

*Via electronic mail only*

Keith Keemer  
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Re: Tenant Advocate Comments on Notice of Proposed Rulemaking –  
2018 Mold Amendment Proposed Rules (Published September 21, 2018)

Dear Mr. Keemer:

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 2018 Mold Amendment Proposed Rules published by the District Department of Energy and Environment (DDOE) on September 25, 2018 amending the Mold Assessment and Remediation Licensure Regulations in Chapter 32 of Title 20 DCMR. We appreciate this opportunity to continue our dialogue with DDOE on these important regulations.

We believe the proposed amendments are responsive to a number of concerns tenant advocates have raised since the January 12, 2016 adoption of the Mold Assessment and Remediation Licensure Regulations and are in general support of the proposed amendments for that reason. Our remaining comments are limited to more technical points as detailed below.

Definition of Visible (§ 3299.1):

One of the main concerns tenant advocates have raised since the original publication of the regulations at Chapter 32, Title 20 is that licensed mold assessors have a variety of tools available to detect surface mold, including moisture mapping and surface sampling. They bring expertise and specialized equipment to the field of mold detection and assessment, which Chapter 32 recognizes by setting professional licensing requirements.

However, the current definitional language creates uncertainty and ambiguity around whether licensed mold professionals may rely on specialized tools, training, and best industry practices to assess mold when they cannot also detect the mold with their naked eye. This has created grounds for litigation and uncertainty in enforcement of the Chapter 32 requirements.

Given the general overall purpose of Chapter 32 to differentiate the expertise of a licensed mold assessor from that of a lay person, and past stakeholder discussion with the Department, we do not believe this ambiguity in the originally promulgated regulations was

intended. We welcome an amendment to clarify that licensed professionals may rely on industry practices and the standards laid out in Chapter 32 in making their assessments. However, we believe more explicit language beyond that of the proposed amendment is still needed in the definition section to ensure clarity. This is because the proposed language still relies on the use of the word “seen” in relation to industry standards.

We propose the following language to fully eliminate this ambiguity and to highlight the different assessment methods that are available to a lay person as opposed to a licensed indoor mold assessment professional.

Visible –

- (a) capable of being seen by a lay person with the naked eye following the guidelines in §3206, or
- (b)
  - (1) 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.

Provision of Completed Verification Report by Indoor Mold Remediation Professional, §3204.7(c):

The current regulations do not explicitly provide a right for a tenant to receive a copy of a written verification report when the property owner or property management company has completed remediation work in their unit. The current regulations also do not require that the mold remediation professional provide a copy of a verification report to a tenant or property management company that contracted for work, only to the property owner. Changing the language in §3204.7(c) from “property owner” to “client” addresses this second concern, but not the first. While we are in support of the change from “property owner” to “client”, we believe the proposed amendments must also address the second concern.

As tenant advocates, we have had to routinely litigate around the issue of tenants not receiving verification that mold remediation work has been properly completed in their units. This creates both the stress, time, and expense of litigation for tenants, as well as uncertainty about their unit’s safety and potentially imposes a financial burden (which many tenants simply cannot afford) to contract for their own inspection to verify if there is remaining mold. It also creates an unnecessary administrative burden on the already over-burdened Housing Conditions and Landlord-Tenant Courts. There is a power imbalance and potential for abuse created where the property owner or management company is in sole possession of the verification report and does not wish to disclose it to a tenant.

Again, we believe that the proposed amendment is meant to address this gap and be responsive to tenant advocate concerns about excessive litigation around this issue. To fully address the concerns raised, we propose the following language:

§3204.7(c) “Provide to the client a completed verification report not later than the tenth (10<sup>th</sup>) 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 (10<sup>th</sup>) day after receiving the verification report from the indoor mold remediation professional.

Because the indoor mold assessment professional has completed work in the residential unit, they would have an address to mail a copy to provide it to the current resident. However, adding a separate provision that the client must provide the report to the current resident as a fallback will mean that the current resident will have an enforceable way in court to receive a copy from their property owner or manager who has sought out the assessment.

Additional Comment Regarding Provision of Completed Assessment Report by Indoor Mold Assessment Professional:

We would also propose amending Subsection §3204.6, regarding the responsibilities of the indoor mold assessment professional to make it correspond to and mirror our proposed language in §3204, as follows:

3204.6 Indoor mold assessment professionals shall:

- (a) Provide to the client a mold assessment report following an initial mold assessment. Unless the indoor mold assessment professional has provided a copy of the report to the current resident of the unit, the client shall provide a copy of the initial mold assessment to the current resident of the residential unit not later than the tenth (10<sup>th</sup>) day after receiving the assessment report from the indoor mold assessment professional.
- (b) 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;
- (c) If indoor mold growth is identified in a mold assessment, provide to the client a mold remediation protocol before a remediation project begins. Unless the indoor mold assessment professional has provided a copy of the mold remediation protocol to the current resident of the unit, the client shall provide a copy of the mold remediation protocol to the current resident of the residential unit before a remediation project begin;
- (d) Within ten (10) days, after successful completion of remediation activities, provide a verification report to the client, , and the appropriate indoor mold remediation professional or, 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 and the appropriate indoor mold remediation professional; unless the indoor mold assessment

professional has provided a final status report to the current resident of the unit, the client shall provide a copy of the mold remediation protocol to the current resident of the residential unit before a remediation project begin; and

- (e) In all issued reports, protocols, or other documents, include the date when the document was issued to the client and all indoor mold assessment professionals' names, license numbers, and, if applicable, business name and addresses.

Support for Proposed Addition of §3204.5(j):

We strongly support the proposed amendment to §3204.5(j) to make explicit that mold licensees shall not perform mold assessment and mold remediation on the same project. This provision will address serious conflict of interest concerns that arise from the same professional completing both an assessment and remediation work.

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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 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,

AARP Legal Counsel for the Elderly  
Bread for the City  
Children's Law Center  
Legal Aid Society of the District of Columbia