MOLD REFRESHER TRAINING MANUAL

for

Mold Assessors, Remediation Contractors and Abatement Workers

208 NEWTOWN ROAD, PLAINVIEW, NY 11803
www.cnsenviro.com

NYS Mold Refresher Course Outline

The Mold Refresher course will be a total of four (4) hours.

Day 1

Introduction, Review Health Effects of Mold .....0.25 hours

New York State Regulations, Guidance and Factsheets.....1.00 hours

Review and Updates: Regulations and Guidance.....0.50 hours

BREAK .....0.25 hours

Developments in Work Practices, Technologies, and Safety .....1.00 hours

Case Studies & Group Discussions Forum .....1.00 hours

Day 1 TOTAL HOURS .....4.0 hours

P227 Fact Sheet
Mold Assessment and Remediation in New York State

Mold Assessment and Remediation in New York State

What is Mold?

Mold is a multi-cellular fungus, similar to mushrooms and yeast. Mold can be different colors, and look fuzzy, slimy, or powdery. It often has a musty odor when present in large amounts.

Mold requires three things to grow:

- water/moisture,
- organic food source (paper, fabric, sheetrock, etc.), and
- proper temperature.

The presence of mold means there is too much moisture. Moisture problems can be caused by:

- plumbing leaks
- leaking roofs or windows
- high humidity
- flooding
- condensation due to poor ventilation or insulation

It is impossible to 'mold proof' your house. However, you can manage mold growth by controlling indoor humidity levels and fixing water leakage problems. To prevent mold from coming back in the future, you must fix the underlying source of moisture.

If I want to clean up mold, do I need to hire a mold professional?

No. Mold issues can often be fixed by the property owner. However, if you are sensitive to mold, not interested in cleaning up the mold or are not capable of cleaning the mold you can hire mold professionals.

Does New York require a property owner to clean up mold when it is found?

No, there is no cleanup requirement for property owners. However, if a property owner chooses to hire a mold professional, those professionals must follow the requirements of the law.

Note: Rental property owners must still provide clean and sanitary living conditions to their tenants.

How does the Department of Labor help with mold issues?

The Department of Labor makes sure that professionals who do mold assessments and remediation work have proper training, licenses and minimum work standards.

Every mold cleanup project performed by professionals must follow these steps: assessment, remediation (clean up), clearance. The law protects consumers by barring mold licensed mold companies and their employees from doing both the assessment and remediation on the same property. One mold company and their employees may do the initial and post-cleanup clearance assessments, but a different company and their employees must do the actual cleanup work.

Assessments

What is an assessment?

An assessment, or a mold remediation plan, is a document prepared by a mold professional. It identifies mold and serves as a guide for the cleanup project. It says what must be done, how it is to be done, and how you will be able to tell if all the mold has been removed. The specific requirements are listed in Section 945 of the Labor Law.

Am I entitled to a copy of the assessment?

Yes. If you hire a mold professional to do an assessment, you must be given a copy. The professional you hire to do the remediation work must also get a copy.

Does a mold assessor need to perform sampling as part of an assessment?

No. In most cases, air sampling and mold testing are not necessary. There are no national or state standards for "safe" levels of mold. Mold spores are a natural part of the environment and are always in the air and on surfaces. A thorough visual inspection is the most important step to identify mold problems and determine cleanup strategies. Before contractors perform any sampling or testing, ask what type of sampling or testing they wish to perform, why it is necessary, and what it will show that is not already known.

How much should an assessment cost?

The law does not say how much an assessment should cost. We recommend that you get estimates from different companies. If a contractor recommends testing as part of an assessment, you should have a clear understanding of the costs for that testing and exactly what the testing will show.

Remediation

What does the Mold Remediation Contractor do?

The remediation contractor does the actual cleanup work. They must give you a mold remediation work plan. The work plan must fulfill all the requirements of the mold remediation plan developed through the assessment.

Hiring a Mold Professional

What should I know before hiring a mold professional?

As is true with all construction projects, the most important step is choosing your contractor. Contact more than one contractor for all work to be performed.

- For Mold Assessment: Make sure each contractor comes to the job site and bids on the same work. Before any work starts, you should have a clear understanding of the scope of work and the services the contractor will provide. You should understand and agree with the mold assessor's remediation plan for acceptable work scope and job clearance. This may include sampling, recommended use of biocides or other chemicals, replacement of materials, and criteria to demonstrate clearance after the cleanup.

- For Mold Remediation: The work plan must fulfill all the requirements of the mold remediation plan developed through the assessment. The work plan should also have specific instructions and/or standard operating procedures for how the contractor will perform the cleanup work.

Ask about the contractor's experience and references from previous clients. If you are not sure that the proposed work complies with local building code rules, contact the local building code office before allowing the contractor to start work.

Ask the contractor for copies of their mold license. You can verify the license on the Department of Labor's website **http://labor.ny.gov/mold**. On the left side of the page, click "Licensing" under "Mold Program." The link to the search tool is located at the bottom of the page under "Licensed Mold Assessors and Mold Remediator Contractors."

How do I file a complaint?

Consumers may report licensing and work practice violations by sending an email to **moldcomplaints@labor.ny.gov** or by calling the appropriate district office. A list of district offices is found at **http://www.labor.ny.gov/mold**.

Where do I go for more information?

U.S. Environmental Protection Agency: **https://www.epa.gov/mold**
New York City Department of Health and Mental Hygiene: **http://www.nyc.gov/health**

Case Studies

CBS NEWS

An Insidious Mold

BY CBSNEWS.COM STAFF CBSNEWS.COM STAFF
JANUARY 31, 2002 / 8:43 AM / CBS

Melinda Ballard and Ron Allison thought theirs was a dream house: a 22-room mansion on 72 acres outside of Austin, Texas.

Ballard, a former New York City public relations executive, thought it offered the perfect way to escape from the big city. "It was my baby," she said. "And it was truly a dream house for me."

It's not a dream anymore. Ballard and Allison abandoned their home; they were forced to move out when their house was invaded by a mold that they say made everyone in their family sick. Erin Moriarty reports.

The couple's son Reese was the first to become ill at age 4. "(He was) coughing up blood," Ballard said. "His equilibrium was completely shot; very bad stomach problems; diarrhea; vomiting - it just spanned the whole globe in terms of symptoms."

Soon Ballard became sick; she says she had trouble staying on her feet. Then Allison, an investment banker, began having trouble breathing. He started coughing up blood, Ballard said.

Experts say the family was being poisoned by a black toxic mold, called Stachybotrys. The mold, which has been found in all 50 states, in homes, businesses and schools, had invaded their house. Some strains of Stachybotrys cause allergies, asthma and skin rashes. Others produce mycotoxins, released into the air. These toxins can seriously damage the lungs and central nervous system.

In April 1999, Dr. David Straus, one of the nation's leading mold experts, ordered the Ballards to evacuate their house. They had to leave at a moment's notice. They left dishes in the dishwasher and food in the refrigerator.

Dr. Straus believed they became sick from breathing in mycotoxins. The mold most commonly grows as a result of water damage, according to Dr. Straus.

This mold began with a leak in the downstairs bathroom, Ballard said.

"It needs water and it needs some type of organic food source," said Dr. Straus, who is at Texas Tech University. "They like cellulose," he added. "Most of the material we use to build houses - like Sheetrock, ceiling tile, wood - fungi can grow on."

The mold infiltrated under the flooring, 2,500 square feet of a wooden floor, according to Ballard.

And the mold contaminated all of the family's possessions, including photographs, Dr. Straus said. It got into the air-conditioning unit and spread toxins throughout the house. Removing every trace of the mycotoxins may be impossible, said experts hired by the Ballards.

"This is like what happens in a huge flood; you lose everything," Ballard said.

The toxins affected her husband, she added. He became very forgetful: When he'd go to the grocery store, he'd leave the groceries there, she said.

Allison says his memory loss affected his work.

His co-worker Harold Babbitt noticed the change. "I would walk into his office, and he would just be staring, like someone who had a stroke," Babbitt said. "There were deals that should have been completed that weren't completed."

Allison finally resined.

Since Ballard left the house, her symptoms disappeared.

But Reese developed asthma and had trouble in school. Allison went to New York with Reese to see a doctor specializing in treatment of mold exposure illnesses: Dr. Eckhardt Johanning, of Albany, who has studied more than 600 patients exposed to toxic mold.

Dr. Johanning found that both Reese and his father had low levels of antibodies, which suggested exposure to a toxin.

Ballard said that Dr. Johanning said Reese should never again be exposed to the mold.

"I'm not saying this is necessarily a permanent condition," Dr. Johanning said. "The brain can repair itself a lot. But it may take some time to do. Stachybotrys produces very potent chemicals that can cause brain fogginess, tremors, problems with the memory."

Allison, Ballard and their son are not the only family to have trouble with the mold. In Southern California, Julie and Richard Licon found Stachybotrys in the walls and floors of their condomnium.

"All the wood was pretty much black from the mold," said Richard Licon.

The couple's homeowners association agreed to move the Licons and their six children to a hotel while the house was cleaned of mold.

Seven months later, the Licons moved back. But they became convinced the mold was still there. During the seven months in the hotel, the children were not sick, Julie Licon said. When they moved back into their condominium, however, the kids got sick, she noted.

Their son Jordan, then 2, had seizures form mold exposure. These seizures resumed when they moved back, the Licons said. Their other children also experienced a variety of symptoms, from nosebleeds to headaches and dizziness.

They retested their house and found massive amounts of Stachybotrys in the air. A spore had grown inside the air-conditioning unit.

So the Licons moved out again. "The only thing we can take, literally, is the clothes on our back," Richard Licon said.

In some cases, Stachybotrys may even kill.

Dr. Dorr Dearborn, of Rainbow Children's Hospital in Cleveland, who has studied pulmonary hemorrhaging in infants, said the mold is not only dangerous but deadly: "Of the 29 cases (of pulmonary hemorrhaging in infants) that we've studied in depth, we've had five deaths. And all five of those have come from homes that were contaminated with Stachybotrys."

In California, the Licons are in litigation with their homeowners association for not completely removing mold the first time around. Since the *48 Hours* broadcast in March, the Licon family has still not been able to return to its former home. But the children's symptoms have gone away. The fate of the home remains uncertain as does the long term health of the children.

The New York Times

Infants' Lung Bleeding Traced to Toxic Mold

By Robyn Meredith

Jan. 24, 1997

Dr. Dorr G. Dearborn of the Rainbow Babies and Childrens Hospital here realized he faced a horrible mystery in November 1994 when he treated three babies in a single day with a rare ailment: their lungs were bleeding for no apparent reason. If one more case showed up, he decided, he would call Federal health investigators.

The next night, a fourth baby arrived with similar symptoms, and Dr. Dearborn was soon on the telephone with doctors from the Centers for Disease Control and Prevention in Atlanta, who flew here within a day.

"Since we had only seen three cases in children, let alone infants, in the past 10 years, I thought we had an outbreak of sorts that we needed help with," said Dr. Dearborn, the associate chief of the hospital's pediatric pulmonary division.

Unexplained lung bleeding, which normally strikes one in a million children, was afflicting more than one in every thousand Cleveland babies, killing nearly a third of them, studies later showed. And after a two-year study of cases here, released on Jan. 16, the centers for disease control named its prime suspect: a black mold that grows in water-damaged homes.

For doctors around the country who had been observing scores of unexplained bleeding-lung cases in infants, the new study may provide some clues.

"This is a major step in understanding what has heretofore been an enigmatic lung problem for small kids," said Dr. Thomas F. Boat, chairman of the pediatric department at the University of Cincinnati College of Medicine. "This is a real wonderful detective job."

Dr. Ruth A. Etzel, chief of the Air Pollution and Respiratory Health Branch of the Federal agency's National Center for Environmental Health, which conducted the Cleveland study, said doctors in 24 states had formally filed reports with the centers of 79 unexplained bleeding-lung cases in infants in the last four years. Thirty were in Cleveland; nine of those infants died.

While the study showed that the mold had probably caused the children in Cleveland to get sick, Dr. Etzel and Dr. Dearborn cautioned that more study was needed to show whether the mold was connected to unexplained bleeding-lung cases elsewhere. They also pointed out that child abuse and various well-understood diseases could cause infants' lungs to bleed.

Most of the Cleveland cases were clustered on the east side of the city in a low-income neighborhood with older, wooden houses, some of which have not been kept in good repair by landlords. The Federal agency's study covered 40 infants: 10 sick babies and 30 healthy infants who were used as a basis for comparison. All the babies lived in the same seven zip-code areas where the sick children lived.

The study showed that the prime suspect for previously unexplained cases of the disease was a black mold called Stachybotrys chartarum. The mold, also known as Stachybotrys atra, grows in areas where there has been standing water for a few days, as in a flooded basement. When wet, the thin black mold looks slimy, and when dry, it looks dusty, Dr. Dearborn said. It grows on water-logged items like wood, cardboard and clothing. Just three months before Dr. Dearborn became aware of the medical problem, a heavy rainstorm had flooded many homes in Cleveland.

As part of the study, the county coroner reviewed all 172 infant deaths for a two-year period. With further tests on tissue samples collected before the infants were buried, doctors found that six of the 117 deaths attributed to sudden infant death syndrome were more likely caused by the mold.

In Cleveland, the illness has seemed to strike African-American boys disproportionately. Dr. Etzel of the Federal centers said it was not clear why.

"We have no idea why males should be at greater risk than females," she said. "Sometimes when race appears, it may just be a surrogate for socioeconomic factors."

For parents like Yvette J. Roper, the study offers some answers about what made their children sick.

Her son, Ryshon M. A. Johnson, was discharged last Friday after nearly two weeks in Rainbow Hospital, where his condition was diagnosed as a mild case of pulmonary hemorrhage, or bleeding in the lung. His mother rushed him to the hospital after he vomited dark blood.

"It is really scary that a little breathing of toxic mold could cause your baby to lose his life," said Ms. Roper, who picked up her 8-week-old son and cradled him in her arms. "To think that there was a chance that I could have lost him," she said, shaking her head.

The ordeal is not quite over for Ryshon or his mother. He must stay at his grandmother's house until his home can be given a clean bill of health by inspectors. For the next year, his mother must use a machine to monitor his breathing and heart rate to be sure the problem does not recur, as it has in other sick infants.

The disorder is not contagious, the agency said. The oldest victim in Cleveland was 10 months old.

For parents, the illness "is frightening as can be," Dr. Etzel said. "You have a previously healthy baby who basically gets sick before your eyes."

The illness is sometimes accompanied by subtle symptoms in seemingly healthy infants. Babies less than a year old might simply cry, cough or turn pale, then have an unexplained nosebleed or begin to cough or vomit the blood that has quietly begun filling their lungs.

Children can quickly deteriorate. "Six came in with nosebleeds," Dr. Dearborn said. "Three of them were dead in a week."

While most afflicted babies show some symptoms that prompt their parents to bring them to a doctor, in one unusual case here an 8-month-old baby with no visible symptoms other than a

failure to thrive was brought to the hospital and died within 24 hours from bleeding lungs, he said. Doctors discovered that her lungs had been slowly bleeding for months, and that she had been exposed to the mold since her mother's first trimester of pregnancy. "She just drowned in her own blood," Dr. Dearborn explained.

During the past four years, in addition to the Cleveland cases, there have been two other cases in Ohio; five in Texas; four each in North Carolina and Florida; three in Missouri; two each in Mississippi, Maryland and Louisiana, and one each in 15 other states, from Massachusetts to California. In Illinois, 10 Chicago babies with unexplained bleeding lungs have been reported to the disease centers.

Dr. Etzel said parents of children in water-damaged houses in Cleveland should be sure to thoroughly clean up any water damage to protect their infants. Anything from a damp pile of newspapers in the basement to moldy carpets or wallpaper to water-logged wood beams could provide a home for the mold, she said. While cleaning up some of the water damage requires washing flooded areas with a bleach solution, other cases require plumbing to be fixed or water-saturated walls or wood beams to be torn down and replaced.

The brief report from the agency does not detail how the mold hurts infants. But Dr. Dearborn, the lead doctor on the study, theorized that the mold produced airborne toxins that weakened tiny blood vessels in infants just as their lungs were growing at a rapid pace. Sometimes, the mold toxins alone can cause the capillaries to begin bleeding into the lungs, he said. But often, it takes some other stress, like secondhand smoke or another illness, to set off the attack, Dr. Dearborn said.

A version of this article appears in print on Jan. 24, 1997, Section A, Page 12 of the National edition with the headline: Infants' Lung Bleeding Traced to Toxic Mold.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BONNY M. BOLSON, Appellant, v. HAYDEN G. WILLIAMS and DONITA C. WILLIAMS, individually and on behalf of the marital community composed thereof; WILLIAMS & SCHLOER, CPA'S, P.S., a Washington professional service corporation, Respondents.	No. 71365-5-I DIVISION ONE UNPUBLISHED OPINION FILED: May 27, 2014

APPELWICK, J. — Bolson sued her former employer, W&S, alleging that W&S's negligent cleanup of the office after a flood resulted in mold growth, which proximately caused her sarcoidosis. On W&S's motion for summary judgment, the trial court dismissed Bolson's claims for lack of medical causation. We affirm in part, reverse in part, and remand.

FACTS

Respondent, Williams & Schloer, CPA's, Inc. (W&S), is a small accounting firm located in Puyallup, Washington, near the Puyallup River. W&S is owned and managed by Respondents Hayden Williams and Donita Williams, who are husband and wife, and their daughter Tina Schloer. W&S employed Appellant Bonny Bolson as a tax accountant and enrolled agent from January 28, 2003 until December 3, 2010

In 1985, Bolson was diagnosed with a "very high allergic response to mold and mites" after she experienced unusually intense headaches and fatigue. Her doctor advised her to avoid additional exposure. Bolson moved to a new home, because her

older rental house was triggering her mold allergy. In February 2005, Bolson was again exposed to mold in her home. She experienced watery eyes, fatigue, and facial swelling as a result. She again had to move to a new home. On January 20, 2008, medical imaging of Bolson's lungs showed nothing abnormal.

On January 7, 2009, a severe storm caused massive flooding near the Puyallup River. Floodwaters rose to the first floor of the W&S office building.

The day after the flood, W&S initiated cleanup and repair of the flooded office building. W&S rented box fans and dehumidifiers, opened up the offices for ventilation, tore out all the carpeting and padding, and either dried or threw away all wet personal property. The subfloor was checked for wetness and damage, and a contractor was brought in to remove and dispose of all insulation. Bleach and other cleaning products were applied during the process.

The flood occurred during a busy tax season, so W&S set up a temporary workspace in the back of the building. However, several employees, including Bolson, worked from home during the cleanup. Bolson came to the office to get files or discuss projects with Schloer for an hour or two every couple of days. Bolson's own records indicate that she was present in the office every few days to return client calls and review files.

During the cleanup, there was a damp smell from the moisture, a smell of bleach and sawdust, and a lot of noise. Employees complained to W&S about the smell and noise of the repair work. W&S acknowledged that it received complaints from Bolson and other employees about coughing, headaches, and irritated eyes during the cleanup.

Concerned about the musty smell, a few W&S employees purchased two petri dish mold tests at the local hardware store. They put one petri dish in the parking lot as a control and one in the main part of the office. The one in the office showed a variety of mold spots and the one in the parking lot had one or two mold spots. W&S did not send the mold tests in for lab analysis. One employee remembered that W&S did not want the mold tests to be analyzed, because remediation was still ongoing.

