TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 4 HAZARDOUS WASTE
PART 5 CLANDESTINE DRUG LABORATORY REMEDIATION

20.4.5.1 ISSUING AGENCY. Environmental Improvement Board.
[20.4.5.1 NMAC - N, 1/01/2008]

20.4.5.2 SCOPE. This part applies to all law enforcement agencies who discover a clandestine drug laboratory, all persons who own a clandestine drug laboratory property, and all persons engaging in remediation of a clandestine drug laboratory.
[20.4.5.2 NMAC - N, 1/01/2008]

20.4.5.3 STATUTORY AUTHORITY. Section 74-4-4.B NMSA 1978 and Section 74-1-8.A(7) NMSA 1978 (as amended).
[20.4.5.3 NMAC - N, 1/01/2008]

20.4.5.4 DURATION. Permanent.
[20.4.5.4 NMAC - N, 1/01/2008]

20.4.5.5 EFFECTIVE DATE. January 1, 2008 unless a later date is cited at the end of a section.
[20.4.5.5 NMAC - N, 1/01/2008]

20.4.5.6 OBJECTIVE. Contamination from the operation of clandestine drug laboratories is a serious health and environmental threat. Remediation of the residually contaminated portions of clandestine drug laboratory properties is essential to assure the health, safety and welfare of people and the environment. The objective of this part is to provide for the notice of such contamination to potential occupants of the residually contaminated portion of these properties and standards for the assessment and remediation of such properties.
[20.4.5.6 NMAC - N, 1/01/2008]

20.4.5.7 DEFINITIONS. Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in Sections 74-4-1 through 74-4-14 NMSA 1978 (as amended), and 20.4.1 NMAC. As used in this part.

A. “Certified industrial hygienist” means a person certified in the comprehensive practice of industrial hygiene by the American board of industrial hygiene.

B. “Chemicals and equipment” means the bulk or containerized chemicals, illegal drugs and their precursors drugs, equipment and other items that are found in a clandestine drug laboratory that were used in the manufacture of any controlled substance.

C. “Clandestine drug laboratory” means property on which any controlled substance is being unlawfully manufactured or on which there is an attempt to unlawfully manufacture, or where a person is arrested for having on any property any chemicals or equipment used in manufacturing any controlled substance. In the case of a space rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational vehicle in which any controlled substance is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle any chemicals or equipment used in manufacturing any controlled substance. Clandestine drug laboratory shall include any place or area where chemicals or other waste materials used in clandestine drug laboratories have been located.

D. “Controlled substance” means any drug or substance or counterfeit substance listed in the Controlled Substances Act, 30-31-1 NMSA 1978, or regulations adopted thereunder.

E. "Department" means the New Mexico environment department or its successor agency under the Department of Environment Act, 9-7A-1 NMSA 1978.

F. “Law enforcement officer” means any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is

responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state as defined in Section 30-20A-2.D NMSA 1978, and specifically includes Albuquerque police department nuisance abatement inspectors.
G. "Owner" means any person, firm, corporation or other entity that owns, in whole or in part, the property subject to this part.
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H. "Owner's agent" means person designated by the owner to act on behalf of the owner.
I. "Property" means real or personal property, which includes the following:
(1) the area within a structure and the area that surrounds a structure and that is within the land boundary or property lines of any property that can be used for residential purposes or is occupied by people for any length of time for any purpose, and
(2) a vehicle as defined in Section 66-1-4.19 NMSA 1978 (as amended).
J. "Remediation" means the cleanup, removal, or destruction of chemicals and equipment or residual contamination at a clandestine drug laboratory to conform with the remediation standards required by 20.4.5.16 NMAC and any action, including the destruction of property, necessary to investigate, prevent, minimize or mitigate potential damages or injury to human health, the environment, or property that may result from the chemicals or residual contamination.
K. "Remediation firm" means a person or firm that:
(1) performs remediation of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance, or
(2) conducts preliminary assessments or post-remediation assessments, including testing, for the presence of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance.
L. "Residual contamination" means any contaminants associated with manufacturing any controlled substance that are left at a property after the initial removal of chemicals and equipment.
M. "Residually contaminated portion of the property" means the structure or unit where chemicals and equipment were removed and the area of any adjacent structure, unit or land where evidence of residual contamination is observed by a law enforcement agency.
(1) Where chemicals and equipment are removed from a house, mobile home or vehicle, then the entire property, not just the room or rooms in which the chemicals and equipment are found, shall be deemed the residually contaminated portion of the property.
(2) Where chemicals and equipment are removed from a detached shed, garage or other structure and other property on the land are not affected, then the detached structure shall be deemed the residually contaminated portion of the property.
(3) Where chemicals and equipment are removed from a hotel or motel room, apartment unit, storage locker or other similar property with controlled-access units and the adjacent rooms or units are not affected, then the contaminated room or unit shall be deemed the residually contaminated portion of the property.
[20.4.5.7 NMAC - N, 1/01/2008]
20.4.5.8 COMPLIANCE WITH OTHER LAW. Compliance with this part does not relieve a person from the obligation to comply with other applicable federal, state and local laws and regulations.
[20.4.5.8 NMAC - N, 1/01/2008]

