

STATE OF NEW YORK

699

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL, JAFFEE, QUART -- Multi-Sponsored by
-- M. of A. CAHILL, PERRY -- read once and referred to the Committee
on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
establishing mold assessment and remediation requirements

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a
2 new article 32 to read as follows:

ARTICLE 32

MOLD ASSESSMENT AND REMEDIATION REQUIREMENTS

Section 32-0101. Definitions.

32-0102. Credentials; general conditions.

32-0103. Exceptions and exemptions.

32-0104. Conflict of interest and disclosure requirement.

32-0105. Mold assessment technician; licensing requirements.

32-0106. Mold remediation contractor; licensing requirements.

32-0107. Minimum work practices and procedures for mold assess-
ment.

32-0108. Minimum work practices and procedures for mold remedi-
ation.

32-0109. Post-remediation assessment and clearance.

32-0110. Duty of property owner.

32-0111. Compliance; inspections and investigations.

32-0112. Compliance; reprimand, suspension, revocations,
probation.

32-0113. Compliance; administrative penalty.

§ 32-0101. Definitions.

1. The following words and terms within this article shall have the
following meanings, unless the context clearly indicates otherwise.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD04072-01-9

1 a. "Assessor" means a person who conducts mold assessment as defined
2 in this section and who is licensed under this article as a mold assess-
3 ment technician or mold assessment consultant.

4 b. "Commercial mold remediation" means the removal, cleaning, sanitiz-
5 ing, demolition, or other treatment, including preventive activities, of
6 mold or mold-contaminated matter that was not purposely grown at a
7 location. Preventive activities include those intended to prevent future
8 mold contamination of a remediated area, including applying biocides or
9 anti-microbial compounds.

10 c. "Containment" means a component or enclosure designed or intended
11 to control the release of mold or mold-containing dust or materials into
12 surrounding areas in the building. The broad category of containment
13 includes such sub-categories as walk-in containment, surface containment
14 (such as plastic sheeting), and containment devices (such as wall-mount-
15 ed glove boxes).

16 d. "Containment area" means an area that has been enclosed to control
17 the release of mold or mold-containing dust or materials into surround-
18 ing areas.

19 e. "Credential" means a license, registration, or accreditation issued
20 under this article.

21 f. "Employee" means an individual who is paid a salary, wage, or
22 remuneration by another person or entity for services performed and over
23 whom the person or entity exerts supervision or control as to the place,
24 time, and manner of the individual's work.

25 g. "Facility" means any institutional, commercial, public, govern-
26 mental, industrial or residential building.

27 h. "Managing agent" means a company or individual that manages a resi-
28 dential or commercial building for an owner.

29 i. "Mold assessment report" means a document prepared by a licensed
30 mold assessment technician for a client that describes any observations
31 made, measurement taken, and locations and analytical results of samples
32 taken by an assessment consultant or by an assessment technician during
33 a mold assessment. An assessment report can be either a stand-alone
34 document or a part of a mold management plan or mold remediation proto-
35 col.

36 j. "Mold management plan" means a document prepared by a licensed mold
37 assessment consultant for a client that provides guidance on how to
38 prevent and control indoor mold growth at a location.

39 k. "Mold remediation protocol" or "mold remediation work analysis"
40 means a document, prepared by a licensed mold assessment technician for
41 a client, that specifies the estimated quantities and locations of mate-
42 rials to be remediated and the proposed remediation methods and clear-
43 ance criteria for each type of remediation in each type of area for a
44 mold remediation project.

45 l. "Mold remediation work plan" means a document, prepared by a
46 licensed mold remediation contractor that provides specific instructions
47 and/or standard operating procedures for how a mold remediation project
48 will be performed.

49 m. "Mold remediation worker" means an employee of the mold remediation
50 contractor who engages in any mold-related activity restricted only
51 under supervision of a licensed mold remediation contractor.

