

# CIHC – December 7, 2015

- ▶ Mold Licensure: What has occurred in other states (The Good, The Bad, and the Ugly (Mostly the ugly)

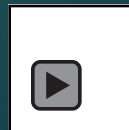
- ▶ The Good



- ▶ The Bad



- ▶ The Ugly



# States with Laws

- ▶ Various states have laws with regard to mold.
- ▶ Concentrating primarily on three states
  - ▶ The Republic of Texas
  - ▶ New Hampshire
  - ▶ Virginia

# The Mold Law associated with the Republic of Texas (The Lone Star State)

- ▶ Texas Administrative Code Rule §295.303
  - ▶ Not this Lonestar!



- ▶ This Lone Star



# Being unfamiliar with the laws in Texas, what is the difference between a consultant and a technician

- ▶ A technician can perform some duties such as collecting air samples, monitor remediation projects, etc. but only under the direction of a licensed mold consultant. Although Texas has provisions for mold technicians to be licensed, there has been little need for use of a licensed mold technician due to the limited duties a technician is permitted to perform and the state does not require third-party monitoring of remediation projects.

# Technician v. Consultant


- ▶ The consultant has complete authority to inspect, write specifications, etc. The consultant and owner control the project. The technician basically serves as a field inspector for the consultant. Very few mold experts opted for the technician route. Clients are not interested in hiring technicians.

# Are clients requiring/specifying the license (consultant/technician) as a project qualification?

- ▶ Not directly, although compliance with local, state, and federal regulations is expected
- ▶ Texas mold rules require licensing of these individuals including the mold remediator, so yes clients are requesting this.

# How much does the license cost?

- ▶ \$610.00 every two years in Texas
- ▶ Technician = \$200, mold consultant = \$600, mold assessment company = \$1000, mold remediation contractor = \$600. The license is a two year renewal.




What is the process for obtaining the license (i.e. classes, qualifications, testimonials, tests, other certifications such as CIH, CSP, etc.)

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) - (4) of this section;





What is the process for obtaining the license (i.e. classes, qualifications, testimonials, tests, other certifications such as CIH, CSP, etc. - More)

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) proof of successfully passing the state licensing examination with a score of at least 70% correct; and

(D) a copy of a certificate of training as described in §295.320(c) of this title (relating to Training: Required Mold Training Courses); or

What is the process for obtaining the license (i.e. classes, qualifications, testimonials, tests, other certifications such as CIH, CSP, etc. – More, this will be repeating theme)

(2) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt

under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

# Which agency in the state administers the license requirement?

- ▶ Texas Department of State Health Services

# Are there CEU requirements?

- ▶ An 8-hour refresher course every two years

# What is required for the renewal process?

- ▶ Complete 8-hour refresher course, a renewal application with required fees, certificate and photo from refresher course, and certificate of insurance.

# Has the license been useful for you professionally?

- ▶ Somewhat
- ▶ Certainly, since it is a state requirement for conducting mold assessments.

# Has the license been effective to assure project quality?

- ▶ Yes, although the Texas Mold Rules In the past, there were a number of unqualified people performing mold assessments (including drywall contractors, in a separate discussion with professional from Florida, they have issues with carpet cleaners)

# Has the license been effective to assure project quality? (Part II)

- ▶ The license does not ensure there will be quality workmanship. It probably does help to require individuals and companies to become licensed. At least those individuals/companies are required to take the extra steps for education, testing, etc.




# Has the license been effective to assure that personnel are qualified to work on projects?

- ▶ Yes, for mold remediation projects. However, there are no provisions to ensure mold assessment surveys, not part of a remediation project, are performed by qualified or licensed consultants.



Is this license necessary if the project lead person is a CIH?

▶ Yes




Has the licensure programs increased the quality of consultants in the state who work on mold projects or has it reduced the quality?