20.4.5.9 DECLARATION OF HAZARDOUS SUBSTANCE INCIDENT AND PUBLIC NUISANCE. Upon identification by a law enforcement agency of a clandestine drug laboratory where chemicals and equipment were removed or residual contamination was observed, the property is presumed to constitute a site of a hazardous substance incident and a public nuisance until such time as the remediation required by this part is completed.
[20.4.5.9 NMAC - N, 1/01/2008]

20.4.5.10 NOTICE OF CONTAMINATION.

A. Upon identification of a clandestine drug laboratory by a law enforcement agency where chemicals and equipment were removed or residual contamination was observed, the agency shall take the following actions.

(1) Post a notice of contamination in a conspicuous place at the clandestine drug laboratory.

(2) Deliver a copy of the notice of contamination to the owner of the property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the agency shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

(3) Document proof of posting the notice of contamination, which proof of posting shall be considered notice to the owner if the owner of the clandestine drug laboratory cannot be identified.

(4) Deliver a copy of the notice of contamination to the department’s hazardous waste bureau chief within seven days after identification of the clandestine drug laboratory. The law enforcement agency shall inform the department whether or not the agency was able to personally deliver the notice to the owner or on-site manager of the property.

B. Upon receiving a copy of the notice of contamination from a law enforcement agency, the department shall send a copy of the notice of contamination by certified mail, return receipt requested, to the owner at the owner's last known address contained in records of the county assessor where the clandestine drug laboratory is located if the owner of the clandestine drug laboratory or, if the clandestine drug laboratory is a mobile home or recreational vehicle, the owner of a mobile home or recreational vehicle space-rental or space-purchase park where the clandestine drug laboratory may be located, is not personally provided a copy of the notice of contamination pursuant to Subsection A of this section. Proof of mailing shall be considered notice to the owner. The owner is presumed to have received the notice of contamination five days after the notice is mailed.
[20.4.5.10 NMAC - N, 1/01/2008]

20.4.5.11 CONTENTS OF NOTICE OF CONTAMINATION. The notice of contamination required by 20.4.5.10 NMAC shall contain the following in both English and Spanish or other appropriate tribal language.

A. The word "warning" in large bold type at the top and bottom of the notice.

B. A statement that a clandestine drug laboratory was identified at the property.

C. The date of the identification.

D. The address or location of the property where the clandestine drug laboratory was identified. A description of the residually contaminated portion of the property, including a structure, room, apartment or unit number if not the entire or a vehicle registration or vehicle identification number if appropriate.

