



January 2005

Methamphetamine Residue: Lack of Legislation Puts North Dakota and Minnesota Homeowners at Risk

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Recommended Citation

Bettendorf, Nicole (2005) "Methamphetamine Residue: Lack of Legislation Puts North Dakota and Minnesota Homeowners at Risk," *North Dakota Law Review*. Vol. 81 : No. 3 , Article 20.
Available at: <https://commons.und.edu/ndlr/vol81/iss3/20>

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METHAMPHETAMINE RESIDUE: LACK OF LEGISLATION PUTS NORTH DAKOTA AND MINNESOTA HOMEOWNERS AT RISK

WARNING: The house you are moving into contains toxic residue from a former methamphetamine drug lab and is unfit for human use . . . only, nobody is telling you about it.

I. INTRODUCTION

Tammy Young's daughter woke up sick to her stomach and vomiting in the middle of the night while her son had bloody noses so severe that he woke up with bloodstains on his clothes and bedding.¹ Her landlord assured her that the rental property was not making her children sick.² Young and her children stayed in the home for twelve years until they discovered that their home was declared unfit for human use due to the contaminate residue of a former clandestine methamphetamine drug lab (CMDL)—a detail the landlord conveniently failed to disclose.³ Unfortunately, Tammy Young's situation is becoming more prevalent as CMDLs intensify in Mid-western rural areas, leaving behind a hidden danger undetectable to the general public.⁴ An increasing amount of evidence indicates a substantial health risk to unsuspecting families buying or renting property that contained a CMDL due to the toxic chemical residue permeating the walls, floor, air, and structure within a dwelling.⁵ The lack of empirical evidence confirming the long-term health hazards of occupying a former CMDL makes confronting this problem difficult.⁶

1. David Steves, *Tainted Properties: Meth Lab's Toxic Legacy*, THE REGISTER-GUARD, June 16, 2004, at A1, available at <http://www.registerguard.com/cgi-bin/printStory.py?name=A1.methhouse1.06138date=20040613>.

2. *Id.*

3. *Id.*

4. DRUG ENFORCEMENT ADMIN., METHAMPHETAMINE SITUATION IN THE U.S. INTELLIGENCE REP. (1996), available at <http://www.fas.org/irp/agency/doj/dea/product/meth/production.htm#midwest>.

5. Tom Hoban, *Meth Scene Can Put Tenants, Property At Risk*, 3 SNOHOMISH COUNTY BUS. J. 9, 24 (Dec. 2000), available at <http://www.snohomishcountybusinessjournal.com/archive/dec00/hoban-dec00.htm>.

6. See Leroy Sigman, *Passing Legislation for Cleaning Up Meth Labs Difficult*, DAILY JOURNAL ONLINE, News, April 13, 2004, <http://www.mydjconnection.com/articles/2004/12/18/features/meth%20series/meth4.txt> (stating that "victims of meth-lab contamination might suffer the same long-term effects as those who manufacture and use the illegal substance, but health officials say they have not yet confirmed that").

Part II presents an overview of methamphetamine (meth), and describes the development and manufacturing process of CMDLs. Part III examines the potential health and safety hazards CMDLs pose to the environment and public health with an emphasis on the relatively recent discovery of meth residue and the shortcomings of the federal and state government's regulations addressing this issue. Part IV discusses the similarities in the recent development of meth residue to the evolution and current practices of lead-based paint regulations. Part V describes the vulnerabilities of CMDLs confronting rural areas, and addresses the inadequate state laws regulating meth residue in Minnesota and North Dakota. The final section discusses possible solutions to prevent innocent people from becoming victims of meth residue. The proliferation of highly mobile CMDLs in rural North Dakota and Minnesota, and the grave consequences of meth residue, necessitate immediate action by lawmakers to provide adequate cleanup and reporting requirements that will effectively protect the citizens of the communities.

II. METHAMPHETAMINE

A. HISTORY

Traditionally, California had been the chief producer of meth.⁷ Motorcycle gangs, like Hell's Angels, were the chief suppliers until Mexican drug trafficking organizations expanded their smuggling and distribution networks of cocaine and marijuana to include meth.⁸ In recent years, the United States has seen a tremendous increase in the number of "domestic independent laboratory operators in the Midwest that produce and distribute meth [in smaller quantities]."⁹

7. MICHAEL S. SCOTT, U.S. DEP'T OF JUSTICE, CLANDESTINE DRUG LABS 7-8, *available at* http://www.streetdrugs.org/pdf/Clandestine_Drug_Labs.pdf.

8. *Id.*; U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., METHAMPHETAMINE SITUATION IN THE UNITED STATES: PRODUCTION & TRAFFICKING, 1996, *available at* <http://www.fas.org/irp/agency/doj/dea/product/production.htm>.

9. See MethamphetamineAddiction.com, History of Methamphetamine, http://www.methamphetamineaddiction.com/methamphetamine_hist.html (last visited August 27, 2005) (discussing the increase in the number of meth addictions in the 1990s); U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., METHAMPHETAMINE & AMPHETAMINES, <http://www.dea.gov/concern/meth.pdf> (last visited January 29, 2005) (providing that recipes on the Internet and methods to cook chemicals are partly responsible for the geographical shift in meth production). See also N.D. CENT. CODE § 19-03.1-01 (2004) (providing that methamphetamine is an amphetamine containing ephedrine, pseudoephedrine, or any of their optical isomers, or salts).

B. USE

Meth has become the fastest growing drug in America.¹⁰ This highly addictive illicit drug stimulates the central nervous system.¹¹ Meth, ranging in price from \$400 to \$3,000 per ounce, is an odorless, bitter-tasting, white powder that dissolves in water and alcohol, and is easily made with inexpensive household and over-the-counter ingredients sold around the country.¹² Meth is manufactured in several different forms including white powder, chunky crystals, and bright colored tablets.¹³ The various configurations allow users to snort, smoke, inject, or ingest it orally.¹⁴ Common slang terms for meth include speed, crank, glass, crystal meth, and ice.¹⁵

C. EFFECTS

Meth affects the chemical structures in the brain causing neurons to release a high dose of dopamine.¹⁶ The dopamine allows meth users to experience an intense, pleasurable sensation called a “rush” that lasts approximately two to three minutes.¹⁷ A “high” immediately follows the rush and lasts up to eight hours.¹⁸ In addition to a feeling of euphoria,¹⁹ meth

10. U.S. DEP'T OF HEALTH AND HUMAN SERV., METH: WHAT'S COOKING IN YOUR NEIGHBORHOOD? 1 (2002), available at <http://media.shs.net/prevline/pdfs/vhs143g.pdf>.

11. *Id.* at 2.

12. See *id.* (stating that meth can be made with inexpensive, over-the-counter ingredients); NAT'L DRUG INTELLIGENCE CTR., NORTH DAKOTA DRUG THREAT ASSESSMENT 1 (MAY 2002), available at <http://www.usdoj.gov/ndic/pubs1/1052/meth.htm#Top> (noting that meth ranged in price from \$100 to \$120 per gram and \$1,000 to \$1,300 per ounce in 2000).

13. See U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., METHAMPHETAMINE & AMPHETAMINES, *supra* note 9 (noting that chunky crystals are usually called crystal meth or ice). Meth, in the form of brightly colored pills, is referred to as yaba. *Id.*

14. LYONS COUNTY SHERIFF'S DEP'T, WHAT IS METHAMPHETAMINE?, (Nov. 2003) http://www.lyoncountysheriff.org/what_is_methamphetamine.htm#meth.

15. See OFFICE OF THE NAT'L DRUG CONTROL POL'Y, METHAMPHETAMINE, <http://www.whitehousedrugpolicy.gov/drugfact/methamphetamine/index.html#top> (last updated May 4, 2005) (describing other street terms for meth including biker's coffee, chalk, chicken feed, go-fast, methlies quick, poor man's cocaine, shabu, stove top, yellow bam, and trash); see also Joan Miles & Laura Behenna, *Meth Labs: An Environmental Hazard*, 10 MONT. POL'Y REV. 1, 3 (2003) (stating that “the Florida Based Kock Crime Institute lists more than 300 nicknames for methamphetamine”).

16. NAT'L INST. ON DRUG ABUSE, RESEARCH REPORT SERIES-METHAMPHETAMINE ABUSE AND ADDICTION: HOW IS METHAMPHETAMINE USED?, <http://www.drugabuse.gov/Research-Reports/methamph/methamph3.html> (last updated May 21, 2003).

17. U.S. DEP'T OF HEALTH AND HUMAN SERV., METH: WHAT'S COOKING IN YOUR NEIGHBORHOOD?, *supra* note 10, at 3.

18. *Id.*

19. *Id.* Additionally, psychological effects of a meth high include feelings of increased strength and renewed energy, feelings of invulnerability, feelings of increased confidence and competence, and intensified feelings of sexual desire. *Id.*

increases the user's activity level, causing the person to be more alert and awake.²⁰

A meth high is accompanied by a withdrawal called "tweaking."²¹ Meth users may try to avoid the low by taking the drug every few hours.²² A meth user may experience short-term psychological effects from meth including, but not limited to, extreme depression with feelings of paranoia, irritability, hallucinations, and unpredictable violent behavior.²³ Chronic users may encounter long-term consequences such as brain damage, strokes, breathing problems, and lung, kidney, and liver damage.²⁴

D. "COOKING" 101: METH LAB PRODUCTION

Meth is produced in clandestine drug labs²⁵ using common household materials and over-the-counter medications.²⁶ Clandestine drug labs consist of "super" labs commonly found in California and "mom and pop" labs, located in rural areas.²⁷ "Super labs" produce a higher quantity of meth than "mom and pop" labs, however, smaller labs present a greater risk due to the higher number of explosions and fires, lack of technologically advanced equipment, and less-skilled cooks.²⁸ "Mom and Pop" labs are also troublesome because they are mobile, so meth dealers can assemble and disassemble them with relative ease before being apprehended by law enforcement.²⁹

Meth is manufactured through a process called "cooking."³⁰ The cooking process involves "mixing and heating; straining; chemical conversion; extraction; and drying."³¹ Meth can be cooked using three

20. NAT'L INST. ON DRUG ABUSE, *supra* note 16.

21. U.S. DEP'T OF HEALTH AND HUMAN SERV., METH: WHAT'S COOKING IN YOUR NEIGHBORHOOD?, *supra* note 10, at 1.

22. *Id.* at 4.

23. NAT'L INST. ON DRUG ABUSE, *supra* note 16.

24. *Id.* See also LYON'S COUNTY SHERIFF'S DEP'T, *supra* note 14 (stating that exposure to meth chemicals can cause kidney and liver damage, among other health problems).

25. See HONOLULU POLICE DEP'T, CLANDESTINE LABORATORY RESPONSE TEAM: DEFINITIONS/SLANGS, <http://www.honolulupd.org/nv/clanlab.htm> (last visited Oct. 13, 2004) (defining clandestine drug labs as facilities equipped and used in the production of illegal drugs).

