

MOLD ASSESSORS AND REMEDIATORS
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 78
(Effective November 1, 2017)

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78.1. Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 1958.

78.10. Definitions. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Accredited training program--A training program that has been accredited by the department to provide training for persons seeking licensure or registration under this chapter.
- (2) Act--The Texas Occupations Code, Chapter 1958, concerning mold assessment and remediation.
- (3) Allied field--Mold assessment, mold remediation, and any field whose principles and practices are applicable to mold assessment or mold remediation, including asbestos abatement, lead abatement, industrial hygiene, building sciences, public health, and environmental remediation.
- (4) Assessor--A person who conducts mold assessment as defined in this section and who is licensed under this chapter as a mold assessment technician, mold assessment consultant, or mold assessment company.
- (5) Building sciences--The field of study covering the design, construction, management, and performance of building systems, including structures, enclosures, electrical and mechanical systems, environmental systems (such as temperature and moisture control), safety systems (such as fire suppression and alarms), lighting, acoustics, and diagnosis and correction of problems with building systems.
- (6) Certificate of Mold Damage Remediation--A certificate adopted by the Texas Department of Insurance, commonly referred to as Certificate of Mold Damage Remediation and Form MDR-1.
- (7) Commission--The Texas Commission of Licensing and Regulation.
- (8) Consumer Mold Information Sheet--A document prepared and made available by the department that describes the persons who are required to be licensed under this chapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint.
- (9) Containment--A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad category of containment includes such sub-categories as walk-in containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).
- (10) Containment area--An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.
- (11) Contiguous--In close proximity; neighboring.
- (12) Contiguous square feet--See "Total surface area of contiguous square feet."
- (13) Credential--A license, registration, or accreditation issued under this chapter.
- (14) Department--The Texas Department of Licensing and Regulation.

- (15) Employee--An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual's work. A contractor or subcontractor who is performing work under a contractual agreement with a person is not an employee of the person unless the agreement specifies otherwise.
- (16) Executive director--The executive director of the department.
- (17) Facility--Any institutional, commercial, public, governmental, industrial or residential building.
- (18) Indoor air--Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.
- (19) Indoor mold--Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.
- (20) License--Any license issued under this chapter. The term "license" does not include a registration, accreditation, or approval issued under this chapter.
- (21) Mold--Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.
- (22) Managing agent--A company or individual that manages a residential or commercial building for an owner.
- (23) Mold analysis--The examination of a sample collected during a mold assessment for the purpose of:
 - (A) determining the amount or presence of, or identifying the genus or species of, any living or dead mold or related parts (including spores and hyphae) present in the sample; or
 - (B) growing or attempting to grow fungi for the purposes of subparagraph (A); or
 - (C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.
- (24) Mold analysis laboratory--A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.
- (25) Mold assessment--Activity that involves:
 - (A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold; or
 - (B) the development of a mold management plan or mold remediation protocol; or
 - (C) the collection or analysis of a mold sample.
- (26) Mold assessment report--A document prepared by a licensed mold assessment consultant or

licensed mold assessment technician for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

- (27) Mold management plan--A document prepared by a licensed mold assessment consultant for a client that provides guidance on how to prevent and control indoor mold growth at a location.
- (28) Mold-related activities--The performance of mold assessment, mold remediation or any other related activities.
- (29) Mold remediation--The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.
- (30) Mold remediation protocol (mold remediation work analysis) --A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.
- (31) Mold remediation work plan--A document, prepared by a licensed mold remediation contractor that provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed.
- (32) Office--A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.
- (33) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.
- (34) Project--All activities that involve mold-related activities in a building or designated area of a building for which a specific start-date and a specific stop-date is provided that covers the mold remediation.
- (35) Remediator--A person who performs mold remediation as defined in this section and who is credentialed under this chapter as a mold remediation worker, mold remediation contractor, or mold remediation company.
- (36) Residential dwelling unit--A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.
- (37) Residential property--A property containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

- (A) lodgings (such as hotels and motels) that rent units on a transient basis;
 - (B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and
 - (C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).
- (38) Responsible person--An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.
 - (39) Routine cleaning--Cleaning that is done on a regular basis and in a regular course of procedures.
 - (40) Start-date--The date on which a mold remediation begins. Preparation work is not considered mold remediation.
 - (41) Stop-date--The date following the day on which final clearance for a mold remediation project is achieved.
 - (42) Supervise--To direct and exercise control over the activities of a person.
 - (43) Survey--An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for analysis.
 - (44) Total surface area of contiguous square feet--The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.
 - (45) Training hours--Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.
 - (46) Visible--Exposed to view; capable of being seen.
 - (47) Work analysis--A mold remediation protocol.
 - (48) Work plan--A mold remediation work plan.
 - (49) Working days--Monday through Friday, including holidays that fall on those days.

78.20. Credential Required. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing or registration requirement. A person must be licensed or registered in compliance with this chapter to engage in mold assessment or mold remediation unless specifically exempted under the Act or §78.30.
- (b) Accreditation requirement. A person must be accredited as a mold training provider in compliance with this chapter to offer mold training for fulfillment of training requirements for licensing under this chapter.

78.21. Applications. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Unless otherwise indicated, an applicant must submit the following:
 - (1) a completed application on a department-approved form;
 - (2) the fee required under §78.80; and
 - (3) proof that the applicant meets all requirements for obtaining the credential being sought.
- (b) Materials submitted in the application process become the property of the department and are not returnable.
- (c) Except as provided by §78.56(c), all credentials are valid for two years and expire on the second anniversary of the effective date.