In mid-January 2009, Bolson began experiencing flu-like symptoms, coughing, and fatigue. By February, she also began experiencing backaches and started seeing a chiropractor. In March 2009, Bolson was screened for a kidney infection, which came back negative. She continued to experience flu-like symptoms and allergies until July 2009, when she returned to the doctor. The doctors performed an x-ray and computed tomography (CT) scan on Bolson, which revealed abnormal scarring in her lungs. After biopsying Bolson's lungs, her doctors diagnosed her with sarcoidosis—an inflammatory disease that can affect any organ in the body, but most commonly affects the lungs.

In September 2009, Bolson's sarcoidosis was determined to be clinically stable. Upon evaluating Bolson and reviewing three studies on sarcoidosis, Dr. Louis Lim believed that "there is insufficient evidence to suggest that her sarcoid was the result of her work exposure on a more probable than not basis. It is possible that the environment may have contributed to the development of her illness . . . although the time frame would be unusually rapid." A colleague of Dr. Lim's agreed with this conclusion.

On December 9, 2010, Bolson filed a workers' compensation claim with the Washington Department of Labor and Industries (L&I), alleging sarcoidosis due to workplace exposure. L&I rejected Bolson's claim, concluding that she had not suffered an industrial injury or occupational disease required for workers' compensation benefits.

On February 29, 2012, by amended complaint, Bolson sued W&S for negligence, premises liability, negligent infliction of emotional distress (NIED), and intentional infliction of emotional distress (outrage). She alleged that W&S's negligence in cleaning up the office resulted in mold growth, which proximately caused her sarcoidosis.

On July 5, 2012, W&S moved for summary judgment. W&S argued that Bolson's claims should be dismissed, because she had not produced any expert testimony on medical causation. W&S also argued that Bolson should be collaterally estopped from pursuing claims dependent on medical causation, because she already litigated and lost the issue in her workers' compensation claim.

In her opposition to W&S's motion for summary judgment, Bolson attached a declaration from Jack Thrasher, Ph.D. Thrasher has extensive experience, training, and education in the fields of toxicology and immunotoxicology. In his declaration, he explained that toxicology is the study of the adverse effects of chemicals on living organisms, including humans. He defined immunotoxicology as the study of adverse effects on the immune system resulting from exposure to physical factors, chemicals, biological materials, and medical devices. Thrasher has specific expertise in toxicology and immunotoxicology as they apply to mold, fungi, and bacteria resulting from water intrusion in indoor environments.

Thrasher reviewed Bolson's case file, including the parties' declarations and Bolson's medical records. He explained that floodwater carries "microbes (including bacteria and mold), silt, and other organic matter into structures and create[s] black water conditions." As such, he believed that "[p]otentially dangerous and pathogenic mold and bacteria were more likely than not present in the water-damaged interior" of the W&S building. He further explained that W&S's use of box fans constantly circulated sawdust containing "mold, bacteria, pathogen by-products, and other particulates."

Thrasher stated that, because of Bolson's preexisting mold allergy, she should not have been allowed in the office during remediation. He concluded:

> 28. It is my professional opinion that Ms. Bolson's Sarcoidosis was, on a more probable than not basis, caused by her exposure to mold, its by-products, and other environmental contaminants that were present in the W&S office immediately after the January 2009 flood.
>
> 29. Further, even if Ms. Bolson had pre-existing conditions or illnesses, it is my opinion, on a more probable than not basis, that her exposure to the contaminated work environment exacerbated the injuries she suffered and continues to suffer.

Bolson argued that Thrasher's opinion was sufficient expert testimony on the issue of medical causation.

Bolson also moved to strike and exclude any evidence of her L&I claim, and moved to seal any related evidence already submitted by W&S. W&S opposed Bolson's motion to strike the L&I records.

In reply to Bolson's opposition to summary judgment, W&S asserted that Thrasher's opinion was insufficient to meet the standards for expert testimony linking a specific toxic exposure to a specific medical condition. W&S pointed out that Thrasher

did not examine Bolson, did not inspect the W&S building, and did not make any finding about specific mold that might lead to sarcoidosis. W&S argued that Bolson failed to establish a factual and scientific link between her exposure to an airborne toxin at the W&S office and her sarcoidosis.

At a hearing on W&S's motion for summary judgment, the trial court orally granted Bolson's motion to exclude the L&I records and stated that it would not rely on those records. The trial court reasoned that L&I records are discoverable for review by the parties, but not admissible for any dispositive motion.

The trial court also orally granted summary judgment for lack of medical causation. The trial court explained:

> It's not sufficient to have someone who is not a medical doctor telling the jury to draw conclusions on this sort of thing. There has to be a connection done by medical testimony as far as I read the law.
>
> I understand a reviewing court may disagree with me on that, but my reading of the reviewing courts repeatedly is that that is the requirement.
>
> Now, there are exceptions, and I appreciate that. Doctor takes off the wrong leg, you don't need a doctor telling him he took off the wrong leg; that's kind of a famous case. But this case here does require someone to draw the connection, the proximate cause between the two on a more likely than not basis. And it's not present in this case that I could find. And Dr. Thrasher doesn't have the skill. He's not the expert to do that, irrespective of his conclusions. Therefore, summary judgment will be granted.

On August 3, 2012, the trial court entered a written order granting W&S's motion for summary judgment. The court noted that it did not consider the L&I files. The trial court also denied Bolson's subsequent motion for reconsideration. Bolson appeals.

DISCUSSION

Bolson argues on appeal that the trial court erred in requiring expert testimony to establish that workplace exposure to mold proximately caused her sarcoidosis. She also argues that, even if expert testimony was required, the trial court erred in concluding that her expert toxicologist was not qualified as a medical expert under Washington law. She further asserts that the trial court erred in dismissing both her NIED and outrage claims.

We review an order granting summary judgment de novo. Hadley v. Maxwell, 144 Wn.2d 306, 310-11, 27 P.3d 600 (2001). Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Peterson v. Groves, 111 Wn. App. 306, 310, 44 P.3d 894 (2002). We review all facts, and reasonable inferences drawn from the facts, in the light most favorable to the nonmoving party. CTVC of Haw., Co. v. Shinawatra, 82 Wn. App. 699, 708, 919 P.2d 1243, 932 P.2d 664 (1996). On a motion for summary judgment, courts do not weigh evidence or assess witness credibility. Barker v. Advanced Silicon Materials, LLC, 131 Wn. App. 616, 624, 128 P.3d 633 (2006).

In a negligence claim, the plaintiff must establish that (1) the defendant owes the plaintiff a duty to conform to a certain standard of conduct; (2) a breach of that duty; (3) a resulting injury; and (4) proximate cause between the breach and the injury. Cameron v. Murray, 151 Wn. App. 646, 651, 214 P.3d 150 (2009). To recover for NIED, the plaintiff must prove the four elements of negligence, as well as objective symptomatology. Kloepfel v. Bokor, 149 Wn.2d 192, 199, 66 P.3d 630 (2003).

A proximate cause of an injury is defined as a cause that, in a direct sequence, unbroken by a new, independent cause, produces the injury complained of and without which the injury would not have occurred. Fabrique v. Choice Hotels Int'l, Inc., 144 Wn. App. 675, 683, 183 P.3d 1118 (2008). Issues of negligence and proximate cause are generally not susceptible to summary judgment. Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). Only when reasonable minds can reach but one conclusion may questions of fact be determined as a matter of law. Id. at 703-04.

I. The Need for Expert Testimony

Bolson argues that the trial court erred when it determined that expert testimony was required to establish that workplace exposure to mold proximately caused her sarcoidosis. Bolson contends that a jury could infer causation, without the need of an expert, based on the close temporal proximity between the W&S's conduct and her injuries.

When the results of allegedly negligent conduct are within the experience and observation of an ordinary lay person, the trier of fact can draw a conclusion about causation without expert testimony. Riggins v. Bechtel Power Corp., 44 Wn. App. 244, 254, 722 P.2d 819 (1986). For example, no expert testimony is required where a physician amputates the wrong limb or pokes a patient in the eye while stitching a wound on the face. Berger v. Sonneland, 144 Wn.2d 91, 111, 26 P.3d 257 (2001).

However, evidence establishing proximate cause must rise above speculation, conjecture, or mere possibility. Attwood v. Albertson's Food Ctrs., Inc., 92 Wn. App. 326, 331, 966 P.2d 351 (1998). Expert testimony is therefore required where the nature

of "the injury involves obscure medical factors which are beyond an ordinary lay person's knowledge, necessitating speculation in making a finding." Riggins, 44 Wn. App. at 254. The expert must be able to testify that the alleged negligence "'more likely than not'" caused the harmful condition leading to injury. Attwood, 92 Wn. App. at 331 (quoting Merriman v. Toothaker, 9 Wn. App. 810, 814, 515 P.2d 509 (1973)).

For instance, expert testimony was required when truck drivers alleged that multiple airborne chemicals in company trucks caused them to experience skin rashes, respiratory symptoms, nose bleeds, headaches, and other symptoms. Bruns v. PACCAR, Inc., 77 Wn. App. 201, 203, 214-15, 890 P.2d 469 (1995). Similarly, when a firefighter had multiple heart problems unrelated to his employment, expert testimony was necessary to establish whether his heart disease was caused by occupational exposures. City of Bellevue v. Raum, 171 Wn. App. 124, 153-54, 286 P.3d 695 (2012), review denied, 176 Wn.2d 1024, 301 P.3d 1047 (2013). Expert testimony was likewise needed when a hotel patron contracted salmonella in the hotel restaurant and subsequently developed a reactive arthritis. Fabrique, 144 Wn. App. at 687-88. In all three of these cases, temporal proximity between the harmful condition and the plaintiffs' injuries was insufficient to establish causation.

The same is true here. Sarcoidosis is an inflammatory disease that can appear in almost any body organ, but most commonly affects the lungs. An ordinary lay person may not be familiar with sarcoidosis; indeed, an ordinary lay person may never have heard of sarcoidosis. There is no connection obvious to a lay person between mold exposure and sarcoidosis. Thus, an expert must establish that link. Otherwise, the jury

would be left to speculate as to the possible causes of sarcoidosis. This is impermissible under Washington law. We hold that expert testimony is required to establish that Bolson's sarcoidosis was more likely than not caused by her workplace exposure to mold.

II. Dr. Thrasher's Expert Testimony

Bolson argues that the trial court erred in granting summary judgment for lack of causation, because the court failed to properly recognize Dr. Thrasher's qualifications as an expert. Bolson contends that the trial court erroneously concluded that a medical doctor must testify to causation. Instead, Bolson argues, Thrasher's decades of experience as a toxicologist and immunotoxicologist qualify him to testify that workplace mold exposure proximately caused her sarcoidosis. Bolson asserts that any remaining challenges go to the weight and credibility of his testimony rather than its admissibility.[1]

Expert testimony must demonstrate that the defendant's conduct "'probably'" or "'more likely than not'" caused the injury, rather than "'might have,'" "'could have,'" or "'possibly did.'" Fabrique, 144 Wn. App. at 687 (quoting Ugolini v. State Marine Lines, 71 Wn.2d 404, 407, 429 P.2d 213 (1967)). Importantly, expert testimony must be based

[1] Bolson also argues that W&S failed to preserve any challenge to the admissibility of Thrasher's opinion, because W&S did not move to strike Thrasher's declaration or challenge his expert qualifications under ER 702. However, materials submitted in connection with a motion for summary judgment cannot actually be stricken—the trial court only refuses to consider the evidence. Parks v. Fink, 173 Wn. App. 366, 374 n.7, 293 P.3d 1275, review denied, 177 Wn.2d 1025, 309 P.3d 504 (2013). As such, a party can object to the admissibility of the evidence in a reply brief rather than by a separate motion to strike. Id. Thus, objecting to an affidavit filed in support of a motion for summary judgment preserves the issue on appeal. Bonneville v. Pierce County, 148 Wn. App. 500, 508-09, 202 P.3d 309 (2008). W&S objected to Thrasher's opinion in its summary judgment reply brief, and so we may properly consider the issue on appeal.

on the facts of the case and not on speculation or conjecture. Id. Finally, such testimony must be based upon a "reasonable degree of medical certainty." Id. at 687-88.

Washington courts have explicitly refused to create a per se rule that medical doctors must testify to causation. See, e.g., Harris v. Robert C. Groth, M.D., Inc., 99 Wn.2d 438, 449-50, 663 P.2d 113 (1983). Per se limitations on the testimony of otherwise qualified nonphysicians are not in accord with the general trend in evidence to move away from requiring formal titles and degrees. Goodman v. Boeing Co., 75 Wn. App. 60, 81, 877 P.2d 703 (1994). Training in a related field or academic background alone may be sufficient. Id. The Washington Supreme Court explained that "'the line between chemistry, biology, and medicine is too indefinite to admit of a practicable separation of topics and witnesses.'" Harris, 99 Wn.2d at 450 (quoting 2 J. Wigmore, Evidence § 569, at 790 (rev. 1979)). Thus, whether an expert is licensed to practice medicine is "certainly an important factor to be taken into account in making this determination," but is not dispositive. Id. at 450-51. Furthermore, it is worth emphasizing that the medical diagnosis of sarcoidosis is not at issue here, only the cause of the sarcoidosis.

In Loudermill v. Dow Chemical Co., the plaintiff offered expert testimony from a toxicologist with doctoral degrees in toxicology and chemistry, but not in medicine. 863 F.2d 566, 568 (8th Cir. 1988). The toxicologist testified, to a high degree of medical probability, that chemical exposure caused the plaintiff's cirrhosis of the liver and death. Id. On appeal, the defendant argued that (1) the toxicologist did not possess the proper

qualifications to offer expert testimony on the effects of the plaintiff's exposure to chemicals, (2) the toxicologist could not offer opinions as to medical probability because he was not a medical doctor, and (3) the toxicologist's opinions were based entirely upon speculation and conjecture. Id. at 567.

The Eighth Circuit concluded that the toxicologist's testimony was properly admitted. Id. at 570. He had extensive knowledge of toxicology and the liver, and his testimony to that effect assisted the trier of fact. Id. at 568-69. The toxicologist's lack of a medical degree went to the weight and value of his testimony, which is for the jury to evaluate. Id. at 570. He examined microscopic specimen slides, pathology and autopsy reports, government records, and publications concerning liver injuries caused by halogenated hydrocarbons. Id. This factual basis likewise went to the credibility of his opinion, not its admissibility. Id. We also recently recognized that the weight, if any, to be given to an expert's opinion based solely on a medical records review, rather than a physical exam, is within the jury's province. Raum, 171 Wn. App. at 154 n.25.

Similarly, the Third Circuit in Genty v. Resolution Trust Corp. recognized that medical doctors are not the only experts qualified to render an opinion as to the harm caused by exposure to toxic chemicals. 937 F.2d 899, 917 (3d Cir. 1991). The Genty court held that exclusion of a toxicologist's testimony "without considering his credentials as a doctor of toxicology, simply because he did not possess a medical degree, is inconsistent with expert witness jurisprudence." Id.

Dr. Thrasher has extensive experience in the fields of toxicology (45 years) and immunotoxicology (25 years). In 1964, he received his doctorate in human anatomy

and cell biology from the School of Medicine at University of California, Los Angeles (UCLA). He worked as an assistant professor of human anatomy at both the UCLA School of Medicine and the University of Colorado School of Medicine. As a professor, he conducted "research in cell biology, with a focus on the effects of aging, air pollutants, environmental radiation, and organo-mercurial compounds." He has published extensively on the topics of toxicology and immunotoxicology, and has held leadership roles at several medical and research facilities.

Dr. Thrasher defined toxicology as the "study of the adverse effects of chemicals on livings systems, whether they be human, animal, plant, or microbe." "Adverse effect" means anything from a life threatening injury to a minor annoyance. Thrasher explained that toxicology is an interdisciplinary science that integrates the fields of chemistry, biology, pharmacology, molecular biology, physiology, and medicine. Black's Law Dictionary likewise defines toxicology as the "branch of medicine that concerns poisons, their effects, their recognition, their antidotes, and generally the diagnosis and therapeutics of poisoning; the science of poisons." BLACK'S LAW DICTIONARY 1629 (9th ed. 2009).

Similarly, Thrasher defined immunotoxicology as the "study of adverse effects on the immune system resulting from exposure to physical factors, chemicals, biological materials, medical devices and, in certain instances, physiological factors, collectively referred to as agents." It encompasses the study of "immune pathologies associated with exposure of humans and wildlife species, including allergy, immune dysregulation, autoimmunity, and chronic inflammation." Thrasher has specific expertise in these

fields as they apply to "mold, fungi, bacteria, mycotoxins, and indoor environment resulting from water intrusion."

Thrasher reviewed Bolson's case file, including the parties' declarations and Bolson's medical records. Thrasher opined that the musty odor, various mold spots on the indoor mold test kit, and the employees' physical reactions "indicated mold and bacteria growth" in the W&S office building. Thus, he concluded, "[p]otentially dangerous and pathogenic mold and bacteria were more likely than not present in the water-damaged interior." Similarly, Dr. Lim believed that it was "possible that the environment may have contributed to the development of [Bolson's] illness," even though he went on to note that the "time frame would be unusually rapid." Viewing these facts in the light most favorable to Bolson, we can infer for summary judgment purposes that mold was present in the W&S office during cleanup.

From there, both Dr. Thrasher and Dr. Lim relied on research publications to support their positions. Thrasher read several peer reviewed papers on sarcoidosis and discovered at least 18 recent publications on the association of dampness, mold, and sarcoidosis. In contrast, Lim studied only three reports, which Thrasher also reviewed. Thrasher explained that even these three reports state that exposure to bioaerosols in damp indoor spaces is associated with sarcoidosis.

Based on Thrasher's decades of experience in toxicology, his specific expertise in water intrusion into indoor spaces, his review of the case files and Bolson's medical records, and his research on sarcoidosis, Thrasher concluded "on a more probable than not basis" that Bolson's workplace exposure to mold caused her sarcoidosis. And, even

if Bolson had preexisting conditions or illnesses, Thrasher believed, again on a more probable than not basis, that the contaminated work environment "exacerbated the injuries she suffered and continues to suffer."

These conclusions fell within Thrasher's particular area of expertise as a toxicologist and immunotoxicologist. Based on the definition in Thrasher's declaration and in Black's Law Dictionary, a toxicologist is a medical expert capable of recognizing and diagnosing symptoms caused by exposure to mold. Challenges to the factual basis of Thrasher's opinions and his lack of a medical degree go to the weight and credibility of his testimony, not its admissibility. The fact that Dr. Lim reached a different conclusion simply sets up "'a classic battle of the experts, a battle in which the jury must decide the victor.'" Intalco Aluminum Corp. v. Dep't of Labor & Indus., 66 Wn. App. 644, 662, 833 P.2d 390 (1992) (quoting Ferebee v. Chevron Chem. Co., 736 F.2d 1529, 1535 (D.C. Cir. 1984)).

Accordingly, we reverse the trial court's dismissal of Bolson's negligence and NIED claims for lack of medical causation.[2]

III. Outrage

Bolson argues that the trial court erred in dismissing her outrage claim. She contends that she does not need to demonstrate a causal connection between the

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[2] Bolson argues that the trial court erred when it granted summary judgment on the remaining elements of negligence, because there are disputed issues of material fact. W&S argues that dismissal was proper on the alternative bases that Bolson failed to establish the relevant standard of care or any breach of that standard. However, the trial court granted summary judgment solely based on lack of causation. It is clear from the record that the trial court did not consider any of the remaining elements of negligence. Because the trial court did not consider the remaining elements of negligence, neither do we.

defendant's extreme and outrageous conduct and her emotional distress. She argues that the court may presume emotional distress once there is outrageous conduct.