52 n. "Remediator" means a person who conducts mold remediation as
53 defined in this section and who is credentialed under this article as a
54 mold remediation contractor.

55 o. "Supervise" means to direct and exercise control over the activ-
56 ities of a person by being physically present at the job site or, if not

1 physically present, accessible by telephone within ten minutes and able
2 to be at the site within one hour of being contacted.

3 p. "Work analysis" means a mold remediation protocol.

4 q. "Work plan" means a mold remediation work plan.

5 § 32-0102. Credentials; general conditions.

6 1. A person must be licensed in compliance with this article to engage
7 in mold assessment or mold remediation unless specifically exempted
8 under section 32-0103 of this article.

9 2. Age requirement. Each individual applying to be licensed under this
10 article must be at least eighteen years old at the time of application.

11 3. Certification. An applicant for the license shall submit proof or
12 certification by the American Council for Accredited Certification or
13 any other nationally recognized, third-party accredited certifying body
14 that operates independently of training organizations and industry trade
15 associations. An applicant for license renewal shall submit proof of
16 continued certification by the American Council for Accredited Certif-
17 ication or any other nationally recognized, third-party accredited
18 certifying body that operates independently of training organizations
19 and industry trade associations.

20 4. Department examination. An applicant for an initial license must
21 pass the department licensing examination in that area of licensure with
22 a score of at least seventy percent correct before applying for the
23 license. All applicants must pass the department licensing examination
24 within six months of earning certification pursuant to subdivision three
25 of this section.

26 a. Re-examination. An individual is permitted to take two re-examina-
27 tions after failing an initial examination. An individual who fails both
28 re-examinations must submit a new application for the state examination.

29 b. Scheduling and registration. Annually, the department shall publish
30 a schedule of examination dates and locations. Registration for examina-
31 tion date and location must be submitted by mailing, faxing, or e-mail-
32 ing a registration form to the department and must be received by the
33 department no later than five working days before the examination date.
34 Information on the examination schedule and assistance with registration
35 is available by contacting the department. Entrance into the examination
36 site will be allowed only upon presentation of a valid photo identifica-
37 tion.

38 c. A fee of twenty-five dollars is required for any examination or
39 re-examination. The department must receive the required fees no later
40 than five working days before the examination.

41 5. Applications. Each application for approval for licensing shall be
42 provided by the department. Each application for approval must provide
43 all required information. An applicant for an initial license must
44 submit the complete application to the department within six months of
45 obtaining certification pursuant to subdivision three of this section,
46 or must successfully pass the department licensing examination before
47 submitting a new initial application.

48 6. Term and expiration. a. All licenses issued on or after January
49 first, two thousand twenty, shall be valid for two years and expire on
50 the second anniversary of the effective date of the license.

51 b. Fees commensurate with a two-year license must be included with any
52 application for a license that will expire on the second anniversary of
53 its effective date of the license.

54 c. A license holder is in violation of this article if the holder
55 practices with lapsed qualifications.

1 7. Condition of issuance. No identification (ID) card or approval
2 issued under this article shall be sold, assigned, or transferred. ID
3 cards issued by the department must be present at the worksite any time
4 an individual is engaged in mold-related activities. The department
5 retains the right to confiscate and revoke any ID card or approval that
6 has been altered.

7 § 32-0103. Exceptions and exemptions.

8 1. Exceptions. This article shall not apply to:

9 a. the following activities when not conducted for the purpose of mold
10 assessment or mold remediation:

11 (1) routine cleaning;

12 (2) the diagnosis, repair, cleaning, or replacement of plumbing, heat-
13 ing, ventilation, air conditioning, electrical, or air duct systems or
14 appliances;

15 (3) commercial or residential real estate inspections; and

16 (4) the incidental discovery or emergency containment of potential
17 mold contamination during the conduct or performance of services listed
18 in this subdivision. For purposes of this subdivision, an emergency
19 exists if a delay in mold remediation services in response to a water
20 damage occurrence would increase mold contamination;

21 b. the repair, replacement, or cleaning of construction materials
22 during the building phase of the construction of a structure;

23 c. the standard performance of custodial activities for, preventive
24 maintenance of, and the routine assessment of property owned or operated
25 by a governmental entity; or

26 d. a pest control inspection conducted by a person regulated under
27 article thirty-three of this chapter.