26. *Id.*

27. See SCOTT, *supra* note 7, at 6-8 (characterizing "super" labs as large, highly organized labs that can manufacture ten or more pounds of meth and identifying "mom and pop" labs as smaller labs that produce one to four ounces of meth).

28. *Id.* at 6.

29. *Id.* at 8.

30. U.S. DEP'T OF HEALTH AND HUMAN SERV., METH: WHAT'S COOKING IN YOUR NEIGHBORHOOD?, *supra* note 10, at 7.

31. MINN. DEP'T OF HEALTH, METH LABS ARE HAZARDOUS TO HEALTH, http://news.minnesota.publicradio.org/features/2004/06/14_postt_methhealth/. See also WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE

different methods: (1) the phenyl-2-propanone (P2P) method, (2) the red phosphorus (red P) method, and (3) the "Nazi" dope method.³² Meth cooks prefer the Nazi method because the main chemicals, ephedrine, and pseudoephedrine are easy to obtain from over-the-counter allergy medicines.³³

The P2P method is generally associated with outlaw motorcycle gangs and produces a lower quality of meth.³⁴ The primary chemicals are P2P, aluminum, methylamine, and mercuric acid.³⁵ Red P is mostly produced by Mexican drug trafficking organizations, and yields high quality meth in

THREAT TO LAW ENFORCEMENT 12 (2004), available at http://www.hidta.org/programs/docs/040922_Meth_Report.pdf. The Red Phosphorous and Nazi methods both consist of nine steps. *Id.* The first step of the Red Phosphorous method is to extract the ephedrine or pseudoephedrine from over-the-counter cold tablets. *Id.* Second, the ephedrine or pseudoephedrine is separated by pouring the mixture through a coffee filter. *Id.* Third, the solvent is heated until the liquid evaporates. *Id.* Fourth, iodine, red phosphorus (matchstick plate), and water are boiled with the mixture. *Id.* At this point, phosphine gas, a very dangerous gas, is created. *Id.* Fifth, sodium hydroxide (lye) is added to the solution using ice to keep the mixture cool. *Id.* Sixth, more ice is added to maintain coolness, and ether is also added. *Id.* An orange residue (red phosphorous) may be present at this stage. *Id.* Seventh, the top layer of meth base is poured through several coffee filters or extracted directly using turkey basters. *Id.* The eighth step consists of processing the mixture in a gas generator by using salt or rock salt and sulfuric acid (drain opener), which creates hydrogen chloride (HCL), an extremely dangerous gas. *Id.* The gas will "salt-out" the meth base at the bottom of the jar. *Id.* Lastly, the remaining mixture is poured through a filter. *Id.* D-methamphetamine hydrochloride is left in the filter, and the remaining liquid can be processed again with HCL gas to extract more meth. *Id.* The first three steps and the last two steps are the same for both processes. *Id.* Using the Nazi cooking method, step four consists of adding sodium metal or lithium (batteries) to the mixture. *Id.* Anhydrous ammonia is added to the mixture in step five. *Id.* In step six, sodium hydroxide is formed which will convert into a meth base. *Id.* Step seven consists of pouring the mixture into a jar of ether. Camping fuel, paint thinner, toluene, brake cleaner, gun scrubber, and other solvents may be substituted for ether. *Id.* At this time, the meth base will dissolve in ether and the water will settle at the bottom. *Id.* The process is finished with steps eight and nine previously listed under the Red Phosphorus method, and D-methamphetamine will be produced. *Id.*

32. SCOTT, *supra* note 7, at 12.

33. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 3-4.

34. *Id.*; see also U.S. DEP'T OF JUSTICE DRUG ENFORCEMENT ADMIN., OFFICE OF DIVERSION CONTROL, DEA—PSEUDOEPHEDRINE RETAILERS MEETING (Feb. 28, 2003), available at <http://www.deadiversion.usdoj.gov/mtgs/pseudoephedrine/pseudo.htm> (asserting that meth production began in the 1970s when motorcycle gangs produced it using the P2P method).

35. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 3-4; see also ELLIJAY POLICE DEP'T, METH LABS, <http://www.gilmercounty.com/ellijaypolice/Methlab.htm#history>, (last visited Jan. 11, 2006) (stating that ephedrine is a chemical contained in many legal drugs including Vick's inhalants, decongestants, Nyquil Nighttime Cold Medications, and diet pills). After the Controlled Substances Act of 1970 placed restrictions on precursor drugs like ephedrine, meth lab operators began extracting pseudoephedrine from legally produced over-the-counter diet pills, decongestants, and bronchodilators, like Sudafed. *Id.* Iodine crystals can be obtained from veterinary supply stores or made by mixing iodine with hydrogen peroxide in glass jars. NAT'L DRUG INTELLIGENCE CTR., NORTH CAROLINA DRUG THREAT ASSESSMENT, April 2003, available at <http://www.usdoj.gov/ndic/pubs3/3690/meth.htm>.

large and small quantities.³⁶ The principal chemicals consist of ephedrine or pseudophedrine, red phosphorus, and hydriodic acid or iodine.³⁷

The Nazi dope method is commonly used by independent dealers and producers in “mom and pop” clandestine labs that produce small quantities of high quality meth.³⁸ The primary ingredients utilized in the Nazi method include ephedrine or pseudoephedrine, anhydrous ammonia³⁹, and sodium or lithium metal.⁴⁰ The Nazi method creates exceptional problems in rural farming communities due to the ease of obtaining agricultural fertilizers like anhydrous ammonia, a chemical used to synthesize ephedrine.⁴¹ Meth cooks can easily obtain large quantities of anhydrous ammonia since the farm fertilizer is often stored in tanks in unsupervised agricultural fields.⁴²

III. ENVIRONMENTAL AND HEALTH DANGERS FROM COOKING METH

Meth production poses grave environmental and health concerns by creating a toxic, hazardous waste endangering the environment and surrounding community.⁴³ Meth cooks dump toxic residue near the drug lab where it contaminates the soil, groundwater, and kills vegetation.⁴⁴ In addition to the environmental dangers, meth labs produce toxic gaseous vapors

36. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 3-4; *see also* WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT, *supra* note 31, at 10 (noting that iodine can be substituted for lithium and anhydrous ammonia); ELLIJAY POLICE DEP'T, METH LABS, *supra* note 35 (stating that Red Phosphorous can be extracted by scraping the striker plates of matchbooks or road flares).

37. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 3-4.

38. *See* SCOTT, *supra* note 7, at 5; WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT, *supra* note 31, at 10 (stating that the Nazi dope method was employed by German Nazi troops during World War II as a stimulant to help soldiers fight fatigue and enhance performance).

39. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 3-4; *see also* MINN. DEP'T OF HEALTH, HAZARDS OF ANHYDROUS AMMONIA WHEN USED IN THE ILLEGAL PROD. OF METHAMPHETAMINE (2000), http://www.mda.state.mn.us/appd/nh3/aa_lab.pdf (noting that anhydrous ammonia is an agricultural fertilizer stored as a liquid in high-pressure tanks).

40. *See* WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT, *supra* note 31, at 10-11 (explaining that lithium metal can be obtained from camera batteries).

41. *Id.* *See also* MINN. DEP'T OF AGRIC., HAZARDS OF ANHYDROUS AMMONIA WHEN USED IN THE ILLEGAL PRODUCTION OF METHAMPHETAMINE, Jan. 2000, <http://www.mda.state.mn.us/> (stating that anhydrous ammonia is a colorless, non-flammable liquefied gas with a pungent odor comparable to ammonia that is usually obtained by theft).

42. PILAR KRAMAN, THE COUNCIL OF STATE GOV'T, DRUG ABUSE IN AMERICA—RURAL METH 6 (Mar. 2004), *available at* <http://www.csg.org/NR/rdonlyres/e7ikxr65zumtwpwpirtdyxcaru5wy7uru2yzfyomiezficwvhl3s6dxttd7dz2bzsip4cpggefqa65jvpokvb6ajxb/drug+abuse+in+america-rural+meth.pdf>.

43. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12.

44. *Id.*

that cause adverse health effects to the meth operators, their families, and law enforcement.⁴⁵ The gaseous vapors released during meth production create a nearly invisible residue that lingers within the walls of a meth lab home where it poses serious health risks to unsuspecting residents.⁴⁶

A. ENVIRONMENTAL DANGERS FROM CMDLS

An extremely dangerous activity, cooking meth poses severe consequences to the environment and public health.⁴⁷ Meth recipes include the use of explosives, metals, acids, anhydrous ammonia, solvents, and other volatile, unstable chemicals that are known for causing fires and explosions.⁴⁸ CMDLs can operate almost anywhere.⁴⁹ A few common places have included farmhouses, apartments, hotels, storage units, and most types of vehicles.⁵⁰ Meth produces toxic sludge and liquid waste.⁵¹ These by-products pollute the soil after the meth cook burns or dumps meth residue on the property.⁵² For each pound of meth manufactured, approximately five to seven pounds of chemical waste are produced.⁵³

B. HEALTH DANGERS FROM CMDLS

Contact with CMDLs, both before and after the manufacturing process, may cause short-term and long-term health effects on meth cooks and their families, law enforcement, and unsuspecting residents living in former meth lab.⁵⁴ The severity of the effects varies depending on the cooking method and types of chemicals employed, the amount of chemicals and length of exposure, and the age and health of the person exposed.⁵⁵

During meth production, volatile chemicals produce a gaseous substance that can enter the body by inhalation, ingestion, or skin

45. ELLIJAY POLICE DEP'T, *supra* note 35.

46. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, lines 34-42 (Sept. 24, 2003), *available at* <http://www.health.state.mn.us/divs/eh/meth/lab/clean-up0903.pdf>.

