

ADDRESSING METHAMPHETAMINE ISSUES IN TRIBAL HOUSING

Dave Heisterkamp
Sylvia Wirba

Wagenlander & Heisterkamp LLC
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Does Your TDHE Need to to Address Meth?

- Is meth us a problem in your community or reservation?
 - Drug use/arrests
 - Contamination in Units
- Create a policy or rule that will work for your Tribe and your TDHE
 - One size does not fit all
 - Policy must be a living document that can be revised if something is not working
 - Use samples as starting point, but not all provisions may work for every TDHE.

Tribal or Other Laws

- Which laws apply?
 - Is the property on trust land or fee land?
 - Policies for properties on fee land may need to be different from properties on trust land.
- Does the jurisdiction have its own meth cleanup laws?
 - Cleanup threshold and requirements
 - Habitability
- Does the jurisdiction require certified testing or certified cleanup?
- Will another agency (for example: Dept. of Health, or Environment) be involved if a Unit tests positive?

Many Tribes Do Not Have Applicable Law

- Many tribes do not have any methamphetamine law in their current tribal codes, including:
 - Cleanup requirements
 - Habitability requirements
 - Applicable Landlord/Tenant laws
- In these situation the TDHE may be the building the first meth program or policy for their Tribe.
 - Many TDHEs are creating meth programs/policies from the ground up.

METH TESTING

- **Testing procedures**
 - **Who conducts tests?**
 - **Contractors**
 - **TDHE staff**
 - **Training and certifications requirements?**
 - **Maintenance, Occupancy or a new TDHE Department?**
- **Testing procedures may be set by law**
- **Who pays for the test?**

METH TESTING

- **When is a test done?**
 - **Probable cause?**
 - **How will your TDHE determine when probable cause exists?**
 - **As part of regular inspections?**
 - **Random testing?**
 - **When a unit is vacant?**
 - **Will you test when needed or all units at once?**

Baseline Testing

- Highly recommended
- Shows that a Unit is clean when a Tenant moves in
 - Document clean Unit with an addendum to Lease
- Easier to prove current tenant responsibility
 - “It must have been there when I moved in.”
- Some judges/jurisdictions may not grant eviction if the Unit was not clean at move-in.

Safety Considerations

- If staff will be conducting testing or cleanup, how will they be protected from negative impacts of meth?
- Personal Protective Equipment
- When testing occurs
- Preventing contamination of other areas
- Employee health concerns
- Drug testing issues

Group Exercise One

To Test or Not to Test

Cleanup and Mitigation

- How soon will the Unit be decontaminated?
 - Is there funding available for immediate cleanup?
 - If not, is a plan in place?
 - How are cleanup costs budgeted?
- How is the Unit protected while it is awaiting cleanup?
 - Trespassers, squatters, party house

Cleanup and Mitigation

- Cleanup requirements
 - Who will cleanup/decontaminate?
 - Always check local law to determine if any certifications are required.
 - Some jurisdictions require that only certified companies are used.
 - Staff
 - Will staff have necessary training to properly decontaminate?
 - How much time will it take staff?
 - Maintenance? Meth Cleanup Department?
 - Certified Cleanup Company
 - Which is more cost effective?

Cleanup and Mitigation

- EPA's Voluntary Guidelines for Methamphetamine Laboratory Cleanup.
- How will the TDHE determine when a Unit has been properly decontaminated?
 - Follow-up testing to a certain level is recommended
 - Follow-up testing may be required in some jurisdictions
- Is the Tenant still living in the Unit before it will be cleaned?
 - Temporary displacement?
 - Who pays for their lodging in the meantime?