28 2. Minimum area exemption. A person is not required to be licensed
29 under this article to perform mold remediation in an area in which the
30 mold contamination for the project affects a total surface area of less
31 than twenty-five contiguous square feet.

32 3. Residential property exemption. An owner, or a managing agent or
33 employee of an owner, is not required to be licensed under this article
34 to perform mold assessment or mold remediation on a residential property
35 which is owned by that person, and which has fewer than six residential
36 dwelling units. This exemption applies regardless of the total surface
37 area within the residential property that is affected by mold growth.
38 This exemption does not apply to a managing agent or employee who
39 engages in the business of performing mold assessment or mold remedi-
40 ation for the public.

41 4. Facility exemption. An owner or tenant, or a managing agent or
42 employee of an owner or tenant, is not required to be licensed under
43 this article to perform mold assessment or mold remediation on property
44 owned or leased by the owner or tenant. This exemption does not apply:

45 a. if the managing agent or employee engages in the business of
46 performing mold assessment or mold remediation for the public;

47 b. if the mold remediation is performed in an area in which the mold
48 contamination affects a total surface area of twenty-five contiguous
49 square feet or more; or

50 c. to a person exempt under subdivision three of this section.

51 5. Construction and improvement exemption. A person is not required to
52 be licensed under this article to perform mold assessment or mold reme-
53 diation in a one-family or two-family dwelling that the person
54 constructed or improved if the person performs the mold assessment or
55 mold remediation at the same time the person performs the construction
56 or improvement or at the same time the person performs repair work on

1 the construction or improvement. This exemption applies regardless of
2 the total surface area that is affected by mold growth. This exemption
3 does not apply if the person engages in the business of performing mold
4 assessment or mold remediation for the public. For purposes of this
5 subdivision, "improve" means "to build, construct, or erect a new build-
6 ing or structure or a new portion of a building or structure that is
7 attached to an existing building or structure" and "improvement" means
8 "a building or structure, or a portion of a building or structure, that
9 was built, constructed, or erected as an attachment to an existing
10 building or structure after the construction or erection of the existing
11 building or structure."

12 6. Supervised employee exemption. An employee of a license holder is
13 not required to be licensed under this article to perform mold assess-
14 ment or mold remediation while supervised by the license holder.

15 7. Exceptions for licensed professionals. All persons engaged in mold-
16 related activities must be licensed as outlined in this article, except
17 that those professionals currently licensed by the state in another
18 field (including, but not limited to, medicine, architecture, or engi-
19 neering) who provide to a mold licensee only consultation related to
20 that other field are not required to be separately licensed under this
21 article. In such a case, the responsibility for the project or activity
22 remains with the mold licensee.

23 8. Loss of exemption. A person who is performing mold remediation
24 under the licensing exemptions of subdivision two or four of this
25 section and identifies additional mold such that the total mold contam-
26 ination affects a total surface area of twenty-five contiguous square
27 feet or more shall:

28 a. immediately cease all remediation work and implement emergency
29 containment if necessary; and

30 b. advise the person requesting the remediation that the exemption
31 under subdivision two or four of this section has been lost and that any
32 additional mold remediation and post-remediation assessment in the area
33 must be done by a person licensed or registered under this article.

