

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Mold Assessment and Remediation Licensure Amendments

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(III) and 8-151.07(4) (2013 Repl. & 2017 Supp.)); Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2017 Supp.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice to amend Chapter 32 (Mold and Radon Licensure and Certification) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), the Mold Assessment and Remediation Licensure Regulations.

This rulemaking amends the notification requirements of the Mold Assessment and Remediation Licensure Regulations in Chapter 32 of Title 20 DCMR to specify that the licensed assessment or remediation professional must provide a verification form to the client and the current resident of the property. The rulemaking further clarifies the definition of "visible" to specify that visible mold can be identified by a lay person or by mold professionals using industry practices. DOEE published a proposed rule on September 21, 2018 (65 DCR 009759) and took public comment. DOEE received comment from only one stakeholder, the Children's Law Center (CLC).

CLC requested that DOEE change the definition of "visible" mold from mold detectable by the naked eye to include mold detectable by a mold assessment professional using industry protocols, including moisture mapping and surface sampling. DOEE agrees with the recommendation because mold assessment professionals should be able to use more sensitive detection methodologies than the naked eye to better protect tenants from mold exposure. For this reason, DOEE changed the definition of "visible" mold in § 3299.1 of the regulations.

CLC also requested that the mold regulations be amended to require the tenant of a residential unit to receive a copy of the verification report from the mold remediation professional. The regulations currently require only the property owner to receive the verification report, and CLC was concerned that the tenant (often the party seeking mold remediation in the first place) was not receiving notice when that remediation had been completed. DOEE agrees with the recommendation because the tenant should be informed when his or her unit is mold-free. For this reason, DOEE added language to § 3204.6 to require the indoor mold professional provide reports to both the client and "the current resident of the unit."

Finally, CLC requested that the regulations forbid mold licensees from performing mold assessment and mold remediation on the same project to prevent a potential conflict of interest between the party performing the mold assessment and the party performing the remediation. DOEE rejected this change due to concerns that requiring separate assessment and remediation professionals could be more burdensome and costly for landlords and could ultimately delay

mold remediation for tenants. These rules were adopted as final on April 19, 2021 and will become effective upon publication.

Chapter 32, MOLD AND RADON LICENSURE AND CERTIFICATION, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Section 3204, PROHIBITIONS AND LICENSEE OBLIGATIONS, is amended as follows:

Subsection § 3204.5 is amended as follows:

By amending the text in paragraph § 3204.5(h) to read as follows:

- (h) Retaliate against any person who reported in good faith to any District of Columbia agency, department, or instrumentality, alleging incompetent, illegal, or unethical conduct;

By amending the text in paragraph § 3204.5(i) to read as follows:

- (i) Supervise the work of more than ten (10) individuals at one time; or

By amending the text in paragraph § 3204.6 to read as follows:

Indoor mold professional shall:

- (a) Provide to the client and the current resident of the unit a mold assessment report following an initial mold assessment. If the licensee includes the results of the initial assessment in a mold remediation protocol or a mold management plan, not provide a separate assessment report;
- (b) If indoor mold growth is identified in a mold assessment, provide to the client and the current resident of the unit a mold remediation protocol before a remediation project begins;
- (c) Within ten (10) days after successful completion of remediation activities, provide a verification report to the client, the current resident of the unit, and the appropriate indoor mold remediation professional. If an indoor mold assessment professional ceases to be involved with a project before it passes verification, provide a final status report to the client, the current resident of the unit, and the appropriate indoor mold remediation professional.
- (d) In all issued reports, protocols, or other documents, include the date when the document was issued to the client and the current resident of the unit and all indoor mold assessment professionals' names, license numbers, and, if applicable, business name and addresses.

Notice given to any current resident of the unit in question satisfies the notice requirements in (a) through (d) above.

Subsection § 3204.7 is amended as follows:

By amending the text in paragraph § 3204.7(c) to read as follows:

- (c) Provide to the client a completed verification report not later than the tenth (10th) day after receiving the verification report from the indoor mold assessment professional. The client shall provide a completed verification report to the current resident of the residential unit not later than the tenth (10th) day after receiving the verification report from the indoor mold remediation professional; and

Section 3209, NOTIFICATION REQUIREMENTS, is amended as follows:

Subsection § 3209.1 is amended as follows:

By amending the text in paragraph § 3209.1(a) to read as follows:

- (a) The notification shall include the address of the site, a short description of the building and its mold condition, the name of the client, the date(s) of the assessment, and the name and license number of the indoor mold assessment professional; and

Subsection § 3209.2 is amended as follows:

By amending the text in paragraph § 3209.2(a) to read as follows:

- (a) The notification shall include the address of the site, a short description of the building, the name of the client, the start date, the anticipated stop date, and the name and license number of the indoor mold remediation professional;

Section 3299, DEFINITIONS, is amended as follows:

Subsection § 3299.1 is amended as follows:

The definition of “visible” is amended to read as follows:

- Visible** – (a) capable of being seen by a lay person with the naked eye following the guidelines in § 3206, or (b) capable of being seen by an indoor mold assessment professional with the naked eye; or (2) detectable by an indoor mold assessment professional following the standards in this chapter and industry practices.