E. The name of the law enforcement agency that identified the clandestine drug laboratory and that agency's telephone number.
F. A statement that hazardous substances, toxic chemicals, or other residual contamination from operation of the clandestine drug laboratory may still be present.
G. A statement that a person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory property or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC and such remediation has been approved by the department.
H. A statement that a person may not knowingly and intentionally disturb the notice of contamination posted at the clandestine drug laboratory.
I. A statement that the owner of the property shall remediate the residually contaminated portion of the property in compliance with 20.4.5.16 NMAC.
J. A statement that until remediation is complete, the owner or the owner's agent shall not sell, lease, rent, loan, assign, exchange, or otherwise transfer the residually contaminated portion of the property without providing notice of its existence as required by 20.4.5.13 NMAC.
K. A statement that failure of the owner to comply with the requirements of this part may result in a fine of up to $10,000 per day pursuant to Section 74-4-12 NMSA 1978 , and is a petty misdemeanor pursuant to Section 74-1-10 NMSA 1978.
L. Contact information for the department.
[20.4.5.11 NMAC - N, 1/01/2008]

20.4.5.12 VACATING NOTICE OF CONTAMINATION.

A. The owner of a clandestine drug laboratory is responsible for providing proof to the department that the property has been remediated in compliance with 20.4.5.16 NMAC.
B. Within seven days of the department determining that a clandestine drug laboratory has been remediated in accordance with this part, or that no remediation is required, the department shall notify the owner of the clandestine drug laboratory that the notice of contamination can be removed from the property.
[20.4.5.12 NMAC - N, 1/01/2008]

20.4.5.13 USE AND TRANSFER OF CLANDESTINE DRUG LABORATORY.

A. An owner shall not sell, lease, rent, loan, assign, exchange or otherwise transfer the clandestine drug laboratory property unless the owner does the following:
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(1) provides written notice to the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee, with a copy to the department's hazardous waste bureau, of the existence of the clandestine drug laboratory; and
(2) receives a written acknowledgment, and provides a copy to the department's hazardous waste bureau, that the notice was received by the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee.
B. A person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC. Persons performing work for a law enforcement agency, the department, or a remediation firm are excepted from this prohibition.
[20.4.5.13 NMAC - N, 1/01/2008]

20.4.5.14 CLANDESTINE DRUG LABORATORY LIST.

A. The department shall maintain a list of clandestine drug laboratory sites on the department's web site based on information received from law enforcement agencies.

B. Within ten days of the department notifying the owner of its approval pursuant to Subsection B of 20.4.5.18 NMAC, the department shall indicate on its website whether the property has been remediated in accordance with this part.

[20.4.5.14 NMAC - N, 1/01/2008]

20.4.5.15 OWNER RESPONSIBILITIES FOR REMEDIATION.

A. The owner of the property shall retain a remediation firm to perform a preliminary assessment of the residually contaminated portion of the property to determine the extent of the contamination and the nature of the required remediation within seven days of the day of delivery of the notice of contamination to the owner. The preliminary assessment shall be completed within 21 days after delivery of the notice of contamination to the owner.

(1) If the preliminary assessment determines that remediation is not required, the owner shall send a copy of the assessment to the department's hazardous waste bureau chief within seven days of receipt of the results of the preliminary assessment, which shall be reviewed in accordance with 20.4.5.18 NMAC.

(2) The owner may choose to forego a preliminary assessment and conduct the remediation in accordance with Subsection B of this section.

B. The owner shall retain a remediation firm to conduct the remediation within 14 days of receipt of the results of the preliminary assessment when this preliminary assessment determines that remediation is required or, in event where a preliminary assessment was not performed pursuant to Paragraph (2) of Subsection A of this section, within 30 days of the day of delivery of the notice of contamination to the owner.

C. The owner shall complete remediation and the post remediation assessment in accordance with the requirements of this part within 90 days of the day of delivery of service of the notice of contamination to the owner or for such other period of time that is approved in writing by the department.

D. The owner shall retain a remediation firm to perform a post-remediation assessment of the residually contaminated portion of the property to determine that the requirements for remediation of residual contamination in this part have been met within seven days of receiving notice from the remediation firm that the residually contaminated portion of the property has been remediated.

E. After the department has approved the remediation and vacated the notice of contamination, the owner or owner's agent is not required to comply with 20.4.5.13 NMAC and may remove the notice of contamination and allow any person to enter, use, occupy, rent, or sell the property.

[20.4.5.15 NMAC - N, 1/01/2008]

20.4.5.16 REQUIREMENTS FOR REMEDIATION OF RESIDUAL CONTAMINATION. The evaluation and cleanup of residual contamination found at clandestine drug laboratories after chemicals and equipment have been removed shall meet the following standards.