34 9. Fee exemption for department employees. Employees of the department
35 who engage in mold-related activity as a condition of their employment
36 shall be exempt from examination fees and credentialing fees under this
37 article. Fee-exempted credentials shall be restricted for use only in
38 required departmental duties, and the credentials will indicate the
39 restriction. An employee who is no longer required to possess a creden-
40 tial as a condition of employment shall immediately return that creden-
41 tial to the department for closure. An individual who terminates employ-
42 ment with the department shall immediately return all unexpired
43 credentials to the department for closure. The department may impose an
44 administrative penalty or take other disciplinary action against any
45 employee or former employee who uses a fee-exempt credential to engage
46 in a mold-related activity that is not a required departmental duty.

47 § 32-0104. Conflict of interest and disclosure requirement.

48 1. Conflict of interest. a. A licensee shall not perform both mold
49 assessment and mold remediation on the same project.

50 b. A person shall not own an interest in an entity that performs mold
51 assessment services and an entity that performs mold remediation
52 services on the same project.

53 2. Disclosure requirement. At the time of application for licensing,
54 an applying company that is not solely owned, shall disclose to the
55 department the name, address, and occupation of each person that has an
56 ownership interest of ten percent or more in the company. A licensee

1 shall report to the department within ten days any change related to a
2 person who has an ownership interest of ten percent or more including
3 additions to or deletions from any list of such persons previously
4 supplied to the department and any changes in the names, addresses, or
5 occupations of any persons on such a list.

6 3. This section does not apply to a license holder employed by a
7 school district working on a project for that school district.

8 § 32-0105. Mold assessment technician; licensing requirements.

9 1. Licensing requirement. Unless exempted under section 32-0103 of
10 this article, an individual must be licensed as a mold assessment tech-
11 nician to perform activities listed under subdivision two of this
12 section.

13 2. Scope. An individual licensed under this section is authorized to
14 determine the location and extent of mold or suspected mold present in a
15 facility. A mold assessment technician is licensed to:

16 a. record visual observations and take on-site measurements, including
17 temperature, humidity, and moisture levels, during an initial or post-
18 remediation mold assessment;

19 b. collect samples for mold analysis during an initial mold assess-
20 ment;

21 c. prepare a mold assessment report; and

22 d. collect samples during a post-remediation mold assessment.

23 3. Qualifications. In addition to the requirements for all applicants
24 listed in section 32-0102 of this article, an applicant must be a high
25 school graduate or have obtained a general education development (GED)
26 certificate.

27 4. Fees. The fees for a mold assessment technician license shall be
28 two hundred dollars.

29 5. Applications and renewals. Applications for licenses shall be
30 submitted as required by subdivision five of section 32-0102 of this
31 article. An applicant shall include the following information with the
32 application:

33 a. if the application is for an initial license:

34 (1) a copy of a high school diploma or GED certificate;

35 (2) a copy of certification as described in subdivision three of
36 section 32-0102 of this article; and

37 (3) proof of successfully passing the state licensing examination with
38 a score of at least seventy percent correct; or

39 b. if the application is for renewal of a license, a copy of certif-
40 ication pursuant to subdivision three of section 32-0102 of this arti-
41 cle.

42 6. Responsibilities. A licensed mold assessment technician shall:

43 a. perform only activities allowed under subdivision two of this
44 section;

45 b. comply with mold sampling protocols accepted as industry standards;

46 c. utilize the services of a laboratory that is licensed by the
47 department to provide analysis of mold samples; and

48 d. provide to the client a mold assessment report following an initial
49 (pre-remediation) mold assessment.

50 § 32-0106. Mold remediation contractor; licensing requirements.

51 1. Licensing requirements. Unless exempted under section 32-0103 of
52 this article, an individual must be licensed as a mold remediation
53 contractor to perform activities listed under subdivision two of this
54 section.

55 2. Scope. An individual licensed under this section may perform mold
56 remediation and supervise registered mold remediation workers performing

1 mold remediation. In addition, a licensed mold remediation contractor is
2 licensed to provide mold remediation services including:

3 a. preparing a mold remediation work plan providing instructions for
4 the remediation efforts to be performed for a mold remediation project;
5 and

6 b. conducting and interpreting the results of activities recommended
7 in a work plan developed under paragraph a of this subdivision.