47. ELLIJAY POLICE DEP'T, *supra* note 35.

48. WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT, *supra* note 31, at 13-14.

49. U.S. DEP'T OF HEALTH AND HUMAN SERV., METH: WHAT'S COOKING IN YOUR NEIGHBORHOOD?, *supra* note 10, at 7.

50. LYONS COUNTY SHERIFF'S DEP'T, *supra* note 14.

51. *Id.*

52. *Id.*

53. *Id.* Five to seven pounds is equal to approximately two gallons of chemical waste. *Id.*

54. Lisa Marshall, *Meth's Mess*, DAILY CAMERA, June 29, 2004, at A1.

55. HAMILTON COUNTY SHERIFF'S OFFICE, TENN. DEP'T OF ENV'T & CONSERVATION, REASONABLE, APPROPRIATE, PROTECTIVE (RAP) CLEANUP RESPONSE AND DOCUMENTATION GUIDELINES FOR PROPERTIES QUARANTINED DUE TO CLANDESTINE DRUG LABORATORY (CDL) ACTIVITIES, Aug. 20, 2004, <http://www.hcsheriff.gov/meth/guidance.asp>.

absorption.⁵⁶ The vapors “attack the mucous membranes, skin, eyes, and respiratory tract.”⁵⁷ Mild contact with meth chemicals can cause headaches, nausea, dizziness, and fatigue.⁵⁸ An exposure to a CMDL over a relatively short period of time can cause “shortness of breath; chest pain; dizziness; lack of coordination; chemical irritation; burns to the skin, eyes, nose, and mouth; and even death depending on the chemical exposure and the person’s vulnerability to the chemicals.”⁵⁹ Continued exposure over a longer period of time “may result in liver and kidney damage, neurological problems, and [an] increased risk of cancer.”⁶⁰

Meth cooks and their families are exposed to a greater health risk because they occupy the dwelling during the cooking process when hazardous vapors are released.⁶¹ Even if the families were not present during the manufacturing process, the toxic residue from the gaseous vapors lingers in the air and the structure.⁶² Children are especially susceptible to health complications because they play on contaminated carpet and floors, have more hand to mouth contact, weaker immune systems, and higher respiratory rates.⁶³

The dangers posed by meth labs require law enforcement to possess an extraordinarily high level of technical expertise . . . [in understanding] illicit drug chemistry; how to neutralize the risks of explosions, fires, chemical burns, and toxic fumes; how to handle, store and dispose of hazardous materials; and how to treat medical conditions caused by chemical exposure. They must also have a detailed knowledge of numerous federal, state, and local laws governing chemical manufacturing and distribution, hazardous materials, occupational safety environmental protection, and child protection.⁶⁴

In addition to the chemical hazards produced by meth labs, law enforcement and first-responders may encounter booby-traps set by armed

56. *Id.*

57. U.S. DEP’T OF HEALTH AND HUMAN SERV., METH: WHAT’S COOKING IN YOUR NEIGHBORHOOD?, *supra* note 10, at 12.

58. LYONS COUNTY SHERIFF’S DEP’T, *supra* note 14.

59. *Id.*

60. *Id.*

61. *Id.*

62. MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 33-36.

63. *Id.* at lines 63-69.

64. SCOTT, *supra* note 7, at 7.

meth dealers.⁶⁵ Subsequent to a CMDL seizure, law enforcement and first-responders are usually in charge of removing the hazardous chemicals from the residence.⁶⁶ Chemical removal, a time-consuming process, increases the possibility that an officer will be exposed to the dangerous, volatile chemicals.⁶⁷ Law enforcement and first-responders typically experience mild reactions from meth labs because many agencies lack the funding and resources to equip officers and first-responders with proper protection and the necessary level of training.⁶⁸

C. AFTERMATH OF METH PRODUCTION: METH RESIDUE, THE HIDDEN DANGER

In addition to the health and safety concerns during and immediately after production, recent investigations have discovered a “hidden danger”⁶⁹ of meth residue that poses a serious health risk to unsuspecting residents living in a former meth lab dwelling.⁷⁰ Meth residue is an unseen, toxic, chemical substance that seeps into household surfaces where it remains for several years.⁷¹ If a former CMDL is not properly cleaned, toxic residue can linger in sufficient quantities to contaminate the residential structure and cause severe health consequences for innocent people living within the dwelling.⁷² Even relatively low-levels of exposure for long periods of time can jeopardize the health of those residing in a former meth lab.⁷³ The lack of empirical evidence confirming the long-term health risks of occupying a former CMDL complicates this growing phenomenon.⁷⁴ The federal government has failed to set a numerical standard for determining a “safe”

65. *Id.* at 4; *see also* HOUSTON FIRE DEP’T CONTINUING EDUC. CLANDESTINE DRUG LABS, (2001), <http://www.ci.houston.tx.us/hfd/firefighters/ce/2001/February/Feb01CE.htm> (noting that some common booby traps include “trip wires designed to set off alarms, explosions, or toxic chemical devices; light switches, refrigerators, VCR’s or other electrical appliances wired to explosive devises; buried wooden planks with large nails or spikes protruding upward; and attack dogs [are sometimes] used”).

66. SCOTT, *supra* note 7, at 14.

67. *Id.* *See also* LYON’S COUNTY SHERIFF’S DEP’T, *supra* note 14.

68. SCOTT, *supra* note 7, at 1; Kraman, *supra* note 42, at 8.

69. *Channel 7 Denver News: Dangerous Residue: Was Your Home A Meth Lab?* (ABC local television broadcast, Feb. 13, 2004), *available at* <http://www.thedenverchannel.com/7news-investigates/2846018/detail.html>.

70. MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 35-36.

71. MINN. DEP’T OF HEALTH, METHAMPHETAMINE AND METH LABS, *available at* <http://www.health.state.mn.us/divs/eh/meth/lab/index.html> (last updated Jan. 10, 2005).

72. *Id.*; LYONS COUNTY SHERIFF’S DEP’T, *supra* note 14.

73. *See* MICHAEL C. COOPER, M2 PRESSWIRE, STRUCTURAL NARCOTICS DETECTION SERVICE (West 2003) (stating that methamphetamine residue and other narcotic residue does not dissipate over time).

74. SCOTT, *supra* note 7, at 14.

cleanup level.⁷⁵ The toxic level of meth residue depends on the variations in size, length, physical characteristics of the structure, and chemicals used to manufacture the drug.⁷⁶ In addition, the federal government has not required professional CMDL cleanup; instead, each state has the option to enact legislation determining a uniform toxic level of meth residue and whether to mandate CMDL cleanup.⁷⁷ In the absence of state regulations, most property owners “paint over the walls and clean the carpet, and the next unsuspecting individual moves in.”⁷⁸

The lack of state laws regulating meth residue have allowed scores of people to move into former drug labs that have not been properly cleaned.⁷⁹ Occupants of former meth labs may be exposed to poisonous residue that could produce substantially harmful effects to the unsuspecting victims.⁸⁰ Meth residue has become a growing public environmental and health concern that needs to be addressed by state policy makers in order to effectively protect those victimized by this phenomenon.⁸¹

75. DIV. OF WASTE MGMT., N.D. DEP'T OF HEALTH, BEST MGMT. PRACTICES FOR CLEANUPS AT METHAMPHETAMINE LABS 1 (Feb. 2003), available at http://www.ehs.health.state.nd.us/ndhd/envIRON/wm/pdf/mo_Drugs.pdf.

76. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS IN MINNESOTA: HEALTH, SAFETY, AND REMEDIATION ISSUES 3 (2004), available at [http://64.233.161.104/search?q=cache:uHwkhO9nnQJ:www.health.state.mn.us/divs/eh/meth/materialsection2.pdf+Section+2:+Basic+Drug+Lab+Identification+and+Information,+Lab+Chemicals,+Interior+and+Exterior+Contamination,+Clean+Up+Guidance,+and+Health+Effects+\(MN+Dept+Health\)&hl=en](http://64.233.161.104/search?q=cache:uHwkhO9nnQJ:www.health.state.mn.us/divs/eh/meth/materialsection2.pdf+Section+2:+Basic+Drug+Lab+Identification+and+Information,+Lab+Chemicals,+Interior+and+Exterior+Contamination,+Clean+Up+Guidance,+and+Health+Effects+(MN+Dept+Health)&hl=en) (on file with author).

77. Dion Nissenbaum and Aldrin Brown, *Source Nation: Chemical Leftovers Pose Human Hazard: Records Show that Poor Coordination and Lack of Regulations have Permitted People to Live in Contaminated Inland Property*, PRESS ENT., Jan. 22, 2000, at A01, available at <http://dec.co.riverside.ca.us/fyi/methproject/0126Meth1.doc>. Washington and Oregon were the first states to enact legislation regulating meth lab cleanup programs by establishing decontamination standards for hazardous chemicals found in meth labs. Anna S. Vogt, *The Mess Left Behind: Regulating the Cleanup of Former Methamphetamine Laboratories*, 38 IDAHO L. REV. 251, 272 (2001) (citing MO. DEP'T OF HEALTH AND SENIOR SERVS. SECTION FOR ENVTL. PUB. HEALTH, GUIDELINES FOR CLEANING UP FORMER METHAMPHETAMINE LABS, <http://www.dhss.state.mo.us/resourcematerial/welcome/meth.pdf>) (citing Facsimile from Carolyn Comeau, *Review of Contaminant Levels: Guidelines for Clandestine Drug Lab Cleanup*, Sept. 2000 (on file with author)). Washington requires no more than five micrograms of meth residue per square foot while Oregon accepts no more than .5 micrograms per square foot as an acceptable meth residue standard. *Id.* Arkansas, Georgia, Indiana, Kentucky, Ohio, and Oklahoma have enacted laws making meth lab operators liable for cleanup costs. Erin Madigan, *War on Meth Epidemic Targets Cold Medicines*, STATELINE, Apr. 16, 2004, at 1, available at <http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=365182>. North Dakota has not established an official cleanup regulation or cleanup number. DIV. OF WASTE MGMT., *supra* note 75, at 1. Minnesota has not enacted a state statute mandating meth lab cleanup, but the Minnesota Department of Health has recommended a cleanup number set above one hundred micrograms per square foot. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 94-96.

78. Nissenbaum and Brown, *supra* note 77, at A01.

79. *Id.*

80. Hoban, *supra* note 5.

81. Miles and Behenna, *supra* note 15, at 3.

IV. METHAMPHETAMINE LABS INTENSIFY IN RURAL AREAS; NORTH DAKOTA AND MINNESOTA ARE ESPECIALLY VULNERABLE

CMDLs have spread throughout Midwest rural areas at an extraordinarily high rate.⁸² Over half of the drug labs seized by law enforcement stem from small, “mom and pop” meth labs in the Midwestern region.⁸³ The surge of CMDLs pose a great danger to rural communities such as North Dakota and Minnesota.⁸⁴ North Dakota meth lab seizures have jumped from thirteen in 1999 to two hundred thirty-five in 2003.⁸⁵ Minnesota meth lab seizures increased from one hundred in 1999 to three hundred and one in 2003.⁸⁶ The dramatic explosion of CMDLs in rural areas, like North Dakota and Minnesota, are primarily attributed to the general mistaken beliefs regarding rural drug abuse, the easy access to meth recipes, low-cost household and chemical materials, the open land in farming communities, and the limited law enforcement budgets.⁸⁷ Despite the dramatic increase of CMDLs in rural areas, North Dakota and Minnesota have failed to enact legislation regulating cleanup and disclosure requirements.⁸⁸ Consequently, rural communities in North Dakota and Minnesota are not prepared or equipped to handle the problems associated with meth labs, leaving communities struggling to find a viable solution.⁸⁹

82. Donna Leinwand, *Meth Moves East*, USA TODAY, July 30, 2003, at 1A, available at http://www.usatoday.com/news/nation/2003-07-29-meth-cover_x.htm.

83. SCOTT, *supra* note 7, at 14.

84. *Id.* See also Stephen J. Lee, *Officials Brainstorm on Meth Crisis Cures*, GRAND FORKS HERALD, Dec. 10, 2004, at 4B (stating that meth has “become a problem in nearly every small and large community in the state”).