A. Remediation Firms.

(1) Any preliminary assessment, remediation, and post-remediation assessment of a clandestine drug laboratory for the purpose of complying with this part shall be performed by a remediation firm that meets the requirements of this subsection. The department recommends that the remediation firm performing the preliminary and post-remediation assessments be a different

firm than the one that performs the remediation, to ensure independent evaluation of work required and thoroughness of the remediation.
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(2) The remediation firm shall be under the direction of a certified industrial hygienist or be approved and currently registered to perform such work with a state, county, or municipal agency during the time the firm participates in the assessment or remediation of residual contamination. A firm's approval, certification, or registration with another state to perform assessments of residually contaminated properties will be accepted as meeting this requirement.
(3) The department may reject or require replacement of a remediation firm if one of the following findings is made:
(a) criminal activity,
(b) disregard for public health or the environment,
(c) failure to comply with this section or local ordinances, or
(d) noncompliance with health and safety, or environmental rules or standards.
B. Preliminary Assessment of the Property.
(1) The preliminary assessment shall include, but not be limited to, the following elements.
(a) A review of available information such as law enforcement reports and hazardous materials team reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.
(b) A physical inspection of the property, including but not limited to living areas, storage areas, plumbing, ventilation systems, septic systems, and outdoor areas, as necessary based on knowledge of the clandestine drug laboratory operation.
(c) Sampling and testing to determine the residual levels of contamination if the preliminary assessment results in a recommendation that no further remediation is required.
(2) A proposed work plan for remediating the residually contaminated portion of the property shall be prepared by the remediation firm that includes a description of the areas to be remediated and a description of the recommended cleanup methods.
(3) The remediation firm shall provide the owner with a written preliminary assessment report that includes the following elements.
(a) Identification of manufacturing methods, chemicals used, and actual and suspected areas of residual contamination or waste disposal based on law enforcement reports, visual observations, and knowledge of manufacturing method(s).
(b) The results of testing for residual contamination.
(c) A copy of the proposed work plan.
(4) In the event the remediation firm determines that remediation is not required, the firm shall provide the owner and the department's hazardous waste bureau with a written basis for the determination that includes the following statement signed by a certified industrial hygienist or principal in the remediation firm certifying the property meets the requirements in this section and that the no remediation is required. ***Remediation firm's certification:*** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the preliminary assessment of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the assessment, including the sampling and testing results, and find that the property meets the clearance levels in 20.4.5.17 NMAC for remediation of residual contamination and does not require further remediation."

C. Remediation of the Residually Contaminated Portion of the Property. Once chemicals and equipment removal is completed by the law enforcement agency or hazardous materials team, the owner shall have a remediation firm remove and dispose of, or clean, the portions of the property with residual contamination. Both the interior and exterior residually contaminated portions of the property shall be decontaminated in accordance with this section. Cleanup activities must be repeated until testing indicates that contamination levels are below the clearance levels in 20.4.5.17 NMAC.

(1) Interior Decontamination. The decontamination of the interior of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose shall meet the clearance levels listed in 20.4.5.17 NMAC. At a minimum, the following steps shall be taken to decontaminate the interior of a clandestine drug laboratory property.

(a) Ventilate the property to remove or lower levels of residual volatile organic compounds in indoor air.

(b) Decontaminate or discard interior furnishings and household contents including, but not limited, to carpets, drapes, and furniture.

(c) Decontaminate structural features and surfaces paying particular attention to heavily contaminated areas such as those locations where the manufacturing occurred, or where chemicals were stored, mixed or disposed.

(d) Decontaminate interior surfaces of heating, ventilation and air conditioning systems and plumbing drain lines and traps that are impacted by residual contamination.

(e) Remove or seal interior surfaces where residual contamination can not be effectively removed by cleaning.

(2) Exterior Decontamination. Waste from clandestine drug laboratories are typically disposed of by dumping into indoor plumbing drains that empty either into a city sewer system or an onsite septic system or dumping on the ground into burn or burial pits. If evidence of exterior contamination is found at a clandestine drug laboratory property, the remediation firm shall respond as follows.