Cleanup and Tenant Issues

- Will Tenant Possessions be tested?
 - Some jurisdictions will require testing of possessions
- Tenant Possessions when contaminated?
 - How will TDHE work with Tenant to dispose of contaminated possessions?
 - Any liability for the possessions?
- Disposal Requirements?
 - In most cases, cannot throw out with normal refuse

Policy Development Continued

- Describe TDHE strategy and requirements
 - For TDHE
 - Testing
 - Cleanup
 - Enforcement
 - For Tenants
 - Prohibition Against Meth
 - Testing/Inspections
 - Accountability

Setting Threshold

- **Must set a contamination threshold for cleanup and enforcement purposes**
 - **No standard threshold amount**
 - **Number differs by state, county, and city**
 - **2.0, 1.5, 1.0 $\mu\text{g}/100 \text{ cm}^2$ (micrograms per 100 square centimeters) for example**
 - **Number also used to determine when a unit is deemed safe to re-inhabit (may not always be 0)**
 - **0 $\mu\text{g}/100 \text{ cm}^2$ may not be financially/realistically feasible.**

When Meth Contamination is Found

Some Questions to Consider

- Does the Unit need to be decontaminated?
- What happens to the Tenants?
 - Second chance?
 - Eviction?
- Who pays for cleanup and other costs?
- Does the TDHE have to notify anyone when a Unit is found contaminated with meth?
 - How soon does TDHE notify Tenant of contamination?

Tenant Accountability

- Will TDHE hold tenant responsible for meth contamination?
 - Is there sufficient proof to show Tenant is responsible?
 - Other Tenant History
 - Was the Unit clean when the Tenant moved in?
 - Was there police activity or arrests at the Unit?

Second Chance?

- **Pros**
 - **Prevents homelessness**
 - **Prevents moving the problem to another Unit**
 - **Allows the TDHE to maintain relationship if costs are owed**
 - **Keeps families together**
 - **Political Issues**

Second Chance?

- **Put any second chance agreements in writing**
 - **Can be Addendum to Lease**
 - **Once the Unit is decontaminated, show clean status in writing**
 - **Can document any costs owed TDHE**
 - **Failure to comply consequences**
 - **Insert requirement for random testing for at least one year**

Second Chance?

- **Cons**
 - **Risks repeated contamination of the Unit if meth use continues**
 - **User may not change-Enabling?**
 - **May show that TDHE isn't serious about meth prohibition**
- **Uniformity**
 - **Hard to treat all cases the same, but tenants eventually know who a TDHE works with and who they evict**

Eviction

- Entire family or just responsible party, if known?
- How long will an eviction process take?
 - Safety considerations
 - FED
 - Restraining Order
- Will the Court grant damages awards for contamination costs?
 - How will the TDHE collect after the Tenant is evicted?
 - What evidence will the TDHE have to show costs to the Court?

Evidence Issues

- How strong is the evidence?
 - What is the history or practice at TDHE Tribal Court or other Court?
 - Police Reports or Testimony
 - Meth Test alone?
 - How do you tie the meth contamination to the Tenant?
 - Lease violations
 - Drug-related criminal activity
 - Damage to unit

Notification

- Reporting test results to law enforcement?
 - What level of contamination?
 - Will law enforcement be able to do anything, if needed?
- Reporting test result to Child Protection or Elder Services?
 - Is there a child or elder at risk?
 - Small children and elders may be more susceptible to health risks from meth contamination.
 - Are there therapy/rehab resources available?

Other Policy Considerations

- Some jurisdictions require that a landlord disclose to future tenants when a unit was previously contaminated with meth.
- Once a unit tests positive the TDHE has a responsibility to make the unit safe and habitable, including moving occupants out as soon as possible.
- How do you prove a tenant is responsible for meth contamination if the units hasn't tested clear at occupancy and/or there isn't a police report or other evidence to tie the tenant to the contamination?
 - Some courts require evidence that meth contamination is caused by the tenant.

Group Exercise Two

Enforcement

TDHE Examples

- Cheyenne River Housing Authority and Sicangu Wicoti Awanyakapi (Rosebud) have all implemented meth policies and procedures that share some common elements:
- Created and implemented comprehensive policy and cleanup manual to address meth in housing units.
 - Includes protocols for testing, enforcement and cleanup.
- Created meth remediation team or department within TDHE.
- Adopted EPA's Voluntary Guidelines for Methamphetamine Laboratory Cleanup.