To establish the tort of outrage, a plaintiff must show: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) severe emotional distress as a result. Reid v. Pierce County, 136 Wn.2d 195, 202, 961 P.2d 333 (1998). While a showing of bodily harm is not necessary, the extreme and outrageous conduct "must result in severe emotional distress to the plaintiff." Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975) (emphasis added and omitted). Bolson is incorrect that she need not show any causal connection between the purportedly outrageous conduct and her emotional distress. A causal link is clearly required.

Furthermore, Bolson fails to meet the high bar for establishing extreme and outrageous conduct. The conduct must be "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Id. (emphasis omitted) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965)).

For instance, in Birklid v. Boeing Co., Boeing began using a new material in its airplanes that was impregnated with a toxic chemical. 127 Wn.2d 853, 856, 904 P.2d 278 (1995). Employees soon began experiencing harmful physical reactions to the chemical and eventually sued Boeing for outrage. Id. at 856-57. They alleged that Boeing knowingly exposed them to the toxin; removed labels on the chemical; denied access to material safety data sheets; harassed employees who requested protective

equipment or sought medical treatment; altered the workplace during governmental safety tests to disguise harm from the chemical; and experimented with exposing employees to the toxin without their informed consent. Id. at 857. The Washington Supreme Court concluded that the employees stated a claim for outrage based on this conduct. Id. at 868.

W&S's conduct that Bolson alleges to be outrageous includes: failing to warn the employees of unsanitary conditions; forcing the employees to work in a building with toxic particles; ignoring the employees' concerns and symptoms; and throwing away the employees' mold kit tests. However, Bolson was allowed to work from home during the repairs. W&S's conduct does not rise to the level of extreme and outrageous conduct like in Birklid. Birklid demonstrates the type of atrocious, intolerable conduct that gives rise to a colorable outrage claim. There is no comparable conduct here.

W&S did not purposefully expose Bolson to mold with the intent to cause her harm. At most, W&S was negligent in cleaning up the office space. Negligence is insufficient for an outrage claim. We therefore affirm the trial court's dismissal of Bolson's outrage claim.

IV. Collateral Estoppel

W&S argues that we can affirm on the alternative basis of collateral estoppel, because L&I previously ruled against Bolson on the issue of medical causation in her workers' compensation claim. Bolson argues that W&S's collateral estoppel argument is procedurally barred, because W&S failed to cross appeal the trial court's order refusing to consider any L&I records on summary judgment.

RAP 2.4(a) limits the circumstances under which a respondent may seek affirmative relief. State v. Sims, 171 Wn.2d 436, 442, 256 P.3d 285 (2011). It states:

> The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

RAP 2.4(a). A notice of cross appeal is required if the respondent "'seeks affirmative relief as distinguished from the urging of additional grounds for affirmance.'" Robinson v. Khan, 89 Wn. App. 418, 420, 948 P.2d 1347 (1998) (quoting Phillips Bldg. Co. v. An, 81 Wn. App. 696, 700 n.3, 915 P.2d 1146 (1996)).

A successful litigant need not cross appeal in order to urge additional reasons in support of the judgment, even though rejected by the trial court, so long as no additional relief is granted on appeal. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 202, 11 P.3d 762, 27 P.3d 608 (2000). On the other hand, affirmative relief usually means a change in the final result at trial. Sims, 171 Wn.2d at 442. While RAP 2.4(a) does not limit the scope of argument a respondent may make, it qualifies any relief sought by the respondent beyond affirming the lower court. Id. When a respondent requests partial reversal of the trial court's decision, the respondent seeks affirmative relief and needs to cross appeal. In re Arbitration of Doyle, 93 Wn. App. 120, 127, 966 P.2d 1279 (1998).

W&S's collateral estoppel argument is not simply an additional basis for affirmance—it requires affirmative relief. W&S asserted collateral estoppel as an alternative basis to grant summary judgment below. In response, Bolson moved to

strike and exclude all the L&I records that formed the basis of W&S's collateral estoppel argument. The trial court granted Bolson's motion to exclude the L&I records and refused to consider any related evidence. Therefore, we would need to reverse the trial court's order excluding the L&I records in order to consider collateral estoppel. This constitutes affirmative relief. Because W&S did not cross appeal, we do not consider W&S's collateral estoppel argument.

We affirm in part, reverse in part, and remand.

Leach, J.

WE CONCUR:

Mann, A.C.J.

Cox, J.

BRENDA C. REDDOCH, LOUISE BARNEY, LYNN SANGER AND LETTIE MARINOVICH	*	**NO. 2013-CA-0788**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
THE PARISH OF PLAQUEMINES, THE PLAQUEMINES PARISH COUNCIL, AND ABC INSURANCE COMPANY	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 48-380, DIVISION "B"
Honorable Michael D. Clement,
* * * * * *
Judge Terri F. Love
* * * * * *
(Court composed of Judge Terri F. Love, Judge Roland L. Belsome, Judge Rosemary Ledet)

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AFFIRMED
March 26, 2014

This appeal arises from damage awards to eighteen plaintiffs for mold exposure and health problems suffered therefrom while working in the Plaquemines Parish 911 center between 1998 and 2002. The building housing the 911 center was owned by the Plaquemines Parish Government. The Plaquemines Parish Government asserts that the trial court erred, alleging that the plaintiffs failed to prove a causal link between its alleged tortious conduct and the alleged subsequent injuries. The Plaquemines Parish Government contends that the lack of medical evidence at trial mandates a reversal. We find that the trial court did not err in awarding the eighteen plaintiffs damage awards after weighing their testimony and the scientific evidence presented at trial. Therefore, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Brenda Reddoch and Lettie Marinovich ("Plaintiffs") filed a Class Action Petition for Damages, seeking certification, as potential class representatives against Plaquemines Parish, Plaquemines Parish Council, and ABC Insurance Company. The Plaintiffs alleged that they suffered health problems as a result of working in a hazardous, mold-infested building ("Building") owned by the Plaquemines Parish Government ("PPG") from 1998 - 2002, which housed the 911

center and jail. The trial court found that the Plaintiffs failed to establish commonality and denied the request for class certification. Supplemental and amended petitions for damages were then filed to include additional plaintiffs.

Prior to trial, a majority of the Plaintiffs and all of the defendants[1] were dismissed except for PPG. Twenty-five Plaintiffs remained. At trial, eighteen Plaintiffs testified or were represented by testimony from their heirs, if the plaintiff was deceased at the time of trial. The trial court found that the eighteen Plaintiffs established that they were exposed to mold in PPG's building. As a result, they suffered damages from health problems caused by the exposure to mold. The trial court awarded damages as follows:

June Isaacs	$20,000
Lynn Sanger	$25,000
Dorothy Barnie	$25,000
Michael Hudson	$15,000
Albert Perry	$15,000
Melissa Buras	$25,000
S. E. Roberts	$15,000
Mary Ann Bell	$5,000
Danyl Cosse	$5,000
Aretha Etienne	$25,000
Michael S. Etienne, Jr.	$5,000
Marie Etienne	$5,000
Michael Etienne, Sr.	$15,000
Arthur Reddick	$15,000
Sandra Ritchey	$5,000
Morris Roberts	$10,000
Thomas Reddoch	$25,000
Jaunh Dorsey	$25,000

PPG then filed a Motion for a New Trial, and the Plaintiffs' opposition noted that the trial court's judgment omitted two Plaintiffs. The trial court denied the Motion for New Trial and held that the Plaintiffs did not file a motion for new trial to

[1] Additional defendants were added following the filing of the original Class Action Petition for Damages. However, only the documents filed with the trial court after the denial of the class certification were compiled into the record on appeal.

address the two allegedly omitted Plaintiffs. PPG's suspensive appeal followed.

PPG asserts that the trial court erred because no causal link between the alleged tortious conduct regarding the mold and the alleged subsequent injury was proven and that it is entitled to a judgment of reversal based upon La. C.C.P. art. 2164.

STANDARD OF REVIEW

The manifest error or clearly wrong standard of review is utilized when appellate courts review findings of fact. *Rosell v. ESCO*, 549 So. 2d 840, 844 (La. 1989). The Louisiana Supreme Court has established "a two-part test for the reversal of a factfinder's determinations." *Stobart v. State through Dep't of Transp. & Dev.*, 617 So. 2d 880, 882 (La. 1993). First, "[t]he appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court." *Id.* Second, "the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous)." *Id.*

"[W]here there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." *Rosell*, 549 So. 2d at 844. "[T]he court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Id.* If two reasonable views of the evidence exist, then the factfinder cannot be manifestly erroneous. *Id.* When findings of fact "are based on determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings" because "only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and

belief in what is said." *Id.*

"However, if a legal error interdicts the fact finding process, the manifest error standard of review is no longer applicable, and, if the record is otherwise complete, the appellate court should make an independent *de novo* review of the record and determine which party should prevail." *Chambers v. Vill. of Moreauville*, 11-898, p. 4 (La. 1/24/12), 85 So. 3d 593, 597. Questions of law are also reviewed using the *de novo* standard of review. *Thibodeaux v. Donnell*, 08-2436, p. 3 (La. 5/5/09), 9 So. 3d 120, 122.

TRIAL TESTIMONY OF PLAINTIFFS

June Isaac

June Isaac worked for the Plaquemine's Parish Sheriff's Office ("Sheriff's Office") as a 911 dispatcher from December 1999 until March 2002. Ms. Isaac viewed mold on the ceiling tiles and the vents and stated that "the smell was really bad." Ms. Isaac began to suffer from headaches, congestion, breathing problems; and her asthma was exacerbated by the mold. While working in the Building, Ms. Isaac had to increase the frequency of her asthma inhaler refills and took Claritin every day. "The longer I [Ms. Isaac] worked in the building it [health problems] got progressively worse." However, Ms. Isaac's health improved when she was not at work and after the 911 center moved out of the Building. Ms. Isaac worked next to Ms. Reddoch.

Lynn Sanger

Lynn Sanger was also a 911 dispatcher from 1998 – 2002, while the Sheriff's Office housed the 911 center in the Building. Ms. Sanger saw mold on the ceiling tiles and the carpet and stated that "the equipment room flooded several times . . . and you could smell like, it smelled musty when you went in there, it

never smelled fresh." Ms. Sanger and other dispatchers complained about the mold to PPG. Some of the ceiling tiles were replaced several times and other remediation attempts were made. However, Ms. Sanger suffered from an irritated throat and headaches and had to begin taking over the counter medications to try to alleviate her symptoms. When the 911 dispatchers were removed from the Building, Ms. Sanger's symptoms improved.

Dorothy Barnie

Dorothy Barnie worked as a 911 dispatcher with the Sheriff's Office in the Building from 1998 – 2002. Ms. Barnie "started with all kind of allergies which is sneezing, coughing, runny nose, fever." She did not suffer from these problems prior to working in the building and her symptoms worsened the longer she worked in the Building. Further, Ms. Barnie testified that Plaquemines Parish attempted remediation, but the attempts made her symptoms worse. When the 911 dispatchers moved out of the Building, Ms. Barnie's symptoms improved.

Michael Hudson

Michael Hudson was incarcerated in the jail located in the Building from 1998 – 2001. Mr. Hudson experienced a "sore throat and nose problems" that he did not have prior to his incarceration in the Building. Mr. Hudson stated that his health problems ceased after his release.

Albert Perry

Albert Perry, a smoker, was also incarcerated in the jail from 1998 – 2002. Mr. Perry cleaned the "911 room up from the top to the bottom" every day. Mr. Perry had to exit the Building and get fresh air because of breathing problems he developed. He did not previously have breathing problems. Mr. Perry knew he "was cleaning up, all I know it [sic] was some kind of mold." Mr. Perry did not

have the breathing problems when he was not around the mold.

S.E. Roberts

S.E. Roberts, a past smoker, was employed as a "jailer" from 1998 – 2002. Mr. Roberts saw mold in the Building. Mr. Roberts testified that the ceiling was always black and that the upstairs carpet was always wet. Mr. Roberts could smell the mold. The mold caused Mr. Roberts to experience "a little asthma" and "little allergies and everything." However, after Mr. Roberts stopped working in the Building, his health problems ceased.

Mary Ann Bell

Mary Ann Bell's husband[2] was a "jailer" in the Building and she visited him there daily. Mrs. Bell could smell mold, viewed wet carpets, and water coming inside the Building when it rained. Mrs. Bell's eyes would burn and she would experience headaches and migraines. However, her symptoms disappeared when she was away from the mold. Mrs. Bell's late husband's health problems began with flu-like symptoms. Then he suffered from pulmonary problems, his ankles and feet would be swollen by the end of the day, and he would be short of breath. Mrs. Bell's late husband smoked before they were married.

Darryl Cosse

Darryl Cosse was assigned to the Building for nine or ten months, between 1998 – 2002, as a "jailer" and then worked transporting prisoners. Mr. Cosse, a smoker, noticed a mildew smell. Mr. Cosse's doctor told him that a past infection was probably caused by the mold. Mr. Cosse never experienced that same infection again, but the infection caused pain in his chest, headaches, and allergies that lasted "[a] couple days, three or four days."

[2] Ms. Bell's deceased husband was also a plaintiff.

Aretha Etienne

Aretha Etienne was employed at the 911 center from 1998 – 2002. She was in the 911 center every day and could see and smell the mold. While working in the Building, Mrs. Etienne suffered from "[c]oughing, headaches, nausea, [and a] scratchy throat." Mrs. Etienne did not have those health problems prior to working in the Building. After the 911 center moved out of the Building, Mrs. Etienne's symptoms lessened. Mrs. Etienne's two children stayed with her in the Building every day after school for a couple of hours. Her childrens' health problems were similar to allergies, so Mrs. Etienne gave them over the counter medications to relieve their symptoms. Mrs. Etienne's childrens' health problems ceased after the 911 center relocated.

Michael Etienne, Jr.

Michael Etienne, Jr., Mrs. Etienne's son, remained with his mother in the Building after school until her workday ended. Michael "would be congested like my nose would start running, I would have headaches." Michael no longer experienced these health problems after the 911 center was relocated.

Maria Etienne

Maria Etienne, Mrs. Etienne's daughter, also remained with her mother in the Building after school. Maria suffered from headaches, nausea, and a runny nose. Maria did not experience these health problems before her mother worked in the Building or after the 911 center was relocated.

Michael Etienne, Sr.

Michael Etienne, Sr., Mrs. Etienne's husband, was at the jail every day from 1998 – 2002, and maintained all personnel files in the Building. He stated that the Building had a "stale smell." Mr. Etienne suffered from headaches, sinus

problems, and nausea. His symptoms improved after leaving the Building. Mr. Etienne reiterated that his two children were at the Building daily and that he witnessed the symptoms of both his children and his wife.

Arthur Reddoch

Arthur Reddoch worked as a "jailer" in the Building from 1998 – 2002, and also went into the 911 center. Arthur saw mold and noticed a smell in the Building. Arthur suffered from a runny nose that ceased when he stopped going to the Building.

Sandra Ritchey

Sandra Ritchey's husband was a "jailer" in the Building for an unspecified period of time between 1998 – 2002. Ms. Ritchey visited the 911 center almost every day that her husband worked. She brought her husband lunch and visited with him. She also visited with the 911 center dispatchers. Ms. Ritchey noticed moldy smells and saw black mold. She experienced "[a]llergies, [a] burning nose, [and a] throat, itchy." Ms. Ritchey did not have these health issues "much" prior to working in the Building and her symptoms ceased after leaving the Building.

Morris Roberts

Morris Roberts, a road deputy for the Sheriff's Office and a smoker, went to the 911 center on a daily basis for work. Mr. Roberts also visited the 911 center on some of his days off from work. Mr. Roberts noticed the mold and testified that the mold smell was very strong in the 911 dispatchers' office. Mr. Roberts' health problems included "sneezing, runny nose, burning eyes, [and] coughing real bad." Mr. Roberts did not experience these health problems prior to working in the Building, and his symptoms "ceased somewhat" after he stopped working in the Building.

Thomas Reddoch

Thomas Reddoch, the husband of deceased plaintiff Mrs. Reddoch,[3] testified that his wife worked with the 911 center from 1998 – 2002. Mr. Reddoch's wife was "very sick a lot of the time." Mrs. Reddoch suffered from headaches, runny nose irritation, eye irritation, coughing, and congestion. Mrs. Reddoch did not have those health problems prior to 1998. Lastly, Mr. Reddoch could smell the mold on Mrs. Reddoch and in her hair when she came home from working in the Building.

Jaunh Dorsey

Jaunh Dorsey was employed as a 911 dispatcher from 1998 to May 2000. Ms. Dorsey saw and smelled the mold in the Building. She suffered from headaches and "more allergy and the sinus definitely." Ms. Dorsey did not suffer from these health problems before working in the Building, and her health problems improved after leaving the Building. However, Ms. Dorsey's symptoms "still act up sometimes." PPG's attempt at remediating the mold "kind of made it worse, the smell and with the bleach and all that, it did, it kind of made the situation worse." Ms. Dorsey testified that the attempted remediation did not alleviate the problems in the Building.

Melissa Buras

Melissa Buras worked in the criminal records room and the 911 center as a dispatcher from 1998 – 2002. Ms. Buras witnessed the mold "dripping from the ceiling, the carpet" was "always wet dew," and could always smell mold. She suffered from "[h]eadaches, sore throat," and nausea. She did not suffer with these health problems prior to working in the Building, and her health problems

[3] Mrs. Reddoch was a smoker and passed away from lung cancer.

diminished once the offices moved out of the Building. Ms. Buras no longer has any nose related health problems.

THE SCOTT REPORT

All of the parties stipulated to and entered into evidence a "Report of Fungal Sampling and Analysis Services" ("Scott Report") regarding the Building, as prepared by the W.D. Scott Group, Inc. for the Plaquemines Parish Health Department. The Scott Report took two "tape lift samples" from the 911 center in the Building. The Scott Report identified seven fungal organisms present in the Building from the two samples. Those fungal organisms were *alternaria spp.*, *aspergillus spp.*, *chaetomium spp.*, *curvularia spp.*, *drechslera/helminthosporium spp.*, *pencillium spp.*, and *stachybotrys spp.* The Scott Report concluded that "[f]rom the data obtained in this study, it is clear that fungal activity is present."

Following the identification of the fungal activity present, the Scott Report contained these conclusions:

> 1. There is considerable evidence of elevated fungal activity in the ceiling area of the 911 Room. *Stachybotrys spp.* is present in this sample.
>
> 2. The carpet on the floor of the 911 Room shows relatively low levels of fungal activity.
>
> 3. The examined portion of the structure requires remediation to arrest further infestation, eliminate the fungal growth already present, and to prevent future, favorable conditions for fungal growth.

The Scott Report also made recommendations based on the information that six of the fungal organisms present "are known and documented aeroallergens" and that "[a]t least" one of the fungal organisms is "classified as toxigenic." According to the Scott Report, PPG should "[e]liminate the current source of condensation in the above-ceiling area of the structure," "[r]emove and dispose of building materials

that show substantial and visible fungal growth," "[c]onduct the removal of building materials that show visible fungal growth under containment conditions, with the use of negative or positive pressure ventilation, as applicable," "HEPA vacuum all surfaces of the structure, to the extent possible, to capture fungal spores that have been spread by renovation and other activities," [d]evelop a specification for the remedial work," and "[r]etain the services of a qualified remediation contractor, with appropriately trained and equipped personnel to carry out the above outlined actions."