- - ▶ No. Many qualified consultants chose not to pursue licensure but at the same time, eliminated unqualified personnel. This is not typically an issue unless a local emergency (e.g., hurricane, etc.) occurs, which creates a demand for rush water intrusion and mold assessments. However, in the past, the state put a stay on licensing requirements for a specified time period during such emergencies


Has the licensure programs increased the quality of consultants in the state who work on mold projects or has it reduced the quality? (Part II)

- ▶ Most of the consultants these days are CIHs, CSPs, or PEs, so most of these individuals are already qualified to a large degree. Non-credentialed individuals do not last long in this business.




# Has this license eliminated the "mold inspectors" with dubious credentials or are they still operating in your state?

- ▶ Somewhat. However, by the time the Texas mold rules were promulgated, the demand for mold inspections had already decreased and many of those with dubious credentials were no longer doing mold inspections.



Has the amount of \$\$ you can charge for mold inspections increased or decreased since implementation of the licensing?

- ▶ Neither. The amount I can charge for mold inspections stayed the same.



Has the amount of \$\$ you can charge for mold inspections increased or decreased since implementation of the licensing?

- ▶ The regulation made it more expensive to conduct mold assessments. Commercial and high end residential has accepted the cost to do these projects. The low end residential customers are pretty much non-existent because of the cost of a mold project.

# What would you change in the law in hindsight?


- ▶ There appears to be little enforcement of the law, especially for mold assessment surveys, such as initial inspections prior to remediation since notification to the state is only required prior to a remediation project. More enforcement is needed to ensure compliance with the law.





# What would you change in the law in hindsight?

- ▶ I would have exempted CIHs, environmental engineers, and probably CSPs. PEs could be exempted who have environmental experience, but this begins to get a little messy.



Have there been any unintended consequences related to the implementation of the law?

▶ No.



Have there been any unintended benefits related to the implementation of the law?

▶ No.

# Exemptions to the law – TAC RULE §295.303

## (a) Exceptions. This subchapter does not apply to:

- ▶ (1) the following activities when not conducted for the purpose of mold assessment or mold remediation:
  - ▶ (A) routine cleaning;
  - ▶ (B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;
  - ▶ (C) commercial or residential real estate inspections; and
  - ▶ (D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination;

# Exemptions – continued (get comfortable, it's a long list)

- ▶ (2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;
- ▶ (3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or
- ▶ (4) a pest control inspection conducted by a person regulated under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control).

# Exemptions – continued (remember I said get comfortable)

- ▶ (b) Minimum area exemption. A person is not required to be licensed under this subchapter to perform mold remediation in an area in which the mold contamination for the project affects a total surface area of less than 25 contiguous square feet.

# Exemptions – continued (get comfortable, it's a long list, I did not lie)

- ▶ (c) Residential property exemption. An owner, or a managing agent or employee of an owner, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on a residential property which is owned by that person, and which has fewer than 10 residential dwelling units. This exemption applies regardless of the total surface area within the residential property that is affected by mold growth. This exemption does not apply to a managing agent or employee who engages in the business of performing mold assessment or mold remediation for the public.

# Exemptions – continued (I was not exaggerating)

- ▶ (d) Facility exemption. An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this subchapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:
  - ▶ (1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;
  - ▶ (2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or
  - ▶ (3) to a person exempt under subsection (c) of this section.



# Exemptions – continued (not done yet)

- ▶ (e) Construction and improvement exemption. A person is not required to be licensed under this subchapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement.

# Exemptions – continued (not done yet, this is the second half paragraph of

(e))

▶ This exemption applies regardless of the total surface area that is affected by mold growth. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public. For purposes of this subsection, "improve" means "to build, construct, or erect a new building or structure or a new portion of a building or structure that is attached to an existing building or structure" and "improvement" means "a building or structure, or a portion of a building or structure, that was built, constructed, or erected as an attachment to an existing building or structure after the construction or erection of the existing building or structure."

