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Testimony Before the District of Columbia Council
Committee on Transportation & the Environment
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Performance Oversight Hearing:
DC Department of Energy and the Environment

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Thank you, Chairperson Cheh and members of the Committee for the opportunity to testify regarding the Department of Energy and Environment (DOEE). My name is Buck Logan and I am an attorney at Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education.¹ With almost 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

Poor housing conditions can pose a serious risk to a child's health. Every year we represent hundreds of families in trying to get their landlords to repair these conditions.² The most serious cases often involve a landlord's failure to ensure a tenant's home is safe from mold and lead-based paint hazards, as required by DC law.³ DOEE plays a critical role in fighting these hazards.

Fighting Lead-Based Paint Hazards

Last year, DOEE showed strong leadership in the fight against lead hazards by establishing its Lead Reduction Program with a grant from the U.S. Department of Housing and Urban Development (HUD). Under this program, DOEE provides eligible DC families up to \$11,000 to remove lead-based paint hazards in their homes. A similar program was administered by the DC Department of Housing and Community Development (DHCD), but DHCD lost its federal funding after it failed to use most of

its previously awarded funds.⁴ We applaud DOEE for stepping up to the plate and applying for a new HUD grant to reinstate this much-needed program.

DOEE also plays a vital role in inspecting rental housing for lead-based paint hazards and responding to all cases in which young children have been tested for an elevated blood lead level. It is our understanding that DOEE is currently auditing landlord compliance with lead-hazard disclosure requirements. We support these efforts. The audits will promote compliance and send a message to all landlords about their legal obligations to protect tenants against the dangers of lead paint.

In November 2020, the DC Auditor issued a report highlighting the need to fix lead-based paint hazards in DC housing.⁵ Much of the report focused on the District of Columbia Housing Authority (DCHA), but the report also urged DOEE to improve its enforcement process. The report found that while DOEE responded promptly to lead-based paint complaints and issued initial notices and administrative orders in a timely manner, “DOEE’s subsequent enforcement process was slow and failed to secure lead remediation in half of cases sampled during the audit scope.”⁶ The DC auditor recommended that DOEE establish internal deadlines for each step in the enforcement process, enforce deadlines for requesting extensions, and use available regulatory authority (denying permits, issuing liens and multiday fines) to enforce landlord compliance with lead remediation orders.⁷ In response to the report DOEE has committed to improve its enforcement process in a number of respects.⁸ We urge DOEE

to follow through on this commitment and to establish a more aggressive and expedited process for enforcing compliance with DC's lead laws.

Strengthening DC's Lead Laws

As the Committee conducts its oversight of DOEE's performance, we also urge it to move forward with legislation that would provide DOEE and DC families with stronger tools to prevent lead-based paint hazards. In the last Council Period, the Committee considered a bill – the *Lead Hazard Prevention and Elimination Amendment Act of 2019* (B23-407) – that would provide these tools. The bill was introduced or co-sponsored by Chairperson Cheh as well as Councilmembers Allen, Bonds, Gray, Nadeau and Robert White. It received broad support, including from the American Academy of Pediatrics (DC Chapter), Children's National Hospital, the Green & Healthy Homes Initiative, Bread for the City, the Legal Aid Society, and Yachad. In December 2020, the Council passed a part of B23-407 to update several technical standards in DC's lead laws, including the definitional thresholds for what constitutes lead-based paint and lead-contaminated dust.⁹ But the Council did not pass other important aspects of B23-407, including provisions that would require more frequent and more effective housing inspections and more robust enforcement mechanisms to promote landlord compliance with DC lead laws. The Committee stated that it would reconsider these provisions during the current Council Period, after the COVID-19 public health emergency has concluded.¹⁰

We urge the Committee to take up the remaining aspects of B23-407 again. The roll-out of COVID-19 vaccinations has begun and will hopefully bring an end to the COVID-19 public health emergency by this summer. Lead-based paint hazards, however, remain a public health emergency. Enactment of the remaining provisions of B23-407 will address that emergency by helping to prevent lead hazards before children suffer lead poisoning.

Enhancing Enforcement of Mold Law

DOEE's Lead-Safe and Healthy Homes Division takes proactive steps to prevent harm caused by indoor environmental health threats. Our clients have benefited from the Division's work, which includes sending case managers to a family's home to help address a mold problem that is exacerbating a child's asthma.

It is our understanding that the Division currently has one mold inspector on staff and may be planning to hire one additional inspector. We support increasing DOEE mold inspections and enhancing its enforcement of the District's mold contamination law. DOEE inspections and enforcement should use a data driven system that identifies and prioritizes buildings that pose the highest risk of environmental hazards (such as buildings with a history of water intrusion and plumbing issues, which often lead to mold hazards). We recommend that the Council provide the funding DOEE needs to increase inspections and enforcement. It would be money well spent, not only because it will help keep families and children safe but also

by because it will reduce the enormous societal costs (*e.g.*, increased health care and social assistance spending) arising from harm caused by unhealthy housing conditions.