85. See DRUG ENFORCEMENT ADMIN. STATE FACTSHEETS: NORTH DAKOTA (2004), available at <http://www.dea.gov/pubs/states/northdakota.html> (affirming that North Dakota state seizures consisted of eleven busts in 1999 compared to fifty-three in 2003, and as of February 2004, North Dakota has collected 1.6 kilograms of meth).

86. See DRUG ENFORCEMENT ADMIN. STATE FACTSHEETS: MINNESOTA (2004), available at <http://www.dea.gov/pubs/states/minnesota.html> (stating that Minnesota state seizures consisted of ninety-nine in 1999 to one hundred forty-two in 2003, and as of 2004, Minnesota has obtained 15.2 kilograms of meth).

87. KRAMAN, *supra* note 42, at 6.

88. Ann Austin, *New Meth Ordinance Developed*, ALBERT LEA TRIB., Aug. 22, 2004, at A1, available at <http://www.albertleatribune.com/articles/2004/08/21/news/news1.txt>.

89. *Id.*

A. TROUBLE IN SMALL TOWN USA

1. *General Mistaken Beliefs Regarding Rural Drug Abuse*

Historically, CMDLs have been located exclusively on the west coast, like in California, where “superlabs” produced the majority of meth in the United States.⁹⁰ In the 1990s, small-scale, “mom and pop” CMDLs started seeping into the rural Midwestern region.⁹¹ Most communities overlooked or did not notice CMDLs, still holding the notion that meth was an “urban problem.”⁹² Midwestern states can no longer afford to disregard this issue because CMDLs can be found almost anywhere in rural neighborhoods, including a house or apartment, an abandoned bus, or even the trunk of an automobile.⁹³

Meth has become the drug of choice for teenagers since it is cheaper and more accessible than most illicit drugs.⁹⁴ The National Drug Threat Assessment reported in 2000 that “rural and small-town youth were more likely than urban juveniles to become substance abusers and an eighth grader in a rural town [was] more likely to use illicit drugs than an urban eighth grader.”⁹⁵ The North Dakota Youth Risk Behavior Survey supported this contention indicating that North Dakota high school students abuse meth in greater numbers than the national average.⁹⁶ Similar data revealed that rural and urban meth abuse in adults was analogous to the meth use of eighth graders.⁹⁷

The increased production of meth in rural areas has spurred criminal activity, posing a safety threat to citizens.⁹⁸ Meth-related crimes encompass

90. KRAMAN, *supra* note 42, at 2-3; SCOTT, *supra* note 7, at 5.

91. KRAMAN, *supra* note 42, at 3; SCOTT, *supra* note 7, at 5.

92. *Id.*

93. See Hugo Kugiyu, *Meth: The New Drug in Town*, NEWSDAY, September 12, 2004, at A07, available at <http://www.newsday.com/news/printedition/nation/ny-meth03140,2411269.story?coll=ny-nationalnews-print> (declaring that small towns like Drayton, North Dakota have suffered the effects of methamphetamine drug labs first-hand through the loss of manufacturing jobs and near eradication of family farms).

94. *Id.*

95. See KRAMAN, *supra* note 42, at 3 (stating that “rural eighth graders are 104% more likely to use amphetamines in general . . . 59% more likely than their counterparts in large cities and 64% more likely than eighth graders in small metropolitan areas to use methamphetamine specifically”).

96. See NAT’L DRUG INTELLIGENCE CTR., *supra* note 12 (asserting that “nearly 11 percent of high school students in North Dakota reported lifetime methamphetamine use compared with slightly more than 9 percent nationally). North Dakota Attorney General Wayne Stenehjem stated that one in ten high school students admitted to trying methamphetamine at least once. Lee, *supra* note 84, at 4B.

97. KRAMAN, *supra* note 42, at 12.

98. NAT’L DRUG INTELLIGENCE CTR., *supra* note 12.

a vast array of illegal activities ranging from theft of farm fertilizers to murder.⁹⁹ Many small town communities have misconstrued the significance of drug-related crimes in rural neighborhoods.¹⁰⁰ Between 1997 and 2002, drug crimes in urban areas declined by 11.2%, while rural areas observed an increase by approximately 10.5%.¹⁰¹ Additionally, between 1990 and 1998, drug-related crimes in small towns with populations under 10,000 residents were six times higher than metropolitan cities.¹⁰²

2. *Easy Access to Meth Recipes and Low Cost Household Materials and Chemical Materials*

The growing number of CMDLs in Midwestern communities has been attributed, in part, to the easy access of recipes on the internet and the availability of the household materials and chemical materials needed to make a CMDL.¹⁰³ Meth cooks have perfected the chemical cooking techniques, allowing them to produce meth almost anywhere, using a vast assortment of easy-to-acquire chemical and household items.¹⁰⁴ Depending on the type of cooking method employed, meth can be produced from over two hundred common substances,¹⁰⁵ including household cleaners, lye, acetone, and anhydrous ammonia.¹⁰⁶

3. *Open Land in Farming Communities*

The vast expanses of land in rural communities furnish the seclusion meth cooks need to go virtually undetected by law enforcement.¹⁰⁷ The environment also allows meth cooks to mask the unpleasant odor and gaseous vapors released during the cooking process.¹⁰⁸

Farming communities have become the victims of crime from thefts of anhydrous ammonia.¹⁰⁹ Anhydrous ammonia, typically stored in large tanks, can be found in the middle of isolated and unsupervised farm

99. *Id.* at 11-12; *see also* SCOTT, *supra* note 7, at 5 (stating that some meth-related crimes can be attributed to dangerous, even deadly, booby traps set by meth dealers to prevent law enforcement from discovering the production site).

100. KRAMAN, *supra* note 42, at 3.

101. *Id.* at 11.

102. *Id.* at 12.

103. Leinwand, *supra* note 82, at 1A.

104. LYON'S COUNTY SHERIFF'S DEP'T, *supra* note 14.

105. *Id.*

106. WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA, METHAMPHETAMINE: A UNIQUE THREAT TO LAW ENFORCEMENT, *supra* note 31, at 10-12.

107. Kugiya, *supra* note 94, at A07.

108. KRAMAN, *supra* note 42, at 6.

109. *Id.*

fields.¹¹⁰ The lack of supervision allows meth cooks to steal great quantities, while costing farmers thousands of dollars every year.¹¹¹

4. *Limited Law Enforcement Budgets*

Local law enforcement in rural areas do not have the financial resources nor the manpower to manage CMDLs.¹¹² The DEA estimates that shutting down and cleaning up a meth lab can cost law enforcement agencies from \$3,280 to \$100,000.¹¹³ Oftentimes, federal government funding overlooks rural police departments in order to support urban police departments.¹¹⁴ Small town taxpayers cannot provide local law enforcement with the necessary resources and education to effectively combat CMDLs due to their small tax base.¹¹⁵ Several local agencies have fewer than ten officers on staff, while others do not have local agencies.¹¹⁶ Other rural communities that do not have the funding for a police department must rely on the limited staff within state agencies.¹¹⁷ In some instances, this means one law enforcement officer may patrol hundreds of miles.¹¹⁸ Even if a police officer finds a CMDL, the cleanup process can be extremely complex and time consuming, requiring cooperation and assistance from other agencies.¹¹⁹ The law enforcement agency finding the meth lab could be responsible for some of the cleanup costs.¹²⁰ However, without the proper financial resources or adequate state laws dispersing the cleanup costs, the police department's response to the situation is constrained by their available budget.¹²¹

B. MINNESOTA AND NORTH DAKOTA CMDL CLEANUP REGULATIONS AND DISCLOSURE REQUIREMENTS

Meth is the most serious drug threat in North Dakota and Minnesota.¹²² North Dakota and Minnesota have taken measures to decrease the number

110. *Id.*

111. *Id.* at 12.

112. *Id.* at 11.

113. Leinwand, *supra* note 83, at 1A.

114. KRAMAN, *supra* note 42, at 8.

115. *Id.*

116. *Id.* at 6-7.

117. *Id.* at 8.

118. *Id.* at 6.

119. See SCOTT, *supra* note 7, at 1, 5 (characterizing "super labs" as large, highly organized labs that can manufacture ten or more pounds of meth).

120. *Id.* at 14.

121. KRAMAN, *supra* note 42, at 8-9.

122. See DAKOTA PUB. HEALTH DEP'T, PROBLEM STATEMENT #10, RISK FOR INJURY, ILLNESS, AND DEATH RELATED TO PUBLIC HEALTH EMERGENCIES/THREATS 2 (2004), *available*

of meth labs.¹²³ However, both states have failed to sufficiently address the hazard of meth residue, a growing threat affecting the health and safety of innocent homeowners.¹²⁴ In particular, North Dakota has failed to enact legislation mandating landowners to professionally clean up the chemical residue from a former CMDL or disclose the former presence of a CMDL on the property to a potential buyer or renter.¹²⁵ Effective January 1, 2006, Minnesota passed new meth laws concerning cleanup and reporting requirements.¹²⁶ Although the new laws represent an important step to combat meth and CMDLs, there is still an ample amount of work that needs to be done to effectively control the methamphetamine epidemic.

1. *CMDL Cleanup in Minnesota and North Dakota*

CMDL cleanup, an extremely dangerous, complex, and time-consuming activity demands a tremendously high level of technical

at http://www.co.dakota.mn.us/public_health (search for community health assessment 2004) (stating that meth is the drug most commonly made in Minnesota, and CMDLs have been found mostly in rural or semi-rural areas in almost every county within the state); DEBRA DURKIN, MINN. DEP'T OF HEALTH, METHAMPHETAMINE AND METH LABS (2004), available at <http://www.health.state.mn.us/divs/eh/meth/> (noting that over 75% of meth is produced in CMDLs located in rural or semi-rural areas); NAT'L DRUG INTELLIGENCE CTR., *supra* note 12 (stating that North Dakota law enforcement officers seized more meth in 1999 than during the previous four years combined). Meth-related investigations in North Dakota increased from forty-eight in 1995 to one-hundred and nineteen in 1999. *Id.* at 1. The North Dakota Bureau of Criminal Investigation found that twenty-two of the forty-six meth labs seized in 2000 were located in rural areas while seventeen were found in urban areas, and seven were located in small towns. *Id.* at 3. See also NAT'L DRUG INTELLIGENCE CTR., MINNESOTA DRUG THREAT ASSESSMENT UPDATE 1 (June 2002), available at <http://www.usdoj.gov/ndic/pubs/1/1158/meth.htm#top> (indicating that Minnesota meth lab seizures increased from twenty-one in 1997 to two-hundred and thirty-two in 2001). Minnesota meth lab seizures increased from thirteen in 1995 to one-hundred and thirty-eight in 2000. *Id.* at 2-3.