8 3. Qualifications. In addition to the requirements for all applicants
9 listed in section 32-0102 of this article, an applicant must meet at
10 least one of the following education and/or experience requirements:

11 a. a bachelor's degree from an accredited college or university with a
12 major in a natural or physical science, engineering, architecture,
13 building construction, or building sciences and at least one year of
14 experience either in an allied field or as a general contractor in
15 building construction;

16 b. at least sixty college credit hours with a grade of C or better in
17 the natural sciences, physical sciences, environmental sciences, build-
18 ing sciences, or a field related to any of those sciences, and at least
19 three years of experience in an allied field or as a general contractor
20 in building construction;

21 c. a high school diploma or general education development (GED)
22 certificate, plus at least five years of experience in an allied field
23 or as a general contractor in building construction; or

24 d. certification as an industrial hygienist, a professional engineer,
25 a professional registered sanitarian, a certified safety professional,
26 or a registered architect, with at least one year of experience either
27 in an allied field or as a general contractor in building construction.

28 4. Fees. The fee for a mold remediation contractor license is five
29 hundred dollars.

30 5. Applications and renewals. Applications shall be submitted as
31 required by subdivision five of section 32-0102 of this article. An
32 applicant shall include the following in the application package:

33 a. if the application is for an initial license:

34 (1) verifiable evidence that the applicant meets at least one of the
35 qualifications under paragraph c of subdivision three of this section;

36 (2) a copy of a certification as described in subdivision three of
37 section 32-0102 of this article;

38 (3) proof of successfully passing the state licensing examination with
39 a score of at least seventy percent correct; or

40 b. if the application is for renewal of a license, a copy of a certif-
41 ication as described in subdivision three of section 32-0102 of this
42 article.

43 6. Responsibilities. The mold remediation contractor shall be respon-
44 sible for:

45 a. supervising mold remediation workers as defined in section 32-0101
46 of this article;

47 b. accurately interpreting field notes, drawings, and reports relating
48 to mold assessments;

49 c. advising clients about options for mold remediation;

50 d. complying with standards for preparing mold remediation work plans;

51 e. providing to a client a mold remediation work plan for the project
52 before the mold remediation preparation work begins;

53 f. inquiring of the client whether any known or suspected hazardous
54 materials, including lead-based paint and asbestos, are present in the
55 project area;

1 g. signing and dating each mold remediation work plan that he or she
2 prepares on the cover page. The cover page shall also include his or her
3 license number and license expiration date. He or she must also initial
4 the work plan on every page that addresses the scope of work and on all
5 drawings related to the remediation work;

6 h. ensuring that all individuals are provided with, tested for and
7 trained in the correct use of personal protection equipment required
8 under subdivision three of section 32-0108 of this article;

9 i. providing to the property owner a completed certificate of mold
10 damage remediation not later than the tenth day after the remediation
11 project is complete; and

12 j. assuring that the certificate of mold damage remediation must
13 include a statement by a licensed mold assessment technician (not the
14 licensed mold remediation contractor) that based on visual, procedural,
15 and analytical evaluation, the mold contamination identified for the
16 project has been remediated as outlined in the mold remediation protocol
17 and the underlying cause of the mold has been remediated so that such
18 technician is reasonably certain that the mold will not return from the
19 same cause.

20 § 32-0107. Minimum work practices and procedures for mold assessment.

21 1. Scope. These general work practices are minimum requirements and do
22 not constitute complete or sufficient specifications for mold assess-
23 ment.

24 2. Purpose. The purpose of a mold assessment is to determine the
25 sources, locations and extent of mold growth in a building, to determine
26 the condition or conditions that caused the mold growth, and to enable
27 the assessment technician to prepare a mold remediation protocol.

