

HI 1240
2008

AGENCY: Department of Health
TITLE: Cleanup of Methamphetamine Manufacturing Site
PROPOSED: 09/18/2008
ADOPTED: 09/18/2008

SUMMARY:

Clarifies rules regarding the cleanup of methamphetamine manufacturing sites.

AGENCY

CONTACT:

Department of Health, Office of Hazard Evaluation and Emergency Response, 919 Ala Moana Boulevard, Room 206, Honolulu, HI 96814

CITATION:

HAR 11-452

STATUS:

09/18/2008 No published proposal
Agencies & Departments, New Actions, 09/18/2008

09/18/2008 Rule Adoption
EFFECTIVE: 12/06/2007
Agency Notice, Department of Health, 09/18/2008

The following has special meaning:
underline denotes added text
~~struck out text denotes deleted text~~

HI 1240 2008	CITATION:	HAR 11-452
	AGENCY:	Department of Health
	VERSION:	Adopted Rule
	VERSION DATE:	09/18/2008

DEPARTMENT OF HEALTH

Adoption of Chapter 11-452
Hawaii Administrative Rules

SUMMARY

Chapter 452 of Title 11, Hawaii Administrative Rules, entitled "Requirements for the Decontamination and Cleanup of Methamphetamine Manufacturing Sites", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 452

REQUIREMENTS FOR DECONTAMINATION AND CLEANUP OF
METHAMPHETAMINE MANUFACTURING SITES

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SUBCHAPTER 1

INTRODUCTION

Section 11-452-1 General. This chapter sets forth the minimum requirements for the implementation, administration, and enforcement of Act 170, SLH 2006. These requirements are set forth to allow for the identification, decontamination and cleanup of methamphetamine manufacturing sites and protection of the State's first responder community. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-2 Application. This chapter applies to any site located throughout the State that has been used to manufacture methamphetamine. I [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-3 Definitions. As used in this chapter, unless the context otherwise requires:

"Certification" means the successful completion of an approved, hazardous waste operations and emergency response safety training program and on-the- job training.

"Chief law enforcement officer" means the federal, state or county law enforcement officer in charge of investigating methamphetamine manufacturing sites.

"Cleanup contractor" means the private company hired to handle the decontamination and cleanup of a methamphetamine manufacturing site.

"Department" means the state Department of Health.

"Drug Enforcement Administration" or "DEA" means the federal agency responsible for the enforcement of the controlled substances laws and regulations of the United States.

"Equipment" means, but is not limited to, any non-chemical apparatus, glassware, jar, container, piping or other material used in the methamphetamine manufacturing process.

"EPIC" means the El Paso Intelligence Center of the Drug Enforcement Administration.

"Guidance" means the department guidance document established by the hazard evaluation and emergency response office for the investigation, sampling and cleanup of methamphetamine manufacturing sites.

"Hazard assessment" means a report that includes:

(1) A description of the possible hazards found at a methamphetamine manufacturing site;

(2) Diagrams of the methamphetamine manufacturing site; and

(3) Lists of chemicals and equipment, any debris, trash, litter or other signs of contamination.

"Hazardous materials" means any liquid, chemical, drug or substance used in the manufacturing of methamphetamine that can pose a serious safety threat when improperly handled, packaged or stored.

"Hazardous materials contractor" means the contractor responsible for removing hazardous materials from a methamphetamine manufacturing site.

"Hazardous materials (Hazmat) response team" means a team that handles the cleanup of hazardous materials generated or left behind on a methamphetamine manufacturing site.

"HAZWOPER" means the Hazardous Waste Operations and Emergency Response Standard set forth in 29 CFR 1910.120.

"The Hazard evaluation and emergency response office" means the designee of the state Department of Health that shall provide general oversight for the decontamination of qualifying methamphetamine manufacturing sites.

"Intermediate products" means any substance, apart from methamphetamines, that is produced during any stage of the methamphetamine manufacturing process.

"Manufacturing" means the chemical or physical conversion of precursor chemicals into any form of methamphetamine.

"Methamphetamine manufacturing site" means any site, structure, vehicle or container where methamphetamine is manufactured, purified, synthesized, reconstituted or converted.

"On-scene supervisor" means any designee of the law enforcement agency in charge.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"OSHA safety standards" means the OSHA standards as set forth in 29 CFR 1910.120 entitled "Hazardous waste operations and emergency response".

"Personal protective equipment" means the equipment designed to eliminate or minimize the exposure to hazardous materials.

"Precursor chemicals" means any chemical used in or produced as a byproduct of the methamphetamine manufacturing process.