123. See Kugiya, *supra* note 94, at A07 (stating that certain areas in North Dakota, like Drayton, have been nicknamed "anhydrous heaven" due to the easy access of anhydrous ammonia); Madigan, *supra* note 77, at 1 (Minnesota and North Dakota have modified "their child abuse [statute] definitions to include manufacturing controlled substances in the presence of kids."); N.D. CENT. CODE §19-20.2-11 (2003) (requiring locking of anhydrous ammonia nurse tanks to stop illegal thefts by meth cooks); Tom Shean, *Fertilizer Maker Joins Drug War with Deterrent*, VIRGINIAN-PILOT, Aug. 25, 2004, D1, available at <http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=365182> (adding GloTell, an additive that leaves pink stains on skin, clothes, and other surfaces, to anhydrous ammonia in the hopes of deterring meth thieves); Ember Reichgott Junge, *Omnibus Crime Bills Take Shape at Capitol*, THE MINN. LAWYER, April 12, 2004, News (advocating legislation limiting sales of over-the-counter methamphetamine precursor drugs and other items such as cold medications containing Ephedrine, drain cleaners, and batteries).

124. See Austin, *supra* note 88, at A1.

125. See DIV. OF WASTE MGMT, *supra* note 75, at 1; accord MINN. DEP'T OF HEALTH, LOCAL DRUG LAB ORDINANCES: PURPOSE AND PROBLEMS 1-2 (March 2004) available at <http://www.health.state.mn.us/divs/eh/meth/ordinance/>.

126. Omnibus Public Safety Bill, 2005 Minn. Laws, Ch. 136 Art. 7 Sess. 15 (May 2005) available at http://house.leg.state.mn.us/hrd/as/84/as136.html#_Toc104870723.

expertise.¹²⁷ States that do not require professional cleanup employ a process called “gross chemical removal,” while states mandating specialized high-tech cleaning accurately refer to this procedure as “cleanup.”¹²⁸ Notwithstanding the lack of state laws governing CMDL cleanup, state health departments in Minnesota and North Dakota have provided recommended cleanup guidelines.¹²⁹ These recommendations include “gross chemical removal,”¹³⁰ and professional “cleanup.”¹³¹

127. See SCOTT, *supra* note 7, at 1, 14 (stating that “seizing even a small lab can take four or more hours [to properly clean]”).

128. See MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 139-40 (asserting that gross chemical removal is “often mistakenly referred to as [professional] ‘[c]leanup’”). Specialized, professional cleaning costs an average of \$6,250, but can range anywhere from \$2,500 to \$150,000 depending on the size of the lab, the period of time the lab was in use, and the types of chemicals used. SCOTT, *supra* note 7, at 15.

129. See MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 140-50 (declaring that the “cleanup [guideline] level for methamphetamine is one microgram per square foot of surface area”); *but see* DIV. OF WASTE MGMT., *supra* note 75, at 1 (providing no established cleanup standards in North Dakota).

130. See MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 117-23. The gross chemical removal phase begins when law enforcement officers and first-responders arrive at the site of a meth lab. *Id.* at lines 124-29. Personnel doing the cleanup must be provided with personal protection equipment, including protective clothing, gloves, and respiratory protection that properly comply with the Occupational Safety and Health Administration guidelines at lines 146-71. The Minnesota Department of Health recommends that the initial cleanup team have received at least 40 hours of safety training “plus experience in hazardous waste site cleanup or specific training in clandestine lab cleanup.” *Id.* at lines 146-51.

Cleanup officials contain the area by sealing off the property with signs, crime scene tape, law enforcement officers, and firefighters. See Nitza A. Coleman, *After the Bust: Landowner’s Liability When the Property is used for the Manufacture of Methamphetamine*, 1 S.J. AGRIC. L. REV. 109, 124 (2003). Depending on the severity of the chemical hazard, law enforcement may have to evacuate people in the surrounding vicinity. See MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 119-29 (illustrating by the following example: “anhydrous ammonia in a corroded container, or quantities of highly flammable chemicals, . . . may result in the complete evacuation . . . of an affected building or even neighboring structures”). The drug lab itself must be safely neutralized to prevent chemical explosions that could contaminate the surrounding area and injure the personnel. SCOTT, *supra* note 7, at 14. Law enforcement officers need to ventilate the structure containing the meth lab to avoid contaminating other buildings with meth vapors. MINN. DEP’T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 406-19. The initial cleanup crew must identify the hazardous materials that need immediate attention and safely remove those chemicals. SCOTT, *supra* note 7, at 14. The gross chemicals removed from the site need to be properly disposed of or stored as evidence. *Id.* at 14. Law enforcement officials could also contact a professional cleanup contractor to conduct this procedure. *Id.*

Prior to cleanup, law enforcement may post a warning sign, which can be easily removed, by the entrance of the property stating that “a clandestine lab had operated at the site and that hazardous substances or waste products may be on site.” CAROLYN BRAUN, CITY OF ANOKA, REGULATING THE CLEANUP OF CLANDESTINE DRUG LAB SITES IN MUNICIPALITIES: A SUMMARY REPORT (Apr. 2002), available at <http://www.health.state.mn.us/divs/eh/meth/anokaordinance.doc>. Posting the warning sign ends law enforcement and first-responder involvement with the cleanup process, but the premises cannot be presumed habitable until after the building official makes the formal posting and after the cleanup is complete. Coleman, *supra* note 129, at 124; BRAUN, *supra* note 129, at 1. This course of action fails to account for the toxic

The toxicity of meth lab residue varies depending upon the size of the meth lab, the length of time it was in operation, the types of chemicals used, the methods of chemical storage and disposal, chemical spills, and the physical characteristics of the structure.¹³² In the absence of a national regulation, some states have established their own safety standards.¹³³ Oregon has the highest standard safety level set at five-tenths of a microgram of meth residue per square foot.¹³⁴ Neither Minnesota nor North Dakota lawmakers have chosen a specific numeric standard; however, unlike North Dakota, the Minnesota Department of Health has recommended a maximum safety level at one microgram per square foot.¹³⁵ The inconsistent level between states demonstrates that some structures in one state may pass a cleaning inspection even though they would be deemed inhabitable in a neighboring state.¹³⁶

In addition to the Department of Health's meth residue cleanup recommendations, Minnesota, unlike North Dakota, has given local and county governments discretion to enact ordinances regulating cleanup in private residential dwellings.¹³⁷ As a result, at least sixteen counties have meth lab cleanup ordinances in place, while another fifty-five are in the process of passing ordinances or are researching the possibility of an

residue remaining within the furnishings of that structure, which presents a health hazard for any person living in that environment. *See* MINN. DEP'T OF HEALTH, *supra* note 46, at lines 35-44.

131. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 201-02. Professional CMDL cleanup begins after the scene is secured and the hazardous chemicals are removed. *Id.* at lines 180-81. In an effort to preserve crime scene integrity, specialized cleanup crews, typically private cleaning companies, need to consult with law enforcement officials before entering the site. *Id.* at lines 184-85. The first task of an independent cleanup contractor is to do a preliminary assessment to determine the severity and type of contamination. *Id.* at lines 213-41. The preliminary assessment requires obtaining information from the original agencies at the meth lab site to determine the method used to cook meth. *See id.* at lines 204-08 (manufacturing methods include the Nazi method, red phosphorus method, and phenyl-2-propanone). The types of chemicals used in the manufacturing process, the appropriate cleanup methods, and the habitability of the structure for occupancy also require proper assessment. *Id.* at lines 243-51. Professional cleaning crews enter meth labs wearing similar protective hazmat gear law enforcement and first responders wear. *Id.* at lines 159-69. In addition, the cleanup crew usually maintains ventilation throughout the cleanup, unless it impedes with the assessment. *Id.* at lines 414-16. The cleanup contractors assess the internal structure before and after cleanup using a photo ionization detector (PID) to spot the presence of hazardous chemicals used in meth manufacturing. *Id.* at lines 425-26.

132. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 72-75.

133. Coleman, *supra* note 129, at 126 (citations omitted).

134. *Id.* (citations omitted).

135. MINN. DEP'T OF HEALTH, CLANDESTINE DRUG LABS GEN. CLEANUP GUIDELINES, *supra* note 46, at lines 50-51; *accord* DIV. OF WASTE MGMT., *supra* note 75, at 1.

136. Coleman, *supra* note 129, at 126.

137. MINN. DEP'T OF HEALTH, LOCAL DRUG LAB ORDINANCES: PURPOSE AND PROBLEMS, *supra* note 125, at 1.

ordinance.¹³⁸ Anoka County, Minnesota, leading the state in CMDL seizures, is among the counties providing cleanup requirements in private residential homes.¹³⁹ The county provided a cleanup ordinance by classifying CMDLs as a new category of public health nuisance.¹⁴⁰ After law enforcement seizes a CMDL, the City's Building Official posts the property as a public health nuisance, and any occupants in the residence are required to vacate the premises.¹⁴¹ After the posting, the City Building Official notifies the property owner responsible to make arrangements for the costs of assessment and professional cleanup.¹⁴² In cases where the landowner cannot be located within ten days of posting, the City will bear responsibility for site assessment and cleanup.¹⁴³ After the health risks have been removed through professional cleanup, the posting is removed, and the property may be inhabited once again.¹⁴⁴

In contrast to Minnesota, North Dakota's cities and counties have failed to enact ordinances mandating cleanup requirements.¹⁴⁵ Cities and counties without a cleanup ordinance do not designate responsibility for professional decontamination.¹⁴⁶ As a result of North Dakota's inadequate response, innocent home-buyers and renters are left unprotected from the concealed threat of meth residue.¹⁴⁷

138. Bill Action Summary as of Mar. 31, 2004, *Legislature Focuses on Meth Problems*, 48 MINN. COUNTY 13 (2004).

139. See BRAUN, *supra* note 129 (stating that the county ordinances must be consistent with Minnesota Statute section 145A.05 and Minnesota Statute section 145A.02); Peter Bodley, *Meth Cleanup Costs Lead to Need for City Vigilance*, ANOKA COUNTY UNION, Nov. 28, 2003, at 16A (stating that meth raids in Anoka County, Minnesota have jumped from three in 1998 to forty-three in 2003).

140. See BRAUN, *supra* note 129 (noting that the cleanup ordinance is consistent with Minnesota statute section 145A.05 and Minnesota Statute section 145A.02).

141. *Id.*

142. *Id.*

143. See *id.* (asserting that the ordinance allows the city to recover their expenses through a municipal assessment process).

144. *Id.*

145. See MINN. DEP'T OF HEALTH, LOCAL DRUG LAB ORDINANCES: PURPOSE AND PROBLEMS, *supra* note 125, at 1-2 (reporting that Minnesota does not have a state law requiring disclosure of a former meth lab, however, cities and counties within Minnesota may enact ordinances mandating reporting).

146. Shira Kantor, *Meth Ordinance Gains Public's Support: Dakota County Property Owners are Responsible for Cleaning the Hazardous Remains of Methamphetamine Labs, Making Some More Vigilant About Tenants*, MINNEAPOLIS STAR TRIBUNE, (Sept. 8, 2004), at 1S.