# Exemptions – continued (stay awake, we're getting to the end)

- ▶ (f) Supervised employee exemption. An employee of a license holder is not required to be licensed under this subchapter to perform mold assessment or mold remediation while supervised by the license holder. An employee performing mold remediation must be registered as provided under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements).

# Exemptions – continued (use tooth picks like a cartoon if you must)

- ▶ (g) Exceptions for licensed professionals. All persons engaged in mold-related activities must be licensed, registered or accredited as outlined in this subchapter, except that those professionals currently licensed by the state in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a mold licensee only consultation related to that other field are not required to be separately licensed under this subchapter. In such a case, the responsibility for the project or activity remains with the mold licensee.

Exemptions – continued (use tooth picks like a cartoon if you must, this is the second half of paragraph (g))

- ▶ A person is not required to be licensed under this subchapter if engaging only in the performance of regulated activities of a licensed insurance adjuster pursuant to Article 21.07-4 of the Texas Insurance Code or in the performance of regulated activities of a licensed public insurance adjuster pursuant to Article 21.07-5 of the Texas Insurance Code, including the investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

# Exemptions – continued (hang in there almost there)

- ▶ (h) Loss of exemption. A person who is performing mold remediation under the licensing exemptions of subsection (b) or (d) of this section and identifies additional mold such that the total mold contamination affects a total surface area of 25 contiguous square feet or more shall:
  - ▶ (1) immediately cease all remediation work and implement emergency containment if necessary; and
  - ▶ (2) advise the person requesting the remediation that the exemption under subsection (b) or (d) of this section has been lost and that any additional mold remediation and post-remediation assessment in the area must be done by a person licensed or registered under this subchapter.

Exemptions – continued (On the screen is the second to last slide of the exemptions – now get ready for the Carnac the Magnificent concept, now there is a BIG ROAR from the crowd)

- ▶ (i) Fee exemption for department employees. Employees of the department who engage in mold-related activity as a condition of their employment shall be exempt from examination fees and credentialing fees under this subchapter. Fee-exempted credentials shall be restricted for use only in required departmental duties, and the credentials will indicate the restriction.

Exemptions – continued (On the screen is the last of the exemptions – so now after the BIG ROAR from the crowd, it is followed by a dumb joke or a ridiculous threat-nine slides-13 slides)

- ▶ An employee who is no longer required to possess a credential as a condition of employment shall immediately return that credential to the Mold Licensing Program for closure. An individual who terminates employment with the department shall immediately return all unexpired credentials to the Mold Licensing Program for closure. The department may impose an administrative penalty or take other disciplinary action against any employee or former employee who uses a fee-exempt credential to engage in a mold-related activity that is not a required departmental duty.



# Now for the bad jokes or ridiculous threats

- ▶ The most famous “May the fleas of a 1000 camels infest your armpits”
- ▶ Others include, but not limited to:
- ▶ Out of a catalog
  - ▶ How does Michael Jackson pick his nose?
- ▶ Looks like the Kansas City Royals are gonna suck again this year (Oops not this year).
- ▶ Boil the hell out of it
  - ▶ How do you make holy water?
- ▶ Chicken Teriyaki
  - ▶ What is the name of the last surviving Kamikaze fighter pilot?
- ▶ A third-world dictator
  - ▶ What do you get when you cross a third-world potato with a...ummm...next envelope.

# The New Hampshire Law/Bill

<http://www.gencourt.state.nh.us/legislation/2015/SB0125.html>

- ▶ 208:1 New Section; Mold Assessment; Certification Required. Amend RSA 310-A by inserting after section 189-a the following new section:
  
- ▶ (a) "Mold assessment" means:
  - ▶ (1) An inspection, investigation, or survey of a dwelling or other structure to provide information to the owner regarding presence, identification, or evaluation of mold;
  
  - ▶ (2) The development of a mold remediation specification or protocol; or
  
  - ▶ (3) The collection of a mold sample for analysis.