78.22. Renewals. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) A person seeking to renew a license, registration, or accreditation shall submit a renewal application before the credential expires.
- (b) Each person is responsible for renewing the credential before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the credential shall not excuse failure to apply for renewal or late renewal.
- (c) An applicant for renewal of a mold assessment technician, mold assessment consultant, or mold remediation contractor license or for renewal of a mold remediation worker registration must successfully complete a required continuing education course as specified in §78.25 before applying for renewal. The applicant must complete the continuing education course within the two-year term of the credential preceding the expiration date of the credential.
- (d) To renew a credential, a person must:
 - (1) submit a complete renewal application on a department-approved form or in a manner specified by the department;
 - (2) if renewing an individual license or registration:
 - (A) successfully pass a criminal history background check;
 - (B) complete continuing education training as specified in §78.25; and
 - (C) comply with the continuing education audit process described under §78.25 as applicable;
 - (3) demonstrate compliance with the requirement for insurance coverage under §78.40, if applicable;
 - (4) demonstrate compliance with all other applicable requirements under this chapter for the credential being renewed; and
 - (5) pay the renewal fee required under §78.80.
- (e) Credentials must be renewed every two years.

- (f) A temporary mold remediation worker registration issued under §78.56(c) may not be renewed.
- (g) A person shall not perform any mold-related activity with an expired credential.

78.24. Licensing Examination. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) An applicant for a mold assessment technician, mold assessment consultant, or mold remediation contractor license must pass the state licensing examination before the license will be issued.
- (b) To qualify to take the examination, the individual applicant must submit a completed license application for review and determination of licensing examination eligibility.
- (c) The department or the department's designee will notify the applicant who meets all applicable requirements for the license sought and who qualifies to take the examination.
- (d) Annually, the department or its designee shall publish a schedule of examination dates and locations.
- (e) The department or its designee shall administer or arrange for the administration of the examination.
- (f) The department or its designee will notify the applicant in writing regarding the applicant's examination scores or results.

78.25. Continuing Education. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) This section applies to licensed mold assessment technicians, licensed mold assessment consultants, licensed mold remediation contractors, and registered mold remediation workers.
- (b) An applicant for renewal of a license listed under subsection (a) must successfully complete a continuing education course provided by an accredited mold training provider in the subject area for which the renewal is sought.
- (c) An applicant for renewal of a registration listed under subsection (a) must successfully complete a mold remediation worker continuing education course provided by an accredited mold training provider or by a licensed mold remediation contractor or licensed mold remediation company.
- (d) All applicants must complete the required continuing education course during the immediately preceding two-year term of the license or registration before renewal.
- (e) Attendance and completion of continuing education courses of at least the following number of hours are required during each renewal period:
 - (1) mold assessment technician license--8.
 - (2) mold assessment consultant license--8.
 - (3) mold remediation contractor license--8.
 - (4) mold remediation worker registration--4.
- (f) An applicant for renewal of a mold assessment technician license may fulfill the continuing education training requirement by successfully completing an approved mold assessment technician or mold assessment consultant continuing education course provided by an accredited mold training provider.

- (g) Reporting of continuing education credit. The department shall employ an audit system for continuing education reporting.
 - (1) The licensee or registrant shall maintain a record of continuing education credits earned and proof of completion of the continuing education credits.
 - (2) The certificates or other documentation are not to be forwarded to the department at the time of renewal unless the person has been selected for audit.
- (h) Audits. The audit process shall be as follows:
 - (1) The department shall select for audit a random sample of licensees and registrants for each renewal month. Each person selected will be notified of the continuing education audit when they receive their renewal documentation.
 - (2) If selected for an audit, the person shall submit copies of certificates or other documentation satisfactory to the department, verifying the person's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.
 - (3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the person.
 - (4) A person who is selected for continuing education audit may renew through the online renewal process. However, the license or registration will not be considered renewed until required continuing education documents are received, accepted and approved by the department.
- (i) Licenses and registrations will not be renewed until continuing education requirements have been met.

78.30. Exceptions and Exemptions. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) For purposes of Texas Occupations Code §1958.002(b)(1)(D), regarding the excepted emergency containment of mold contamination, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.
- (b) For purposes of Texas Occupations Code §1958.102(d) and (e), regarding certain residential property, the exemptions apply regardless of the total surface area within the subject property that is affected by mold growth. The following terms used in Texas Occupations Code §1958.102(d) shall have the meaning given:
 - (1) "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
 - (2) "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.
- (c) Licensees performing 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 must do so in accordance with the Act and this chapter unless otherwise indicated.
- (d) A person who is performing mold remediation under the licensing exemptions of §1958.102(a) or (c) of the Act, in which the mold contamination affects a total surface area of less than 25 contiguous square feet, and who 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 §1958.102(a) or (c) of the Act has been lost, and that any additional mold remediation and post-remediation assessment in the area must be performed by a person licensed or registered under this chapter.
- (e) Employees of a licensee performing mold remediation under the supervision of a licensee must be registered as provided under §78.56.
- (f) Professional exemptions.
- (1) All persons engaged in mold-related activities must be licensed or registered under this chapter, 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 licensed or registered person only consultation related to that other field, are not required to be separately licensed under this chapter. In such a case, the responsibility for the project or activity remains with the person licensed or registered under this chapter.
 - (2) A person is not required to be licensed or registered under this chapter if engaging only in the performance of regulated activities of a licensed insurance adjuster pursuant to Chapter 4101 of the Texas Insurance Code or in the performance of regulated activities of a licensed public insurance adjuster pursuant to Chapter 4102 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.
- (g) The review of mold remediation bids or proposals and making recommendations thereto is not mold assessment or mold remediation.
- (h) The code of ethics, conflict of interest, and disclosure requirements in the Act and these rules apply to credentialed persons engaging in the activities described in this section.

