remediation Assessment
      - 90 days after owner notified
      - Meets Clearance Levels?
        - Yes: Submit Report to NMED
        - No: 7 days

Add Site To Website
- NMED Reviews Report: Approve?
  - Yes: 30 days
  - No: 7 days

Remove Notice
- 7 days
- 21 days after owner notified
- 30 days
- 7 days
- 90 days after owner notified

Vacate Notice
- 7 days
- 10 days

Notate Website
- 7 days

Law Enforcement
- NMED
- Owner
- Remediation Firm
Remediation Standards

• Remediation Report
  – Qualifications
  – Property description
  – Diagrams and photographs
  – Description of work conducted
  – Sampling and testing results
  – Waste characterization documentation
  – Certification
Clearance Levels

• Found at 20.4.5.601 of the proposed rule
  - Illicit substance – surface area wipe <1.0 µg/ft²
    – Changed provision (NMED required testing for meth in every case)
  - VOCs – indoor air ≤1 ppm
  - Lead (total) – surface area wipe ≤40 µg/ft²
  - Mercury (vapor) – Indoor air <0.3 µg/m³
  - Corrosives – surface pH 6 to 8
    – Changed provision (NMED should have added corrosives to list of substances)
• Don’t have to test for everything if evidence exists showing some constituents weren’t present
  – Changed provision (NMED proposes to delete “clear” as a modifier to “evidence” because of inherent ambiguity)
Discovery

LEA Notifies NMED

7 days

Retain Firm to Conduct Preliminary Assessment

NMED Notifies Owner

Add Site To Website

7 days

30 days

Retain Firm to Conduct Remediation

Remediation Complete

7 days

Retain Firm to Conduct Post-Remediation Assessment

Post-Remediation Assessment

Meets Clearance Levels?

Yes

14 days

Submit Report to NMED

Yes

No

Complete Preliminary Assessment: Is Remediation Required?

Yes

14 days

21 days after owner notified

No

7 days

90 days after owner notified

30 days

7 days

21 days after owner notified

No

7 days

Law Enforcement

NMED

Owner

Remediation Firm

7 days

7 days

21 days after owner notified

30 days

21 days after owner notified

14 days

90 days after owner notified

7 days

30 days

Yes

No

Vacate Notice

Remove Notice

Notate Website

NMED Reviews Report: Approve?

Yes

30 days

No

10 days

7 days
NMED Approval

• Found at 20.4.5.602 of the proposed rule
• NMED reviews report within 30 days
• NMED notifies owner within 7 days of completion of review
Preemption Clause

• Found at 20.4.5.700 of the proposed rule
• If a municipality has adopted a drug lab cleanup rule or ordinance prior to the effective date of these rule, the municipality may enforce its rules in lieu of these
• NMED still provided notice
• This is a changed provision, to ensure Albuquerque’s successful program will continue
Penalties

• Found at 20.4.5.800 of the proposed rule
• Also in statutory authority

• Civil penalties
  – In Hazardous Waste Act at 74-4-10 NMSA 1978
  – $10,000 per day per violation
  – Enforced by NMED through administrative compliance orders or actions in District Court
  – Appeal process includes administrative hearing or action to state Court of Appeals

• Criminal penalties
  – In Environmental Improvement Act at 74-1-10 NMSA 1978
  – Petty misdemeanor
  – NMED with a local District Attorney would bring an action
  – Appeal and hearing under current law
Clandestine Drug Lab Cleanup Process

**Discovery**
- 7 days

**LEA Notifies**
- **NMED**

**NMED Notifies**
- **Owner**
- 7 days

**Retain Firm to Conduct**
- Preliminary Assessment
- 30 days

**Complete Preliminary Assessment: Is Remediation Required?**
- Yes: 14 days
- No: 7 days

**Add Site To Website**
- 7 days

**NMED Notifies**
- **Owner**
- 7 days

**Remediation Complete**
- 7 days

**Retain Firm to Conduct**
- Post-Remediation Assessment
- 90 days after owner notified

**Post-Remediation Assessment**
- **Meets Clearance Levels?**
  - Yes: **Submit Report to NMED**
  - No: **Add Site To Website**

**NMED Reviews Report:**
- **Approve?**
  - Yes: **Vacate Notice**
  - No: **Remove Notice**

**Notate Website**
- 10 days

**Law Enforcement**
- **NMED**
- **Owner**
- **Remediation Firm**
Comparison with City’s Ordinance

• In Albuquerque
  – Substandard housing notice – no one goes inside
  – Notice filed with County Assessor
  – Remove persons
  – Remediation firm different from “tester”
  – No website
  – Different penalty provisions
  – Clearance levels lower; in guidance document
Potential Benefits vs. Costs to Property Owners

• **Benefits**
  – Protection of health and safety of members of public
  – Increase in property value
  – Disclosure to unsuspecting transferees and renters
  – Protection of financial institutions’ collateral

• **Costs**
  – Nothing to a few hundred dollars for Tier 1
  – Up to several thousand dollars for Tier 2 (most common)
  – Up to several tens of thousands for Tier 3 (most common)
  – Lost income on rental properties for several months pending cleanup