"Representative sample" means any chemical or substance, whether in a liquid, solid or gaseous state that is in sufficient quantity to be measured by protocols that are based on widely accepted industry standards.

"Respond" means remove, removal, remedy or remedial action and any related terms including government enforcement activities related thereto.

"Responding agency" means each federal, state or county agency and its personnel that respond to a methamphetamine manufacturing site. Responding agencies may include the fire department, emergency medical services, environmental regulators, code enforcement officers, probation officers, public safety personnel and child protective services.

"Scope of work" means an assessment of the work necessary to decontaminate a methamphetamine manufacturing site.

"Site" means:

(1) Any real property, location, structure, vehicle or container in or on which methamphetamine, precursor chemicals or intermediate products are discovered or manufactured; and

(2) The delineated extent of contamination and all suitable areas in proximity to the contamination necessitating a response action.

"Site safety officer" means the person or employee responsible for the implementation of the site safety and health plan and for verifying compliance with applicable safety and health requirements under OSHA 29 CFR 1910.120(a) (3).

"Unacceptable substance" means any hazardous material for which handling, packaging, transportation, storage or analysis is beyond the capability and resources of law enforcement personnel. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 20 6, Act 170, Section 2]

Sections 11-452-4 to 11-452-9 (Reserved)

SUBCHAPTER 2

SAFETY GUIDANCE FOR RESPONDING AGENCIES

Section 11-452-10 Purpose. The purpose of this subchapter shall be to establish procedural requirements for each agency that shall respond to and investigate a methamphetamine manufacturing site. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-11 Personal safety guidance. (a) Each responding agency shall be responsible for the safety of any of the agency's personnel involved in the investigation of a methamphetamine manufacturing site. Guidelines for the protection of such personnel shall be developed by each respective agency in accordance with OSHA safety standards.

(b) Each responding agency shall be responsible for the following:

(1) The designation of at least one individual who shall be responsible for the overall management, integration and coordination of personal safety procedures during the investigation of methamphetamine manufacturing sites; and

(2) The designation of site safety officer.

(c) Each responding agency shall comply with the OSHA guidelines for medical surveillance as set forth in 29 CFR 1910.120(f).

(d) Each responding agency shall comply with the OSHA guidelines for respiratory protection as set forth in 29 CFR 1910.134.

(e) Each responding agency shall maintain all general safety equipment (including but not limited to personal protective equipment, decontamination and air monitoring equipment) used in responding to a methamphetamine manufacturing site. Each responding agency shall be responsible for maintaining equipment on its premises in a serviceable condition at all times in accordance with the manufacturers' recommendations and OSHA guidelines.

(f) Any planning, assessment, processing and exit and decontamination operational phases shall also be subject to OSHA safety standards. [Eff Dec 06, 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006 Act 170, Section 2]

Section 11-452-12 Training and certification. Each responding agency shall be responsible for the training and certification of its personnel based on the duties and function to be performed by each responder of an emergency response organization as set forth under 29 CFR 1910.120 (HAZWOPER). Each responding agency shall maintain a record of the training and certification of its personnel. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Sections 11-452-13 to 11-452-17 (Reserved)

SUBCHAPTER 3

HAZARDOUS MATERIALS DISPOSAL AND FEDERAL NOTIFICATION

Section 11-452-18 Hazardous materials disposal. (a) If the DEA participates in the investigation and decontamination of a methamphetamine manufacturing site, the DEA may coordinate with a hazardous materials contractor for the disposal of any hazardous materials discovered during a response to a methamphetamine manufacturing site.

(b) If the DEA does not participate in the investigation and decontamination of a methamphetamine manufacturing site, the chief law enforcement officer shall coordinate with a hazardous materials contractor for the disposal of any hazardous materials. The hazardous materials contractor shall prepare a disposal record that shall include, but not be limited to, an inventory of the following:

- (1) Hazardous materials;
- (2) Precursor chemicals;
- (3) Intermediate products; and
- (4) Equipment used or stored at the methamphetamine manufacturing site.

The disposal record shall be included in the case file for the investigation and shall be delivered to the hazard evaluation and emergency response office as required under section 11-452-26.

(c) Any materials remaining after sampling shall be referred to the hazardous materials contractor for disposal. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-19 Federal notice requirements. Law enforcement shall complete the federal notice requirements within five business days of the completion of a methamphetamine manufacturing site investigation. Law enforcement shall ensure that a copy of any notification documents shall be included in the case file for the investigation. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Sections 11-452-20 to 11-452-24 (Reserved)

SUBCHAPTER 4

INTERACTION BETWEEN LAW ENFORCEMENT AND THE DEPARTMENT OF HEALTH

Section 11-452-25 Reporting requirements and post-raid notifications. (a) After any laboratory or other equipment and hazardous materials are removed from the methamphetamine manufacturing site, law enforcement personnel shall place a warning in a conspicuous location on the site to any potential visitors, licensees or trespassers to the site, that the methamphetamine manufacturing site may pose a health hazard.