78.40. Insurance Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Unless otherwise indicated, persons licensed under this chapter are required to obtain commercial general liability insurance in the amount of not less than \$1 million per occurrence and to maintain the coverage for the term of the license.
- (1) Governmental entities that are self-insured are not required to purchase insurance under this chapter.
 - (2) A non-governmental entity (business entity or individual) may be self-insured if it submits to the department for approval an affidavit signed by an authorized official of the entity or by the individual stating that it has a net worth of at least \$1 million. A current financial statement indicating a net worth of at least \$1 million must accompany the affidavit. A new affidavit and current financial statement must be submitted with each renewal application.
 - (3) An individual required to have insurance must obtain individual coverage unless covered under the policy of the individual's employer or employed by a governmental entity or a person approved by the department to be self-insured.
- (b) Insurance policies required under this section must be currently in force and must be written by:

- (1) an insurance company authorized to do business in Texas; or
 - (2) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Chapter 981 (relating to Surplus Lines Insurance); or
 - (3) a Texas registered risk retention group; or
 - (4) a Texas registered purchasing group.
- (c) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Texas Department of Licensing and Regulation as a certificate holder.
- (d) An applicant for a license or license renewal must provide proof of insurance in one of the following forms:
- (1) a copy of the required current certificate of insurance; or
 - (2) if claiming to be self-insured, a statement that it is a governmental entity, or, if a non-governmental entity, the affidavit and current financial statement described under subsection (a); or
 - (3) proof that the licensee by whom the applicant is employed has the required insurance.
- (e) The commission or the executive director may impose an administrative penalty or take other disciplinary action against any person who fails to have the current insurance required under this section.
- (1) If a policy is canceled or materially changed, the licensee shall notify the department in writing not later than 30 calendar days before the change or cancellation effective date. A licensed company may file a single notification for the company and its licensed employees.
 - (2) If a policy expires or is canceled or materially changed, the licensee shall cease engaging in mold-related activities. Before resuming such activities, the licensee must either:
 - (A) provide to the department a certificate of the renewal or replacement policy; or
 - (B) submit to the department the affidavit and current financial statement described under subsection (a) and receive departmental approval to be self-insured.
 - (3) If an individual licensee ceases to be covered under an employer's insurance, the individual must obtain replacement coverage either individually or through a new employer. The individual must submit the documentation required under subsection (d) to the department before engaging in mold-related activities.
- (f) Applicants for a registration or renewal of a registration issued under this chapter shall comply with subsection (d)(3), if applicable.

78.50. Mold Assessment Technician License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirement. An individual must be licensed as a mold assessment technician to perform activities listed under subsection (b), except that an individual licensed under §78.52 is not required to be separately licensed under this section.
- (b) Scope. An individual licensed under this section is authorized to determine the location and extent of mold

or suspected mold present in a facility. A mold assessment technician is licensed to:

- (1) record visual observations and take on-site measurements, including temperature, humidity, and moisture levels, during an initial or post-remediation mold assessment;
 - (2) collect samples for mold analysis during an initial mold assessment;
 - (3) prepare a mold assessment report; and
 - (4) as directed by an on-site assessment consultant, collect samples during a post-remediation mold assessment.
- (c) **Qualifications.** An applicant for a mold assessment technician license must be a high school graduate or have obtained a General Educational Development (GED) certificate.
- (d) **Eligibility for licensing.** To obtain a mold assessment technician license, a person must:
- (1) be at least 18 years old at the time of application;
 - (2) successfully pass a criminal history background check;
 - (3) comply with subsection (c);
 - (4) comply with the requirement for insurance coverage under §78.40;
 - (5) successfully complete a mold training course as described in §78.68(b) or (c);
 - (6) pass the required licensing examination prescribed under §78.24; and
 - (7) pay the fee required under §78.80.
- (e) **Applications.** Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
- (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
 - (2) a copy of the applicant's high school diploma or GED certificate; and
 - (3) a copy of a course completion certificate for the applicable training course offered by a department-accredited training provider, as described in §78.68(b) or (c). An applicant for a mold assessment technician license may fulfill the training requirement for the license by successfully completing an approved mold assessment technician or mold assessment consultant training course offered by an accredited mold training provider.
- (f) **Responsibilities.** In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, a licensed mold assessment technician shall:
- (1) perform only activities allowed under subsection (b);
 - (2) comply with mold sampling protocols accepted as industry standards, as presented in training course materials or as required by his/her employer;

- (3) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples; and
- (4) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment, if the technician is not acting as an employee of a licensed mold assessment consultant or company.

78.52. Mold Assessment Consultant License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirements. An individual must be licensed as a mold assessment consultant to perform activities listed under subsection (b). A licensed mold assessment consultant who employs more than one individual required to be licensed under this section or under §78.50, must be separately licensed as a mold assessment company under §78.54.
- (b) Scope. An individual licensed under this section is also licensed to perform all activities of a mold assessment technician listed in §78.50(b). In addition, a licensed mold assessment consultant is licensed to provide mold assessment services including:
 - (1) plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;
 - (2) conduct activities recommended in a plan developed under paragraph (1) and describe and interpret the results of those activities;
 - (3) determine locations at which a licensed mold assessment technician will record observations, take measurements, or collect samples;
 - (4) prepare a mold assessment report, including the observations made, measurements taken, locations of samples collected, analysis results, and analysis and interpretation of results of samples taken by the consultant or by a licensed mold assessment technician during the mold assessment;
 - (5) develop a mold management plan for a building, including recommendations for periodic surveillance, response actions, and prevention and control of mold growth;
 - (6) prepare a mold remediation protocol, including the evaluation and selection of appropriate methods, personal protective equipment (PPE), engineering controls, project layout, post-remediation clearance evaluation methods and criteria, and preparation of plans and specifications;
 - (7) evaluate a mold remediation project to certify that mold contamination identified for the remediation project has been remediated as outlined in a mold remediation protocol;
 - (8) evaluate a mold remediation project to certify 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 cause; and
 - (9) complete appropriate sections of a Certificate of Mold Damage Remediation as specified under §78.150(b).
- (c) Qualifications. An applicant for a mold assessment consultant license must meet at least one of the following education and/or experience requirements:
 - (1) a bachelor's or graduate degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences, and at