147. Hoban, *supra* note 5, at 3.

2. *What has Minnesota and North Dakota Done to Address Reporting Requirements?*

“Health inspectors, real estate agents, and homebuyers in Minnesota and North Dakota are all confronting a problem no one is prepared for—chemicals that remain in homes long after the meth lab is gone.”¹⁴⁸ In states where professional cleanup is not required, like Minnesota and North Dakota, the internal structure is not evaluated to determine the danger of noxious chemical residue lurking within the furnishings of walls, carpets, pipes and other areas of the structure.¹⁴⁹ Neither Minnesota nor North Dakota mandate property owners and landlords to inform future buyers or tenants of a former CMDL.¹⁵⁰ There is no state record to maintain a list of tainted properties so even a diligent search by a potential buyer or tenant would not yield the information.¹⁵¹ The only method of obtaining this information would be to ask the owner, but few potential property buyers or renters may think of asking whether or not the property ever contained a CMDL.¹⁵² Consequently, hundreds of unsuspecting families may move into former CMDLs and find themselves living in a “Home Sick Home.”¹⁵³

At least thirty-two states require property disclosure statements mandating property owners to inform potential buyers or renters of any known material defects, including health and safety dangers, on the property.¹⁵⁴ However, a landowner is not liable for hidden dangers on the property unless the defective condition is something that the property owner knew or should have known about.¹⁵⁵ Even though meth is becoming a well-known drug across the country, people living in rural areas like Minnesota and North Dakota, including landlords and property sellers, may be unaware that clandestine labs producing meth leave behind harmful chemical residue.¹⁵⁶ Even if a seller or landlord knows about a former CMDL on the

148. *Former Meth Houses Could Pose Serious Health Risks* (KSL 5 television broadcast, Feb. 24, 2003), available at <http://tv.ksl.com/index.php?nid=46&sid=11-6275>.

149. DIV. OF WASTE MGMT., *supra* note 75, at 1; MINN. DEP'T OF HEALTH, LOCAL DRUG LAB ORDINANCES: PURPOSE AND PROBLEMS, *supra* note 125, at 1-2.

150. DIV. OF WASTE MGMT., *supra* note 75, at 1; MINN. DEP'T OF HEALTH, LOCAL DRUG LAB ORDINANCES: PURPOSE AND PROBLEMS, *supra* note 125, at 1-2.

151. DURKIN, *supra* note 122; DIV. OF WASTE MGMT., *supra* note 75, at 1.

152. *Houses That Were Former “Meth Labs” May be Causing Illness to Unsuspecting Residents: An Inside Edition Investigation* (CBS television broadcast, Feb. 25, 2003); Hoban, *supra* note 5.

153. *Former Meth Houses Could Pose Serious Health Risks*, *supra* note 148; *Channel 7 Denver News*, *supra* note 69.

154. Jay MacDonald, *Sellers Forced to Disclose Any Problems with Property*, POST-GAZETTE, Oct. 23, 2003, at H-6, <http://www.post-gazette.com/homes/20030117realcolp8.asp>.

155. *Gradjelick v. Hance*, 646 N.W.2d 225, 225-26 (Minn. Ct. App. 2001).

156. *Channel 7 Denver News*, *supra* note 69.

premises, only a small number of property owners may know about meth residue.¹⁵⁷ If the landowners are aware of the dangers posed by meth residue, only a few states require private landowners to disclose this information to a potential buyer or renter.¹⁵⁸ Some states have enacted legislation requiring real estate agents to disclose the former presence of a CMDL to potential buyers.¹⁵⁹ The drawback to these laws is that they do not mandate disclosure for private property owners or landlords renting or selling their property without the use of an agent.¹⁶⁰ After police seize a CMDL and dispose of the hazardous chemicals, private landowners may choose to spend a large quantity of money professionally cleaning the property or they may turn around and rent or sell the contaminated property without notifying an unsuspecting buyer or renter that the property had contained a CMDL.¹⁶¹

V. DEVELOPMENTAL COMPARISON OF METH RESIDUE AND LEAD-BASED PAINT

Meth residue, a relatively new toxic hazard, lacks scientific evidence substantiating potential long-term health risks associated with occupying a former CMDL.¹⁶² However, the discovery and development of meth residue seems to have several similarities to the evolution of lead-based paint poisoning. Although each subject maintains distinct characteristics, the underlying factor remains the same: meth residue and lead-based paint cause serious health consequences to homeowners.¹⁶³

Lead-based paint poisoning has been termed “the silent disease.”¹⁶⁴ In 1991, lead poisoning was considered the “number one environmental threat

157. *Former Meth House Could Pose Serious Health Risks*, *supra* note 148.

158. *Channel 7 Denver News*, *supra* note 69.

159. Devonne R. Sanchez & Blake Harrison, *The Methamphetamine Menace*, NAT'L CONF. OF STATE LEGISLATURES LEGISBRIEF, Jan. 2004, 1, available at <http://www.ncsl.org/programs/cj/meth.pdf> (citing ANDREWS UNIV., THE MAYATECH CORP. AND RAND, *Illicit Drug Policies: Selected Laws from the 50 States*, Feb. 2002, available at <http://www.andrews.edu/BHSC/ImpacTeen-IllicitDrugTeam>; OFFICE OF THE NAT'L DRUG CONTROL POLICY, *Methamphetamine*, Washington D.C., May 1999 available at <http://www.whitehousedrug-policy.gov/drugfact/methamphetamine/index.html>; Denise Hertz, *Drugs in the Heartland: Methamphetamine Use in Rural Nebraska*, THE NAT'L INST. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, April 2000, available at <http://www.ncjrs.org/pdffiles1/nig/180986.pdf>) (asserting that Washington and Oregon have the most comprehensive meth cleanup laws in the nation).

160. *Id.*

161. Coleman, *supra* note 129, at 125.

162. SCOTT, *supra* note 7, at 14.

163. Claude E. Walker, *The Lead-Based Paint Real Estate Notification and Disclosure Rule*, 8 BUFF. ENVTL. L.J. 65, 68 (2000); LYON'S COUNTY SHERIFF'S DEP'T, *supra* note 14.

164. Alvin C. Harrell, *Lead Paint Disclosure Requirements for Residential Real Estate*, 51 CONSUMER FIN. L.Q. REP. 380, 381 (1997).

to the health of children in the United States.”¹⁶⁵ Prior to 1960, the knowledge and understanding concerning the dangers of lead-based paint was insufficient.¹⁶⁶ During this period, lead-based paint was used as a sealant in residential homes.¹⁶⁷ Subsequently, a growing number of people living in homes with lead-based paint contracted lead poisoning.¹⁶⁸ Children under six were the most vulnerable age group because their nervous systems were not fully developed.¹⁶⁹ Many victims of lead poisoning did not associate lead-based paint with their illness because the general public was unaware of the dangers posed by lead.¹⁷⁰ As scientific studies identified previously unrecognized health effects of lead-based paint poisoning, the number of reported lead poisoning cases increased.¹⁷¹

In 1978, responding to the high number of documented lead poisoning cases, the federal government began regulating lead-based paint by banning it in residential structures constructed by federal agencies.¹⁷² However, the federal government’s regulations did not include remedial action for lead-based paint within a residential structure.¹⁷³ Numerous state governments responded to this crisis by implementing legislation addressing lead-paint in residential dwellings.¹⁷⁴ The federal and state programs implemented lead-safe standards requiring specialized cleanup and disclosure of lead based hazards.¹⁷⁵ The policy rationales behind lead based paint legislation

165. *Id.* at 381-82.

166. HOUSE MASTER OF ATLANTA HOMEBUYER’S RESOURCE LIBRARY, THE LEAD-BASED PAINT SOLUTION (2004), available at <http://www.hmainspect.com/Lead-Based-Paint.html>.

167. See John P. Fensler & Leonard A. Bernstein, *Lead Poisoning at Home: New Federal Disclosure Duties*, 26 REAL EST. L.J. 6, 9 (1997).

168. *Id.*

169. Thomas J. Miceli et al., *Protecting Children From Lead-Based Paint Poisoning: Should Landlords Bear the Burden?*, 23 B.C. ENVTL. AFF. L. REV. 1, 2-3 (1995). See also 24 C.F.R. Part 35, 40 C.F.R. Part 745 (2005) (providing federal lead-based paint regulations); MINN. STAT. ANN. §§ 144.9504, 513.52-513.60 (West 2004) (providing the Minnesota lead-based paint statutory disclosure requirements); N.D. CENT. CODE Ch. 23-01.3 (West 2004) (providing the North Dakota disclosure requirements).

170. CINCINNATI CHILD. HOSP. MED. CENTER, HISTORY OF LEAD ADVERTISING: THE DANGERS OF LEAD PAINT BECOME NAT’L NEWS, <http://www.cincinnatichildrens.org/research/project/enviro/hazard/lead/lead-advertising/dangers-news.htm> (last accessed Jan. 13, 2006); see also Fensler, *supra* note 166, at 9 (stating that some of the symptoms of lead poisoning include dizziness, fatigue, muscle weakness, headaches, restlessness, brain injuries, convulsions, comas, and even death).

171. CINCINNATI CHILD. HOSP. MED. CENTER, *supra* note 169.

172. Kristin Kabat Langhoff, *Landlords Need Help to Comply with Antwaun A. and Wisconsin’s Common Law Duty to Inspect for Lead-Based Paint*, 84 MARQ. L. REV. 845, 845 (2001).

173. Jane Schukoske, *The Evolving Paradigm of Laws on Lead-Based Paint: From Code Violation to Environmental Hazard*, 45 S.C. L. REV. 511, 520 (1994).

174. Langhoff, *supra* note 171, at 845.

175. 24 C.F.R. Part 35, 40 C.F.R. Part 745; MINN. STAT. ANN. § 144 (West 2004).

attempted to protect innocent home buyers and renters by placing the responsibility of clean-up and disclosure on landlords and homeowners because they were in the best position to implement the new standards.¹⁷⁶ Lead-based paint programs, although a necessary step in an effort to protect innocent victims from lead poisoning, have not eliminated all lead-based paint hazards.¹⁷⁷

A. DUTY TO REPORT

In recent years, federal and state lawmakers enacted legislation imposing mandatory disclosure requirements for sellers and lessors to protect buyers and tenants from lead-based paint hazards.¹⁷⁸ This legislation sought to alert potential purchasers and lessees to the dangers of lead-based paint.¹⁷⁹ Lead-based paint laws require sellers and lessors to provide potential purchasers and tenants with a pamphlet containing lead hazard information.¹⁸⁰ The pamphlet must explain “health risks associated with lead poisoning, sources of lead in the home, methods to eliminate lead hazards, and contacts for further information.”¹⁸¹

Another stipulation in the law states that before a property transaction can occur,¹⁸² the seller or landlord must disclose “the presence of any known lead-based paint hazards” in the housing, including “the basis for determination that the hazard exists, the location of the hazard, and the condition of the painted surfaces.”¹⁸³ Landlords who fail to disclose lead-based paint hazard information can be held liable for negligence.¹⁸⁴ Landlords are subject to liability only if a tenant does not know or have reason to know of the condition or risk involved and the landlord knows or has reason to know of the condition.¹⁸⁵ Additionally, reasonable knowledge

176. Langhoff, *supra* note 171, at 878-79.

177. *Id.*

178. Miceli et al., *supra* note 168, at 1, 19.

179. *Id.* at 29.

