

**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 Department of Energy and the Environment
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The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to comment about the vital role that the Department of Energy and Environment (DOEE) plays in improving indoor air quality for families in the District.

The Air Quality Amendment Act of 2014 (Public Law No. 20-135)² provides critical new tools for tenants living with indoor mold to force their landlords to abate the problem. The Act charges DOEE 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 assessment and remediation; and establishing approved methods and standards for mold assessment and remediation.

Last year, I appeared before this Committee to urge DOEE to make finalizing these important regulations a top performance goal for the year 2015. I am here today to testify about DOEE's leadership in working to achieve this goal, by convening a diverse group of stakeholders to engage in a consensus-driven process, resulting in regulations that balance industry, tenant, and landlord interests while protecting public health and the environment.

DOEE Regulations Are Vital to the Success of the Air Quality Amendment Act of 2014 – and to Protecting Tenants Living with Indoor Mold.

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

¹ 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.

² 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.

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 DOEE – requires professional remediation. The Act also provides new private remedies for tenants to enforce these requirements, allowing a tenant to seek rent abatement, attorney’s fees and 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, DOEE 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.³

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.⁴ 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.⁵

DOEE Regulations Are Vital to Ensuring That the Air Quality Amendment Act of 2014 Will Be Fully in Force and Effective.

The Air Quality Amendment Act became effective on September 9, 2014, but many of its provisions depend on DOEE issuing implementing regulations. The Act charges DOEE with establishing: (1) a licensing system for mold assessors and remediators; (2) a threshold of mold

³ 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.

⁴ 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; see also World Health Organization, *WHO Guidelines for Indoor Air Quality: Dampness and Mold* (2009).

⁵ 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. 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.*

exposure that will require professional remediation; and (3) methods and standards for mold assessments and remediation, including guidelines for the removal of mold below the DOEE threshold.

The role of DOEE regulations in each of these areas is absolutely vital. The Act's requirement that any person or business performing mold assessment or remediation in the District be licensed and certified will ensure safe, workmanlike abatement of mold. Establishing a threshold that will constitute "indoor mold contamination," requiring professional remediation, will help both landlords and tenants distinguish between moderate and severe levels of mold exposure. Once this threshold is reached, the owner must have the mold remediated by a licensed indoor mold remediation professional, and DOEE can require the owner to provide proof to both DOEE and the tenant that professional remediation occurred. The finding of indoor mold contamination above the threshold also triggers specific enforcement remedies for the tenant, by creating a rebuttable presumption that the owner has violated the Housing Code and allowing a court to award reimbursement of any mold assessment costs paid by the tenant, rent abatement, attorney's fees, court costs, and – if bad faith by the landlord is established – treble damages.

The above provisions – all of which depend on DOEE issuing final regulations – are the heart of the statute. Without these provisions in full effect, tenants cannot utilize the comprehensive enforcement scheme established by the Act. None of these aspects of the statute can come into full force and effect until DOEE's regulations are finalized.

DOEE's Proposed Regulations Are the Product of a Thoughtful, Consensus-Driven Process That Sought Input From a Wide Variety of Stakeholders.

We understand that DOEE will report today that the regulations to implement the Air Quality Amendment Act are nearing final review and soon should be published as final rulemaking. We urge those involved to continue to keep the pressure on to finalize these important regulations. While we have not seen the final version, we can say with confidence that they are the product of a careful and thoughtful vetting by representatives for industry, landlords, and tenants.

DOEE issued its first set of draft regulations in a Notice of Proposed Rulemaking in April 2015. Aware of the importance of the task before it, DOEE immediately sought to convene a diverse working group to review and comment on the proposed regulations. The group included an array of mold and laboratory professionals and certification organizations with a wealth of scientific knowledge and practical experience; several tenant advocates with experience working with tenants with indoor mold and seeking to enforce tenants' rights; and landlord representatives with experience remediating indoor mold, with and without the help of licensed professionals.⁶ I had the good fortune to participate in this working group to help represent the interests of tenants across the District.

⁶ Representatives from the Apartment and Office Building Association, the Office of the Tenant Advocate, the Legal Society of the District of Columbia, Healthy Buildings, the National Organization of

The working group was both thorough and efficient, carefully considering all aspects of the law and the implementing regulations through a consensus-driven process. DOEE staff were critical in guiding our group through each aspect of the regulations, keeping us on task while also ensuring a complete vetting of all of our representatives' perspectives and concerns. We met on four separate occasions during May and June 2015.