- least one year of experience in an allied field; or
- (2) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field; or
 - (3) a high school diploma or a GED certificate and at least five years of experience in an allied field; or
 - (4) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience in an allied field.
- (d) Eligibility for licensing. To obtain a mold assessment consultant license, a person must:
- (1) be at least 18 years old at the time of application;
 - (2) successfully pass a criminal history background check;
 - (3) comply with subsection (c);
 - (4) comply with the requirement for insurance coverage under §78.40;
 - (5) successfully complete a mold training course as described in §78.68(c);
 - (6) pass the required licensing examination prescribed under §78.24; and
 - (7) pay the fee required under §78.80.
- (e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
- (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
 - (2) verifiable evidence that the applicant meets the requirement in subsection (c); and
 - (3) a copy of a course completion certificate for the applicable training course offered by a department-accredited training provider, as described in §78.68(c).
- (f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, a licensed mold assessment consultant shall:
- (1) provide adequate consultation to the client to diminish or eliminate hazards or potential hazards to occupants caused by the presence of mold growth;
 - (2) provide, in accordance with a client's instructions, professional services concerning surveys, building conditions that have or might have contributed to mold growth, proper building operations and maintenance to prevent mold growth, and compliance with work practices and standards;
 - (3) comply with mold sampling protocols as presented in training course materials or as required by his/her employer;

- (4) inquire of the client whether any hazardous materials, including lead-based paint and asbestos, are present in the project area;
- (5) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;
- (6) sign and date each mold assessment report and each mold management plan that the mold assessment consultant prepares and include that consultant's license number and expiration date on each report and each plan;
- (7) sign and date each mold remediation protocol on the cover page, including the mold assessment consultant's license number and expiration date. The consultant must also initial the protocol on every page that addresses the scope of work and on all drawings related to the remediation work;
- (8) review and approve changes to any protocol by signing or initialing according to paragraph (7);
- (9) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment. If the consultant includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;
- (10) provide to the client a mold remediation protocol at least one calendar day before a mold remediation project begins;
- (11) ensure that all employees who will perform mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protective equipment appropriate for the activities to be performed;
- (12) ensure that each person performing mold assessment activities is licensed in accordance with this chapter, as applicable;
- (13) ensure that the training and license of each employee that is required to be licensed under this chapter are current;
- (14) if the mold assessment consultant performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §78.140(e); and
- (15) provide a passed clearance report to the client as specified under §78.140(d) and complete applicable sections of a Certificate of Mold Damage Remediation as specified under §78.150(b).

78.54. Mold Assessment Company License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirements. A person performing mold assessment activities must be licensed as a mold assessment company if the person employs more than one individual required to be licensed under §78.50 or §78.52.
- (b) Authorization and conditions. A licensed mold assessment company shall:
 - (1) designate one or more individuals licensed as mold assessment consultants as its responsible person(s);

- (2) notify the department in writing of any changes in individual licensed mold assessment consultants as responsible persons within 30 calendar days following the change of the responsible person;
 - (3) perform mold assessment activity only during periods with the active employment of at least one individual licensed mold assessment consultant designated as the responsible person for the company;
 - (4) not transfer the license to any other person, including to any company that has bought the licensed entity;
 - (5) apply for a name change on the license within 30 calendar days after a change in name only; and
 - (6) obtain a new license before performing any mold-related activities when the transfer of a licensed person occurs.
- (c) Eligibility for licensing. To be eligible for licensing, a person must employ at least one licensed mold assessment consultant. To obtain a mold assessment company license, a person must:
- (1) comply with the requirement for insurance coverage under §78.40; and
 - (2) pay the fee required under §78.80.
- (d) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
- (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
 - (2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant; and
 - (3) the name and license number of each licensed mold assessment consultant designated by the applicant as a responsible person.
- (e) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, a licensed mold assessment company shall:
- (1) provide each client with a mold assessment report following an initial (pre-remediation) mold assessment. If the company includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;
 - (2) provide each client a mold remediation protocol at least one calendar day before a mold remediation project begins;
 - (3) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;
 - (4) ensure that all employees who will perform mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protective equipment appropriate for the activities to be performed;
 - (5) ensure that each person performing mold assessment activities is licensed in accordance with this

chapter, as applicable;

- (6) ensure that the training and license of each employee who is required to be licensed under this chapter are current;
- (7) if the company performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §78.140(e); and
- (8) provide a passed clearance report to the client as specified under §78.140(d) and provide a Certificate of Mold Damage Remediation, with applicable sections completed by a mold assessment consultant, to a mold remediation company or contractor, as specified under §78.150(b).