CAUSAL LINK

PPG contends that the trial court erred because the Plaintiffs failed to establish a causal link between their mold exposure and their alleged resulting symptoms. PPG states that the Plaintiffs did not introduce any medical evidence, "[n]ot a medical report, not a medical bill, not a prescription receipt, not so much as a drug store receipt for a package of cough drops."

PPG contends that the Plaintiffs failed to prove general and specific causation between their alleged health symptoms and the mold present in the Building due to a lack of specific medical testimony.

In *Watters*, this Court explained that:

> [p]laintiffs in a mold personal injury case must establish causation on five different levels: (i) the presence of mold, (ii) the cause of the mold and the relationship of that cause to a specific defendant, (iii) actual exposure to the mold, (iv) the exposure was a dose sufficient to cause health effects (general causation), and (v) a sufficient causative link between the alleged health problems and the specific type of mold found (specific causation).

Watters v. Dep't of Soc. Servs., 08-0977, pp. 16-17 (La. App. 4 Cir. 6/17/09), 15 So. 3d 1128, 1142 - 43. Additionally, in *Housley*, the Louisiana Supreme Court held that:

> [a] claimant's disability is presumed to have resulted from an accident, if before the accident the injured person was in good health, but commencing with the accident the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition.

Housley v. Cerise, 579 So. 2d 973, 980 (La. 1991), *quoting Lucas v. Ins. Co. of N. Am.*, 342 So. 2d 591, 596 (La. 1977). This Court expounded upon *Housley*, which required proof of a "causal connection between" the alleged tortious conduct and the resulting injury, by stating that *Housely* represented "an extension of this presumption into the realm of general delictual actions." *Juneau v. Strawmyer*, 94-0903, p. 5 (La. App. 4 Cir. 12/15/94), 647 So. 2d 1294, 1298. This Court further held that the causal connection must be demonstrated "through evidence—medical, circumstantial, or common knowledge" and provide "a reasonable possibility of causation between the accident and the claimed injury." *Id.*, 94-0903, p. 6, 647 So. 2d at 1299.

"A trial court's finding of causation is a factual finding that should not be disturbed unless the record does not furnish a basis for that finding, and it is clearly wrong or manifestly erroneous." *Watters*, 08-0977, p. 32, 15 So. 3d at 1152. "While expert medical evidence is sometimes essential, it is self-evident that, as a general rule, whether the defendant's fault, was a cause in fact of a plaintiff's personal injury or damage may be proved by other direct or circumstantial evidence." *Lasha v. Olin Corp.*, 625 So. 2d 1002, 1005 (La. 1993).

Eighteen plaintiffs testified during the trial about the mold in the Building, its smell, and the health problems they suffered as a result of exposure to the mold. The presence of mold in the Building was undisputed. In further support, the Scott Report confirmed the presence of seven kinds of fungal organisms in the Building.

The Scott Report also described the symptoms the seven types of fungal organisms can cause, most notably "allergic disease" and "allergic reaction."[4] Based on the record, we do not find that the trial court committed manifest error in finding causation. The Plaintiffs' testimony coupled with the Scott Report are sufficient sources of direct and circumstantial evidence that the mold caused the Plaintiffs' symptoms. Accordingly, we affirm.

LA. C.C.P. ART. 2164

PPG next asserts that this Court should review the record *de novo* based upon La. C.C.P. art. 2164, which provides that:

> [t]he appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

PPG also avers that the trial court committed legal error by applying incorrect principles of law. However, this Court, as discussed above, found that the trial court was not manifestly erroneous in its findings. Therefore, PPG's argument is without merit.

DECREE

For the above-mentioned reasons, we find that the trial court did not commit manifest error in awarding damages to the eighteen plaintiffs based on the evidence presented at trial and affirm.

AFFIRMED

[4] The descriptions in the Scott Report also state that "hypersensitive individuals" and those who are "immune-compromised" are more likely to notice the adverse health effects.

COURT OF APPEALS
REJECTS TENANT'S PERSONAL INJURY MOLD CLAIMS

On March 27, 2014, the New York Court of Appeals, in a lengthy analysis of the plaintiff's medical claims and the scientific literature relating to mold exposure in humans, dismissed the plaintiff's personal injury claims against her landlord. *Cornell v. 360 West 51st Street Realty, LLC., et. al.*, NY Court of Appeals, March 27, 2014.

Brenda Cornell was a tenant of premises located at 360 West 51st Street in New York City, for approximately four years. She brought suit against her landlord and others involved with the management of the building in November, 2004, alleging damp and musty conditions at the property, and the release of dust, dirt, mold and debris in her first-floor apartment.

In 2008, the landlord moved for summary judgment regarding the allegations of mold-induced personal injuries on the ground that Plaintiff was unable to prove that mold can cause the type of injuries alleged (general causation), or that the alleged mold in her apartment caused the specific injuries she asserted (specific causation), and requested a *Frye* (expert evidentiary) hearing on whether plaintiff's theory of causation "enjoyed general scientific acceptance".

Defendant submitted an affidavit from a clinical immunologist who assessed Plaintiff's claim that her physical and psychological problems were related to an adverse reaction from exposure to molds, and opined that there was "no relationship between the medical problems experienced by Ms. Cornell, and exposures to molds." He cited medical literature which concluded that mold can cause human disease through certain factors, i.e., immune response in allergic individuals, direct infection by an organism, and ingestion of mycotoxins from spoiled or contaminated food where there is objective evidence of disease. He noted that molds are ubiquitous in the atmosphere, and the level measured in Cornell's apartment, was an expected level for an average home.

Plaintiff submitted the affidavit of a doctor of environmental and occupational medicine who specializes in mold-related illness. Plaintiff's expert challenged Defendant's expert's credentials, and argued that the generally accepted pier reviewed literature supported his contention that exposure to damp buildings with mold contamination is recognized as a cause of respiratory health complaints. Based on his differential diagnosis, he concluded that Cornell suffers from "bronchial-asthma, rhino-sinusitis, hypersensitivity reactions and irritation reactions of the skin and mucous membranes.

Supreme Court granted Defendant's summary judgment motion and denied plaintiff's motion for summary judgment.

On appeal, the Appellate Division, First Department reversed the lower court's order, and reinstated the complaint. The Appellate Division held that the lower court "erred in finding that [Cornell's] proof was not strong enough to constitute a causal relationship, or that the methodologies used to evaluate her condition failed to meet the *Frye* standard***".
The Court of Appeals began its analysis by referring to *Frye v. United States*, 293 F. 1013, 1014 (DC Circuit, 1923), which held that expert testimony requires a showing of general acceptance of the expert's opinion in the scientific community. The Court of Appeals noted that Defendant made a *prima facie* case that plaintiff could not prove general causation through its expert since hypersensitivity pneumonitis was not one of the respiratory illnesses claimed by Plaintiff.

The Court also rejected Plaintiff's claim of specific causation. It found that Plaintiff's expert did not identify a specific disease-causing agent other than to describe it vaguely as "an unusual mixture of atypical microbial contaminants, nor did he quantify her level of exposure to the unusual mixture." The Court also ruled that the record before it did not support Plaintiff's expert's "differential diagnosis".

The Court emphasized that a *Frye* ruling on lack of general causation, is based on the scientific literature in the record before the Court, and that its decision in the Cornell case "does not (and indeed cannot) stand for the proposition that a cause-and-effect relationship does not exist between exposure to indoor dampness and mold, and the kinds of injuries that Cornell alleged. Rather, Cornell simply did not demonstrate such a relationship on this record."

This important ruling by the Court of Appeals emphasizes the difficult burden faced by plaintiffs in toxic exposure personal injury cases when a *Frye* challenge is made relating to the foundation for the plaintiff's expert's opinion on both general and specific causation.

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WOOD SMITH HENNING & BERMAN LLP

2015 Annual Mold Litigation Update

April 29, 2015

By Patrick S. Schoenburg

2015 Annual Mold Litigation Update: Important Decisions On Causation, Challenges To Medical Testing Reflect Ongoing Evidentiary Battle

Each year at this time we look back at the cases, studies and other developments which have impacted mold personal injury litigation over the last twelve months. After more than a decade of legal battles over which personal injuries can be attributed to mold exposure, and the type of evidence required to prove causation, Courts still struggle with these issues. This update highlights a key 2014 decision by New York's Court of Appeals regarding the evidence necessary to prove causation, related decisions by other appellate courts which take contrary positions and a discussion of so-called "home brew" medical tests that are often the starting point for mold personal injury claims. Finally, we analyze how mold fits in with another litigation trend, the filing of so-called "habitability" lawsuits.

New York Court of Appeals Sets Higher Bar For Proving Causation – *Cornell v. 360 West 51st Street Realty LLC.*

On March 27, 2014, in a key appellate decision on causation, the New York Court of Appeals affirmed the dismissal of a tenant's personal injury claims against her landlord. The Court's opinion was based upon an in depth review of the scientific literature regarding mold exposure and disease in humans.

Plaintiff Brenda Cornell was a tenant in a New York City apartment for four years. She brought suit against her landlord and others involved with the management of the building in November 2004. Plaintiff's complaint alleged that substandard conditions at the property resulted in excessive levels of dust, dirt, mold and debris in her first floor unit. Plaintiff claimed that this exposure resulted in dizziness, rashes, breathing problems and headaches, among other problems.

In 2008, defendant landlord moved for summary judgment of plaintiff's mold personal injury claims, arguing that plaintiff was unable to prove that mold caused the type of injuries alleged (i.e., general causation) or that the mold allegedly present in her apartment caused her specific injuries (i.e., specific causation). Defendant requested a *Frye* hearing to determine whether plaintiff's theory of causation "enjoyed general scientific acceptance." The motion was granted and plaintiff's claims were dismissed.

In bringing the motion in the trial court, defendant relied upon a clinical immunologist who assessed plaintiff's physical and psychological problems and found that there was "no relationship between the medical problems experienced by the plaintiff and exposures to molds." He cited medical literature that mold causes human disease, but only through specific mechanisms not present in the *Cornell* case (i.e., allergic reactions, direct fungal infection and ingestion of high levels of mycotoxins from spoiled or contaminated food where there is objective evidence of

disease). The immunologist noted that molds are ubiquitous in the atmosphere and that the mold measured in the plaintiff's apartment were at expected levels.

On appeal, the Appellate Division, First Department, reversed the lower court's order, and reinstated the complaint against the landlord. The appellate division held that the lower court "erred in finding that [Cornell's] proof was not strong enough to constitute a causal relationship, or that the methodologies used to evaluate her condition failed to meet the *Frye* standard." A further appeal to the New York Court of Appeals followed.

The New York Court of Appeals began its analysis with *Frye v. U.S*. (1923), which holds that expert testimony must be based on opinions that have general acceptance in the relevant scientific community. The Court noted that the defendant landlord set forth a prima facie case that the plaintiff could not prove general causation because plaintiff did not allege injury due to one of the diseases proven to be caused by mold. The State high court noted that plaintiff's reliance on government reports and public health initiatives and guidelines regarding mold in damp indoor environments were irrelevant since "standards promulgated by regulatory agencies as protective measures, are inadequate to demonstrate legal causation."

The Court also rejected the plaintiff's claim of specific causation. It found that the plaintiff's expert did not identify a specific disease-causing agent, other than to describe it vaguely as "an unusual mixture of atypical microbial contaminants, nor did he quantify her level of exposure to the unusual mixture." The state high court also ruled that the record before it did not support the plaintiff expert's "differential diagnosis." The court stated that many of the medical conditions plaintiff attributed to mold exposure are common in the general population and could be the result of multiple alternative causes.

The decision concluded with a cautionary note, stating that its affirmation of the dismissal of the plaintiff's mold personal injury claims "does not (and indeed cannot) stand for the proposition that a cause-and-effect relationship does not exist between exposure to indoor dampness and mold, and the kinds of injuries that Cornell alleged. Rather, Cornell simply did not demonstrate such a relationship on this record."

This decision brings to a conclusion a battle regarding the standards to be applied and the quantum of evidence required to prove causation in mold cases which played out in an influential State court. We expect this opinion to be cited in other jurisdictions when defendants ask that plaintiffs prove both general and specific causation or face the dismissal of their mold personal injury claims.

DO IT YOURSELF MEDICINE SUBJECT TO CRITICISM

Any internet search of terms related to mold injuries will bring up advertisements for medical labs offering blood testing or related diagnostic procedures, for a price. These tests claim to be capable of identifying "symptoms of mold exposure" or "mold sickness." Notably, blood or tissue samples are drawn at home, by the patient or family members, and then shipped overnight to the lab. No physician referral (or involvement) is required. As a result, individual patients are left to evaluate both the validity of the tests and the meaning of the results.

Not surprisingly, the results of such testing often lead to individuals believing they have been injured and ultimately, to the assertion of claims and filing of lawsuits. The proliferation of such testing has garnered the attention of the scientific community and regulators. On April 18, 2014, the United States Centers for Disease Control and Prevention (CDC) published an alert. The agency had learned of a new test being used to diagnose Lyme disease, a tick-borne bacterial infection that can cause fatigue, joint pain and nervous-system problems. The test, like many others for the disease, had not been formally evaluated and approved by governmental regulators, and agency scientists worried that the method would churn out too many false positives. But because of a regulatory loophole, there was little the CDC could do except ask consumers to avoid the tests and urge people to seek out the few diagnostics that had been approved by the US Food and Drug Administration (FDA).

This same guidance applies to the numerous laboratory tests currently offered directly to consumers to diagnose mold related illnesses. In many instances, the labs offering the tests are certified. But the test methodologies are not. As the CDC noted: **"**When evaluating testing options, providers and their patients might be confused by the distinction between Clinical Laboratory Improvement Amendments (CLIA) certification of laboratories and FDA clearance or approval of specific tests. CLIA certification of a laboratory indicates that the laboratory meets a set of basic quality standards. It is important to note, however, that the CLIA program does not address the clinical validity of a specific test (i.e., the accuracy with which the test identifies, measures, or predicts the presence or absence of a clinical condition in a patient). FDA clearance/approval of a test, on the other hand, provides assurance that the test itself has adequate analytical and clinical validation and is safe and effective."

Government regulators are expected to take stronger action against these laboratories in the future. Until they do, anyone faced with assessing a mold personal injury claim should carefully scrutinize the results of medical testing supporting that claim. If the testing was done without physician supervision, or is not FDA approved, the results should be given little weight.

Court of Appeal of Louisiana: Circumstantial Evidence Sufficient To Prove Causation – *Reddoch v. Parish of Plaquemines*

Twenty five former employees of the Parish of Plaquemines sued for alleged personal injuries resulting from mold exposure while working in Parish emergency facilities. The evidence presented at trial consisted of the testimony of the plaintiffs, who viewed or smelled mold in the buildings, and a single report by an environmental consultant. That consultant, based upon two tape lift samples, confirmed the presence of seven types of fungi in the buildings. Plaintiffs alleged that as a result of the exposure, they suffered from headaches, asthma, allergies and sinus symptoms. No testimony from a physician on the issue of causation was presented at trial. The Court awarded a total of $280,000, with individual awards ranging from $5,000 to $25,000. The Parish appealed, arguing that the circumstantial evidence presented by plaintiffs was insufficient to prove causation. The Court of Appeal began its analysis by reviewing prior case law.

Plaintiffs in a mold personal injury case must establish causation on five different levels: (i) the presence of mold, (ii) the cause of the mold and the relationship of that cause to a specific defendant, (iii) actual exposure to the mold, (iv)

the exposure was a dose sufficient to cause health effects (general causation), and (v) a sufficient causative link between the alleged health problems and the specific type of mold found (specific causation).

Watters v. Dep't of Soc. Servs., 08–0977, pp. 16–17 (La.App. 4 Cir. 6/17/09), 15 So.3d 1128, 1142–43.
Despite this seemingly high standard and the lack of medical experts to support plaintiff's claims, the Court of Appeal held that the testimony of the plaintiffs, along with a single environmental report, was sufficient to prove causation. The Court of Appeal noted that a determination of causation was a factual finding that should only be disturbed by an appellate court if "it is clearly wrong or manifestly erroneous." The award by the trial court was affirmed.

Washington Court of Appeal Finds Testimony of Non-Physician Toxicologist Sufficient to Prove Causation – *Bolson v. Williams*
In a May 2014 opinion, the Washington Court of Appeal reversed a lower court decision, dismissing a plaintiff's claim against her employer for negligent cleanup of mold growth. Plaintiff Bonny Bolson was working as a tax accountant when a severe storm flooded her office. While attempting to repair the damage, the employer aggravated the mold growth, causing Ms. Bolson and other employees to allegedly experience coughing, headaches, and irritated eyes. Plaintiff sought medical attention after developing flu-like symptoms. Ms. Bolson 's doctor discovered abnormal scarring on her lungs and diagnosed her with sarcoidosis, a condition characterized by abnormal collections of inflammatory cells. Ms. Bolson filed suit against her employer claiming their negligent cleanup and the resulting mold exposure caused her sarcoidosis. A lower court granted the employer's motion for summary judgment, finding a lack of evidence of medical causation. The Washington Court of Appeal reversed the lower court's order dismissing Ms. Bolson's claim.

In its decision, the Court explained the necessity of expert testimony in personal injury cases, stating that when an injury is not obvious to an ordinary person and involves "obscure medical factors" beyond an ordinary person's knowledge, expert testimony is required. Sarcoidosis is a disease many ordinary individuals are unfamiliar with, requiring expert testimony to establish a causal connection between exposure and the development of the disease. The key finding by this Court was that the required expert testimony could be given by individuals who have expertise in the field relating to the injury, even if they lack a medical degree. In this case, a non-physician toxicologist and immunotoxicologist gave testimony finding that Ms. Bolson's sarcoidosis was more likely than not caused by her exposure to mold in the workplace and that although she had pre-existing conditions, the exposure exacerbated those conditions. This was sufficient, according to the Court of Appeal, to make the dismissal of the claim erroneous.

The difficulty with this decision is that it replaces a bright line rule – that expert testimony on medical causation must be provided by licensed physicians – with a vague standard. That standard now requires Courts in Washington to perform an analysis of "expertise" that may be beyond the technical competence of the bench and bar.

HABITABILITY: HOW MOLD FITS INTO THE BIGGER PICTURE

Mold claims are generally property based. Plaintiffs allege that their exposure is the result of inadequate construction or maintenance of a structure, causing water intrusion into the building envelope and the subsequent growth of fungi. The same defective construction or maintenance of a building resulting in mold can also lead to exposure to other potentially harmful substances, including lead paint, asbestos, dust mites, carbon monoxide and bacteria.

As a result, there have been a growing number of "habitability" lawsuits, generally by individuals or groups of tenants. These claims are made against landlords, management companies and the contractors they retain to repair and maintain rental properties. From the perspective of plaintiffs' counsel, taking this approach has several advantages to filing lawsuits focused solely on mold.

When a case involves exposure to multiple substances, a single adverse finding on causation is not fatal. Defendants faced with claims involving multiple causes face a more difficult (and expensive) task, at both the pre-trial and trial phases of litigation. A jury may be persuaded that simply living with these problems is worthy of awarding damages or that the combination of these exposures has a synergistic effect. In many States, landlords are held to a higher standard of care, tenants face a lower burden of proof and may be entitled to statutory damages or an award for loss of use when making habitability claims.