(b) The chief law enforcement officer shall notify the owner of the property that the property was utilized as a methamphetamine manufacturing site.

(c) Upon receiving notice from the chief law enforcement officer, the owner of the property shall contact the hazard evaluation and emergency response office within seventy-two (72) hours. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2][Imp: SLH 2006, Act 170, Section 2]

Section 11-452-26 Initiation of environmental cleanup.

(a) The chief law enforcement officer shall make a determination as to the existence of a methamphetamine manufacturing site.

(b) Once the chief law enforcement officer has made a determination, the chief law enforcement officer shall contact the hazard evaluation and emergency response office and submit a report. The report shall include but not be limited to, the following information:

(1) The general layout of the methamphetamine manufacturing site and indicates the areas:

- (A) On which chemical reactions occurred;
- (B) Where chemicals and equipment were stored;
- (C) Where chemicals and waste were disposed of; and
- (D) Where equipment used to manufacture methamphetamine was discovered;

(2) The amounts and types of chemicals found and stored on the methamphetamine manufacturing site; and

(3) The method used to produce the methamphetamine, any precursor chemicals or intermediate products.

(c) Before any decontamination efforts may commence, the following shall be completed:

(1) A determination by the chief law enforcement that all the necessary evidence has been collected from the methamphetamine manufacturing site;

(2) A written report as required under subsection (b) ;

(3) All hazardous materials, precursor chemicals, intermediate products and equipment used or stored at the methamphetamine manufacturing site are documented in a disposal record as required under section 11-452-18;

(4) All hazardous materials, precursor chemicals, intermediate products and equipment used or stored at the methamphetamine manufacturing site are properly disposed of by the hazardous materials contractor; and

(5) The hazard evaluation and emergency response office obtains permission to enter the methamphetamine manufacturing site. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Sections 11-452-27 to 11-452-31 (Reserved)

SUBCHAPTER 5

THE DEPARTMENT OF HEALTH RESPONSE

Section 11-452-32 Response. The hazard evaluation and emergency response office shall provide general oversight for the decontamination of methamphetamine manufacturing sites that meet the following criteria:

(1) The investigation of the site is referred to the hazard evaluation and emergency response office by the chief law enforcement officer in accordance with section 11-452-26;

(2) The site contains methamphetamine, any precursor chemicals or intermediate products in amounts that may pose a risk to human health or the environment;

(3) The site contains evidence of manufacturing; and

(4) The site contains equipment used to manufacture methamphetamine, any precursor chemicals or intermediate products. [Eff Dec 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-33 Guidance. The hazard evaluation and emergency response office shall establish a department guidance document for the investigation, sampling and cleanup of methamphetamine manufacturing sites. The guidance may be revised as new technology and science become available and accepted by the Department. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Sections 11-452-34 to 11-452-38 (Reserved)

SUBCHAPTER 6

THE DEPARTMENT OF HEALTH OVERSIGHT OF THE DECONTAMINATION PROCESS

Section 11-452-39 Pre-decontamination procedures. (a) The owner and operator of the property on which a methamphetamine manufacturing site is located, shall, in coordination with the hazard evaluation and emergency response office, hire a cleanup contractor that specializes in responding to environmentally contaminated sites. Any and all costs incurred from the decontamination and cleanup of a methamphetamine manufacturing site shall be the responsibility of the owner and operator of the property on which the methamphetamine manufacturing site is located.

(b) The cleanup contractor shall deliver a written report to the hazard evaluation and emergency response office that includes, but is not limited to, the following:

- (1) A hazard assessment; and
- (2) A scope of work.

(c) Prior to decontamination, the cleanup contractor shall deliver a work plan to the hazard evaluation and emergency response office for approval that includes, but is not limited to, the following information:

- (1) The specific areas of the methamphetamine manufacturing site from which samples shall be collected;
- (2) The number of samples to be collected;
- (3) The methods for analyzing the samples;
- (4) A list of suspected contaminants;
- (6) The measures to ensure quality assurance and quality control;
- (7) The measures to minimize or reduce worker exposure to hazards during the cleanup process;
- (8) The measures to address overall contaminant removal;
- (9) Identification of any contaminated non-manufacturing items, which includes, but is not limited to: carpets, rugs, furniture, white goods and clothing and the measures to dispose of such items;
- (10) Identification of any biohazards, which includes, but is not limited to, syringes tainted with bodily fluids and the measures to dispose of such items;
- (11) The measures to ensure the effective remediation of ventilation systems, which includes air conditioning and heating systems; and
- (12) The measures to ensure the effective decontamination and cleanup of any plumbing fixtures and plumbing systems.