78.56. Mold Remediation Worker Registration. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Registration requirement. An individual must be registered as a mold remediation worker to perform mold remediation, except that an individual licensed under §78.58 is not required to be separately registered under this section.
- (b) Eligibility for registration. To obtain a mold remediation worker registration, a person must:
 - (1) successfully pass a criminal history background check;
 - (2) be at least 18 years old at the time of application;
 - (3) demonstrate that the person's employer, if any, is in compliance with the requirement for insurance coverage under §78.40 if requested by the department;
 - (4) complete a mold training course as described in §78.68(d); and
 - (5) pay the fee required under §78.80.
- (c) Temporary registration. The department may issue a temporary registration to an applicant for a mold remediation worker registration if the person:
 - (1) has not been convicted of a criminal offense; and
 - (2) meets the requirements of subsection (b)(2)-(5).
 - (3) A temporary registration is valid for 21 days and may not be renewed.
- (d) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
 - (1) a copy of a course completion certificate for the applicable training course as described in §78.68(d); and
 - (2) proof that the applicant's employer, if any, is in compliance with the insurance requirement for licensees specified in §78.40 if requested by the department.

- (e) Responsibilities. In addition to all applicable responsibilities in this chapter, a registered mold remediation worker shall use remediation techniques specified in the project mold remediation work plan.
- (f) Prohibitions. Registered mold remediation workers are prohibited from:
 - (1) performing mold remediation except under the supervision of a licensed remediation contractor; and
 - (2) engaging in any mold-related activity requiring licensing as a remediation contractor under this chapter.

78.58. Mold Remediation Contractor License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirements. An individual must be licensed as a mold remediation contractor to perform activities listed under subsection (b). A licensed mold remediation contractor who employs more than one individual required to be licensed under this section or required to be registered under §78.56 must be separately licensed as a mold remediation company under §78.60.
- (b) Scope. An individual licensed under this section may perform mold remediation and supervise registered mold remediation workers performing mold remediation. In addition, a licensed mold remediation contractor is licensed to provide mold remediation services including:
 - (1) preparing a mold remediation work plan providing instructions for the remediation activities to be performed for a mold remediation project; and
 - (2) conducting and interpreting the results of activities recommended in a work plan developed under paragraph (1), including any of the activities of a registered mold remediation worker under §78.56.
- (c) Qualifications. An applicant for a mold remediation contractor license must meet at least one of the following education and/or experience requirements:
 - (1) a bachelor's or graduate degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences and at least one year of experience either in an allied field or as a general contractor in building construction;
 - (2) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field or as a general contractor in building construction;
 - (3) a high school diploma or GED certificate, plus at least five years of experience in an allied field or as a general contractor in building construction; or
 - (4) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience either in an allied field or as a general contractor in building construction.
- (d) Eligibility for licensing. To obtain a mold remediation contractor license, a person must:
 - (1) be at least 18 years old at the time of application;

- (2) successfully pass a criminal history background check;
 - (3) comply with subsection (c);
 - (4) comply with the requirement for insurance coverage under §78.40;
 - (5) successfully complete a mold training course as described in §78.68(e);
 - (6) pass the required licensing examination prescribed under §78.24; and
 - (7) pay the fee required under §78.80.
- (e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
- (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
 - (2) verifiable evidence that the applicant meets the requirement in subsection (c); and
 - (3) a copy of a course completion certificate for the applicable training course offered by a department-accredited training provider, as described in §78.68(e).
- (f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, a licensed mold remediation contractor shall:
- (1) supervise mold remediation workers as defined in §78.10(42). When supervising mold remediation workers, the licensee must:
 - (A) be physically present at the mold remediation project; or
 - (B) be accessible by telephone within ten minutes and able to be at the project within one hour of being contacted;
 - (2) ensure that all employees who will perform mold remediation activities are provided with, fit tested for, and trained in the correct use of personal protective equipment appropriate for the activities to be performed;
 - (3) ensure that all supervised persons performing mold remediation activities are licensed or registered under this chapter;
 - (4) ensure that the training and license or registration of each individual who is required to be licensed or registered to perform mold remediation activities under this chapter is current;
 - (5) comply with the requirements under §78.64(f)(2)-(3), (5)-(9), and (11) if the licensee provides mold remediation worker training as authorized in §78.68(d);
 - (6) maintain copies of the required training documents in accordance with 78.74(e), if providing mold remediation worker training as authorized in §78.68(d);
 - (7) accurately interpret field notes, drawings, and reports relating to mold assessments;
 - (8) inquire of the client whether any known or suspected hazardous materials, including lead-based

- paint and asbestos, are present in the project area;
- (9) advise clients about options for mold remediation;
 - (10) comply with standards for preparing mold remediation work plans, as presented in training course materials or as required by the mold remediation company by whom the contractor is employed;
 - (11) properly prepare each mold remediation work plan that the mold remediation contractor prepared by:
 - (A) signing and dating the cover page;
 - (B) including the license number and license expiration date on the cover page; and
 - (C) initialing the work plan on every page that addresses the scope of work and on all drawings related to the remediation work;
 - (12) provide to each client a mold remediation work plan for the project at least one calendar day before the mold remediation preparation work begins;
 - (13) submit the required notification to the department as described in §78.110, unless employed by a licensed mold remediation company; and
 - (14) provide to the property owner a completed Certificate of Mold Damage Remediation as specified under §78.150.