TDHE Examples

- Also implemented a procedure to address meth in housing units.
 - Prohibits all meth use, manufacture, sale or distribution in or near any TDHE property.
 - Prohibits tenants from engaging in any use, manufacture, sale or distribution at or away from the unit.
 - Requires TDHE to conduct a scheduled testing of units.
 - Lease termination when a unit tests positive above a certain level.
 - Working with tenants to remediate when a unit tests positive below the “move-out” level.

TDHE Examples

- Numerous houses have been tested positive for meth since program was implemented.
- Some programs have been in place for 3-4 years.
- TDHEs are working with some tenants and giving them one more opportunity to remain tenants.
- Tribal courts have been generally supportive/informed on the cases that have come before them.
- Also conducting ongoing outreach with tenants to educate tenants on tribal law, housing policies and possible consequences when meth is found in a unit.
- Based on current circumstances, the TDHEs have designated a significant part of their budget for meth remediation-the challenge of where to find the funding is huge.

Tribes Fighting Meth

- Many tribes creating stricter laws to address meth problems
- Banishment/Disenrollment Laws
- For non-tribal and tribal members
- Even with strong laws in place enforcement is still a major issue for some tribes due to current lack of law enforcement resources
 - Not enough police officers
 - Not enough funding
 - Not enough prosecutorial or court resources
 - Not enough jail/rehab resources

The Lease

- Confirm that your current lease contains language that will cover your meth policy/program:
 - Testing/Inspection Language
 - Prohibition of drug-related criminal activity or prohibition of meth
 - Consequences for violations

Other Policies

- Make sure all TDHE policy and rule language is uniform:
 - Management and Occupancy
 - Maintenance
 - Admissions
 - Grievance Policy

Tenant Outreach & Training

- New/revised policies or rules
- Tenant notification
- Notify community and Tribe
 - Radio
 - By Mail
- Training
 - Special training for tenants
 - During recertification

Meth in Indian Country

- TDHEs working alone cannot solve this problem.
- There are three areas that tribes must address cooperatively to save their communities:
 - Housing and housing stock
 - Law enforcement and Court resources
 - Treatment and rehabilitation (without this, the problem simply moves from place-to-place)
- It has been said that there is no way to evict or arrest your way out of this problem.
- This is an incredible drain on tribal resources that are already severely limited.

Funding Challenges

- Current NAHASDA Block Grant funding shrinking and not sufficient.
- National crisis outside of Indian Country in many other communities.
- Both UNAHA and Great Plains Tribal Chairman's Association have passed resolutions asking Congress to find \$100 million in additional funds to address mitigation of methamphetamines in Indian housing units and to strengthen law enforcement and Court resources.
- COPS-Community Oriented Policing Services also seeing reduction in funding.

Pending Legislation and Other Funding

- Mitigating Meth Act S.2270 (Sen. Daines R-MT)
- Opioid Response Enhancement Act S. 2437 (Sen. Baldwin D-WI)
 - Would make some funding available to tribes in program to combat opioid epidemic
- FY 2018 Appropriations Bill-
 - 100 Million in addition to regular IHBG grant-Need and Capacity
 - No details yet

Indian Housing Challenges

Great Needs

- In many cases tribes do not have public health departments for monitoring or adequate laws in place regarding clean up requirements or safe thresholds.
 - TDHEs often lead the way for their communities in developing standards, policy and procedures.
 - Essential to develop internal policy or rules for how to address meth in housing units.
 - Must work with Tribal governments to strengthen laws and advocate for enforcement.

Other Political Considerations

- Will the tribal government support TDHE efforts and policies?
- Can a THDE become “too” successful in addressing meth in housing units?
- Will the tribal government remain supportive even if numerous tenants are evicted from units?

Thank You!

Questions?

Wagenlander & Heisterkamp LLC

Attorneys at Law

1700 Broadway, Suite 1202

Denver, CO 80290

(303) 832-6511

davidvh@wagenlander.com

sylviaw@wagenlander.com