In addressing this trend, property owners and their insurers and counsel need to adopt some of the same tactics we have recommended in responding to mold claims. A well documented maintenance and repair program is money better spent than defense costs once a claim makes it to Court. When issues do arise, use qualified consultants and contractors. The "gold standard" in environmental consulting in this context are individuals who are certified in Industrial Hygiene by the American Board of Industrial Hygiene. These individuals are designated by the acronym "CIH." Once a lawsuit is filed, counsel who are familiar with all facets of these claims must be retained, e.g., construction and maintenance, toxic torts, personal injury and mold/water damage claims.

The difficulty that plaintiffs have faced in proving causation in mold personal injury lawsuits has resulted in a decrease in the number of actions focused solely on mold exposure. But the rise of habitability claims shows that when one door closes, another opens. For property owners, landlords and managers who feel a diminishing threat due to mold claims, habitability issues can create a more widespread problem.

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WOOD SMITH HENNING & BERMAN LLP

2017 Annual Mold Litigation Update

February 13, 2017

By Patrick S. Schoenburg

Each year at this time, we look back at the cases, studies and other developments which have impacted mold personal injury litigation over the last twelve months. After more than a decade and a half of legal battles over which personal injuries can be attributed to mold exposure, the parties liable for those injuries, and the extent to which mold is a health risk, controversies remain.

The trends illustrated by the cases and studies highlighted in this year's update reflect the dual nature of mold exposure issues. In a hospital setting, fungal infections among a population of immune-compromised patients can be deadly. In contrast, there still exists a cottage industry of "experts" who willingly connect any reported symptom to mold – for a price. This year's cases also reflect the differing contexts in which mold personal injury claims can arise: occupational exposure, habitability claims in rental housing, and nosocomial infections in hospitals. Finally, several million-dollar-plus verdicts and settlements demonstrate that mold claims continue to be a serious issue for property owners, landlords, employers, and those who insure them.

Distinguishing between the serious claims and those that are subject to challenge remains as important as ever. The failure to properly handle a mold personal injury claim based on recognized medical testing can cost millions in damages. In the aggregate, paying claims without a scientific basis can cost just as much.

Occupational Exposure To Mold Leads To $1.8 Million Verdict For New Jersey Music Teacher

In what appears to be the largest single plaintiff personal injury verdict in 2016, an Essex County Superior Court judge awarded $1.8 million to a music teacher employed by the Milburn Board of Education. The teacher, Mary Jean Alsina, claimed that dripping water in her classroom lead to mold growth, stains, and seepage through the walls. Although the District tested and cleaned the classroom in response to her complaints, Alsina also alleged that the District retaliated against her.

Alsina was diagnosed with adult onset asthma and other pulmonary issues, conditions that were attributed to mold exposure by her treating physician. When these conditions persisted, despite the District's efforts to remediate her classroom, Alsina reduced her work schedule from full time to part time, eventually limiting herself to working one day a week.

Judge Christine Farrington found in favor of Alsina, awarding her $1.8 million for medical expenses, lost wages and general damages. It is anticipated that the District will appeal the verdict.

Mold "Expert" Sent To Federal Prison

As with many trends, California led the nation when mold personal injury claims became a hot issue for plaintiff's attorneys in the early 2000's. Behind many of those cases was Dr. Gary J. Ordog, a physician and toxicologist who attributed a wide range of illnesses to the allegedly "toxic" effects of environmental mold exposure. Dr. Ordog treated patients in his clinic located north of Los Angeles and charged nearly $1,000 an hour to testify as an expert witness in the resulting litigation.

As scientific studies found that environmental exposure to mold in non-occupational settings only caused allergic reactions and irritation in otherwise healthy patients, Dr. Ordog persisted in offering his opinions regarding the alleged toxic effects of such exposure. Eventually, this led the California Board of Medical Quality Assurance to suspend Dr. Ordog's license and prohibit him from acting as an expert witness.

Once reinstated, Dr. Ordog did not reform. According to an indictment filed in the United States District Court for the Central District of California, Dr. Ordog began operating a "mobile medical clinic," where he would diagnose "patients with various toxicological symptoms, including, but not limited to, those related to various mold and chemical exposures . . . ." Dr. Ordog's biggest mistake was to charge Medicare for these questionable services. Between 2010 and 2014, Ordog billed Medicare for $6,524,660 in services and was paid $2,573,667.

The United States Attorney alleged that Ordog's patients were referred to him by a network that included lawyers and "counselors" for patients allegedly suffering from mold-related ailments. Dr. Ordog then overbilled or billed Medicare for services that were never provided. In some instances, services were allegedly provided to "beneficiaries who were deceased well before the dates of service."

In early 2016, Dr. Ordog pled guilty to health care fraud. He has now been sentenced to eighteen months in federal prison.

Georgia Court of Appeals Addresses Evidence of Causation in Mold Personal Injury Context – *McCarney v. PA Lex Glen, LLC*

In March, the Georgia Court of Appeals addressed an issue which has been at the forefront of mold personal injury litigation: what evidence is sufficient to prove that mold exposure caused a specific injury?

The underlying facts reflect a common pattern. Plaintiff Kevin McCarney moved into an apartment unit in Sandy Springs, Georgia in 2012. In 2013, in response to comments by other tenants regarding the presence of mold at the complex, McCarney inspected the vents in his apartment and found a black substance. Plaintiff and his roommate also discovered water leaks and other problems with the HVAC system and complained to management. A mold remediation company was hired by the apartment complex to clean the unit. Plaintiff independently paid to have his

unit tested. McCarney then notified the management company that he was cancelling his lease, based partly on the test results.

Earlier in his tenancy, plaintiff had suffered various sinus ailments, resulting in surgery. Those issues continued while plaintiff remained a tenant at the apartment. McCarney sued the management company for negligence, based upon these personal injuries. The trial court granted summary judgment in favor of the defendant, finding that plaintiff had insufficient evidence of causation. The Court of Appeals reversed.

The appellate court's decision started by noting that in cases alleging personal injury due to exposure, a plaintiff must support his or her case with expert testimony demonstrating to a "reasonable possibility" that the injury was caused by the exposure. In McCarney's case, he presented the testimony of his treating physician, an Ear, Nose and Throat specialist, that he had removed mold from plaintiff's sinuses during the surgery. Although the physician could not state with certainty that the mold came from the apartment, when combined with the history of the illness, his opinion was that the sinus issues were linked to the tenancy. The physician specifically advised the plaintiff to leave the apartment.

The Court of Appeals noted that the opinion of the physician was bolstered by the environmental test results obtained by plaintiff, which demonstrated a comparatively high level of mold in the unit. Taken together, the appellate court found that plaintiff had presented sufficient evidence to allow his case to proceed and reversed the trial court. The case will now proceed to trial.

Mold In Military Housing Leads To $350,000 Verdict For Marine and Family

In April, a Virginia federal court jury found in favor of Marine Gunnery Sgt. Joe Federico and his wife Shelley, who alleged that their off-base housing, operated by Mid-Atlantic Military Communities, was contaminated with mold. Both claimed that they had become "extremely" sick as a result.

Attorneys for the Federicos made claims for both breach of contract and negligence per se. At trial, they asked for $8 million in damages. While the jury found for the plaintiffs on the negligence claim, they rejected the contract-based cause of action and the larger request for damages. The Federico's attorney argued afterwards that these verdicts were inconsistent and he plans to seek post-verdict relief.

In all, nineteen families living in similar military housing in the area have filed mold claims and the issue has received publicity in the local media. We expect the issue of mold in military housing to be an ongoing story.

When The Medicine Makes You Sick – Legalization Efforts Highlight Issue of Mold In Marijuana

States across the country have legalized the use of medicinal marijuana. In regard to recreational use, a turning point likely occurred this fall, when voters in our largest state, California, joined Colorado and other jurisdictions in approving non-medicinal use of cannabis. These decisions have prompted the media to focus on the marijuana growing industry, a largely unregulated business that has numerous potential problems.

Those issues include mold. Cannabis grown in wet conditions is susceptible to mold growth. The perceived problems associated with smoking marijuana contaminated with fungus are not solely based upon anecdotal coverage in the press. In 2012, researchers with the National Aspergillosis Centre at the University Hospital of South Manchester in the United Kingdom reported on an association between long-term marijuana smoking in two patients and the development of aspergillosis. As noted by the researchers, aspergillosis is a progressively debilitating disease resulting from infection by fungi of the genus Aspergillus.

The title of the published study stands as a warning to all of those smokers newly emboldened by legalization efforts: "Too Many Mouldy Joints – Marijuana and Chronic Pulmonary Aspergillosis." Future consumers of newly legalized marijuana, both medicinal and recreational, should be aware of this hidden health risk.

Deadly Hospital Mold Infections In Pennsylvania Lead To Lawsuits

In one of the most serious incidents involving mold personal injuries in 2016, at least five patients at the University of Pittsburgh Medical Centers were diagnosed with nosocomial fungal infections leading to their deaths. All were transplant patients. At least three of the patients had been placed in negative pressure rooms, designed to prevent a patient from transmitting infections to others, following transplant surgeries. Negative air pressure can also pull particles, including mold spores, into the rooms. This process likely contributed to the deaths at UPMC.

The federal Centers for Disease Control and Prevention was called in to investigate the outbreak. Organ transplant patients are often treated with immune system suppressive drugs to prevent rejection of the new organs. Treatment with these drugs also makes the patient particularly susceptible to systemic infections, including fungal infections. In May, the family of one of the deceased patients settled a wrongful death lawsuit against UPMC for $1.35 million. The settlement was approved, and made public, by the Allegheny County Court of Common Pleas. Other claims are pending.

Georgia Mold "Expert" Loses Lawsuit, Faces Complaints

In November, local media reported on the dismissal of a mold exposure lawsuit that Michael Pugliese, the man behind the National Treatment Centers for Environmental Disease, had filed in Georgia State Court against his own landlord. The result was ironic. The impressively named "National Treatment Centers" has been the subject of complaints by patients to the Georgia Medical Board. The Centers For Disease Control and Prevention has found

that Pugliese's treatment protocol for mold exposure had "no scientific evidence of being beneficial" and "the potential to cause harm."

The findings by the CDC are not surprising. Pugliese is not a licensed physician, although the website for the National Treatment Centers claims that "[t]he National Treatment Centers for Environmental Disease is the nation's largest medical facility providing medical treatment for mold illness, mold exposure, mycotoxin poisoning, lead poisoning and other environmental exposures." The website caused patients from across the country to pay Pugliese for his controversial treatments. These included "bowel evacuation" by eating "white rice and canned chicken white meat for 3 days" and avoiding all sugar, all gluten grains and all beans. Notably, the website lists litigation support as among the services provided.

Since the start of the mold litigation boom in the early 2000's, a cottage industry of so-called medical and environmental experts has arisen. Many of them pushed the discredited theory that mold caused "toxic" reactions in patients. The "National Treatment Centers" clearly supports this "toxicity theory." In explaining why most physicians can't treat toxic mold issues, the Center's website states:

"The reason being is that these types of poisonings are more of a toxicology problem in human health rather than a disease, they are an actual poisoning. Most MD's are not equipped, or trained, in this area of medicine."
In reviewing the stories in this year's update, a key distinction should be noted between "toxicity," which is not accepted as a known health effect of environmental mold exposure, and fungal infection, which is well supported in the medical literature. Another key difference: fungal infections are diagnosed by objective testing, including the culturing of tissue samples in a laboratory. "Toxic" mold claims have always been supported by a hodge-podge of homemade testing and the opinions of questionable experts. Let the buyer, and the jury, beware.

Supplement to the Mold Refresher Course Curriculum

Division of Safety and Health
Safety Training Program
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Albany, NY 12240

Supplement to the Mold Refresher Course Curriculum

The Department of Labor (DOL) has developed this supplement to provide direction on the specific topics and issues that must be covered in the *Case Studies & Group Discussion Forum* section of the mold refresher course. DOL has developed this list based on questions received from the regulated community, mold complaints, and enforcement issues encountered in the field. It is anticipated that this list will be updated periodically in response to changing compliance issues and enforcement concerns; as such, it will be maintained as a separate document from the mold refresher curriculum. DOL will notify approved mold training providers if any updates are made to this supplement.

In addition to the general topics of mold remediation considerations, concepts, and lessons learned, training providers must also include all the specific topics listed below in the *Case Studies & Group Discussion Forum* section of the mold refresher course. Training providers have discretion over which topics to present in a case study and which topics to address as discussion points.

1. Proper Mold Assessment and Remediation

a) Distribute and review any DOL-issued fact sheets. Presently, the **Mold Assessment and Remediation Factsheet** (P227) is posted on DOL's website at this link: https://labor.ny.gov/formsdocs/wp/P227.pdf As noted in the factsheet, in most cases, air sampling and mold testing are not necessary. There are no national or state standards for "safe" levels of mold. Mold assessors who intend to perform sampling or testing on a mold project should explain to the client what type of sampling they wish to perform, why it is necessary, what criteria they are using to compare results, and what it will show that is not already known.

b) Mold assessors and remediation contractors should reference appropriate guidance and publications from EPA, OSHA, NYCDOH and IICRC in resolving issues pertaining to:

   i. Proper techniques and standard industry practices for mold removal.
   ii. Proper use of disinfectant, biocide and anti-microbial coating in accordance with Article 32 Sections 945.3 and 946.5.

c) Proper mold remediation plan and mold remediation work plan development and content.

2. Moisture Source Identification and Project Clearance

a) **Mold assessors should emphasize to the client the importance of identifying the source(s) of moisture and elimination of the moisture source(s) to prevent mold recurrence.** As per Article 32 Section 945.1(h) of the NYS Labor Law, when possible, mold assessors should identify the source(s) of the moisture resulting in mold growth in the mold remediation plan and provide a recommendation as to the type of contractor who could remedy the source of the moisture. Ultimately, it is the client's responsibility to decide whether to repair the underlying source of moisture; however, the assessor should clearly identify the moisture source and remedies in the mold remediation plan.

b) For a remediated project to achieve clearance, a mold assessor shall conduct a post-remediation assessment. Ideally, the same mold assessor that developed the mold remediation plan for a project will perform the post-remediation assessment, but this is not required. If the client declines to have the post-remediation assessment performed, the mold assessor and remediation contractor should obtain documentation of the client's refusal to have a post-remediation assessment performed before leaving the site.

3. Prohibited Work Practices

a) Unlicensed mold assessors, mold remediation contractors, and mold abatement workers/supervisors cannot perform work on a mold project per Article 32 Section 931 of the NYS Labor Law.

b) It is unlawful for a licensed contractor to perform both mold assessment and mold remediation on the same property per Article 32 Section 936.2 of the NYS Labor Law.

c) Licensed mold remediation contractors cannot proceed with mold remediation on a mold project until they have provided the client with a mold remediation work plan based upon the mold remediation plan completed by the licensed mold assessor. See Article 32 Section 946 of the NYS Labor Law.

4. Standard Procedures for a Mold Project

The following steps should be followed for the execution of a typical mold project:

a) The mold assessor provides the mold remediation plan, including the clearance criteria, for the project to the client. See Article 32 Sections 935.1 and 945 of the NYS Labor Law.

b) The client provides the mold remediation plan to the mold remediation contractor.

c) The mold remediation contractor utilizes the mold remediation plan to prepare the mold remediation work plan (i.e., standard operating procedures) that is specific to the project and provides it to the client prior to remediating the mold. See Article 32 Sections 935.2 and 946 of the NYS Labor Law.

d) The mold remediation contractor must be aware of the clearance criteria set forth in the mold remediation plan by the mold assessor.

e) The post-remediation clearance assessment shall be performed by a licensed mold assessor who shall issue a passed clearance report to the client if the clearance criteria are met, or a final status report with recommendations for completing the remediation.

f) Upon receipt of a passed clearance report from an assessor, the remediation contractor may complete the project.

5. DOL Mold Program Website and Resources

a) Review the contents of DOL's Mold Program website and subpages: https://labor.ny.gov/workerprotection/safetyhealth/mold/mold-program.shtm

b) Review DOL's Mold Program Frequently Asked Questions: https://labor.ny.gov/workerprotection/safetyhealth/mold/frequently-asked-questions.shtm

c) Observations of prohibited work practices and other potential violations of Article 32 of the NYS Labor Law should be reported to DOL via the Mold Contractor Complaint Form, located at this link: https://labor.ny.gov/formsdocs/wp/SH140.pdf

Article 32 of the New York State Labor Law

Licensing of Mold Inspection, Assessment and Remediation Specialists and Minimum Work Standards

Licensing of Mold Inspection, Assessment and Remediation Specialists and Minimum Work Standards

Article 32
New York State Labor Law
Effective July 28, 2015

SH 120 (12/16)

ARTICLE 32
LICENSING OF MOLD INSPECTION, ASSESSMENT AND REMEDIATION SPECIALISTS AND MINIMUM WORK STANDARDS

Title 1. Licensing of mold inspection, assessment and remediation specialists and minimum work standards (Sections 930-940.)

Section

§ 930. Definitions. As used in this article:

1. "Department" means the department of labor.
2. "Mold" means any indoor multi-cellular fungi growth capable of creating toxins that can cause pulmonary, respiratory, neurological or other major illnesses after minimal exposure, as such exposure is defined by the environmental protection agency, centers for disease control and prevention, national institute of health, or other federal, state, or local agency organized to study and/or protect human health.
3. "Mold remediation" means conducting the business of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by a business enterprise, including but not limited to, sole proprietorships. Mold remediation for the purposes of this article shall not include remediation of the underlying sources of moisture that may be the cause of mold that requires expertise not specific to acts authorized under this article.
4. "Mold assessment" means an inspection or assessment of real property that is designed to discover mold, conditions that facilitate mold, indicia of conditions that are likely to facilitate mold, or any combination thereof.
5. "Mold abatement" means the act of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by an individual.
6. "Project" means mold remediation, mold assessment, or mold abatement, of areas greater than ten square feet, but does not include (a) routine cleaning or (b) construction, maintenance, repair or demolition of buildings, structures or fixtures undertaken for purposes other than mold remediation or abatement.
7. "Commissioner" means the commissioner of the department of labor.

§ 931. Licensing requirements.

1. It shall be unlawful for any contractor to engage in mold assessment on a project, or to advertise or hold themselves out as a mold assessment contractor unless such contractor has a valid mold assessment license issued by the commissioner.
2. It shall be unlawful for any contractor to engage in mold remediation on a project, or to advertise or hold themselves out as a mold remediation contractor unless such contractor has a valid mold remediation license issued by the commissioner.
3. It shall be unlawful for any individual to engage in mold abatement on a project or to advertise or hold themselves out as a mold abatement worker unless such individual has a valid mold abater's license issued by the commissioner.
4. A copy of a valid mold assessment or mold remediation license must be conspicuously displayed at the work site on a mold project.
5.
    (a) Nothing in this article shall prohibit any design professional licensed pursuant to title eight of the education law from performing mold inspection, assessment, remediation and/or abatement tasks or functions if the person is acting within the scope of his or her practice, or require the design professional to obtain a license under this article for such mold inspection, assessment remediation and/or abatement tasks or functions.
    (b) Nothing in this article shall mean that any individual not licensed pursuant to title eight of the education law may perform tasks or functions limited to the scope of practice of a design professional under such title.

§932. License; procedure.

