



DATE: November 12, 2014

TO: Washington State Board of Health Members

FROM: Keith Grellner, Vice Chair

SUBJECT: RESULTS OF PRELIMINARY INVESTIGATION UNDER RCW 70.05.120 CONCERNING BARRY ELLIS COMPLAINT AGAINST JEFFERSON COUNTY PUBLIC HEALTH FOR FAILING TO POST A PROPERTY UNDER CHAPTER 64.44 RCW, CONTAMINATED PROPERTIES, AND 246-205 WAC, DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING OR STORAGE SITES

Introduction. On July 9, 2014, and August 13, 2014, Mr. Barry Ellis filed written complaints with the Washington State Board of Health pursuant to RCW 70.05.120. The complaints alleged that Jefferson County Public Health failed to carry out the State Board of Health's laws or rules and regulations concerning Contaminated Properties and Decontamination of Illegal Drug Manufacturing or Storage Sites, Chapter 64.44 RCW and Chapter 246-205 WAC, respectively.

Specifically, Mr. Ellis alleges that Jefferson County Public Health failed to post Mr. Ellis' former rental residence (1507 31st Street, Port Townsend, WA) as contaminated and unsafe due to illegal drug manufacturing activity, and to force the owner of this residence to clean up the illegal drug lab contamination.

On August 13, 2014, the Board asked for a preliminary investigation of the complaint and allegations of Mr. Barry Ellis against Jefferson County Public Health. The purpose of this memo is to discuss the findings and conclusions of the preliminary investigation.

Process. Board staff and I reviewed Mr. Ellis' complaint information; the relevant law, RCW 64.44 and WAC 246-205; and the results of public records requests to Jefferson County Public Health, Port Townsend Police Department, and Jefferson County Prosecuting Attorney concerning:

“1507 31st Street, Port Townsend, WA”, “Public complaints and investigation reports for 1507 31st Street, Port Townsend, WA”, and “records, inquiries, complaints, and other information requests or correspondence from Mr. Barry Ellis and Jefferson County Public Health, Port Townsend Police Department, and Jefferson County Prosecuting Attorney”;

I also interviewed three of the four witnesses that Mr. Ellis cited in his written complaints (Paula Martin, Christina Nelson, and Larry Stone). In addition, we reviewed a written statement of response to the complaint from Thomas Locke, Jefferson County Health Officer.

Findings and Discussion. The following points summarize the findings of the preliminary investigation:

Intent and scope of the law, rules, and regulations:

- RCW 64.44.005, Legislative finding, states, in part, that “The legislature finds that some properties are being contaminated *by hazardous chemicals* used in unsafe or illegal ways *in the manufacture of illegal drugs*.”
- RCW 64.44.010, Definitions, defines “Hazardous chemicals” in part as “...the following substances *associated with the illegal manufacture of controlled substances...*”

WAC 246-205-001, Purpose and authority; -010, Definitions; -510, Local health officer responsibilities; -520, Posting property; and -530, Inspecting property; are authorized by, and mirror the language of, RCW 64.44.

The law, rules, and regulations clearly state that the legislature’s intent was to address hazardous chemicals used in the manufacture of illegal drugs, or associated with the illegal manufacture of controlled substances.

A. **Local health officer responsibilities:**

- RCW 64.44.020, Reporting – Warning – Notice – Duties of local health officer, states, in part, that, “Whenever a law enforcement agency becomes aware that *property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer*. The local health officer shall cause a posting of a written warning on the premises *within one working day of notification of the contamination...*” and “If a *property owner believes that a tenant has contaminated the property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer* about the possible contamination.” This section of statute continues with, “A local health officer may enter, inspect, and survey at reasonable times *any properties for which there are reasonable grounds to believe that the property has become contaminated.*”

The local health officer is responsible to post a written warning on the property, and to inspect the property, when notified by a law enforcement agency or property owner that property has been contaminated by hazardous chemicals used in, or associated with, the manufacture of illegal drugs.

Mr. Ellis cited Ms. Paula Martin, and her written statement concerning a conversation that she had with a woman alleged to be Ms. Joanne Meyer, co-owner of 1507 31st Street, as further cause to confirm that illegal drug lab manufacturing activity occurred

at 1507 31st Street. I contacted Ms. Martin and interviewed her about her statement. Ms. Martin confirmed that she had a conversation with a woman at this property and that she did provide Mr. Ellis with a written statement. However, Ms. Martin stated that she did not know who the woman was that she talked to; she had never been in the residence nor had ever seen or suspected any evidence of illegal drug manufacturing activity even though she was a neighbor to this property; and she never contacted any law enforcement agencies to report suspected drug manufacturing activity. Therefore, Ms. Martin's statement provides no reasonable grounds to suspect that this property had become contaminated, and her statement does not meet the intent of the law concerning notification of the local health officer.

Attempts were also made to interview the owners of 1507 31st Street, Bent and Joanne Meyer, and Denyse Early, a neighbor to this residence whom Mr. Ellis cited as providing firsthand information to him that she was inside the home and saw meth manufacturing items. The Meyers did not return my messages asking for a callback. Ms. Early no longer works at the US Bank in Port Townsend, and the cell phone number Mr. Ellis listed does not belong to Ms. Early. There is no other phone listing or address for a Denyse Early in Port Townsend that I could locate.

