



Kentucky Public Health

Prevent. Promote. Protect.

**KENTUCKY DEPARTMENT FOR PUBLIC HEALTH
DIVISION OF PUBLIC HEALTH PROTECTION & SAFETY
275 E. MAIN ST.
FRANKFORT, KY. 40621**

GUIDANCE REGARDING KRS 224.01-.410

METHAMPHETAMINE CONTAMINATED PROPERTIES & LOCAL HEALTH DEPARTMENT RESPONSIBILITIES

Revised JULY 18, 2013

INTRODUCTION

In 2007, the General Assembly passed House Bill 94, which became KRS 224.01-.410 dealing with methamphetamine clean-up standards. This law assigned local health departments various responsibilities including the posting of methamphetamine contaminated properties. Due to concerns with the language of the law and the health and welfare of local health department staff involved in the posting of properties, HB 765, was introduced and passed during the 2008 Legislative Session which amended KRS 224.01-.410. Changes in the law became effective July 15, 2008, and were not retroactive. LHD's are encouraged to read and familiarize themselves with the law which is available at <http://www.lrc.ky.gov/record/08RS/HB765/bill.doc>.

Subsequently, administrative regulations relative to methamphetamine contaminated properties were drafted by the Energy and Environment Cabinet; the Justice and Public Safety Cabinet (Kentucky State Police) and by the Cabinet for Health and Family

Services. The applicable regulations for each agency are listed below for reference.

Energy and Environment Cabinet Regulations 401 KAR 101:001-040

Cabinet for Health and Family Services 902 KAR 47:200.

Dept. for Justice and Public Safety Cabinet (KSP) 502 KAR 47:010

The following document shall serve as guidance to local health departments in regards to the requirements of the methamphetamine law.

Informational Highlights:

- LHD Personnel are not responsible for posting properties
- Kentucky State Police (KSP) entered into a Memorandum of Understanding (MOU), with the Cabinet to post properties with a notice of methamphetamine contamination warning sign at the time of the initial investigation or bust. Although it is our understanding that this information has been provided to local law enforcement, LHD's may be asked to enter into a similar MOU with their local law enforcement offices in order to accomplish posting through those agencies. An example of an MOU can be provided to you upon request.
- The notice of methamphetamine contamination warning sign, DFS 407, is provided by the Cabinet to the Kentucky State Police for law enforcement's use, to affix to the contaminated properties. The local health department has also been provided with copies of the sign as a back up, in the event that local law enforcement should need a warning sign and not have one available. Justin Carey may be contacted if more signs are needed by the health department. A printable PDF version is also available on the Public Health Protection and Safety Homepage.
- The posted notice **does not** quarantine the property, **nor does** it prohibit entry into the dwelling. The posting notice shall simply warn persons entering the dwelling of the health risks associated with methamphetamine contamination.
- The amended law **requires** that any owner of contaminated property that leases, rents, or sells that property, must make a **written disclosure** of the contamination to the prospective buyer or renter if it has not been properly decontaminated
- The law provides for criminal penalties for persons who unlawfully remove a posted notice of methamphetamine contamination from a dwelling and for persons who fail to disclose.

- It is a Class A Misdemeanor to remove a posted warning sign.
- It is a Class D Felony for failure to disclose contamination
- KSP or local law enforcement shall notify the LHD in writing, within **3** days that the property has been posted
- Homeowners have the right to **appeal** the posting to the Cabinet within 30 days of the posting by law enforcement. Appeal procedures are outlined in 902 KAR 47:200.
- Appeals will be handled by the Cabinet's Administrative Hearings Branch. We do not anticipate that LHDs will be heavily involved in the appeals process, however, they may be asked for information depending on the circumstances of the appeal. .
- The law provides for a four-tiered clean-up response depending on the level of contamination

KSP RESPONSIBILITIES:

- The KSP or local law enforcement responding to a clandestine methamphetamine lab event in an inhabitable property will make a determination of the level of methamphetamine contamination present. If the property is deemed contaminated, law enforcement will post a notice of methamphetamine contamination warning sign on the entrance(s) of the dwelling. The sign **does not** quarantine or prevent entry into the dwelling but rather alerts the public regarding the health risks associated with exposure to methamphetamine contamination.
- KSP will complete a Clandestine Drug Lab Preliminary Assessment tool which will be used to determine the level of contamination and "tier" the contamination as 1-4, with 4 being the highest level of contamination. The decontamination process will depend on the "tier" as determined through this assessment.
- The Dept. for Public Health has developed a Memorandum of Understanding with Kentucky State Police to post the property. Local law enforcement agencies responding to methamphetamine events should post property through a similar agreement with the LHD.
- Once a property is posted, law enforcement shall send written notification to the local health department along with a copy of the Clandestine Drug Lab Preliminary Assessment sheet within **three (3) days**.
- KSP will also forward a copy of the Clandestine Drug Lab Assessment to EEC

LOCAL HEALTH DEPT. RESPONSIBILITIES:

- The local health department shall upon notification by police that a posting has occurred, send a **certified** letter to the owner listed on the deed of the property notifying them of the contamination posting. The letter shall outline the owner's responsibilities in the decontamination process, notify them of their right of appeal and shall alert them to disclosure requirements specified in the amended law. A sample letter is available on the Public Health Protection and Safety Homepage at <http://chfs.ky.gov/dph/info/phps/> .
- The LHD shall also notify the Cabinet that a posting has occurred by **mailing or faxing** a copy of the Clandestine Drug Lab Preliminary Assessment tool received from police and a copy of the owner's notification letter to Justin Carey, Public Safety Branch, 275 East Main, Mailstop HS1EB, Frankfort, KY 40621. The fax number is 502-564-0885.
- The LHD shall notify the Kentucky State Police Meth. Coordinator, Lynne Spencer, KSP DESI/West, FAX #270-746-7836, Lynne.spencer@ky.gov
- The LHD shall notify EEC, Superfund Branch Manager, 14 Reilly Road, Frankfort, KY 40601.
- The law requires that any owner of contaminated property who leases, rents or sells contaminated property shall disclose in writing to any potential leaser, tenant or buyer that the property is contaminated with methamphetamine and has not been decontaminated pursuant to the requirements of the law. 902 KAR 47:200 outlines the disclosure process and standards and is available at <http://www.lrc.ky.gov/kar/902/047/200.htm> . LHDs may serve as an information resource for homeowner's as they try to understand their disclosure obligations.
- Both the owner's notification letter and sample disclosure notice are available on PHPS website at <http://chfs.ky.gov/dph/info/phps/> for easy download.
- The homeowner may not remove the posted warning until the property has been decontaminated or found to be improperly posted through appeal. Removal of the posting is a Class A misdemeanor and is punishable by criminal penalties. If the health department **becomes aware** that a posting has been removed they should notify the KSP or local law enforcement. The law does not require the LHD to repost the property, nor does it require them to monitor the property, however, some agencies do.
- Failure to disclose contamination to potential renters, buyers, or lessees of property is a Class D felony. Should the health department receive reports that

the property has been rented, leased or sold without proper disclosure they should notify the law enforcement agency which posted the property.

- Property that has been decontaminated or released **is not** subject to disclosure requirements.
- Once the health department has been notified that the property has been decontaminated and released by EEC, they shall notify the homeowner by **certified mail** that the posting may be removed and that disclosure is no longer required. A “Property Address Methamphetamine Clearance” letter has been developed for this purpose and is available at .
<http://chfs.ky.gov/dph/info/phps/PHPSR.htm>. The LHD shall also forward a copy of the release letter to Justin Carey, Public Safety Branch, 275 East Main, Mailstop HS1EB, Frankfort, KY 40621. The fax number is 502-564-0885.
- Local Health Departments **do not** need to physically remove the posting, only notify the owner that it is legal for them to do so.
- Local Health Departments should retain copies of all correspondence, including the certified letter receipts, mailed to homeowners regarding methamphetamine contamination notices and release.
- Local Health Departments have been asked by DCBS-Department of Community Based Services to refer any complaints regarding children living in or being cared for in a home which has been posted as having contamination to their Abuse Hotline at 1-877-597-2331 or to provide that number to those making the complaint.

EEC-ENERGY AND ENVIRONMENT CABINET **RESPONSIBILITIES:**

- EEC is responsible for the certification of methamphetamine clean-up contractors. All questions regarding certification of contractors should be addressed to EEC. Guidance is available on EEC website at
<http://waste.ky.gov/SFB/MethLabCleanup/Pages/default.aspx>
- EEC will send the homeowner a list of certified contractors and information on the decontamination process. They will also forward the owner a copy of the assessment tool.
- EEC has developed standards for decontamination bases on a “tiered” level of contamination as assessed at the time of the initial bust by police using the “Clandestine Drug Lab Preliminary Assessment”. Decontamination standards vary based on the tier level assigned. An example of the tier assessment tool is included with this information.

- EEC is responsible for notifying the LHD that a property has been decontaminated and released.

DIVISION OF PUBLIC HEALTH PROTECTION AND SAFETY RESPONSIBILITIES:

- Any homeowner, listed on the deed of the posted dwelling, may request an administrative hearing pursuant to KRS Chapter 13B to determine whether the methamphetamine contamination notice is proper by filing a request for appeal to the Commissioner of Public Health, Dept. for Public Health, 275 East Main St., Frankfort, KY 40621 **within 30** days of the methamphetamine contamination notice having been posted on the property. The LHD will be notified of the outcome of the appeal.
- The Cabinet will act as liaison between LHDs and KSP and EEC when questions or concerns arise.
- The Cabinet shall retain copies of all records forwarded to them involving a methamphetamine posting and release.

METHAMPHETAMINE PROPERTIES POSTED PRIOR TO JULY 15, 2008

- The law is **not** retroactive. Properties posted prior to the effective date of the statutory changes are not subject to any of the criminal penalties or disclosure requirements contained within the new law.
- Properties that had been posted shall remain posted; however, the LHD shall **make no effort** to continue quarantines placed upon the property or to impede reentry into the property from the date of this guidance forward. People are allowed back into these properties at their own risk.
- Owners of property that was posted prior to the July 15, 2008 effective date, have no statutory right to appeal the posting. Persons wishing to appeal a previous posting may be referred to the Cabinet for a case-by-case review of their request.

IMPORTANT NUMBERS AND ADDRESSES

Justin Carey
Public Safety Branch
275 East Main, Mailstop HS1EB
Frankfort, KY 40621
Phone: 502-564-4537 x 4224
Fax: 502-564-0885
Justint.Carey@ky.gov

Kim Greenidge
Energy and Environment Cabinet
Superfund Branch Manager
200 Fair Oaks Lane
Frankfort, KY 40601
502-564-6716
Kim.Greenidge@ky.gov

Kentucky State Police Meth Coordinator
Lynne Spencer
KSP DESI/West
Fax: 270-746-7836
Lynne.Spencer@ky.gov

Department of Community Based services Hotline
1-877-597-2331