1. The commissioner shall establish minimum qualifications for licensing.
2. Applications for licenses and renewal licenses shall be submitted to the commissioner in writing on forms furnished by the commissioner and shall contain the information set forth in this section as well as any additional information that the commissioner may require.
3. An applicant for a license to perform mold assessment shall meet the following minimum requirements:
    (a) be eighteen years of age or older;
    (b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment;
    (c) paid the appropriate fees as provided in subdivision six of this section; and
    (d) submitted insurance certificates evidencing workers' compensation coverage, if required, and liability insurance of at least fifty thousand dollars providing coverage for claims arising from the licensed activities and operations performed pursuant to this article.
4. An applicant for a license to perform mold remediation shall meet the following minimum requirements:
    (a) be eighteen years of age or older;
    (b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment;
    (c) paid the appropriate fees as provided in subdivision six of this section; and
    (d) submitted insurance certificates evidencing workers' compensation coverage, if required, and liability insurance of at least fifty thousand dollars providing coverage for claims arising from the licensed activities and operations performed pursuant to this article.

5. An applicant for a license to perform mold abatement shall meet the following minimum requirements:
   (a) be eighteen years of age or older;
   (b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment; and
   (c) paid the appropriate fees as provided in subdivision six of this section.
6. The commissioner shall charge and collect the following non-refundable fees which shall accompany each application:
   (a) a fee for an initial application for a license as determined by the commissioner, of not less than five hundred dollars nor more than one thousand dollars for a mold remediation license, not less than one hundred fifty dollars nor more than three hundred dollars for a mold assessment license and not less than fifty dollars nor more than one hundred dollars for an individual mold abatement license;
   (b) a fee for renewal of a license equal to the application fee; and
   (c) a fee to be charged to a course provider for review of each course submitted for approval, as determined by the commissioner, of not less than five hundred dollars and not more than one thousand dollars, and an additional fee to be charged to a course provider of not less than one hundred dollars nor more than two hundred dollars for review of changes of technical content.

§ 933. Exemptions. The following persons shall not be required to obtain a license as provided in this title in order to perform mold assessment, remediation, or abatement:

1. a residential property owner who performs mold inspection, assessment, remediation, or abatement on his or her own property;
2. a non-residential property owner, or the employee of such owner, who performs mold assessment, remediation, or abatement on an apartment building owned by that person that has not more than four dwelling units;
3. an owner or a managing agent or a full-time employee of an owner or managing agent who performs mold assessment, remediation, or abatement on commercial property or a residential apartment building of more than four dwelling units owned by the owner provided, however, that this subdivision shall not apply if the managing agent or employee engages in the business of performing mold assessment, remediation, or abatement for the public; and
4. a federal, state or local governmental unit or public authority and employees thereof that perform mold assessment, remediation, or abatement on any property owned, managed or remediated by such governmental unit or authority.

§ 934. License issuance and renewal.

1. Licenses issued pursuant to the provisions of this title shall be valid for a period of two years from the date of issuance and may be renewed in accordance with the conditions set forth in this article and established by the commissioner.
2. Within thirty days of the receipt of the application and fee for any license issued under this section, the commissioner shall either issue the license or issue a notification of denial pursuant to subdivision one of section nine hundred thirty-eight of this title.
3. Licenses shall be in a form prescribed by the commissioner.
4. The renewal of all licenses granted under the provisions of this article shall be conditioned upon the submission of a certificate of completion of a commissioner-approved course

designed to ensure the continuing education of licensees on new and existing mold assessment and mold remediation standards.

§ 935. Practice by license holder.

1. A mold assessment license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The mold assessment license holder shall provide the analysis to the client before the mold remediation begins and such plan must include the analysis as defined in section nine hundred forty-five of this article.
2. A mold remediation license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The mold remediation license holder shall provide the work plan to the client before the mold remediation begins. The mold remediation license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

§ 936. Licensee duties; prohibited activities.

1. A mold assessment licensee who performs mold assessment services shall provide a written report to each person for whom such licensee performs mold assessment services for compensation.
2. No licensee shall perform both mold assessment and mold remediation on the same property.
3. No person shall own an interest in both the licensee who performs mold assessment services and the licensee who performs mold remediation services on the same property.

§ 937. Civil penalties and revocation.

1. The commissioner may, after a notice and hearing, suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include, but not be limited to the following:
   (a) conviction of a felony relating to the performance of a mold assessment or mold remediation;
   (b) deceit or misrepresentation in obtaining a license authorized under this article;
   (c) providing false testimony or documents to the commissioner in relation to a license authorized by this article or any other license issued by the commissioner;
   (d) deceiving or defrauding the public in relation to services provided for a fee that require a license; or
   (e) incompetence or gross negligence in relation to mold assessment or mold remediation.
2. Violators of any of the provisions of this article may be fined by the commissioner in an amount not to exceed two thousand dollars for the initial violation and up to ten thousand dollars for each subsequent violation.

§938. Denial of license; complaints; notice of hearing.

1. The commissioner shall, before making a determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notice shall notify the applicant that a request for a hearing must be

made within thirty days after issuance of such notification. If a hearing is requested, such hearing shall be held at such time and place as the commissioner shall prescribe.

2. If the applicant fails to make a written request for a hearing within thirty days after issuance of such notification, then the notification of denial shall become the final determination of the commissioner. The commissioner shall have subpoena powers regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant.
3. The commissioner shall, before revoking or suspending any license or imposing any fine as authorized by this article or reprimand on the holder thereof and at least ten days prior to the date set for the hearing, notify in writing the holder of such license, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. No prior notice and hearing is required before the commissioner issues an order directing the cessation of unlicensed activities.
4. Written notice must be served to the licensee or person charged.
5. The hearing on such charges shall be at such time and place as the commissioner shall prescribe.

§ 939. Judicial review. The action of the commissioner in suspending, revoking or refusing to issue or renew a license, or issuing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be appealed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 940. Rulemaking authority. The commissioner may adopt rules and regulations to oversee the practice of mold assessment, remediation and abatement and to ensure the health, safety and welfare of the public.

Title 2. Minimum work standards for the conduct of mold assessments and remediation by licensed persons (Sections 945-948.)

Section

945. Minimum work standards for the conduct of mold assessments by licensed persons.
946. Minimum work standards for the conduct of mold remediation by licensed persons.
947. Post-remediation assessment and clearance.
948. Investigations and complaints.

§ 945. Minimum work standards for the conduct of mold assessments by licensed persons.

1. A mold assessment licensee shall prepare a mold remediation plan that is specific to each remediation project and provide the plan to the client before the remediation begins. The mold remediation plan must specify:
   (a) the rooms or areas where the work will be performed;
   (b) the estimated quantities of materials to be cleaned or removed;
   (c) the methods to be used for each type of remediation in each type of area;
   (d) the personal protection equipment (PPE) to be supplied by licensed remediators for use by licensed abaters;
   (e) the proposed clearance procedures and criteria for each type of remediation in each type of area;

(f) when the project is a building that is currently occupied, how to properly notify such occupants of such projects taking into consideration proper health concerns; the plan must also provide recommendations for notice and posting requirements that are appropriate for the project size, duration and points of entry;

(g) an estimate of cost and an estimated time frame for completion; and

(h) when possible, the underlying sources of moisture that may be causing the mold and a recommendation as to the type of contractor who would remedy the source of such moisture.

2. The remediation plan may require containment, as appropriate, to prevent the spread of mold to areas of the building outside the containment under normal conditions of use.

3. A mold assessment licensee who indicates in a remediation plan that a disinfectant, biocide, or antimicrobial coating will be used on a mold remediation project shall indicate a specific product or brand only if it is registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by a mold assessment licensee to use such products must take into account the potential for occupant sensitivities.

§ 946. Minimum work standards for the conduct of mold remediation by licensed persons.

1. A mold remediation licensee shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation plan developed by the mold assessment licensee as provided to the client and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed. The mold remediation licensee shall provide the mold remediation work plan to the client before site preparation work begins.

2. If a mold assessment licensee specifies in the mold remediation plan that personal protection equipment (PPE) is required for the project, the mold remediation licensee shall provide the specified PPE to all employees who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination. The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment.

3. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas.

4. No person shall remove or dismantle any containment structures or materials from a project site prior to receipt by the mold remediation licensee overseeing the project of a notice from a mold assessment licensee that the project has achieved clearance as described in section nine hundred forty-seven of this title.

5. Disinfectants, biocides and antimicrobial coatings may be used only if their use is specified in a mold remediation plan, if they are registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. If a plan specifies the use of such a product but does not specify the brand or type of product, a mold remediation licensee may select the brand or type of product to be used. A decision by a mold assessment or remediation licensee to use such a product must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with the product.

§ 947. Post-remediation assessment and clearance.

1. For a remediated project to achieve clearance, a mold assessment licensee shall conduct a post-remediation assessment. The post-remediation assessment shall determine whether:

(a) the work area is free from all visible mold; and

(b) all work has been completed in compliance with the remediation plan and remediation work plan and meets clearance criteria specified in the plan.

2. Post-remediation assessment shall, to the extent feasible, determine that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated area. If it has been determined that the underlying cause of the mold has not been remediated, the mold assessment licensee shall make a recommendation to the client as to the type of contractor who could remedy the source of the mold or the moisture causing the mold.
3. A mold assessment licensee who determines that remediation has been successful shall issue a written passed clearance report to the client at the conclusion of each mold remediation project.
4. If the mold assessment licensee determines that remediation has not been successful, the licensee shall issue a written final status report to the client and to the remediation licensee and recommend to the client that either a new assessment be conducted, that the remediation plan as originally developed be completed, or the underlying causes of mold be addressed, as appropriate.

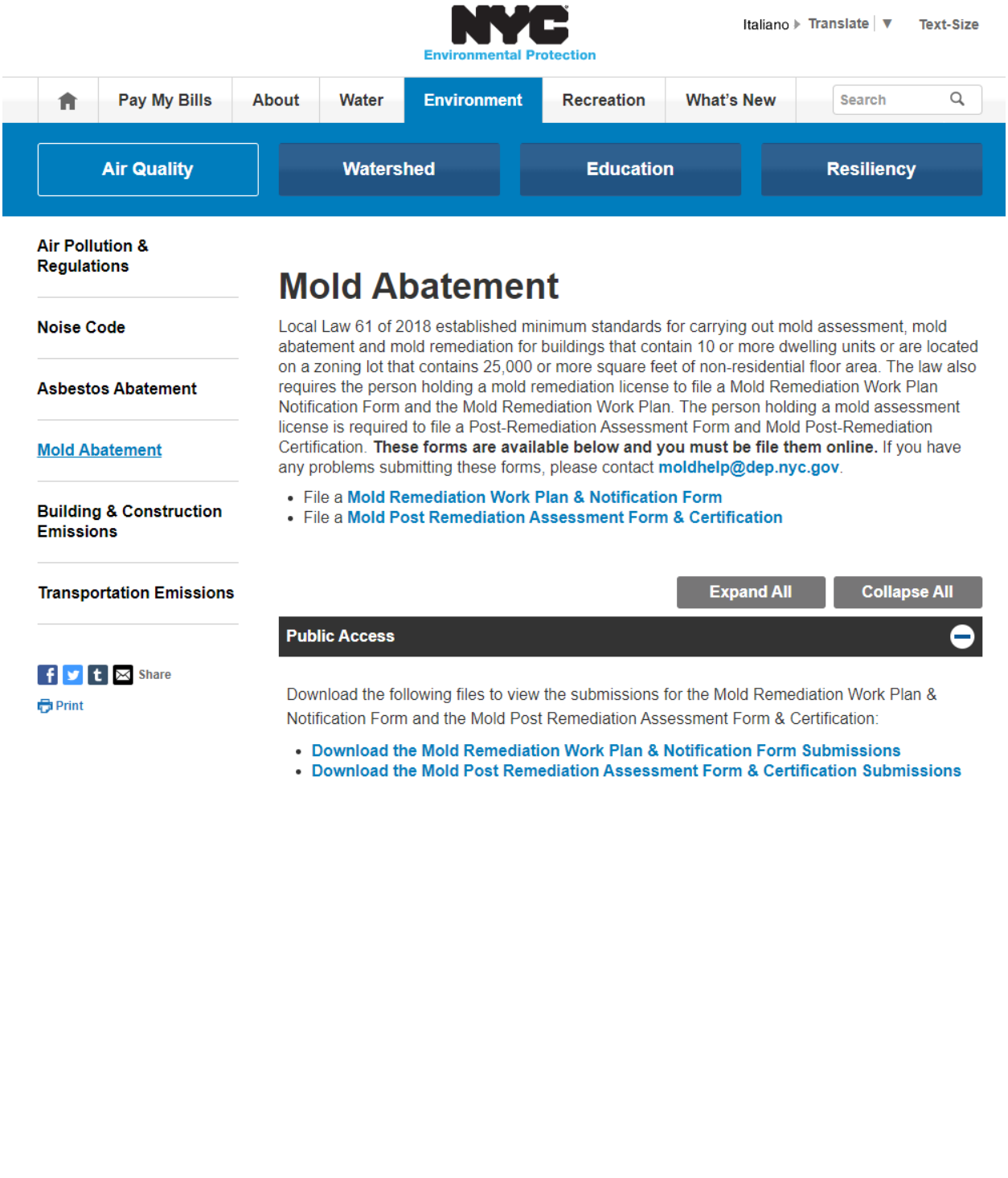
§ 948. Investigations and complaints. The commissioner shall have the authority to inspect ongoing or completed mold assessment and mold remediation projects and to conduct an investigation upon his or her own initiation or upon receipt of a complaint by any person or entity.

NYC Local Law 61 of 2018

NYCDEP Website where to File:

http://www1.nyc.gov/site/dep/environment/mold-abatement.page

(can only be done online)



LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018

No. 61

Introduced by Council Members Torres, Constantinides, Mendez, Richards, Treyger, Dromm, Gentile, King, Koo, Palma, Rose, Crowley, Miller, Rosenthal, Lancman, Maisel, Lander, Johnson, Menchaca, Van Bramer, Rodriguez, Levine, Kallos, Salamanca, Ferreras-Copeland, Cornegy, Barron, Koslowitz, Cohen, Levin, Grodenchik, Espinal, Reynoso, Gibson, Eugene, Vallone, Cumbo, Cabrera, Williams, Garodnick, Perkins, Chin, Vacca, Deutsch, Borelli, Ulrich and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to mold assessment, mold abatement and mold remediation for certain buildings

Be it enacted by the Council as follows:

Section 1. Subchapter 6 of chapter 1 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-154 to read as follows:

§ 24-154 Mold abatement and remediation work for certain buildings. a. As used in this section, the terms "mold abatement," "mold assessment" and "mold remediation" shall have the meanings ascribed to such terms in section 930 of the labor law; the term "dwelling unit" shall have the meaning ascribed to such term in the housing maintenance code; the terms "floor area" and "zoning lot" shall have the meaning ascribed to such terms in the New York city zoning resolution and:

Administering agency. The term "administering agency" means the agency or agencies designated by the mayor pursuant to subdivision f to administer and enforce the provisions of this section.

Covered building. The term "covered building" means a building that (i) contains ten or more dwelling units or (ii) is located on a zoning lot that contains 25,000 or more square feet of non-residential floor area.

Covered person. The term "covered person" means, with respect to a building, a person who is an owner of such building, a managing agent of such building or an employee of such owner or agent.

Project. The term "project" means mold remediation, mold assessment or mold abatement, of areas greater than ten square feet, but does not include full demolition of vacant buildings.

Non-residential floor area. The term "non-residential floor area" means, for a zoning lot, the amount of commercial floor area, office floor area, retail floor area, storage floor area and factory floor area, according to records of the department of finance and department of city planning.

b. For a covered building:

1. No covered person for such building may perform mold assessment, abatement or remediation for a project for such building.

2. Mold assessment, abatement or remediation for a project for such building shall be performed (i) by a person licensed to perform such work pursuant to article 32 of the labor law and (ii) in compliance with the requirements set forth in such article and any other applicable laws or rules.

c. 1. Except as provided in paragraph 3, no later than two business days before the commencement of mold remediation for a project for a covered building, the person holding a mold remediation license pursuant to article 32 of the labor law who performs such remediation

shall provide the administering agency with a notice, in a form and manner established by such agency, containing the following information:

(a) The name of such person and the number or other designation identifying such person's license issued under such article;

(b) The address of such building;

(c) The name of the person on whose behalf such work was performed;

(d) The dates that such work is to be performed;

(e) A copy of the mold remediation work plan prepared in accordance with section 946 of the labor law for such project;

(f) A certification that such work was performed and such plan was prepared in compliance with article 32 of the labor law; and

(g) Such other information as such agency may require by rule.

2. No later than seven days after completion of a post-remediation assessment pursuant to section 947 of the labor law, the person holding a mold assessment license pursuant to article 32 of the labor law who prepares such post-remediation assessment shall provide the administering agency with a notice, in a form and manner established by such agency, containing the following information:

(a) The name of such person and the number or other designation identifying such person's license issued under such article;

(b) The address of such building;

(c) The name of the person on whose behalf such post-remediation assessment was performed;

(d) The dates that such post-remediation assessment was performed;

(e) A copy of such post-remediation assessment;

(f) A certification that such post-remediation assessment was performed in compliance with article 32 of the labor law; and

(g) Such other information as such agency may require by rule.

3. Notwithstanding the requirements of paragraphs 1 and 2, the notices required by such paragraphs for a project may be provided to the administering agency no later than 24 hours after commencement of mold remediation in connection with such project if:

(a) Such project is subject to an order issued by a court that requires such project to be completed within 30 or fewer days; or

(b) The condition that such project is intended to correct poses either an immediate risk of harm to any person or damage to property, or both, pursuant to rules established by the administering agency in conjunction with the department of health and mental hygiene, the department of buildings and the department of housing preservation and development.

4. No later than 24 hours after receiving information provided pursuant to this subdivision, the administering agency shall make such information publicly available online.

d. Violations. 1. Civil penalties under this section may be recovered by the administering agency in an action in any court of appropriate jurisdiction or in a proceeding before the office of administrative trials and hearings acting pursuant to section 1049-a of the New York city charter.

2. If such court or office finds that a person has violated any provision of this section or rule promulgated thereunder, such court or office shall, in addition to any other relief such court or office determines to be appropriate, impose a civil penalty of up to $1,000 for a first violation, up

to $5,000 for a second violation and up to $10,000 for a third or subsequent violation.

3. Notwithstanding paragraph 2, if such court or office finds that an owner of a covered building has violated any provision of this section or rule promulgated thereunder, such court or office shall, in addition to any other relief such court or office determines to be appropriate, impose a civil penalty of (i) for a first violation relating to such building, up to the greater of $1,000 or 20 cents per square foot of gross floor area in such building, (ii) for a second violation, up to the greater of $5,000 or 30 cents per square foot of gross floor area in such building and (iii) for a third or subsequent violation, up to the greater of $10,000 or 40 cents per square foot of gross floor area in such building.

e. The requirements of this section shall not apply to buildings owned or operated by the New York city housing authority.

f. The mayor shall, in writing, designate one or more agencies to administer and enforce the provisions of this section and may, from time to time at the mayor's discretion, change such designation. Within 10 days after such designation or change thereof, a copy of such designation or change thereof shall be published on the city's website and on the website of each such agency, and shall be electronically submitted to the speaker of the council.

§ 2. This local law takes effect January 1, 2019, except that, before such effective date, (i) the mayor may designate administering agencies in accordance with subdivision f of section 24-154, as added by this local law, and (ii) the head of such designated agencies may take such actions as are necessary for implementation of this local law, including the promulgation of rules.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 19, 2017 and returned unsigned by the Mayor on January 22, 2018.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 61 of 2018, Council Int. No. 978-D of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.