Issuing Final Mold Regulations

In 2018, DOEE initiated a rulemaking proceeding to amend the Mold Assessment and Remediation Licensure Regulations in Chapter 32 of DCMR Title 20.¹¹ Children’s Law Center and other public interest advocates submitted comments supporting these changes and suggesting several clarifications to promote more effective mold inspections and remediation. If adopted, the proposed amendments would:

- Prohibit mold professionals from performing both mold assessment and mold remediation on the same project.
 - This would ensure an impartial verification of work and align the District’s mold requirements with similar remediation requirements in its lead and asbestos programs.
- Clarify the definition of “visible” to specify that visible mold can be identified by a layperson or by mold professionals using industry practices such as moisture mapping.
 - This clarification would close a glaring gap in existing regulations. For example, one of our clients lived in an apartment with mold above the ceiling, which repeatedly caused the ceiling to rot and collapse. The landlord, however, would only patch up the ceiling, denying there was mold contamination because it was not “visible” to the naked eye, even though it was detectable using standard industry practices. It was only after the ceiling had collapsed eight times and Children’s Law Center filed a case in housing conditions court that the landlord finally recognized the need for effective mold remediation.
- Ensure tenants – not just the landlord – receive a copy of mold assessment and verification reports.
 - Families should have the right to these reports and to understand the conditions in their apartment. With access to the reports, families can

identify any gaps or mistakes in the inspection or report, thus promoting more effective, reliable inspections and remediation.

The record in the proceeding closed years ago. We urge DOEE to issue the final regulations so these important changes can become effective.

Promoting Quality Mold Inspections and Remediation

In the work we do to improve housing conditions for our clients, we often come across incomplete and shoddy mold inspections and remediation performed by contractors hired by the landlord. For example, sometimes mold assessors will miss mold contamination because they only inspect the rooms designated by the landlord and ignore tenant requests to examine other rooms the tenant knows contain mold. We also see assessments and remediation work that ignore basic requirements set forth in DOEE regulations, such as failing to specify the extent of mold contamination in an apartment or failing to provide instructions for remediating the mold.

It is our understanding that DOEE is considering the creation of a formal, public-facing feedback mechanism that would allow tenants to lodge complaints with the agency concerning unsatisfactory mold assessments and remediation. This would provide a forum for tenants to raise their concerns and help DOEE enforce contractor compliance with its regulations. We also recommend that DOEE conduct periodic audits of contractor qualifications and mold work to promote compliance with DOEE

licensing requirements and regulations. These steps would increase the quality of mold assessments and remediation and thereby create healthier homes for District residents.

Conclusion

We commend DOEE, and its hard-working, dedicated staff, for their efforts in promoting healthy homes in the District. We hope our suggestions today will further these efforts. I would be happy to answer any questions you may have.

¹ Judges, pediatricians, and families turn to Children’s Law Center to be the voice for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With nearly 100 staff and hundreds of pro bono lawyers, we reach one out of every nine children in DC’s poorest neighborhoods--more than 5,000 children and families each year. We multiply this impact by advocating for city-wide solutions that benefit all children. *See* <https://www.childrenslawcenter.org/>.

² Children’s Law Center frequently represents families whose homes’ poor conditions are so severe they harm the health of the children living in them. In those instances, the child’s pediatrician refers the family to us for legal representation to secure healthy, code-compliant conditions.

³ *See* D.C. Code § 8-231.01 *et seq.* (DC lead law), D.C. Code § 8-241.01 *et seq.* (DC mold law).

⁴ Morgan Baskin, “DC Chronically Failed to Spend Federal Funds to Remediate Lead Paint Hazards, HUD Says, Washington CityPaper (Feb. 21, 2019), available at: <https://www.washingtoncitypaper.com/news/housing-complex/article/21048191/dc-chronically-failed-to-spend-federal-funds-to-remediate-lead-paint>.

⁵ Office of the District of Columbia Auditor, “More Urgency Needed to Fix Lead-based Paint Hazards” (Nov. 18, 2020), available at <https://dcauditor.org/report/more-urgency-needed-to-fix-lead-based-paint-hazards/>.

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.*, Appendix (Agency Comments).

⁹ The Council incorporated these updated technical standards for DC’s lead laws into B23-132, the “Residential Housing Environmental Safety Amendment Act of 2020.” B23-132 was passed by the Council on December 15, 2020 and enacted into law on January 14, 2021 as Act Number A23-0607.

¹⁰ *See* Committee on Transportation and Environment, Committee Report on B23-132, at 5-6 (Nov. 9, 2020).

¹¹ DOEE proposed these amended rules on September 25, 2018. See <https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N0074128>.