180. ENVTL. PROTECTION AGENCY, 69 C.F.R. § 745.107 (2004).

181. Amy E. Souchuns, *Old Paint, New Laws: Achieving Effective Compliance with the Residential Lead-Based Paint Hazard Reduction Act*, 47 CATH. U. L. REV. 1411, 1423 (1998).

182. Miceli et al., *supra* note 168, at 23.

183. 69 C.F.R. § 745.107 (2004).

184. RESTATEMENT (SECOND) OF TORTS § 358(1) (1965); *see, e.g.*, *Antwaun A. by Muwonge v. Heritage Mut. Ins. Co.*, 596 N.W.2d 456, 459 (Wis. Ct. App. 1999) (describing a three-year-old child who contracted lead poisoning from eating paint chips in the apartment his parents rented). In *Antwaun*, the child sued the landlord for negligence. *Id.* The court ruled in the child's favor noting that the danger of lead-based paint was a foreseeable risk and that the landlord had a duty to test the apartment for lead-based paint. *Id.* at 464.

185. ELLIJAY POLICE DEP'T, *supra* note 35; *see also* Miceli et al., *supra* note 168, at 23-24 (explaining that “‘reason to know,’ as defined by common law, meant that the [seller or lessor] has knowledge of facts which a reasonable man of ordinary intelligence or one of the superior

has been confined to lead-based hazards a seller or lessor could have discovered at a reasonable cost.¹⁸⁶ Sellers and landlords may gain knowledge of previous lead-based paint incidents by checking with local agencies that maintain records of lead-based paint violations.¹⁸⁷ Therefore, a seller or lessor could escape liability only if he or she was unaware of the danger and the risk was of such nature that it could not have been discovered in a reasonably cost-effective manner.¹⁸⁸

B. DUTY TO CLEANUP

State lawmakers have been at the forefront in addressing lead-based paint poisoning.¹⁸⁹ Approximately one-third of all states have enacted some form of lead-based cleanup regulation called “abatement.”¹⁹⁰ Maryland and Massachusetts have the most comprehensive programs, addressing lead-based poisoning through cleanup regulations.¹⁹¹ Massachusetts and Maryland charge the property owner with the duty to abate lead-based paint hazards by requiring risk reduction treatments.¹⁹² In the cases where a landowner cannot afford to properly abate lead-based paint, both states have established financial funding, providing loans to property owners.¹⁹³ Both states offer incentives for property owners complying with the regulations.¹⁹⁴ Property owners who fail to follow cleanup standards are held strictly liable for the consequences and may suffer civil and criminal penalties.¹⁹⁵

intelligence of the [seller or lessor] would either infer the existence of the fact in question or would regard its existence as so highly probable that his conduct would be predicated upon the assumption that the fact did exist”).

186. Miceli et al., *supra* note 168, at 25.

187. Schukoske, *supra* note 172, at 511, 532.

188. Miceli, *supra* note 168, at 25, 29.

189. Souchuns, *supra* note 180, at 1426.

190. *See id.* at 1430, 1433 (defining “abatement” as a “set of measures designed to permanently eliminate lead-based paint hazards or lead-based paint . . .”).

191. *Id.* at 1439 (citing Jennifer L. Bush, *The Federal Lead Poisoning Prevention Program: Inadequate Guidance for an Expeditious Solution*, 23 ENVTL. AFF. L. REV., 645, 655 (1996)).

192. *Id.* at 1430, 1440 (citing U.S. DEP’T OF HOUS. & URBAN DEV., GUIDELINES FOR EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING 1-6 to 1-7 (1995)).

193. *Id.* at 1430-31.

194. *Id.* at 1431-32 (citing MD. CODE ANN., Envir. §§ 6-826 to -6-842 (1996) (describing benefits including a tax credit up to \$1,500 and reduced civil and criminal liability for property owners who comply with the provisions)).

195. *See id.* at 1431-33 (citing ME. REV. STAT. ANN. tit. 22, § 1325 (2004) and S.C. CODE ANN. § 44-53-1470 (2004)) (stating that property owners who comply with the abatement procedures will not be held strictly liable for damages occurring after compliance).

C. COMPARING AND CONTRASTING METH RESIDUE TO LEAD-BASED PAINT

Meth residue, similar to lead-based paint, is a “hidden danger,” threatening public health.¹⁹⁶ Although meth has been in the United States for a substantial amount of time, like lead-based paint studies before the 1960s, the long-term health effects stemming from meth residue are generally unknown to the public.¹⁹⁷ Similar to reports of lead poisoning around 1960, the adverse risks linked to meth residue are becoming a prevailing public health issue as the amount of anecdotal evidence increases.¹⁹⁸ However, unlike lead-based paint legislation, neither federal nor state lawmakers have adequately addressed cleanup and disclosure requirements through meth legislation.¹⁹⁹

The lack of state and federal laws addressing meth residue, comparable to the lack of lead paint legislation prior to 1978, has created a situation in which, for the most part, homeowners and landlords are under no obligation to report a former meth lab.²⁰⁰ Even if a homeowner or landlord knows about a former meth lab on the premises, millions of people may be unaware of the dangers of meth residue.²⁰¹ Additionally, meth residue is not readily detectable.²⁰² Home inspectors do not have instruments to check for toxic levels of meth residue; instead, a homeowner must seek assistance from the state’s department of health.²⁰³ As a result of the unrecognized health effects and lack of property information concerning CMDLs, families moving into former meth homes might not connect their poor health to meth residue.²⁰⁴

Even though the lasting effects of meth residue remain unclear, the strong resemblance to the development of lead-based poisoning, and the

196. Debra Bowen, *Bowen Bill Battling Meth Labs Passes Senate Judiciary Committee*, Mar. 27, 2001, available at <http://democrats.sen.ca.gov/servlet/gov.ca.senate.democrats.pub.members.memDisplayPress?district=sd28&ID=750>; *Channel 7 Denver News*, *supra* note 69.

197. Bowen, *supra* note 195.

198. *Id.*

199. *Id.*

200. *Id.*

201. See PEMISCOT COUNTY SHERIFFS DEP’T, METHAMPHETAMINE ENFORCEMENT WEBSITE MISSOURI, <http://www.methtaskforce.com/index.htm> (last visited Aug. 27, 2005) (stating that former meth lab sites that have not yet been cleaned can be “deadly”); Barbara Whitehouse, *Meth Labs Can Kill Our Police, Fire, and EMS Personnel*, THE DAILY PRESS ONLINE, Dec. 13, 2003, http://smdailypress.com/articles/2003/12/13/local_news/news02.txt; *Houses That Were Former “Meth Labs” May be Causing Illness to Unsuspecting Residents: An Inside Edition Investigation*, *supra* note 151.

202. Interview with Bob Kramer, Home Inspector, N.D. Home Inspectors, Home Sweet Home Inspection, in Grand Forks, N.D. (Sept. 20, 2004).

203. *Id.*

204. *Channel 7 Denver News*, *supra* note 69.

increased number of people reporting health-related illnesses suggests that scientific data could confirm the enduring detrimental consequences of living in a former CMDL. Until the long-term health risks are properly documented, and unless lawmakers take an active role to curb this dilemma through state laws similar to lead based paint, mandating cleanup and reporting stipulations for private landowners, people will suffer the harmful effects of meth residue.²⁰⁵

VI. RECOMMENDATIONS: WHAT NEEDS TO BE DONE TO ENSURE THE SAFETY OF PROPERTY OWNERS AND RENTERS

The tremendous increase of CMDLs in rural areas, and the health and safety risks from exposure to meth residue affects the entire community.²⁰⁶ Rural states like Minnesota and North Dakota provide the ideal environment for this growing epidemic demanding lawmakers' attention.²⁰⁷ The federal government's failure to address this new phenomenon by providing a national standard regulating toxicity levels in meth residue, cleanup, and disclosure requirements calls for immediate action by state governments. Minnesota and North Dakota lawmakers need to establish comprehensive, uniform state laws regulating meth residue in private residential dwellings.²⁰⁸ Developing a successful program could be a difficult task due to the unknown long-term hazards of meth residue. However, Minnesota and North Dakota law makers should use the framework from lead-based paint regulations and the guidelines from the Minnesota and North Dakota Department of Health and take the following actions: (1) increase awareness by educating the general public about the potential dangers of meth residue; (2) establish a uniform standard for toxic levels of meth residue and safe removal; (3) mandate laws requiring the property owner to bear responsibility for CMDL cleanup; (4) establish revolving funding sources for low income property owners; (5) mandate property owners to disclose information of a former CMDL on the premises; (6) record a former meth

205. Marshall, *supra* note 54, at 1A.

206. RAY COOPER, N.C. DEP'T OF JUSTICE, RESPONDING TO METHAMPHETAMINE: COMBATING NORTH CAROLINA'S FASTEST GROWING DRUG PROBLEM - FINAL REPORT 6, May 2004, available at http://www.ncdoj.com/DocumentStreamerClient?directory=&file=meth_final_report.pdf.

207. KRAMAN, *supra* note 42, at 5-8; see also Ilene K. Grossman, *The Fight Against Meth: States Work Together to Combat Midwest's Rising Drug Problem*, 11 MIDWESTERN OFFICE OF THE COUNCIL OF STATE GOVERNMENTS 1, 12 (2002) (stating that Midwest areas are well-suited for meth production due to the high number of abandoned farmsteads and homes in isolated areas far away from police detection).

208. See Junge, *supra* note 123, at News (emphasizing Representative Steve Smith's statement declaring that "we need statewide uniformity in addressing the problem").

lab on a property abstract at a county records office until the property owner has completed professional cleanup and the department of health has declared the home habitable; and (7) establish civil and criminal penalties for property owners who fail to clean the property or disclose information about the former CMDL.

A. INCREASE AWARENESS BY EDUCATING THE GENERAL PUBLIC ABOUT THE POTENTIAL DANGERS OF METH RESIDUE

Educating the public about CMDLs increases their awareness of the potential health dangers associated with meth residue.²⁰⁹ The government could educate the public on the dangers of meth residue through television and radio programs, town meetings, and mailing information to all homeowners and renters within the state.²¹⁰ Additionally, specialists could speak to business organizations, schools, homeowners and tenants, property owner associations, and hotel organizations about the problems associated with meth and meth residue.²¹¹ This information will enable consumers to make well-informed choices when shopping for property and provide them with the knowledge to ask whether or not the property ever housed a former meth lab.²¹²

B. ESTABLISH A UNIFORM STANDARD FOR TOXIC LEVELS OF METH RESIDUE AND SAFE REMOVAL

A uniform cleanup standard can be created by using best judgment and current practice.²¹³ Uniformity allows the public to rely on one set standard rather than varying standards among the counties.²¹⁴ The standard defeats the possibility of living in a former meth lab that has not been decontaminated to the same safe level as other former meth labs.²¹⁵ Consequently, residents will feel safer and more comfortable moving into a former CMDL.²¹⁶

209. COOPER, *supra* note 205, at 4, 21.

210. *See id.* (describing a similar strategy used by North Carolina to educate the public).