28 3. Mold remediation protocol. An assessment technician shall prepare a
29 mold remediation protocol that is specific to each remediation project
30 and provide the protocol to the client before the remediation begins.
31 The mold remediation protocol must specify:

32 a. the rooms or areas where the work will be performed;

33 b. the estimated quantities of materials to be cleaned or removed;

34 c. the methods to be used for each type of remediation in each type of
35 area;

36 d. the personal protection equipment (PPE) to be used by remediators.
37 A minimum of an N-95 respirator is recommended during mold-related
38 activities when mold growth could or would be disturbed. Using profes-
39 sional judgment, a technician may specify additional or more protective
40 PPE if he or she determines that it is warranted;

41 e. the proposed types of containment, as that term is defined in para-
42 graph c of subdivision one of section 32-0101 of this article and as
43 described in subdivision five of this section, to be used during the
44 project in each type of area; and

45 f. the proposed clearance procedures and criteria, as described in
46 this section, for each type of remediation in each type of area.

47 4. Building occupants. A mold assessment consultant shall consider
48 whether to recommend to a client that, before remediation begins, the
49 client should inform building occupants of mold-related activities that
50 will disturb or will have the potential to disturb areas of mold contam-
51 ination.

52 5. Containment requirements. Containment must be specified in a mold
53 remediation protocol when the mold contamination affects a total surface
54 area of twenty-five contiguous square feet or more for the project.
55 Containment is not required if only persons who are licensed under this
56 article occupy the building in which the remediation takes place at any

1 time during the remediation project. The containment specified in the
2 remediation protocol must prevent the spread of mold to areas of the
3 building outside the containment under normal conditions of use. If
4 walk-in containment is used, supply and return air vents must be
5 blocked, and air pressure within the walk-in containment must be lower
6 than the pressure in building areas adjacent to the containment.

7 6. Disinfectants, biocides and antimicrobial coatings. An assessment
8 technician who indicates in a remediation protocol that a disinfectant,
9 biocide, or antimicrobial coating will be used on a mold remediation
10 project shall indicate a specific product or brand only if it is regis-
11 tered by the United States Environmental Protection Agency for the
12 intended use and if the use is consistent with the manufacturer's label-
13 ing instructions. A decision by an assessment consultant to use such
14 products must take into account the potential for occupant sensitivities
15 and possible adverse reactions to chemicals that have the potential to
16 be off-gassed from surfaces coated with such products.

17 7. Clearance procedures and criteria. In the remediation protocol for
18 the project, the assessment technician shall specify:

19 a. at least one nationally recognized analytical method for use within
20 each remediated area in order to determine whether the mold contam-
21 ination identified for the project has been remediated as outlined in
22 the remediation protocol;

23 b. the criteria to be used for evaluating analytical results to deter-
24 mine whether the remediation project passes clearance;

25 c. that post-remediation assessment shall be conducted while walk-in
26 containment is in place, if walk-in containment is specified for the
27 project; and

28 d. the procedures to be used in determining whether the underlying
29 cause of the mold identified for the project has been remediated so that
30 such technician is reasonably certain that the mold will not return from
31 the same cause.

32 § 32-0108. Minimum work practices and procedures for mold remediation.

33 1. Scope. These general work practices are minimum requirements and do
34 not constitute complete or sufficient specifications for a mold remedi-
35 ation project. More detailed requirements developed by an assessment
36 technician for a particular project shall take precedence over the
37 provisions of this section.

38 2. Remediation work plan. A remediation contractor shall prepare a
39 mold remediation work plan that is specific to each project, fulfills
40 all the requirements of the mold remediation protocol and provides
41 specific instructions and/or standard operating procedures for how a
42 mold remediation project will be performed. The remediation contractor
43 shall provide the mold remediation work plan to the client before site
44 preparation work begins.

