



**Written Testimony of Beth Mellen Harrison  
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**The Committee on Transportation and the Environment  
Council of the District of Columbia**

**Performance Oversight Hearing on the  
District Department of the Environment**

**February 18, 2015**

The Legal Aid Society of the District of Columbia<sup>1</sup> welcomes this opportunity to comment about the critical role that the District Department of the Environment (DDOE) plays in improving indoor air quality for families in the District.

The Air Quality Amendment Act of 2014 (Public Law No. 20-135)<sup>2</sup> provides critical new tools for tenants living with indoor mold in their units to force their landlords to abate the problem. The Act charges DDOE with issuing regulations to implement the Act by establishing licensing standards for mold assessors and remediators; setting a threshold level of indoor mold contamination that requires professional remediation; and establishing approved methods and standards for mold assessment and remediation. Finalizing these important regulations should be a top performance goal for DDOE during this fiscal year.

**The Air Quality Amendment Act of 2014 Contains Important New  
Protections for Tenants Living with Indoor Mold in Their Units.**

The Air Quality Amendment Act of 2014 empowers tenants living with indoor mold in their units to force their landlords to abate the problem. The Act requires landlords to inspect within seven days of receiving notice from a tenant of suspected indoor mold and to remediate any mold within 30 days. Indoor mold contamination – the presence of mold above a threshold established by DDOE – requires professional remediation. A professional assessment finding indoor mold contamination creates a rebuttable presumption in favor of a tenant that the landlord has violated the Housing Code, allowing the tenant to seek rent abatement, attorney's fees and

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<sup>1</sup> The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For more than 80 years, Legal Aid staff and volunteers have been making justice real for tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

<sup>2</sup> The Air Quality Amendment of Act of 2014 contains provisions relating to the Mayor’s comprehensive air pollution control program (Title I), demand response generating sources (Title II), and indoor mold in residential units (Title III). My testimony focuses exclusively on Title III’s provisions.

court costs, and – if the landlord acted in bad faith – an award of treble damages. Landlords also are required to disclose the presence of indoor mold contamination to prospective tenants. To ensure that mold assessment and remediation are effective, DDOE is tasked with developing professional standards and licensing for both.

These provisions in the Air Quality Amendment Act respond to a critical public health problem: far too many of the District’s residents are forced to live with indoor mold in their homes. This has been the collective experience of numerous attorneys and advocates – myself and my colleagues at Legal Aid included – who work with and represent low-income tenants fighting for repairs in their homes. Our clients too often are forced to accept poor housing conditions such as mold in order to maintain their tenancies, because lower-cost units with serious housing conditions are the only units they can afford.<sup>3</sup>

For these tenants, the presence of mold in their homes is not simply an inconvenience, it is a serious health risk. Exposure to mold has been linked to upper respiratory tract symptoms, coughing, wheezing, and an increased risk of developing asthma; for individuals already dealing with asthma, exposure to mold can exacerbates their symptoms.<sup>4</sup> In the District – where asthma rates are significantly higher than national averages and highest in low-income areas – the effects of mold growth can be expected to be even more serious.<sup>5</sup>

New legislation to address indoor mold in residential housing was needed because existing laws and regulations in the District simply failed to address the issue. Tenants were left with no government agency that would inspect, test, or cite for mold, and no private remedies to address the problem on their own. As a result, landlords could simply ignore mold growth or apply slipshod repairs that covered up the problem but did not eliminate it. The Air Quality Amendment Act fills this gap, by requiring landlords to abate indoor mold, establishing licensing and professional standards for mold assessment and remediation, and providing tenants with private enforcement remedies for landlords who do not comply.

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<sup>3</sup> This anecdotal experience is confirmed by hard data about the prevalence of indoor mold in residential homes in the District. Legal Aid found that 50 percent of all complaints filed in the Housing Conditions Calendar of D.C. Superior Court during a six-month period in 2013 listed mold/mildew as a problem in the tenant’s home.

<sup>4</sup> Individuals with mold allergies, with compromised immune systems, and with chronic lung illnesses can have more severe reactions. See Centers for Disease Control and Prevention, “Facts About Mold and Dampness,” at [http://www.cdc.gov/mold/dampness\\_facts.htm](http://www.cdc.gov/mold/dampness_facts.htm); see also World Health Organization, *WHO Guidelines for Indoor Air Quality: Dampness and Mold* (2009).