# The New Hampshire Law/Bill

- ▶ (b) "Third party certification" means a certification approved by a national nonprofit organization whose programs are accredited by ANSI (American National Standards Institute), CESB (Council of Engineering and Scientific Specialty Boards), NCCA (National Commission for Certifying Agencies), or any other accrediting body that operates in compliance with the ISO (International Organization for Standardization) standard for accrediting organizations. Certifications are credentials of industry knowledge granted to individuals by a certification body for a limited time.

# The New Hampshire Law/Bill

- ▶ II. No person shall perform residential mold assessment services for remuneration unless that person possesses a valid national third party certification for mold assessment. The individual shall not own the designation; the designation shall be owned by the certifying body. Certification holders shall meet certain requirements set by third party certification organizations in order to be recertified.
- ▶ III. The board of home inspectors shall inform the public through its website that persons engaged in residential mold assessment shall be certified under paragraph II and shall provide links to the websites of the certifying organizations.

The New Hampshire Law/Bill (that's it, no where near as big as Texas, but they claim that everything is bigger is Texas)

- ▶ IV. Any professional hired for remuneration by a homeowner, in which the primary work contracted for is not mold assessment, shall be exempt from this section.
- ▶ V. Any person who offers mold assessment services for a fee but does not comply with this chapter shall be guilty of a violation if a natural person or guilty of a class B misdemeanor if any other person.
- ▶ 208:2 Effective Date. This act shall take effect January 1, 2016.

# Virginia -

[http://www.dpor.virginia.gov/Boards/ALHI/Mold\\_FAQ/](http://www.dpor.virginia.gov/Boards/ALHI/Mold_FAQ/)

- ▶ **Mold Remediation & Inspection De-Regulation FAQs**
- ▶ **What does the de-regulation mean?**
- ▶ As of July 1, 2012, no state credentials are required for mold remediation and inspection activities.

Virginia -

[http://www.dpor.virginia.gov/Boards/ALHI/Mold\\_FAQ/](http://www.dpor.virginia.gov/Boards/ALHI/Mold_FAQ/) (but then they decided – Never Mind (ala Emily Litella))

- ▶ Mold remediation and inspection reverted to being an un-regulated profession—as it was before July 1, 2011, when the licensure program established by the 2009 General Assembly first went into effect.
- ▶ The regulatory board name returned to the Board for Asbestos, Lead, and Home Inspectors.

# Emily Litella (Gilda Radner)





# Virginia - Continued

- ▶ **Why did Virginia decide to de-regulate after only one year?**
- ▶ After a comprehensive review across state government, the McDonnell Commission on Government Reform and Restructuring recommended de-regulation of the mold remediation and inspection profession.
- ▶ Unlike asbestos and lead abatement, the Environmental Protection Agency (EPA) does not regulate mold remediation and inspection. In light of the absence of national oversight and standards, the General Assembly determined Virginia's regulatory program is unnecessary and endorsed the Commission's de-regulation recommendation.

# Virginia – Continued II

- ▶ **Who will monitor mold remediators and inspectors now?**
- ▶ Numerous private industry associations offer voluntary certification for mold remediators and inspectors. Use the Internet to search "mold remediation certification" and "mold inspection certification" and learn more about private certification standards and organizations.

# Virginia continued - Law III

- ▶ **I think I have a mold problem. Who should I hire?**
- ▶ The EPA offers an information guide for homeowners and renters on how to clean up residential mold problems, and how to prevent mold growth. Visit <http://www.epa.gov/mold/moldguide.html>.
- ▶ If the moldy area is less than about 10 square feet, in most cases, the EPA advises you can handle the job yourself by following these guidelines: <http://www.epa.gov/mold/cleanupguidelines.html>.

# Primary Result

- ▶ It appears that in states with mold laws, other trades (not professions, drywall people in Texas, carpet people in Florida) have passed the test to water down the true expertise that is available by using true professionals

# The End – Any Questions?