78.60. Mold Remediation Company License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirements. A person performing mold remediation activities must be licensed as a mold remediation company if the person employs more than one individual required to be registered under §78.56 or licensed under §78.58. A licensed mold remediation company is specifically authorized to employ mold remediation contractors and mold remediation workers who are currently licensed or registered under this chapter to assist in the company's mold remediation activity.
- (b) Authorization and conditions. A licensed mold remediation company shall:
 - (1) designate one or more individuals licensed as mold remediation contractors as its responsible person(s);
 - (2) notify the department in writing of any changes in individual licensed mold remediation contractors as responsible persons within 30 calendar days following the change of the responsible person; and
 - (3) perform mold remediation activity only during periods with the active employment of at least one individual licensed mold remediation contractor designated as the responsible person for the company;
 - (4) not transfer the license to any other person, including to any company that has bought the licensed entity;
 - (5) apply for a name change on the license within 30 calendar days after a change in name only; and
 - (6) obtain a new license before performing any mold-related activities when the transfer of a licensed

person occurs.

- (c) Eligibility for licensing. To be eligible for licensing, a person must employ at least one licensed mold remediation contractor. To obtain a mold remediation company license, a person must:
 - (1) comply with the requirement for insurance coverage under §78.40; and
 - (2) pay the fee required under §78.80.
- (d) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
 - (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
 - (2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant; and
 - (3) the name and license number of each licensed mold remediation contractor designated by the applicant as a responsible person.
- (e) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, a licensed mold remediation company shall:
 - (1) ensure that all employees who will perform mold remediation activities are provided with, fit tested for, and trained in the correct use of personal protective equipment appropriate for the activities to be performed;
 - (2) ensure that each person performing mold remediation activities is licensed or registered in accordance with this chapter, as applicable;
 - (3) ensure that the training and license or registration of each individual who is required to be licensed or registered to perform mold remediation activities under this chapter are current;
 - (4) comply with the requirements under §78.64(f)(2)-(3), (5)-(9), and (11) if the licensee provides mold remediation worker training as authorized in §78.68(d);
 - (5) maintain copies of the required training documents at a central location at its Texas office in accordance with 78.74(e) if providing mold remediation worker training as authorized in §78.68(d);
 - (6) provide to each client a mold remediation work plan for the project at least one calendar day before the mold remediation preparation work begins;
 - (7) submit the required notification to the department as described in §78.110; and
 - (8) provide to the property owner a completed Certificate of Mold Damage Remediation as specified under §78.150.

78.62. Mold Analysis Laboratory License. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to engage in activities listed under subsection (b). A person licensed under this section is not required to be

separately licensed under §78.54.

- (1) Branch offices that perform mold analysis must fulfill the same equipment and operational standards as the main office that has been licensed and must comply with subsection (c) for the types of analysis they will be performing.
 - (2) A licensed mold analysis laboratory shall:
 - (A) designate one or more individuals as responsible persons;
 - (B) not transfer the license to any other person, including to any company that has bought the licensed entity;
 - (C) apply for a name change on the license within 30 calendar days after a change in name only; and
 - (D) obtain a new license before performing any mold-related activities when the transfer of a licensed person occurs.
- (b) Scope. A person licensed under this section is authorized to analyze samples collected during mold-related activities to:
- (1) determine the presence, identity, or amount of mold present;
 - (2) provide any other information regarding the sample that the submitter requests; and
 - (3) obtain any other information that the laboratory deems useful.
- (c) Qualifications. A person must submit documentation showing that:
- (1) the laboratory is accredited by the American Industrial Hygiene Association under the Environmental Microbiology Laboratory Accreditation Program (EMLAP); or
 - (2) the laboratory is accredited or certified by a program deemed equivalent by the department for the preparation and analysis of mold; or
 - (3) all individuals who will analyze mold samples are certified by the Pan-American Aerobiology Certification Board or a program deemed equivalent by the department, if the laboratory will analyze only non-culturable samples; or
 - (4) the laboratory meets the following requirements:
 - (A) all individuals who will analyze mold samples:
 - (i) have at least a bachelor's degree in microbiology or biology;
 - (ii) have successfully completed training in mold analysis offered by the McCrone Research Institute or by a program deemed equivalent by the department, including receiving a training certificate; and
 - (iii) have a least three years of experience as a mold microscopist; and
 - (B) mold analysis activity at the laboratory is overseen by a full-time mycologist or

microbiologist with:

- (i) an advanced academic degree; or
- (ii) at least two years of experience in mold analysis.

(d) Eligibility for licensing. To obtain a mold analysis laboratory license, a person must:

- (1) comply with subsection (c);
- (2) comply with the requirement for insurance coverage under §78.40; and
- (3) pay the fee required under §78.80.

(e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:

- (1) proof of compliance with the insurance requirement for licensees specified in §78.40;
- (2) evidence acceptable to the department that the laboratory meets one of the qualification requirements under subsection (c);
- (3) the name, address, and occupation of each person that has an ownership interest of 10% or more in the laboratory; and
- (4) the name of each individual designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, the mold analysis laboratory shall:

- (1) provide to a client, as applicable, details of analysis methods used, amounts (percentages) analyzed, raw counts for each genus of mold that is identified, magnification used for counting and identifying mold, and culture media and conditions used;
- (2) provide the department-issued license number of the laboratory on its analysis reports;
- (3) ensure that all individuals who will conduct mold analysis are properly trained in analysis techniques; and
- (4) maintain accreditation or certification required under subsection (c). A licensed mold assessment laboratory that loses the required accreditation or certification must:
 - (A) provide to the department written notification of a change in accreditation or certification status within 30 calendar days after the change; and
 - (B) cease providing services until the accreditation or certification is reinstated or it otherwise comes into compliance with subsection (c).

