

October 26, 2015

*Via electronic mail only*

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Re: Tenant Advocate Comments on Second Notice of Proposed Rulemaking – Mold Assessment/Remediation Licensure (Published September 25, 2015)

Dear Mr. Marshall:

As you know, our organizations are dedicated to ensuring that safe, habitable, and affordable housing is available for low-income tenants in the District. We are writing to provide limited comments on the second set of proposed regulations published by the District Department of Energy and Environment (DDOE) on September 25, 2015 to implement Title III of the Air Quality Amendment Act of 2014. We appreciate this opportunity to continue our dialogue with DDOE on these important regulations.

We applaud the time and resources already invested by you and many other staff at DDOE to study the underlying issues and work to get this right. DDOE has responded carefully and thoughtfully to all stakeholder suggestions throughout this rulemaking process, including by convening an informal working group of stakeholders that represented the interests of tenants, property owners, mold and laboratory professionals, and mold professional certification organizations. While we may disagree on some finer points, we believe the changes in the second notice of proposed rulemaking are significant improvements to the first draft. Importantly, DDOE has lowered the threshold for indoor mold contamination from 25 to 10 square feet in an affected area; clarified the key term “visible”; and added training requirements for all indoor mold professionals, including familiarity with the District’s law and implementing regulations. We agree with the Department that these changes will better achieve the statute’s goal of improving health outcomes for residential tenants affected by indoor mold.

At this point, our remaining comments are limited to more technical points. While we believe addressing these comments will help to improve implementation of the law, our comments do not affect the framework or overall substance of the current draft.

Affected Area. As you know, the regulations require professional assessment and remediation when a residential unit has 10 square feet or more of indoor mold growth in an

affected area. The regulations define “affected” as “in close proximity, likely impacted from the same source of water intrusion or moisture accumulation.” This definition would be even clearer by inserting an “or” in between the two phrases:

Affected – in close proximity, or likely impacted from the same source of water intrusion or moisture accumulation.

There may be occasions when a common source of water intrusion impacts two areas that are not in close proximity as those terms are commonly understood, e.g., a pipe causes mold growth on two sides of a shared wall in two different rooms. Adding the word “or” would clarify the definition and allow for greater flexibility.

DDOE also may want to re-word the phrase “10 square feet (10 ft.<sup>2</sup>) of affected indoor mold growth,” which can be found throughout the regulations. We think it sounds more natural (and therefore is easier for a lay person reading the regulations to understand) to say “10 square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area” or “an affected area of 10 square feet (10 ft.<sup>2</sup>) or more of indoor mold growth.” Based our discussions with indoor mold professionals, this phrasing also is consistent with their approach, i.e. they will examine an “affected” area, measure the visible indoor mold in that area, and compare it to the threshold.

Contamination with Sewage, Chemicals, or Biological Pollutants. We had suggested that DDOE revise the regulations to require a professional mold assessment whenever building materials have been wet for more than 48 hours, or the water source that caused the damage leading to mold growth is contaminated with sewage, chemical, or biological pollutants. This comment is based on recommendations from both OSHA and the EPA that professionals should be brought in under these circumstances.

We understand that DDOE has opted not to include this guidance as a requirement, since it is merely guidance and the correlation between these circumstances and indoor mold contamination is not perfect. We nonetheless think this guidance could be included in the regulations, but clearly identified as guidance as opposed to a requirement. Section 3206.3 contains guidelines for the initial visual inspection performed by a property owner. It could be amended to add consideration of these circumstances:

3206.3 Prior to taking any steps to clean, scrape, remove, paint over, or otherwise remediate any indoor mold growth, a visual inspection should be performed that assesses the following:

(a) ~~(a)~~—The extent of water damage, indoor mold growth, and affected building materials;

(b) Whether building materials have been wet for more than 48 hours;

~~(b)~~(c) Whether the water source that caused the damage leading to mold growth is contaminated with sewage, chemical, or biological pollutants;

- (d) Crawl spaces, attics, behind wallboards, carpet backing and padding, wallpaper, baseboards, insulation, and other materials that are suspected of hiding indoor mold growth;
- (e) Ventilation systems for damp conditions and indoor mold growth on system components, like filters, insulations, and coils or fins; and
- (f) Certain materials that are susceptible to indoor mold growth when damp, including ceiling tiles, paper-covered gypsum wallboard (drywall), structural wood, and other cellulose-containing surfaces.

Consideration of these circumstances as part of the initial visual inspection also is consistent with the guidance document, which provides additional recommendations where building materials have been wet for more than 48 hours, or the water source that caused the damage leading to mold growth is contaminated with sewage, chemical, or biological pollutants.

Dwelling Unit. In the revised regulations, the definition of “dwelling unit” has been changed to make clear that units within a hotel, motel, dormitory, or seasonal or transient facility are not included. This definition is slightly different than the definitions found in the Housing Code and Property Maintenance Code. As DDOE may be aware, DCRA is in the process of transitioning from the Housing Code to the Property Maintenance Code as the governing code, so we suggest looking to similar definitions there for the sake of uniformity. The following would incorporate language directly from the Property Maintenance Code, 12G D.C.M.R. § 202.

Dwelling unit - a room or group of rooms ~~used or designed to be used in whole or in part for permanent occupation and that has providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, for one or more persons. but does not include a unit within a hotel, motel, dormitory, or seasonal or transient facility.~~ The term “dwelling unit” does not include any room or group of rooms in a transient housing business, as defined in 12G D.C.M.R. § 202.

Indoor Mold Contamination. As you know, under the Air Quality Amendment Act of 2014 the presence of “indoor mold contamination” triggers various requirements. While we understand that the regulations as a whole establish the definition for this key phrase, we continue to believe it would be helpful to include it in the Definitions section as well:

Indoor mold contamination - the presence of at least 10 square feet (10 ft.2) of indoor mold growth in an affected area.

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We appreciate this opportunity to share our suggestions with DDOE, and we look forward to continuing our dialogue with you on these important regulations. You can reach our group through Beth Harrison at Legal Aid at 202-661-5971 or Kathy Zeisel at the Children’s

Law Center at 202-467-4900 ext. 547. Thank you for your time and consideration of our comments.

Sincerely,

*Beth Mellen Harrison*

*Evan Henley*

Legal Aid Society of the District of Columbia

*Kathy Zeisel*

*Jessica Kleinman*

Children's Law Center

*Jennifer Berger*

Legal Counsel for the Elderly