(d) For outdoor decontamination, the cleanup contractor shall deliver a work plan to the hazard evaluation and emergency response office as set forth in subsection (c) that also includes a list of the measures to ensure the safe and effective remediation of any impacted sewage system.

(e) Soil remediation shall be subject to cleanup levels specified by the hazard evaluation and emergency response office. Soil cleanup levels for a limited number of chemical compounds associated with the manufacturing of methamphetamine may be set forth in the hazard evaluation and emergency response office technical guidance manual. If there are no established cleanup levels for a chemical compound and subject to the approval by the hazard evaluation and emergency response office, the cleanup contractor may propose an appropriate cleanup level using the following methods:

- (1) Background Concentration (for metals only);
- (2) The Method Detection Limit; or
- (3) Risk-Based Concentration.

(f) Groundwater and surface water remediation shall be subject to cleanup levels specified by the hazard evaluation and emergency response office. Groundwater and surface water cleanup levels for a limited number of chemical compounds associated with the manufacturing of methamphetamine may be provided in the hazard evaluation and emergency response office technical guidance manual. If there are no established cleanup levels for a chemical compound and subject to the approval by the hazard evaluation and emergency response office, the cleanup contractor may propose an appropriate cleanup level using the following methods:

(1) Background Concentration (for metals only);

(2) The Method Detection Limit; or

(3) Risk-Based Concentration. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, 521

Section 11-452-40 Decontamination procedures. A11 decontamination procedures shall be carried out according to the work plan approved by the hazard evaluation and emergency response office. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-41 Post-decontamination sampling. (a) The amount of post-cleanup sampling shall depend on the levels of contamination and the methods used in the process of making methamphetamine.

(b) Sampling protocols shall be based on widely accepted industry standards.

(c) The cleanup contractor shall comply with the appropriate remedial action levels as set forth in the department guidance document and the hazard evaluation and emergency response office technical guidance manual.

(d) The cleanup contractor shall comply with the analytical methodology used to detect methamphetamine, precursor chemicals or intermediate products as set forth in the department guidance document. [Eff DEC 0 6 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-42 Final report. A final report shall document the work performed in conjunction with the work plan approved by the hazard evaluation and emergency response office. A final report shall describe the cleanup process in detail sufficient to allow the hazard evaluation and emergency response office to verify that the decontamination and cleanup has been completed. The final report shall include the following information:

(1) Results of all sampling;

(2) A comparison of the final sampling results with the appropriate hazard evaluation and emergency response office remedial action levels;

(3) A summary of the comparison that indicates whether or not the cleanup has met all of the hazard evaluation and emergency response office appropriate remedial action levels;

(4) All supporting data and information for the cleanup activities performed; and

(5) Any other information that is required by the hazard evaluation and emergency response office. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Section 11-452-43 No Further Action Determination. The hazard evaluation and emergency response office shall issue a no further action determination, provided that:

(1) The final report is deemed accurate by the hazard evaluation and emergency response office;

(2) The hazard evaluation and emergency response office determines that the cleanup effort has decontaminated the property in accordance with the approved work plan and approved decontamination procedures; and

(3) The hazard evaluation and emergency response office verifies that the cleanup is in compliance with Hawaii law.

In the event that new information is subsequently discovered that would alter the determination of no further action, the matter shall be reconsidered and may be reassessed at the owner's expense. All costs associated with the reconsideration and reassessment of the decontamination and cleanup of a methamphetamine manufacturing site shall be the responsibility of the owner of the property on which a methamphetamine manufacturing site is located. [Eff DEC 06 2007] [Auth: SLH 2006, Act 170, Section 2] [Imp: SLH 2006, Act 170, Section 2]

Sections 11-452-46 to 11-452-50 (Reserved)

Department of Health

Chapter 11-452, Hawaii Administrative Rules, on the Summary Page dated Nov 16, 2007, was adopted on Nov 16, 2007, following a public hearing held on September 12, 2007, after public notice was given in the Honolulu Star-Bulletin, Maui News, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today newspapers on August 15-17, 2007.

The adoption of chapter 11-452 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Chiyome Leinaala Fukino, M.D.
Director of Health

Linda Lingle
Governor, State of Hawaii

Dated Nov 23, 2007

Approved as to Form:
Deputy Attorney General