78.64. Mold Training Provider Accreditation. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

(a) Accreditation requirement. A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

- (b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.
- (1) Accredited training providers:
 - (A) may not transfer the accreditation to any other person, including to any company that has bought the accredited entity; and
 - (B) must apply for a name change within 30 calendar days after a change in the name of the accredited entity only.
 - (2) A person must obtain accreditation before providing training when the transfer of an accredited person occurs.
 - (3) A person shall not advertise, offer, or provide a training course for fulfillment of requirements for a license or renewal of a license under this chapter unless the department or the department's designee has approved the course under §78.66.
 - (A) Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance.
 - (B) Accredited training providers shall use only approved instructors for mold remediation worker training courses.
 - (4) Accredited training providers must offer approved courses as described below.
 - (A) Each training course shall address only one license type and shall not be combined with other areas of licensure. Initial training courses shall not be combined with continuing education courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.
 - (B) Training providers shall conduct each course in one language throughout and a course shall not be combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.
 - (C) Accredited mold training providers are authorized to offer:
 - (i) a mold assessment technician or mold assessment consultant training course to persons applying for a mold assessment technician license; and
 - (ii) a mold assessment technician or mold assessment consultant continuing education training course to persons renewing a mold assessment technician license.
 - (5) Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.
 - (6) A training provider must require instructors and guest speakers to present in person during at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials

shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

- (7) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.
 - (8) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.
 - (9) Accredited training providers shall conduct approved training courses in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.
 - (10) Course instructors shall maintain an attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.
 - (11) An accredited training provider shall verify and keep a written record of the student scores on each course test.
 - (A) The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course.
 - (B) The use of the same questions for both the original and re-test is prohibited.
 - (C) Oral course tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet.
 - (D) If a student fails the re-test, the student must repeat the course and pass a new test.
 - (12) An individual instructor shall not train himself/herself to qualify for a license or a registration.
- (c) Qualifications. To qualify for an accreditation, a training provider must:
- (1) have a written policy concerning refunds and cancellations including cancellation procedures in all languages in which training is offered;
 - (2) provide the refund and cancellation policy to students before payment of fees;
 - (3) employ a mold training manager who meets at least one of the following requirements in (A), (B), or (C):
 - (A) at least two years of experience, education, or training in teaching adults;
 - (B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management;
 - (C) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

- (D) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;
- (4) provide for each course a qualified principal instructor who is:
 - (A) approved by the training provider; and
 - (B) meets the requirements under §78.66; and
- (5) develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:
 - (A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and
 - (B) procedures for the training manager's annual review of instructor competency.
- (d) Eligibility for accreditation. To obtain a mold training provider accreditation, a person must:
 - (1) comply with subsection (c); and
 - (2) pay the fee required under §78.80.
- (e) Applications. Unless otherwise indicated, an applicant must submit all required information and documentation on department-approved forms or in a manner specified by the department. In addition to fulfilling the requirements in §78.21, an applicant must submit the following required documentation:
 - (1) the name, address, and occupation of each person that has an ownership interest of 10% or more in the applicant;
 - (2) a complete application for approval of at least one training course; and
 - (3) a description of the training provider's organization, including:
 - (A) the address of its central office;
 - (B) the names and business addresses of its principals;
 - (C) a statement of any affiliation with other mold-related companies doing business in Texas;
 - (D) a listing of the courses to be offered; and
 - (E) the identity of the qualified staff member designated as the mold training manager.
- (f) Responsibilities. In addition to the requirements of §78.70 and all other applicable responsibilities in this chapter, an accredited mold training provider shall:
 - (1) present to students all course information and material approved by the department;
 - (2) furnish appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

- (3) maintain the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §78.68;
- (4) maintain the validity and integrity of each course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;
- (5) at the conclusion of each training course, provide to each student who successfully completes the course and passes the required course test, if applicable:
 - (A) a course completion certificate as described in §78.66(c); and
 - (B) information regarding the state application and examination process, as applicable;
- (6) submit to the department within seven calendar days after the completion date of each course the names and number identifiers of each student who attended the course, on a department-approved form or in a manner specified by the department;
- (7) make all records required under this section available for inspection by the department or the department's designee immediately upon conclusion of a course and the course test;
- (8) document that each person who receives a certificate has successfully completed a training course in accordance with §78.68 and has achieved a passing score on the written test, if applicable;
- (9) for each mold training course for a license or registration, maintain a file that includes:
 - (A) the training course name;
 - (B) the date the course was provided;
 - (C) the subject area of the course taught;
 - (D) the names of all instructors and guest speakers who taught the course;
 - (E) a roster of all students in the course;
 - (F) the names of students receiving certificates;
 - (G) the certificate numbers; and
 - (H) the expiration date of the training, if applicable; and
- (10) for each training course for a mold license, maintaining in the file:
 - (A) a copy of the course test;
 - (B) each student's identified, graded answer sheet;
 - (C) the date and location where the test was administered; and
 - (D) the name of the test proctor; and
- (11) ensure that all information from the training course and course test, if applicable, corresponds to the information on each person's course completion certificate.

- (g) Inspections and audits. The department or its representative or designee may audit any training course. Training providers shall permit the department or its representatives or designees to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this chapter.