<sup>5</sup> It is estimated that asthma affects 9.6 percent of adults and 12.6 percent of children in the District of Columbia. See Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Environmental Hazards and Health Effects, *Asthma in the District of Columbia*, available at [http://www.cdc.gov/asthma/stateprofiles/Asthma\\_in\\_DC.pdf](http://www.cdc.gov/asthma/stateprofiles/Asthma_in_DC.pdf). Over 4,000 children and 8,000 adults in the District visit emergency rooms every year for symptoms related to asthma. See Impact DC, Children’s National Medical Center, *Asthma Surveillance in DC Emergency Departments*, available at <http://www.childrensnational.org/impactdc/>. These numbers are above national averages. See *id.*

## **DDOE Must Issue Implementing Regulations for the Air Quality Amendment Act of 2014 to Be Fully in Force and Effective.**

The Air Quality Amendment Act became effective on September 9, 2014, but many of its provisions depend on DDOE issuing implementing regulations. DDOE action is urgently needed in two areas in particular: (1) establishing a licensing system for mold assessors and remediators; and (2) establishing a threshold of mold exposure that will require professional remediation.

### **DDOE Should Act Immediately to License Mold Assessors and Remediators.**

To ensure safe, workmanlike abatement of mold, the Air Quality Amendment Act requires any person or business performing mold assessment or remediation in the District to be licensed and certified in accordance with requirements promulgated by DDOE. § 304(b).<sup>6</sup> In formulating these requirements, DDOE may look to certification programs and standards used by independent bodies. § 304(a). To date, DDOE has not issued either final or emergency rulemaking to establish a licensing system. As a result, any person or business currently performing mold assessment or remediation in the District is out of compliance with the law. This also creates challenges for tenants seeking to enforce their rights under the Act. Several Superior Court judges already have questioned whether a tenant can rely on a professional mold assessment by an unlicensed business, regardless of the qualifications of the technician or the certifications he holds.

DDOE can and should issue emergency regulations to fill this gap immediately. As Rusty Spearman's testimony notes, DDOE can rely on several nationally- and internationally-recognized certification standards already available.

### **DDOE Should Act Promptly to Establish a Threshold for Indoor Mold Contamination.**

To distinguish between moderate levels of mold exposure and higher levels requiring professional remediation, the Act requires DDOE to establish a threshold that will constitute "indoor mold contamination." Once this threshold is reached, various obligations are triggered:

- Once a property owner knows or has reason to know about the existence of indoor mold contamination, the owner must have the mold remediated by a licensed indoor mold remediation professional. § 305(c).
- DDOE also can require the owner to provide a remediation report from a licensed mold remediation professional to the tenant and to DDOE showing that indoor mold contamination was professionally remediated. § 303(b).
- A professional mold assessment finding indoor mold contamination creates a rebuttable presumption that the owner violated the Housing or Property Maintenance Code, as long as the owner received written or electronic notice of the assessment. § 306(a)(1).

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<sup>6</sup> All references are to sections of the Air Quality Amendment Act of 2014.

- A finding of indoor mold contamination allows a court to order the landlord to pay treble damages to a tenant if the tenant discovered the mold; a professional mold assessment found indoor mold contamination; the owner received notice of the assessment; the owner did not remediate the mold within 60 days; and the owner acted in bad faith. § 306(a)(2).

The above provisions – all of which depend on DDOE issuing regulations – are the heart of the statute. Without these provisions in full effect, tenants cannot utilize the comprehensive enforcement scheme established by the Act. Equally important, the lack of final regulations leaves landlords with uncertainty about the state of the law and their obligations – exactly the type of uncertainty the Act is designed to eliminate.

**DDOE Should Act Promptly to Issue All Other Regulations to Implement the Act.**

The Air Quality Amendment Act also charges DDOE with issuing regulations to establish scientific, objective methods for mold assessments, minimum performance standards and work practices for mold remediation, and guidelines for the removal of mold below the indoor mold contamination threshold. § 303(b). Along with the licensing requirements for contractors, these regulations will help to ensure safe, workmanlike abatement of mold. While the licensing and mold threshold regulations should have top priority, DDOE also should act promptly to complete these regulations and fully implement the Act.

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The Air Quality Amendment Act of 2014 is an important first step to combat the problem of indoor mold in residential housing in the District. By requiring landlords to abate indoor mold, establishing requirements for professional remediation of mold above a certain threshold, and providing tenants with private enforcement remedies, the Act puts the District at the forefront of jurisdictions across the country responding to this critical public health problem. It is therefore vital that DDOE take the necessary steps to put the Act into full force without delay.

Thank you for this opportunity to testify.