45 3. Personal protective equipment (PPE) requirements. If an assessment
46 technician specifies in the mold remediation protocol that PPE is
47 required for the project, the remediation contractor shall provide the
48 specified PPE to all employees who engage in remediation activities and
49 who will, or are anticipated to, disturb or remove mold contamination,
50 when the mold affects a total surface area for the project of 25 contig-
51 uous feet or more. The recommended minimum PPE is an N-95 respirator.
52 Each employee who is provided PPE must receive training on the appropri-
53 ate use and care of the provided PPE.

54 4. Containment requirements. The containment specified in the remedi-
55 ation protocol must be used on a mold remediation project when the mold
56 affects a total surface area of twenty-five contiguous square feet or

1 more for the project. Containment is not required if only persons who
2 are licensed under this article occupy the building in which the remedi-
3 ation takes place at any time during the remediation project. The
4 containment, when constructed as described in the remediation work plan
5 and under normal conditions of use, must prevent the spread of mold to
6 areas outside the containment. If walk-in containment is used, supply
7 and return air vents must be blocked, and air pressure within the walk-
8 in containment must be lower than the pressure in building areas adja-
9 cent to the containment.

10 5. Notice signs. Signs advising that a mold remediation project is in
11 progress shall be displayed at all accessible entrances to remediation
12 areas. The signs shall be at least eight inches by ten inches in size
13 and shall bear the words "NOTICE: Mold remediation project in progress"
14 in black on a yellow background. The text of the signs must be legible
15 from a distance of ten feet.

16 6. Removal of containment. No person shall remove or dismantle any
17 walk-in containment structures or materials from a project site prior to
18 receipt by the licensed mold remediation contractor overseeing the
19 project of a written notice from a licensed mold assessment technician
20 that the project has achieved clearance as described under section
21 32-0109 of this article.

22 7. Disinfectants, biocides and antimicrobial coatings. Disinfectants,
23 biocides and antimicrobial coatings may be used only if their use is
24 specified in a mold remediation protocol, if they are registered by the
25 United States Environmental Protection Agency for the intended use and
26 if the use is consistent with the manufacturer's labeling instructions.
27 If a protocol specifies the use of such a product but does not specify
28 the brand or type of product, a remediation contractor may select the
29 brand or type of product to be used, subject to the other provisions of
30 this subdivision. A decision by an assessment technician or remediation
31 contractor to use such a product must take into account the potential
32 for occupant sensitivities and possible adverse reactions to chemicals
33 that have the potential to be off-gassed from surfaces coated with the
34 product.

35 § 32-0109. Post-remediation assessment and clearance.

36 1. Clearance criteria. For a remediation project to achieve clearance,
37 a licensed mold assessment technician shall conduct a post-remediation
38 assessment using visual, procedural, and analytical methods. If walk-in
39 containment is used during remediation, the post-remediation assessment
40 shall be conducted while the walk-in containment is in place. The post-
41 remediation assessment shall determine whether:

42 a. the work area is free from all visible mold and wood rot; and
43 b. all work has been completed in compliance with the remediation
44 protocol and remediation work plan and meets clearance criteria speci-
45 fied in the protocol.

46 2. Underlying cause of mold. Post-remediation assessment shall, to the
47 extent feasible, determine that the underlying cause of the mold has
48 been remediated so that it is reasonably certain that the mold will not
49 return from that remediated cause.

50 3. Analytical methods. a. The assessment technician shall perform a
51 visual, procedural, and analytical evaluation in each remediated area in
52 order to determine whether the mold contamination identified for the
53 project has been remediated as outlined in the remediation protocol.

54 b. The technician shall use only the analytical methods and the crite-
55 ria for evaluating analytical results that were specified in the remedi-
56 ation protocol, unless circumstances beyond the control of the techni-

1 cian and the remediation contractor necessitate alternative analytical
2 methods or criteria. The consultant shall provide to the client written
3 documentation of the need for any deviation from the remediation proto-
4 col and the alternative analytical methods and criteria selected, and
5 shall obtain approval from the client for their use, before proceeding
6 with the post-remediation assessment.