NYC Local Law 55 of 2018

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018

No. 55

Introduced by Council Members Mendez, Torres, Johnson, Chin, Constantinides, Cumbo, Koo, Reynoso, Rodriguez, Rose, Levine, Koslowitz, Rosenthal, Richards, Palma, Lander, Levin, Menchaca, Lancman, Dromm, Barron, Kallos, Ferreras-Copeland, Crowley, King, Gibson, Cabrera, Mealy, Maisel, Miller, Cornegy, Eugene, Van Bramer, Salamanca, Gentile, Vacca, Espinal, Cohen, Williams, Garodnick, Greenfield, Treyger, Deutsch, Grodenchik, Perkins, Vallone and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to indoor asthma allergen hazards in residential dwellings and pest management, and to repeal section 27-2018 of the administrative code of the city of New York, relating to rodent and insect eradication and extermination

Be it enacted by the Council as follows:

Section 1. Section 27-2018 of the administrative code of the city of New York is REPEALED.

§ 2. The title of article 4 of subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended to read as follows:

ARTICLE 4

CONTROL OF PESTS AND OTHER ASTHMA ALLERGEN TRIGGERS

§27-2017 Definitions.

§27-2017.1 Owners' responsibility to remediate.

§27-2017.2 Owners' responsibility to notify occupants and to investigate.

§27-2017.3 Violation for visible mold.

§27-2017.4 Violation for pests.

§27-2017.5 Removal of asthma triggers in a dwelling unit upon turnover.

§27-2017.6 Department inspections.

§27-2017.7 Department implementation and enforcement.

§27-2017.8 Integrated pest management practices

§27-2017.9 Work practices.

§27-2017.10 Department removal of violations placed by the department of health and mental hygiene.

§27-2017.11 Reporting.

§27-2017.12 Waiver of benefit void.

§ 27-2018.1 Notice of bedbug infestation history

§ 27-2018.2 Reporting of bedbug infestations

§ 27-2019 Elimination of harborages

§ 3. Section 27-2017 of subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended to read as follows:

§27–2017 Definitions. When used in this article:

[(a) Eradication means the elimination of rodents or insects and other pests from any premises through the use of traps, poisons, fumigation or any other method of extermination.

(b) Insects and other pests include the members of class insecta, including houseflies, lice, bees, cockroaches, moths, silverfish, beetles, bedbugs, ants, termites, hornets, mosquitoes and wasps, and such members of the phylum arthropoda as spiders, mites, ticks, centipedes and wood lice.]

Common area. The term "common area" means a portion of a multiple dwelling that is not within a dwelling unit and that is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling, as well as commonly used areas such as a laundry room.

[(c)] *Harborage. The term "harborage"* [Harborage] means any condition which provides shelter or protection for [rodents or insects and other] pests.

Indoor allergen hazard. The term "indoor allergen hazard" means any indoor infestation of cockroaches, mice, or rats or conditions conducive to such infestation, or an indoor mold hazard.

Indoor mold hazard. The term "indoor mold hazard" means any condition of mold growth on an indoor surface, building structure or ventilation system, including mold that is within wall cavities, that is likely to cause harm to a person or that has been cited as a violation by the department.

Integrated pest management. The term "integrated pest management" means ongoing prevention, monitoring and pest control activities and reasonable efforts to eliminate pests from any building, lot, or dwelling. This includes, but is not limited to, reasonable efforts to eliminate of harborages and conditions conducive to pests, the use of traps, and, when necessary, the use of pesticides.

Pest. The term "pest" means any unwanted member of the Class Insecta, including, but not limited to houseflies, lice, bees, cockroaches, moths, silverfish, beetles, bedbugs, ants, termites, hornets, mosquitoes and wasps, and such members of the Phylum Arthropoda as spiders, mites, ticks, centipedes and wood lice, or of the Order Rodentia, including but not limited to mice,

Norway rats, and any other unwanted plant, animal or fungal life that is a pest because it is destructive, annoying or a nuisance.

Remediation or remediate. The term "remediation" or "remediate" means reasonable efforts to eradicate pests in accordance with section 27-2017.8 and reasonable efforts to eradicate indoor mold hazards in accordance with rules promulgated pursuant to section 27-2017.9.

Underlying defect. The term "underlying defect" means a condition that causes an indoor mold hazard, such as a water leak or water infiltration from plumbing or defective masonry pointing or other moisture condition, or causes an infestation of pests, including holes or entryway paths for pests.

Visible mold. The term "visible mold" means mold that is readily identifiable by visual inspection, including mold that is behind furniture or other interior obstructions.

§ 4. Subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding new sections 27-2017.1 through 27-2017.12 to read as follows:

§27-2017.1 Owners' responsibility to remediate. The existence of an indoor allergen hazard in any dwelling unit in a multiple dwelling is hereby declared to constitute a condition dangerous to health. An owner of a dwelling shall take reasonable measures to keep the premises free from pests and other indoor allergen hazards and from any condition conducive to indoor allergen hazards, and shall take reasonable measures to prevent the reasonably foreseeable occurrence of such a conditions and shall expeditiously take reasonable measures to remediate such conditions and any underlying defect, when such underlying defect exists, consistent with section 27-2017.8 and the rules promulgated pursuant to section 27-2017.9.

§27-2017.2 Owners' responsibility to notify occupants and to investigate. a. The owner of a multiple dwelling shall cause an investigation to be made for indoor allergen hazards in all occupied dwelling units and in common areas as set forth on subdivision b of this section.

b. Investigations shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause an indoor allergen hazard, or an occupant makes a complaint concerning a condition that is likely to cause an indoor allergen hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause an indoor allergen hazard.

c. All leases offered to tenants or prospective tenants in such multiple dwellings shall contain a notice, conspicuously set forth therein, which advises tenants of the obligations of the owner and tenant as set forth in this section. Such notice shall be approved by the department, and shall be in English and in the covered languages set forth in section 8-1002. The owner of such multiple dwelling shall provide the tenant or prospective tenant of such dwelling unit with the pamphlet developed by the department of health and mental hygiene pursuant to section 17-199.7. Such pamphlet shall be made available in English and in the covered languages set forth in section 8-1002.

§27- 2017.3. Violation for visible mold a. The presence of visible mold in any room in a dwelling unit in a multiple dwelling shall constitute an indoor mold hazard violation as provided in this section, except when such mold is present on tile or grout:

1. The presence of visible mold in an amount measuring in total less than ten square feet in a room within a dwelling unit shall constitute a non-hazardous violation.

2. The presence of visible mold in an amount measuring in total between ten square feet and thirty square feet in a room within a dwelling unit shall constitute a hazardous violation.

3. In addition, the presence of visible mold as provided in subparagraphs (a) or (b) of this paragraph shall constitute a hazardous violation if:

(a) there is an existing non-hazardous violation of paragraph one of this subdivision for which the certification period has expired and the non-hazardous violation has not been certified as corrected within the certification time period, and the mold condition that was the cause of the non-hazardous violation continues to be present in the same room in the dwelling unit; or

(b) The owner has submitted a false certification of correction of a non-hazardous violation issued pursuant to paragraph one of this subdivision and the mold condition that was the cause of such non-hazardous violation continues to be present in the same room in the dwelling unit.

4. The presence of visible mold in an amount measuring in total greater than or equal to thirty square feet in a room within a dwelling unit, shall constitute an immediately hazardous violation.

5. In addition, the presence of visible mold as provided in subparagraphs (a) or (b) of this paragraph shall constitute an immediately hazardous violation if:

(a) There is an existing hazardous violation pursuant to paragraph two of this subdivision for which the certification period has expired and such hazardous violation has not been certified as corrected within the certification time period, and the department has reinspected the unit within seventy days of the certification date of such hazardous violation and has found that the mold condition that was the cause of such hazardous violation continues to be present in the same room in the dwelling unit; or

(b) The owner has submitted a false certification of correction of a hazardous violation issued pursuant to paragraph two of this subdivision and the mold condition that was the cause of such hazardous violation continues to be present in the same room in the dwelling unit.

b. The presence of visible mold in an amount measuring greater than or equal to thirty square feet in any one room or any one level of a hallway of a common area or fifty square feet in the aggregate shall constitute a hazardous violation. The presence of visible mold in an amount measuring less than thirty square feet in any one room or any one level of a hallway of a common area or fifty square feet in the aggregate shall constitute a non-hazardous violation.

c. 1. The date for correction of a non-hazardous or hazardous violation pursuant to subdivisions a or b of this section shall be as set forth in subdivision c of section 27-2115.

2. The date for correction of an immediately hazardous violation pursuant to subdivision a of this section shall be twenty-one days after service of the notice of violation as provided on such notice.

3. The department may postpone the date by which an immediately hazardous violation issued pursuant to subdivision a of this section shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as may be necessary to make the required repair, provided, however, that where such immediately hazardous violation has been issued as a result of a reinspection of a hazardous violation that remained uncorrected, no postponement shall be granted. Such postponement shall not exceed

fourteen days from the date of correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to correct the violation within the time set for the postponement.

§27- 2017.4. Violation for pests a. When the department makes the determination that any premises are infested by pests other than cockroaches, mice, or rats, it may order such eradication measures and work practices as the department deems necessary. Such violation shall be a hazardous violation pursuant to section 27-2115.

b. Notwithstanding the provisions of subdivision a of this section, the presence of cockroaches, mice or rats in any room in a dwelling unit in a multiple dwelling or a common area shall constitute an immediately hazardous violation of this code as provided in this section and an owner shall comply with the work practices set out in subdivision a of section 27-2017.8 when correcting a such violation.

c. The date for correction of an immediately hazardous violation for cockroaches, mice, or rats shall be twenty-one days after service of the notice of violation as provided on such notice.

d. The department may postpone the date by which an immediately hazardous violation for cockroaches, mice, or rats shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as may be necessary to make the required repair. Such postponement shall not exceed fourteen days from the date of

correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to correct the violation within the time set for the postponement.

§27-2017.5 Removal of asthma triggers in a dwelling unit upon turnover. a. Prior to the reoccupancy of any vacant dwelling unit in a multiple dwelling, the owner shall, within such dwelling unit, remediate all visible mold and pest infestations, and any underlying defects in such dwelling unit, and thoroughly clean and vacuum all carpeting and furniture provided by such owner to incoming occupants, consistent with the work practices set out in subdivision a of section 27-2017.8 and the rules promulgated pursuant to section 27-2017.9.

b. The owner shall certify in writing to the incoming tenant or occupant of a unit of a multiple dwelling, in such form as may be promulgated by the department, that the unit is in compliance with subdivision a of this section.

§27-2017.6 Department inspections. a. When entering a dwelling unit in a multiple dwelling for the purpose of investigating the existence of any violation of the code, the department shall make diligent efforts to ascertain whether there are cockroaches, mice, rats, or visible mold in the dwelling unit and shall inquire of the occupant whether cockroaches, mice, rats or mold are present in the dwelling unit. When performing such inspection, the department need only inspect those portions of the dwelling unit where furniture or other furnishings do not obstruct the view of a surface, except when there is visible evidence that causes the department to believe that the obstructed surface has visible mold or cockroaches, mice, or rats.

b. In any dwelling unit in a multiple dwelling the department shall conduct an inspection pursuant to subdivision a of this section no later than thirty days after the department's receipt of a complaint describing a condition that would constitute a violation under subdivision a of

section 27-2017.3 or subdivision b of section 27-2017.4. Where the department attempts to perform an inspection of a dwelling unit within the time period required by this subdivision but is unable to gain access, the department shall provide written notice to the occupant of such dwelling unit that no further attempts at access shall be made unless a new complaint is submitted.

c. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days of such inspection.

d. The pamphlet developed by the department of health and mental hygiene pursuant to section 17-199.7 shall be left at the premises of the dwelling unit at the time of an inspection made by the department pursuant to this section. Such pamphlet shall be delivered by the department in conjunction with all notices of violation issued pursuant to paragraph one of subdivision o of section 27-2115. Failure to include such pamphlet with such notices of violation shall not render null and void the service of such notices of violation. Such pamphlet shall also be made available to any member of the public upon request.

e. During the period from October first through May thirty-first, or in the event of disaster, the time for the department to conduct an inspection as provided in subdivision b of this section may be extended if the department resources so require. Notwithstanding any other provision of law, failure by the department or the department of health and mental hygiene to comply with any time period provided in this article or section 27-2115 relating to responsibilities of the department and the department of health and mental hygiene, shall not render null and void any notice of violation issued by the department or the department of health

and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article.

§27-2017.7 Department implementation and enforcement. a. The department shall provide appropriate training for indoor allergen inspection and for supervisory personnel. The department shall provide for the continuing education of inspection and supervisory personnel regarding changes in applicable federal, state, and local laws and guidance documents and require that each such individual has successfully demonstrated knowledge of those materials and the requirements of this article.

b. The department, with the approval of the department of health and mental hygiene, shall promulgate a comprehensive written procedure to guide department personnel in implementing and enforcing this article. Such procedures shall include a methodology and a form to be used by department personnel when conducting an inspection to carry out and record an inspection pursuant to section 27-2017.6.

c. The department shall promulgate rules for the implementation and enforcement of this article and to effect compliance with all applicable provisions of this article, rules promulgated thereunder, and all applicable city, state or federal laws, rules or regulations. Such rules shall be subject to the approval of the department of health and mental hygiene prior to their promulgation and shall include, but need not be limited to, establishing:

1. Procedures by which an owner may apply to the department to postpone the date by which a violation shall be corrected pursuant to section 27-2017.3 or 27-2017.4; and

2. Procedures to implement and to enforce compliance with paragraph 2 of subdivision o of section 27-2115, which shall include, but not be limited to, the requirement that an owner certify to:

(a) the correction of a violation of this article,

(b) compliance with section 27-2017.8; and

(c) compliance with the rules promulgated by the department pursuant to section 27-2017.9.

§27- 2017.8 Integrated pest management practices. a. When any premises are subject to infestation by pests, or subject to a violation of subdivision a of section 27-2017.4 where directed by the department, or subject to a violation of subdivision b of section 27-2017.4, the owner shall use integrated pest management measures and eliminate conditions conducive to pests, and comply with following work practices:

1. inspect for, and physically remove pest nests, waste, and other debris by High-Efficiency Particulate Air (HEPA) vacuuming, washing surfaces, or otherwise collecting and discarding such debris;

2. eliminate points of entry and passage for pests by repairing and sealing any holes, gaps or cracks in walls, ceilings, floors, molding, base boards, around pipes and conduits, or around and within cabinets by using sealants, plaster, cement, wood, escutcheon plates, or other durable material. Attach door sweeps to any door leading to a hallway, basement, or outside the building to reduce gaps to no more than one-quarter inch; and

3. eliminate sources of water for pests by repairing drains, faucets, and other plumbing materials that accumulate water or leak. Remove and replace saturated materials in interior walls.

4. The use of pesticides shall not substitute for pest management measures described in this section. Any pesticide applied shall be applied by a pest professional licensed by New York state department of environmental conservation (DEC).

b. An owner's certification of correction of a pest violation that was issued pursuant to subdivision a of section 27-2017.4 shall, where applicable, include an affidavit affirming that the work practices required pursuant to subdivision a of this section were properly performed. An owner's certification of correction of a pest violation that was issued pursuant to subdivision b of section 27-2017.4 shall include an affidavit affirming that the work practices required pursuant to subdivision a of this section were properly performed. The department may also by rule require additional documentation for certification of correction of a pest violation or a violation of subdivision b of 27-2017.4.

§27-2017.9. Work practices. a. The department shall promulgate rules, with the approval of the department of health and mental hygiene, establishing work practices when assessing and correcting indoor mold hazards, and underlying defects including violations cited by the department pursuant to this article. The department shall from time-to-time review and revise such rules based upon, among other things, the latest scientific data and developing federal, state, and local laws and industry standards.

b. The work practices promulgated pursuant to subdivision a of this section shall include the requirement that when correcting an indoor mold hazard violation issued pursuant to this article, or when assessing and correcting an indoor mold hazard identified as a result of an inspection by an owner, such owner shall comply with the following work practices:

1. investigate and correct any underlying defect, including moisture or leak conditions, that are causing or may cause mold violations;

2. remove or securely cover with plastic sheeting any furniture or other items in the work area that cannot be removed;

3. minimize the dispersion of dust and debris from the work area to other parts of the dwelling unit through methods such as: sealing ventilation ducts/grills and other openings in the work area with plastic sheeting; isolating the work area with plastic sheeting and covering egress pathways; cleaning or gently misting surfaces with a dilute soap or detergent solution prior to removal; the use of HEPA vacuum-shrouded tools or a vacuum equipped with a HEPA filter at the point of dust generation;

4. clean mold with soap or detergent and water;

5. remove and discard materials that cannot be cleaned properly;

6. properly remove and discard plastic sheeting, cleaning implements, and contaminated materials in sealed, heavy weight plastic bags;

7. clean any remaining visible dust from the work area using wet cleaning methods or HEPA vacuuming; and

8. leave the work area dry and visibly free from mold, dust, and debris.

The work practices shall also include a requirement that when correcting an indoor mold hazard violation issued pursuant to this article, or when assessing or correcting an indoor mold hazard identified as a result of an inspection by an owner, such assessments or work shall be performed in compliance with article 32 of New York state labor law and any rules promulgated thereunder, where applicable.

c. An owner's certification of correction of an indoor mold hazard violation issued pursuant to this article shall include an affidavit affirming that the work practices required pursuant to this section were properly performed. The department may also by rule require additional documentation for certification of correction of an indoor mold hazard violation.

§27-2017.10 [Department removal of] Violations placed by the department of health and mental hygiene. Where the owner of the dwelling or relevant dwelling unit within such dwelling fails to comply with an order of the department of health and mental hygiene to correct a violation placed by the department of health and mental hygiene pursuant to section 17-199.6, the department of health and mental hygiene shall certify such conditions to the department of housing preservation and development within ten days after the date set for correction in said order. The department of housing preservation and development may take such enforcement action as it deems necessary, including performing or arranging for the performance of work to correct the certified condition.

§27-2017.11 Reporting. a. Within four months after the close of the first fiscal year that begins after the effective date of the local law that added this section, and within four months after the close of each fiscal year thereafter, the commissioner shall provide to the council a written report on the department's implementation of this article during the preceding fiscal year. Such report shall include, at a minimum, an analysis of the department's program, a detailed statement of revenue and expenditures and a statistical section designed to provide a detailed explanation of the department's enforcement including, but not limited to, the following:

1. The number of complaints for visible mold, indoor mold hazards, and pests in dwelling units, disaggregated by city or non-city ownership of the building which is the subject of the complaint;

2. The number of inspections by the department pursuant to this article, disaggregated by the city or non-city ownership of the building where the inspection occurred;

3. The number of violations issued by the department pursuant to this article;

4. The number of violations issued pursuant to this article that were certified as corrected by the owner, the number of such certifications that did not result in the removal of such violations, and the number of civil actions brought by the department against such owners;

5. The number of jobs performed in which violations issued pursuant to this article were corrected by the department, the total amount spent by the department to correct the conditions that resulted in the violations, and the average amount spent per dwelling unit to correct such conditions;

6. A statistical profile with geographic indexing, such as by community district, council district, and/or zip code, of multiple dwellings in which violations are placed, indicating the ages and general condition of the multiple dwellings and other factors relevant to the prevalence of indoor mold hazards and pests, which may include asthma rates in the relevant community, outstanding violations, and emergency repair charges; and.