B. Sampling

- WAC 246-205-531, Sampling procedures, specifies, in part, that:
 - Analytical results obtained through sampling may be used as a method to determine contamination;
 - Collection of samples shall be performed by department of ecology staff; department of health certified CDL supervisors; or the local health officer;
 - Samples shall be collected: using standards and protocols to ensure accuracy and the ability to produce similar results with repeated sampling; with proper care and prudent action to avoid contamination during sampling; and transported, stored, analyzed, and secured to assure an unbroken chain-of-custody as described in ASTM Standard D 4840.
- The department of health has established and published *Guidelines for Environmental Sampling at Illegal Drug Manufacturing Sites* (September 2005).

Mr. Ellis states in his written complaint to the State Board of Health that in April 2012, "before I was locked out of this residence, I removed items from the house and had them tested for meth residue..." In a previous written complaint that he also submitted to the State Board of Health, Mr. Ellis states that after speaking with Paula Martin in April 2012, that he bagged-up contaminated items for evidence, and sealed up the downstairs of the residence in plastic.

Mr. Ellis also included a copy of the lab analyses of the items that he had sampled for meth residue. According to the laboratory correspondence between Mr. Ellis and A Best

Environmental, LLC, Mr. Ellis personally dropped off the items he's alleged to have removed from the residence at the laboratory on October 4, 2012.

I also contacted and interviewed Mr. Larry Stone of A Best Environmental, LLC, and the technician that assisted Mr. Ellis with the sampling of the household items that Mr. Ellis allegedly removed from the residence.

Based on Mr. Ellis' written complaint, the laboratory documentation submitted by Mr. Ellis, a review of the sampling regulations in WAC 246-205-531 and the department of health Guidelines for Environmental Sampling, and my interview with Mr. Stone, the sample results Mr. Ellis alleges are proof of contamination from illegal drug manufacturing are invalid for the following reasons:

1. Mr. Ellis was not qualified or authorized under the law to remove "contaminated" items and participate in the collection and sampling of these items under WAC 246-205-531.
2. There is no unbroken chain-of-custody or valid documentation that the samples were collected, stored, and transported properly in accordance with the regulations. There is was a minimum of period of at least four months where the disposition of these sampled items is unaccounted for (May – October, 2012). Therefore the collection and sampling of these items violated WAC 246-205-531, and the results are invalid.
3. Other than Mr. Ellis' claims, there is no proof or documentation that the items he submitted for sampling were from the residence at 1507 31st Street, or that the items he submitted for sampling are related to an illegal drug manufacturing operation.
4. Mr. Stone, who is authorized and qualified to collect samples, stated that he offered to Mr. Ellis to come and collect proper and legal samples from the residence, but that Mr. Ellis declined.
5. Mr. Stone stated that he advised Mr. Ellis that the samples would not be valid for a legal case due to the sampling errors and omissions, but Mr. Ellis asked him to run the samples anyway.
6. According to Mr. Stone, the levels of meth contamination on the items submitted by Mr. Ellis are not consistent with those typically found at a drug lab manufacturing site --- they are significantly lower than the values found with drug labs.

C. **Other allegations**

In Mr. Ellis' written complaints, he alleges that he was locked out of the house by the owner, and that Christina Nelson of Townsend Bay Property Management was a witness. He also states that Mr. Meyer was attempting to extort money from Mr. Ellis that was not owed to him.

I contacted and interview Ms. Nelson about Mr. Ellis' allegations. In summary:

1. Ms. Nelson stated that Mr. Meyer produced and showed to her written statements that showed that Mr. Ellis was behind in rent payments.
2. According to Ms. Nelson, when she and Mr. Meyer showed up in May 2012 to inspect the rental property, that Mr. Ellis had changed the locks. Ms. Nelson stated that it was actually Mr. Ellis who locked-out the owner, not Mr. Meyer who locked-out Mr. Ellis.
3. Ms. Nelson stated that after being informed by Mr. Ellis that the house was a former drug manufacturing lab, she checked with the Port Townsend Police Department to see if that was true, and that PTPD had no record of a drug lab at the residence at that time.
4. Ms. Nelson stated that despite being evicted by Mr. Meyer in May 2012, Mr. Ellis remained in the residence at 1507 31st Street through the better part of the summer without paying rent. She questioned why Mr. Ellis would continue to stay in a residence he claims was making him ill when he was evicted and not paying rent.
5. Ms. Nelson indicated that when she took over management of the property after Mr. Ellis finally left, that the house was in good shape and that no items were missing.

Conclusion

There was no evidence found or presented that proves that hazardous chemicals were used to manufacture illegal drugs at 1507 31st Street, Port Townsend, WA.

There was no evidence found or presented that shows that a law enforcement agency, or property owner, notified Jefferson County Public Health that 1507 31st Street, Port Townsend, WA, was contaminated by hazardous chemicals associated with the illegal manufacture of drugs.

The sample results submitted by Mr. Ellis did not provide grounds for Jefferson County Public Health to post the property or conduct further inspections under RCW 64.44 and WAC 246-205.

Public records requests to Jefferson County Public Health, Port Townsend Police Department, and Jefferson County Prosecuting Attorney's Office resulted in no findings or documentation that there was ever a drug lab at 1507 31st Street.