7 c. Where visual inspection reveals deficiencies sufficient to fail
8 clearance, analytical methods need not be used.

9 4. Passed clearance report. An assessment technician who determines
10 that remediation has been successful shall issue a written passed clear-
11 ance report to the client at the conclusion of each mold remediation
12 project. The report must include the following:

13 a. a description of relevant worksite observations;

14 b. the type and location of all measurements made and samples
15 collected at the worksite;

16 c. all data obtained at the worksite, including temperature, humidity,
17 and material moisture readings;

18 d. the results of analytical evaluation of the samples collected at
19 the worksite;

20 e. copies of all photographs the consultant took; and

21 f. a clear statement that the project has passed clearance.

22 5. Final status report. If the mold assessment consultant determines
23 that remediation has not been successful and ceases to be involved with
24 the project before the project passes clearance, the consultant shall
25 issue a written final status report to the client and to the remediation
26 contractor or company performing the project. The status report must
27 include the items listed in paragraphs a, b, c, d, and e of subdivision
28 four of this section and any conclusions that the consultant has drawn.

29 § 32-0110. Duty of property owner.

30 If a property owner sells the property, the property owner shall
31 provide to the buyer a copy of each certificate of mold damage remedi-
32 ation issued for the property under this section during the five years
33 preceding the date the property owner sells the property.

34 § 32-0111. Compliance; inspections and investigations.

35 1. The department may inspect or investigate the business practices of
36 any persons involved with mold-related activity for compliance with this
37 article.

38 2. A department representative, upon presenting a department identifi-
39 cation card, shall have the right to enter at all reasonable times any
40 area or environment, including but not limited to any containment area,
41 building, construction site, storage or office area, or vehicle to
42 review records, to question any person, or to locate, identify, or
43 assess areas of mold growth for the purpose of inspection and investi-
44 gation for compliance with this article.

45 3. A department representative conducting official duties is not
46 required to notify in advance or seek permission to conduct inspections
47 or investigations. It is a violation for any person to interfere with,
48 deny, or delay an inspection or investigation conducted by a department
49 representative. A department representative shall not be impeded or
50 refused entry in the course of official duties by reason of any regula-
51 tory or contractual specification.

52 4. A person who believes that any provision under this title has been
53 violated may file a written complaint with the department. The complaint
54 form is available on the department's website. The department shall
55 conduct an investigation, including for an anonymous complaint if the
56 complainant provides sufficient information.

1 Department representatives shall investigate complaints by the public
2 regarding violations of the provisions of this title.

3 § 32-0112. Compliance; reprimand, suspension, revocations, probation.

4 The department may issue an administrative penalty as described in
5 section 32-0113 of this article, deny an application, suspend, suspend
6 with probationary terms, or revoke a license of a person who violates
7 any provision under this title. In addition, the department may issue an
8 administrative penalty, deny an application, suspend, suspend with
9 probationary terms, or revoke a license of a person who:

10 1. fails to comply with this article;

11 2. has fraudulently or deceptively obtained or attempted to obtain a
12 credential, ID card or approval, including engaging in misconduct or
13 dishonesty during the state licensing examination, such as cheating or
14 having another person take or attempt to take the examination for that
15 person;

16 3. duplicates or allows another person to duplicate a credential, ID
17 card or approval;

18 4. uses a credential issued to another person or allows any other
19 person to use a credential, ID card or approval not issued to that other
20 person;

21 5. falsifies records for mold-related activities that the department
22 requires the person to create, submit, or maintain; or

23 6. is convicted of a felony or misdemeanor arising from mold-related
24 activity.

25 § 32-0113. Compliance; administrative penalty.

26 1. If a person violates this article, the department may assess an
27 administrative penalty.

28 2. The penalty shall not exceed three thousand dollars per violation.
29 The department may reduce or enhance penalties as warranted.

30 § 2. This act shall take effect immediately.