211. *See id.* (describing speaking events held by Sheriff Mark Shook in North Carolina at local churches regarding the dangers of meth); *see also* STATE OF TENNESSEE, GOVERNOR'S TASK FORCE ON METHAMPHETAMINE ABUSE - FINAL REPORT 9 (2004) [hereinafter TENNESSEE FINAL REPORT].

212. *See* TENNESSEE FINAL REPORT, *supra* note 210, at 13 (discussing how property owners can be educated on possible property contamination by meth and meth labs).

213. COLORADO DEP'T OF PUBLIC HEALTH AND ENVIRONMENT, CLEANUP OF CLANDESTINE METHAMPHETAMINE LABS GUIDANCE DOCUMENT 4, July 2003.

214. Schukoske, *supra* note 172, at 561; *see also* Coleman, *supra* note 129, at 126.

215. Schukoske, *supra* note 172, at 561-62; *see also* TENNESSEE FINAL REPORT, *supra* note 211, at 13.

216. *See* TENNESSEE FINAL REPORT, *supra* note 210, at 13.

The counter-argument to a state law, at least in Minnesota, would contend that over 70% of the counties have already managed this problem through ordinances.²¹⁷ On the other hand, over 30% of the counties in Minnesota have not passed similar ordinances, which leads to public health and welfare disparities since some citizens are protected from a serious risk while others are left without protections. Uniformity is needed.

C. MANDATE LAWS REQUIRING THE PROPERTY OWNER TO BEAR RESPONSIBILITY FOR CMDL CLEANUP

The state has two choices in delegating responsibility to meth lab cleanup: charge the property owner or make everyone else pay.²¹⁸ Since the meth lab was on the landowner's property, charging the property owner with protecting future occupants seems appropriate.²¹⁹ Property owners should be required to clean up their property within the state's uniform health standards and fully cooperate with all officials in the cleanup process.²²⁰ In the event that the property owner does not fulfill the cleanup requirement, the state law could make a provision imposing a lien on the landowner.²²¹ If the landlord chooses not to rent or sell the property, the state may force the owner to clean the property.²²² The state may also condemn, demolish, or order the landlord to vacate the property.²²³

As an added safeguard to this requirement, home inspectors could be required to test the property before completing the real estate transaction for possible meth residue by using a PID (Photo Ionization Detector).²²⁴ In Montana, a professional CMDL cleaning agency, Structural Narcotics Detection Service, sell drug testing kits that use a process called Ion Mobility Spectrometry, allowing the public to test for methamphetamine residue.²²⁵ Many real estate brokers require inspection of homes that they

217. Sigman, *supra* note 6.

218. Lawrence Schumacher, *Meth Lab Cleanup Ordinance Approved*, ST. CLOUD TIMES, Sept. 29, 2004, at 1B.

219. See Christina M. Currie, *A Toxic Trail: Contamination Caused By Cooking Is Widespread*, CRAIG DAILY PRESS, May 25, 2004, <http://www.craigdailypress.com/section/darkcrystal/story/12158> (discussing the enormous environmental hazards and cleanup costs of home meth labs).

220. See *id.* (discussing cleanup costs and health risks).

221. Junge, *supra* note 123, at News.

222. Vogt, *supra* note 77, at 273.

223. *Id.*

224. HAMILTON COUNTY SHERIFF'S DEP'T, *supra* note 55.

225. See COOPER, *supra* note 73 (stating that in addition to testing for meth residue, the kits simultaneously test for cocaine, heroin, amphetamine, ecstasy, and some other narcotic residues). The narcotic test kits detect residues as small as one one-hundredth the size of a grain of salt. *Id.* Structural Narcotics Detection Services sells the test kits to the public starting at \$29.95. *Id.*

will be financing.²²⁶ The typical inspection includes, but is not limited to, examining the structure, foundation, wiring, and mechanical appliances.²²⁷ This inspection could be expanded to include PID detection of meth residue as a matter of course.²²⁸ This addition would act as a check on the homeowner to ensure the property was sufficiently decontaminated.²²⁹

D. ESTABLISH REVOLVING FUNDING SOURCES FOR LOW INCOME PROPERTY OWNERS²³⁰

Low income property owners simply do not have enough money to pay for the cost of professional meth lab cleanup.²³¹ A revolving fund could provide loans to property owners in an effort to ensure professional decontamination.²³² Additionally, some homeowners may seek assistance from insurance companies.²³³ A number of insurance companies classify CMDLs as acts of vandalism which means the homeowner's insurance policy may cover the cleanup costs, but only if the homeowner is not aware of the operation.²³⁴

E. MANDATE PROPERTY OWNERS TO DISCLOSE INFORMATION OF A FORMER CMDL ON THE PREMISES

Disclosure requirements should extend to any person with knowledge of a former meth lab on the premises and any person involved with the sale of property containing a former meth lab, including, but not limited to, landlords, sellers, and real estate agents.²³⁵ Additionally, property owners should be required to provide a potential buyer or renter with any records, documents, or other information concerning CMDLs, including potential

226. HOME INSPECTIONS U.S.A. *Why and When Have a Home Inspected?*, 1999-2004, at <http://www.homeinspections-usa.com/hiwhy.php3> (last visited Dec. 29, 2004).

227. Best Home Inspection, *Our Inspection*, 2003, <http://thebesthomeinspectionllc.com/inspection/>.

228. AMERICAN COMMUNICATIONS FOUNDATION, KPIX, SAMPLE #1: DIRTY METH, (2002).

229. *Id.*

230. See Junge, *supra* note 123, at News (proposing a meth fund, providing low-interest loans to assist the property owner or city or county in decontaminating the tainted property).

231. See TENNESSEE FINAL REPORT, *supra* note 211, at 8 (discussing the need for increased funding for meth lab cleanup).

232. *See id.*

233. Interview with Toni Nadeau, Insurance Agent, State Farm Ins. Co., in Foley, Minn. (Sept. 3, 2004).

234. *Id.*

235. *See, e.g.*, MINN. REALTORS, METHAMPHETAMINE LAB CLEAN-UP BILL TARGETS REAL ESTATE LICENSES I (March 2004), available at <http://www.mnrealtor.com/publications/MemberResource/031904BrokerResource.pdf> (discussing proposed Minnesota legislation to broaden disclosure requirements as to former meth lab properties).

dangers and contact information to answer any questions the purchaser may have concerning meth residue.²³⁶

The counter-argument would be that notification would have a detrimental effect of decreasing the property value because the property would be tainted.²³⁷ However, the information could include a section discussing the structure's habitability once the professional cleanup process has been completed.²³⁸ Disclosure may deter some purchasers; however, the information warranting habitability of the structure could supercede the former concern.²³⁹ Ultimately, full disclosure must be the greater concern.

F. RECORD A FORMER METH LAB ON A PROPERTY ABSTRACT AT A COUNTY RECORDS OFFICE UNTIL CLEANUP IS COMPLETE

Local agencies could be in charge of listing prior meth labs on an abstract until the owner professionally cleans the land.²⁴⁰ Listing the defect on the abstract is another method to ensure the property owner follows through with adequate cleanup.²⁴¹ Additionally, formal records will enable a diligent purchaser to find out about the potential hazard before moving into the residence.²⁴²

A potential decrease in property value may become a great drawback to this requirement. However, the recording would be temporary, so the written record would only decrease the property value if the land owner did not clean his property, in which case the law would serve its purpose of notifying diligent purchasers of potential health risks associated with the property.²⁴³

236. See, e.g., *id.*

237. Dan Kloberdanz, *Stigmatized Property: What Must be Disclosed?*, 3 PHOENIX REALTOR F. 1, 5 (2001).

238. Jim Holm, *Cleaning up Alaska's Drug Labs* (2003), <http://www.akrepublicans.org/holm/23/pdfs/holm2003022001i.pdf>.

239. Currie, *supra* note 218.

240. *Meth Labs and Rental Property* (WDEF TV News 12 Nov. 29, 2004); see also OR. REV. STAT. § 105.465(2) (West 2004), available at <http://www.wdef.com/satellite/> (setting forth that a seller must deliver a disclosure statement to each buyer making an offer to purchase the property); see also WASH. REV. CODE § 64.06.020 (West 2004) (setting forth that a seller must provide a buyer with a disclosure form including informing the buyer whether or not the property had been used as an illegal drug manufacturing site).

241. *Meth Labs and Rental Property*, *supra* note 240.

242. Benton and Franklin Public Health Districts, *SO YOU ARE THE OWNER OF PROPERTY USED AS A METH LAB, NOW WHAT?* (2000), <http://www.bfhd.wa.gov/forms/brochures/methlab.pdf>; see also Vogt, *supra* note 77, at 271 (explaining that conducting a title search on the property will enable the potential buyer to find the information about the meth lab in the land records).

243. *JOIN TOGETHER, COUNTY SUED OVER HOME METH WARNINGS* (May 20, 2004), <http://www.jointogether.org/sa/news/summaries/reader/0,1854,571039,00.html> (last visited Dec. 29, 2004).

G. ESTABLISH CIVIL AND CRIMINAL PENALTIES

Criminal and civil penalties are another means to ensure the property owners follow through with state mandatory cleanup requirements since most people do not want to bring punishment on themselves. Additionally, these sanctions will help eliminate innocent residents from moving into an unknown serious health hazard while providing a remedy for someone who has moved into a former CMDL.²⁴⁴

VII. CONCLUSION

The extraordinary increase of CMDLs in rural North Dakota and Minnesota presents grave safety and health concerns for the community.²⁴⁵ The dangers of meth residue demand that the state legislature take an active role in regulating meth lab cleanup and reporting regulations. Failure to enact legislation concerning meth residue potentially exposes innocent residents to a lifetime of health problems and possibly premature death. We cannot afford to stand by as people live in a contaminated home. Regulating cleanup and reporting requirements are two minimum steps necessary to combat the hidden dangers of CMDLs in rural areas and protect the safety of its residents.

*Nicole Bettendorf**

244. Jenny Burns, *New Law Requires Homeowners to Cleanup Meth Contamination*, The Shawnee News-Star, Sept. 4, 2003, at 1B, available at http://www.news-star.com/stories/090403/New_52.shtml.

245. NAT'L DRUG INTELLIGENCE CTR., *supra* note 12, at 1; see also MINNESOTA DRUG THREAT ASSESSMENT UPDATE, *supra* note 123, at 1 (discussing the dramatic increase of local meth producers in Minnesota).

*Many thanks to Professor James Grijalva for encouraging me to write about this topic and for his support throughout the development of this note.