7. The number of trainings conducted for owners and building maintenance personnel on the appropriate work methods for controlling and removing indoor allergen hazards in rental housing.

b. The department of health and mental hygiene shall annually prepare and publically post on the Environmental and Health Data Portal a statistical profile on asthma rates in the population, including asthma-related hospitalizations and asthma-related emergency department visits, city wide and by neighborhoods, based on the most recently available data. These data shall be utilized by the department to target intervention efforts to reduce the prevalence of asthma allergens.

§27-2017.12 Waiver of benefit void. a. No owner may seek to have an occupant of a dwelling unit waive the benefit or protection of any provision of this article. Any agreement by the occupant of a dwelling unit purporting to waive the benefit or protection of any provision of this article is void. Any owner who violates this section, or the rules promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any owner who violates this section shall be liable for a civil penalty of not more than five hundred dollars per violation.

b. Notwithstanding any other provision of this article, nothing herein shall be construed to alter existing or future agreements which allocate responsibility for compliance with the provisions of this article between a tenant shareholder and a cooperative corporation or between the owner of a condominium unit and the board of managers of such condominium.

c. The provisions of this article, other than section 27-2017.10, shall not apply to a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling

unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family.

d. The provisions of this article shall not apply to dwelling units owned and operated by the New York city housing authority.

§5. Section 27-2115 of the administrative code of the city of New York is amended by adding a new subdivision o to read as follows:

(o) (1) Notwithstanding any other provision of law, when the department serves a notice of violation to correct and certify a condition that constitutes a violation of article four of subchapter two of this chapter, the notice of violation shall specify the date by which the violation shall be corrected as provided in such article, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. The notice of violation shall further specify that the violation shall be corrected in accordance with section 27-2017.8 and the rules established pursuant to section 27-2017.9, where applicable. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice of violation shall be deemed completed five days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent simultaneously by regular mail to the occupant at the dwelling unit that is the subject of such notice of violation.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing or electronically, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with section 27-2017.8, where applicable, and the rules established pursuant to section 27-2017.9, where applicable. All certifications shall be delivered to the department and acknowledgment of receipt therefore obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, or submitted electronically within five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement saying that the violation was properly corrected by the person who performed the work if performed by an employee or agent of the owner. Notification of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Whenever the department shall issue a notice of violation to correct a condition that constitutes a hazardous or immediately hazardous violation of subdivision a of section 27-2017.3 the department shall conduct a final inspection to verify that the violation has been corrected. Where the department determines that the violation has not been corrected, the department may take such enforcement action as is necessary, including performing or arranging for the performance of the work to correct the violation.

(4) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article four of subchapter two of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than two thousand dollars nor more than ten thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner then such owner shall be responsible for such civil penalty. In addition, any such person making a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(5) Notwithstanding any other provision of law, and in addition to any penalties applicable under article three of subchapter five of this chapter, a person who violates article four of subchapter two of this chapter by failing to correct such violation in accordance with the work practices in section 27-2017.8 and in the rules established pursuant to section 27-2017.9 shall be subject to a civil penalty of five hundred dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for correction in the notice of violation until the date the violation is corrected and certified to the department. There shall be a presumption that the condition constituting a violation continues after the service of the notice of violation. The owner shall be responsible for the correction of all violations noticed pursuant to article four of subchapter two of this chapter, but in an action for civil penalties pursuant to this subdivision may in defense or mitigation of such owner's liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was placed; or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor;

(iii) That he or she was unable to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iv) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefore; or

(v) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises. Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require. If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(6) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall not render null and void any notice of violation issued by the department or the department of health and

mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article

§6. Chapter 1 of title 17 of the administrative code of the city of New York is amended by adding new sections 17-199.5, 17-199.6, 17-199.7 and 17-199.8 to read as follows:

§17-199.5 Encouragement of physician referrals for indoor allergen hazards. a. The department shall report to the council no later than 18 months from the effective date on activities it has undertaken to educate physicians and other health care providers who treat persons with asthma about the role of indoor allergens in asthma exacerbation and the availability of inspections for asthma triggers in their patients' primary residence by the department and the department of housing preservation and development, and on any mechanism they have to refer to the department or the department of housing preservation and development, with consent, the contact information for patients who report these conditions in their primary residence. The report shall describe what was done following such referrals, and what the outcomes were of any that were made and received during this period.

§17-199.6 Investigations of indoor allergen hazards in dwellings of persons with medically diagnosed moderate persistent or severe persistent asthma. a. The department shall establish procedures to permit doctors, nurses, or other health professionals, upon the consent of their patients, to request a department investigation of possible indoor allergen hazards in dwellings where persons reside who have been medically diagnosed with moderate persistent or severe persistent asthma. Such procedures shall provide for the referral to the department of housing preservation and development of such requests that would be subject to section 27-2017.6. The procedures shall also provide for an investigation to be made when the department is notified

that a person who has been medically diagnosed with moderate persistent or severe persistent asthma is residing in a dwelling with possible indoor allergen hazards not otherwise subject to enforcement by the department of housing preservation and development under section 27-2017.6. Such indoor allergen hazards include, but are not limited to, mold that is not readily observable to the eye, including mold that is hidden within wall cavities, construction dust or such other conditions as the department shall from time-to-time determine by rule are indoor allergen hazards.

b. In the event that the department determines that an indoor allergen hazard exists, the department shall order the owner to correct the condition and the underlying causes of such a condition within twenty-one days, in a manner and under such safety conditions as it may specify, including the integrated pest management practices in section 27-2017.8 and the work practices established pursuant to section 27-2017.9.

c. In the event that the department determines that the owner or other person having the duty or liability to comply with an order issued pursuant to this section fails to substantially comply therewith within twenty-one days after service thereof, the department shall, in accordance with section 27-2017.10, refer such order to the department of housing preservation and development. The department of housing preservation and development shall take such enforcement action as is necessary, including performing or arranging for the performance of the work to correct the certified condition.

d. The department shall report to the council and mayor no later than 24 months from the effective date on activities it has undertaken under this section as they relate to adults with asthma diagnoses, including but not limited to the number adult asthma referrals by type to the

department for inspection, the number and types of orders issued to property owners by the department as a result of adult asthma referrals, and the number of apartments that have completed remediation for indoor asthma allergens as a result of adult asthma referrals. Upon submission of such report the agency may submit a recommendation to the council containing a proposed redefinition of "persons with medically diagnosed moderate persistent or severe persistent asthma" for the purposes of the provision of this article.

§17-199.7 Education about indoor allergen hazards. The department shall develop a pamphlet which shall be in English and in the covered languages set forth in section 8-1002, explaining the hazards associated with indoor allergens and describing tenant rights and owner responsibilities under this law, including safe work practices and mechanisms through which the public may report indoor allergen hazards in the home. Such pamphlet shall be made available in accordance with section 27-2017.6. Such pamphlet shall also be made available to any member of the public upon request. The department shall also develop a training curriculum for educating owners and building maintenance personnel on the appropriate work methods for controlling and removing indoor allergen hazards in rental housing, including integrated pest management. Such training curriculum shall also be made available to any member of the public upon request.

§17-199.8 Inspection by the department of unsafe work practices for indoor allergen remediation. The department shall respond to complaints of unsafe work practices related to the correction of indoor mold hazard violations that result in chemical vapors, dust, or other environmental hazards, and promptly refer complaints of unsafe pest control to the New York state department of environmental conservation.

§7. This local law shall take effect one year after its enactment, except that the commissioners of health and mental hygiene and housing preservation and development may take such measures as are necessary for its implementation, including the promulgation of rules, before such effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 19, 2017 and returned unsigned by the Mayor on January 22, 2018.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 55 of 2018, Council Int. No. 385-C of 2014) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.

NYC Housing Preservation & Development's Guides and Notices for Local Law 55

Department of
Housing Preservation
& Development
nyc.gov/hpd

GUIDE TO LOCAL LAW 55 OF 2018
INDOOR MOLD HAZARD WORK PRACTICES

VIOLATIONS ISSUED AFTER JANUARY 19TH, 2019

If your multiple dwelling has 10 or more units AND a "Class B" or "Class C" violation was issued, you are **required** to hire a New York State (NYS) licensed mold assessment company and a NYS licensed mold remediation company. The safe work practices in §27-2017.9 of Local Law 55 and 28 RCNY §54-04 must be followed when assessing and correcting **any** mold hazard(s) and underlying defects (such as moisture or leak conditions).

To find licensed mold contractors in your area, visit https://www.labor.ny.gov/ and use the available Licensed Mold Contractors Search Tool.

Safe Work Practice Requirements

- Seal ventilation ducts/grills and other openings in the work area with plastic sheeting;
- Isolate the work area with plastic sheeting and covering egress pathways;
- Clean or gently mist surfaces with a dilute soap or detergent solution prior to removal;
- Using HEPA vacuum-shrouded tools or a vacuum equipped with a HEPA filter at the point of dust generation;
- Clean mold with soap or detergent and water;
- Remove and discard materials that cannot be cleaned properly;
- Properly remove and discard plastic sheeting, cleaning implements, and contaminated materials in sealed, heavy weight plastic bags;
- Clean any remaining visible dust from the work area using wet cleaning methods or HEPA vacuuming; and
- Leave the work area dry and visibly free from mold, dust, and debris.

Licensed mold contractors (both assessment and remediation contractors) must perform work in compliance with Article 32 of New York State Labor Law. In addition, in accordance with Local Law 61 of 2018, the mold remediation contractor must file a Mold Remediation Notification Form with the New York City Department of Environmental Protection before the work begins while a mold assessment contractor must file a Mold Post-Remediation Assessment Form at the completion of the work. They must also provide you (the owner) with reports regarding the remediation work. For the list of documents that the contractors must supply to you, see the Certification of Correction that is part of this Notice of Violation.

In accordance with Local Law 55 of 2018, a "Class B" violation will be upgraded to a "Class C" violation if the mold hazard has not been certified as corrected within the certification time period and HPD has re-inspected the violation within seventy days of the certification period and the condition still exists or if the "Class B" violation is falsely certified.

Department of
Housing Preservation
& Development
nyc.gov/hpd

GUIDE TO LOCAL LAW 55 OF 2018
INDOOR MOLD HAZARD WORK PRACTICES

VIOLATIONS ISSUED AFTER JANUARY 19TH, 2019

If your multiple dwelling is under 10 units OR a "Class A" violation was issued in a multiple dwelling with 10 or more units, you are **not** required to hire licensed mold remediation and mold assessment contractors. However, the safe work practices in §27-2017.9 of Local Law 55 and 28 RCNY §54-04 must be followed when assessing and correcting **any** mold hazard(s) and underlying defects (such as moisture or leak conditions).

Please note that if licensed mold contractors (both assessment and remediation contractors) are hired they must perform work in compliance with Article 32 of New York State Labor Law.

To find licensed mold contractors in your area, visit https://www.labor.ny.gov/ and use the available Licensed Mold Contractors Search Tool.

Safe Work Practice Requirements

- Seal ventilation ducts/grills and other openings in the work area with plastic sheeting;
- Isolate the work area with plastic sheeting and covering egress pathways;
- Clean or gently mist surfaces with a dilute soap or detergent solution prior to removal;
- Using HEPA vacuum-shrouded tools or a vacuum equipped with a HEPA filter at the point of dust generation;
- Clean mold with soap or detergent and water;
- Remove and discard materials that cannot be cleaned properly;
- Properly remove and discard plastic sheeting, cleaning implements, and contaminated materials in sealed, heavy weight plastic bags;
- Clean any remaining visible dust from the work area using wet cleaning methods or HEPA vacuuming; and
- Leave the work area dry and visibly free from mold, dust, and debris.

In accordance with Local Law 55 of 2018, violations will be upgraded as follows: "Class A" violations will be automatically upgraded to a "Class B" if the correction of the mold hazard(s) has not been made within the certification period and the condition still exists or if a "Class A" violation was falsely certified. "Class B" violations will be upgraded to a "Class C" if the mold hazard(s) has not been certified as corrected within the certification time period and HPD has re-inspected the violation and the condition still exists or a "Class B" violation is falsely certified.

HPD'S DECEMBER 2018 NOTICE TO PROPERTY OWNERS

This email advises property owners of their responsibility to meet upcoming deadlines and reporting requirements set forth in recent legislation on bedbugs (Local Law 69 of 2017), allergen hazards (mold and pests) (Local Law 55 of 2017), and stove knob covers (Local Law 117 of 2018). In addition, this email includes updates on the Certificate of No Harassment Pilot Program (Local Law 1 of 2018).

This notice is intended for informational purposes only and is not intended as legal advice. This notice is not a complete or final statement of all of the duties of owners and tenants with regard to laws and rules relating to housing in New York City.

Jump to a Topic:

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Bedbugs

Under Local Law 69 of 2017, owners of multiple dwellings are required to file bedbug infestation history for all dwelling units on an annual basis with HPD. In addition, they are required to either post the filed notice in a common area, or provide it to tenants upon lease renewal or commencement of a new lease.

The filing should be completed between December 17th, 2018 and January 31st, 2019. On December 17th 2018, a link to the reporting application (Bedbug Annual Report) for property owners will be provided through HPD's Homepage, under Quick Links, and on the Bedbugs landing page.

The reporting period covered remains the same (November 2017 through November 2018). After the 2018 filing period, property owners will be required to file a Bedbug Annual Report between December 1st and December 31st for subsequent years, beginning in December 2019.

For more information on bedbug reporting requirements, please visit:
https://www1.nyc.gov/site/hpd/owners/bedbugs.page

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Allergen Hazards

Allergen hazards can worsen allergies and trigger asthma attacks in people who are sensitive to them. Common indoor allergens or triggers include mold, mice, cockroaches, and rats. Effective

January 19th, 2019, under Local Law 55 of 2018, owners of multiple dwellings will be required to annually inspect units for mold, mice, cockroaches, and rats (indoor allergen hazards). Please note that this update only addresses requirements for mold.

Effective January 1st 2019, Local Law 61 of 2018 requires the use of two **different** licensed professionals (mold remediators and mold assessors) when a property owner of a building with 10 or more units is addressing mold over 10 square feet (including when addressing HPD "Class B" or "Class C" mold violations):

Mold assessors: The mold assessor is required to prepare a mold remediation plan outlining specific requirements including methods to be used to remediate mold. This plan must be submitted to the property owner. In addition, the mold assessor is required to prepare a post-remediation assessment. This assessment is conducted to ensure that a hired independent third party remediation contractor performed the remediation with methods consistent with the mold remediation plan.

Mold remediators: The mold remediator must develop a work plan that includes instructions and/or operating procedures that fulfill the requirements in the mold remediation plan developed by the mold assessor. The mold remediator is required to use the safe work practices outlined in Administrative Code §27-2017.9 of Local Law 55 including using plastic sheeting to cover the openings in the work area and using HEPA vacuum-shrouded tools to remove dust.

Both types of mold contractors must be licensed pursuant to the requirements of Article 32 of the New York State Labor Law and must perform work in accordance with the standards outlined in the Labor Law, in addition to the work practices outlined in Administrative Code §27-2017.9. Administrative Code §24-154 of Local Law 61 requires that the mold remediation work plan and the post-remediation assessment report be filed separately with the Department of Environmental Protection (DEP) by the respective mold contractor. **The contractors are required to file with DEP whether or not the work is done pursuant to an HPD violation.**

You can search for licensed mold contractors in your area by visiting:
https://www.labor.ny.gov/workerprotection/safetyhealth/mold/licensed-mold-contractors-search-tool.shtm

To download required notices and pamphlets, and to learn more about an owner's obligations to correct indoor allergen hazard, including pests, please visit: https://www1.nyc.gov/site/hpd/owners/indoor-allergen-hazards.page.

To learn more about the minimum work standards required for licensed mold contractors, please visit: https://law.justia.com/codes/new-york/2015/lab/article-32/.

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Stove Knob Covers

Effective December 5th, 2018, under Administrative Code §27-2046 of Local Law 117,, the owner of a multiple dwelling or a tenant-occupied co-op or condo must provide stove knob covers for gas-powered stoves where the owner knows or reasonably should know that a child under six years of age resides. In addition, the owner is required to provide tenants with an

annual notice. While owners are not required to submit the notices to HPD, they are required to maintain them as documented proof on the availability of stove knob covers, HPD may request that owners produced proof of distribution of annual notices.

To learn about additional requirements related to the provision of stove knob covers, please visit https://www1.nyc.gov/site/hpd/owners/stove-knob-covers.page.

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Certification of No Harassment Pilot Program

Local Law 1 of 2018 establishes a three-year pilot program which requires owners of certain buildings to obtain a Certification of No Harassment (CONH) before the Department of Buildings can approve new construction applications for an initial or reinstated permit to perform certain covered categories of work.

As set forth in the law, buildings with high levels of physical distress or ownership changes in certain targeted areas of the City will be placed on a building list, along with buildings meeting certain other criteria in the law. Property owners can now access the Program Pilot Building List, the CONH Pilot Program Application, and an extended list of covered categories of work by visiting the CONH landing page.

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To learn more about your responsibilities as a property owner, please visit: https://www1.nyc.gov/site/hpd/owners/homeowner.page

Guide to Finalizing your Mold Certification Documents

in compliance with
NYC Local Law 55 of 2018, NYC Local Law 61 of 2018
and Article 32 of the New York State Labor Law

FINALIZING YOUR MOLD CERTIFICATION DOCUMENTS

This guide outlines documents and actions required in accordance with Local Law 55 of 2018, Local Law 61 of 2018, and Article 32 of the of the New York State Labor Law.

Multiple Dwellings Under 10 Units and Private Dwellings

Violation Class	Remediation Work Must Be Completed By	Document Required	Additional Document(s) Required
A, B, and C	Owner/Managing Agent/Employee; **OR**	Certificate of Correction	**NONE; OR**
	Mold Remediation Contractor and Mold Assessment Contractor		Copy of Mold Assessment Contractor License; **AND**
			Copy Mold Remediation License OR the Mold Remediation Supervisor License

Multiple Dwellings with 10 Units or Above

Violation Class	Remediation Work Must Be Completed By	Document Required	Additional Document(s) Required
A **(less than 10 square feet of visible mold per room)**	Owner/Managing Agent/Employee; **OR**	Certificate of Correction	**NONE; OR**
	Mold Remediation Contractor and Mold Assessment Contractor		Copy of Mold Assessment Contractor License; **AND**
			Copy Mold Remediation License OR the Mold Remediation Supervisor License

Violation Class	Remediation Work Must Be Completed By	Document(s) Required
B and C **(greater than or equal to 10 square feet of visible mold per room)**	Mold Remediation Contractor and Mold Assessment Contractor	Certificate of Correction
		Copy of Mold Assessment Contractor License
		Copy Mold Remediation License OR the Mold Remediation Supervisor License
		Affidavit of Remediation
		Affidavit of Assessment
		Department of Environmental Protection's (DEP) filing receipts for required notices (to be provided to you by the mold remediator and the mold assessor).

Multiple Dwellings with 10 Units or Above

(For remediation projects with greater than or equal to 10 square feet of visible mold)

	Remediation Work Must Be Completed By	Action
No Violation	Mold Remediation Contractor and Mold Assessment Contractor	The mold remediator must file the Mold Remediation Work Plan and a Mold Pre-Remediation Notification Form with DEP. The mold assessor must file a Mold Post-Remediation Assessment Form and complete the Mold Post-Remediation Assessment Certification with DEP.