Even on seemingly-contentious issues, our group ultimately reached consensus. A fitting example is establishing the threshold for indoor mold contamination requiring professional assessment and remediation. After considering scientific literature, standards established by both the Environmental Protection Agency and the Occupational Safety and Health Administration, standards established by other states, and the perspectives of all of our working group participants, we coalesced around a threshold of 10 square feet of indoor mold. This standard reflects a careful balancing of a diverse array of interests and yet will ensure meaningful relief for tenants living with indoor mold. It also is emblematic of DOEE's own message to our group throughout the process: that the agency would seek to balance industry, landlord, and tenant interests while ensuring public health and environmental safety as a paramount goal.

DOEE's consideration of these important regulations was, of course, not confined to the input it received through this working group. A number of individuals and organizations – including Legal Aid, the Children's Law Center, Legal Counsel for the Elderly, and the Neighborhood Legal Services Program – submitted written comments in response to the initial Notice of Proposed Rulemaking. DOEE prepared comprehensive written responses to all submitted comments and incorporated many of them into a Second Notice of Proposed Rulemaking, published in September 2015. DOEE also convened a public roundtable in June 2015 to seek further public input.

We applaud the time and resources invested by so many staff members at DOEE to study the underlying issues and work to get this right, and in particular the commitment of Karim Marshall and Wesley Rosenfeld to this work. DOEE responded carefully and thoughtfully to all stakeholder suggestions throughout this rulemaking process. Importantly, DOEE completed this work in a relatively expeditious manner, considering the complexity of the issues presented. While we may disagree on some finer points, we are confident that the final regulations will accomplish the ultimate goal of the statute: improving health outcomes for residential tenants affected by indoor mold.

DOEE'S Ongoing Work Through the Healthy Homes Program Helps to Protect Tenants From Indoor Mold in Their Homes.

Finally, I want to share our support for DOEE's Healthy Homes program, and in particular the important work DOEE is doing to protect tenants from indoor mold in their homes. Every year in the District, thousands of children and adults suffer from serious health problems caused or worsened by environmental health hazards – including hazards in the home such as mold, lead paint, and insect and rodent infestation. DOEE launched the D.C. Partnership for

Remediators and Mold Inspectors (NORMI), Aerobiology Laboratory Associates, Inc., and Compliance Environmental International, Inc. participated.

Healthy Homes to identify and abate these indoor environmental health hazards. The program includes a comprehensive home environmental assessment, case management and health/social services supports, and the creation of a roadmap and timeline for addressing all of the problems identified.

Legal Aid has worked with Healthy Homes in several individual cases. We have found DOEE inspectors to be professional, careful, and thorough in their work. The agency's staff go above and beyond to work with both landlords and tenants to address indoor mold issues and resolve them. During the past year, Legal Aid met with DOEE staff to establish a referral system when we encounter tenants with mold in their homes who qualify for services under Healthy Homes. This relationship is of mutual benefit; DOEE also has been able to reach out to us when they encounter tenants who need legal representation, for example when landlords retaliate against tenants who report mold in their homes.

In one case that Legal Aid handled during the past year, our client, a mother with young children with asthma, complained of ongoing water leaks and indoor mold growth in her home. DOEE's Healthy Homes Program became involved. DOEE conducted a thorough inspection of the property, cited various housing conditions, and made recommendations on how the landlord could abate the problems. Based on the trial testimony of the DOEE inspector, as well as a Legal Aid investigator and our client, the judge abated the tenant's rent and awarded her substantial financial relief for the terrible conditions she had lived in – conditions that had negatively impacted her health and the health of her young children. DOEE's support was vital in ensuring this just outcome.

While we are here today for an oversight hearing, it is budget season as well. We urge the Council to ensure ongoing funding for DOEE, including increased funding where needed to support growing needs, and specifically for two purposes – first, the resources needed to implement and enforce the Air Quality Amendment Act, and second, ongoing support of DOEE's Healthy Homes Program,. Through both of these programs, DOEE is performing vital work that places the District at the forefront of jurisdictions across the country responding to the critical public health problem of indoor mold.

Thank you for this opportunity to testify.