(a) Collect and analyze soil samples from areas where there is evidence that clandestine drug laboratory wastes have been directly disposed on the ground.

(b) Collect and analyze samples from septic tanks and drain fields if present.

(c) Collect and analyze samples from all wells within 100 feet of impacted septic systems, drain fields, and disposal areas for contaminants of concern.

(d) Contact the department’s hazardous waste bureau for information on media-specific cleanup requirements.

(3) Vehicle Decontamination. For vehicles, including recreational vehicles, campers and trailers, the remediation firm shall follow the requirements listed in Paragraph (1) of Subsection C of 20.4.5.16 NMAC for interior decontamination. The cost of remediation may not make decontamination cost effective for many vehicles, in which case the entire vehicle shall be demolished.

(4) After the remediation is complete, the remediation firm shall notify the owner that the property is ready for post-remediation inspection.

D. Post-Remediation Assessment of the Property.

(1) The post-remediation assessment shall include, but not be limited to, a visual inspection, review of the scope of remediation work performed, and testing necessary to certify compliance with the requirements for remediation of residual contamination in this section.

(2) Samples must be collected from the property interior and submitted to a laboratory for analysis. If the results show that the clearance levels listed in 20.4.5.17 NMAC have not been achieved, further remediation shall be performed as necessary to achieve the clearance levels.
(3) When the remediation firm determines that the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination in this section, a final remediation report with a statement signed by a certified industrial hygienist or principal in the remediation firm certifying the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination shall be prepared. The remediation firm shall deliver the remediation report or send the report by certified mail to the owner and the department's hazardous waste bureau chief within 21 days of completion of the remediation pursuant to Subsection C of 20.4.5.16 NMAC. The remediation report certifying that remediation of the residually contaminated portion of the property shall not be in lieu of any certificate of occupancy or any building inspection, if required by a county or municipality.
(4) The remediation firm preparing the remediation report shall maintain that document and all supporting materials for three years.
E. Remediation Report. The remediation report shall include the following information and documentation.
(1) Information demonstrating the remediation firm's qualifications, the name and qualifications of the certified industrial hygienist or other principal of the remediation firm, and the names and training records of the onsite supervisor and workers that performed the remediation services on the residually contaminated portion of the real property.
(2) Complete identifying information of the real property such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if appropriate.
(3) A copy of the final remediation work plan.
(4) A summary of the remediation services completed on the residually contaminated portion of the real property, and any deviations from the approved work plan.

(5) Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations.
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6) Diagram showing locations of all wells on the property and all wells on properties within 250 feet of any septic system, drain field, waste disposal areas on the subject property.
(7) A copy of the sampling and testing results and a copy of the chain-of-custody documents for all samples from the residually contaminated portion of the real property.
(8) A summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading or manifest, weight tickets and waste receipts for all materials removed from the property.
(9) The following statement signed by a certified industrial hygienist or principal in the remediation firm certifying that the residually contaminated portion of the property has been remediated in accordance with 20.4.5.16 NMAC. ***Remediation firm's certification:*** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the remediation of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the

remediation, including the post-remediation assessment results, and find that the remediation was completed pursuant to the requirements for remediation of residual contamination in 20.4.5.16 NMAC."

[20.4.5.16 NMAC - N, 1/01/2008; A, 1/01/2008]

20.4.5.17 CLEARANCE LEVELS FOR RESIDUAL CONTAMINATION. At a minimum, the remediation firm shall conduct sampling and testing for all of the constituents listed below unless evidence indicates that such constituents were not used in the operation of the clandestine drug laboratory. All interior areas of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose and all furnishings and materials intended for reuse shall meet the following post-remediation clearance levels.

Constituent	Clearance Level
Unlawfully manufactured controlled substance or its precursor drugs	Surface area wipe <1.0 $\mu g/ft^2$
Volatile organic compounds (total)	Indoor air ≤ 1 part per million
Lead (total)	Surface area wipe ≤ 40 $\mu g/ft^2$
Mercury (vapor)	Indoor air < 0.3 $\mu g/m^3$
Corrosives	Surface pH of 6.0 to 8.0