78.66. Training: Approval of Mold Training Courses and Instructors. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) General provisions. Mold training providers must obtain approval of training courses and provide the names of approved instructors to the department in advance of the courses being offered except as provided under §78.64(b)(3)(A). Each application for course approval must be made on a separate application form.
- (b) Application for course approval. An application must be submitted on a department-approved form or in a manner specified by the department. A complete application for training course approval shall include:
 - (1) the training program provider's name, business address and telephone number;
 - (2) the area of licensure and type of course (initial or continuing education) for which approval is being sought, including the course length in training hours;
 - (3) a detailed outline of each course curriculum including the specific topics taught, the amount of time allotted to each topic, and the amount and type of hands-on training for each topic;
 - (4) a description of the facilities and equipment available for lecture and hands-on training;
 - (5) a copy of the course test blueprint (written documentation of the proportion of test questions devoted to each major topic in the course);
 - (6) a copy of all course materials including student manuals, instructor notebooks, handouts, and other course-related materials in all languages taught;
 - (7) the names of all course instructors; and
 - (8) a description and example of the course completion certificates to be issued to students.
- (c) Course completion certificates must have a unique certificate number and must include:
 - (1) the training facility's name, address, and telephone number;
 - (2) the printed name and signature of the course instructor;
 - (3) the license number of the person who provided the training, if applicable;
 - (4) the student's name;
 - (5) a statement that the student successfully completed the course and the name and dates of the training course completed; and
 - (6) the signature of the course director or the principal officer, owner, or chief executive officer of the training provider.
- (d) Changes to training courses and certificates. An accredited training provider must receive department approval for changes to approved training courses, course completion certificates, or to any of the items listed in subsection (b). Accredited training providers must submit requests in writing and shall not offer

training courses incorporating any changes until the department or the department's designee has granted approval.

- (e) Instructor approval. Only qualified instructors who are approved by the training provider may provide instruction in courses required under this chapter, except that guest speakers are permitted to provide limited instruction as provided under subsection (f).
 - (1) An accredited training provider shall:
 - (A) fully document instructor qualifications;
 - (B) approve and use for instruction of mold training courses only instructors who meet the qualifications in this subsection;
 - (C) notify the department or the department's designee of its roster of approved instructors on a department-approved form or in a manner specified by the department before providing training courses;
 - (D) notify the department or its designee of additions and deletions to its instructor roster in a manner specified by the department within 15 calendar days after the change of instructors;
 - (E) ensure that instructors and guest speakers meet all qualifications for each area of licensure for which they are approved to provide instruction; and
 - (F) provide documentation of instructor qualifications upon request by the department or its designee.
 - (2) Instructor qualifications. An accredited mold training provider shall ensure that instructors are qualified in at least one of the following categories:
 - (A) at least two years of actual hands-on experience in mold-related activities for the subject that the instructor will teach, and a high school diploma and completion of at least one teacher education course in vocational or industrial teaching; or
 - (B) graduation from an accredited college or university with a bachelor's degree or advanced degree in natural or physical sciences or a related field, with one year of hands-on experience in mold-related activities; or
 - (C) at least three years teaching experience and completion of one or more teacher education courses in vocational or industrial teaching from an accredited two or four-year college, with one year of hands-on experience in mold-related activities; or
 - (D) a vocational teacher with certification from the Texas Education Agency with one year of hands-on experience in mold-related activities.
 - (3) Instructor training. Each instructor shall meet the training course requirements under §78.68 as appropriate for each area of licensure for which the instructor is approved to teach. Instructors are not required to be separately licensed or registered.
- (f) Guest speakers. Training providers may utilize guest speakers to present training who have documentable and verifiable professional expertise on the subject about which they are speaking. Training providers are not required to obtain department approval for guest speakers but must maintain proof of each guest

speaker's qualifications in accordance with this section and §78.74.

78.68. Training: Mold Training Courses. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) General provisions. Individual applicants for licensing or renewal must submit evidence acceptable to the department of fulfillment of specific training requirements.
- (b) Assessment technician training. The assessment technician training course shall consist of at least 24 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 50 multiple-choice questions. The course requirements in paragraphs (3), (5) - (8), and (10), require hands-on training as an integral part of the course. The assessment technician course shall include:
 - (1) sources of, conditions necessary for, and prevention of indoor mold growth;
 - (2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;
 - (3) workplace hazards and safety, including personal protective equipment, and respirators;
 - (4) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the mold assessment technician, and the roles of other professionals (including an assessment consultant);
 - (5) performance of visual inspections where mold might be present and determining sources of moisture problems, including exterior spaces (including crawlspaces and attics), interior components (including windows, plumbing, walls, and ceilings) and heating, ventilation, and air-conditioning (HVAC) systems (including return air and supply ducts);
 - (6) utilization of physical measurement equipment and tools, including moisture meters, humidity meters, particle counters, data-logging equipment, and visual and robotic inspection equipment;
 - (7) biological sampling strategies and methodologies, including sampling locations and techniques, and minimizing cross-contamination;
 - (8) sampling methodologies, including bulk, surface (including tape, swab, and vacuum sampling), and air sampling (including the differences between culturable and particulate sampling, sampling times, calibrating pumps, selecting media for culturable samples, and sampling for fungal volatile organic compounds);
 - (9) state-of-the-art work practices and new technologies;
 - (10) proper documentation for reports, including field notes, measurement data, photographs, structural diagrams, and chain-of-custody forms;
 - (11) an overview of mold remediation projects and requirements, including containment and air filtration; and
 - (12) clearance testing and procedures, including review of mold remediation protocols, work plans, visual inspections, and sampling strategies.
- (c) Assessment consultant training. The assessment consultant training course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review,

and a written test of 100 multiple-choice questions. The assessment consultant training course shall include:

- (1) all topics listed under subsection (b), including appropriate hands-on activities;
 - (2) requirements concerning workplace safety, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;
 - (3) technical and legal considerations for mold assessment, including applicable regulatory requirements, the role of the assessment consultant, the roles of other professionals, recordkeeping and notification requirements, insurance, and legal liabilities;
 - (4) an overview of building construction, building sciences, moisture control, and water intrusion events;
 - (5) prevention of indoor air quality problems, including avoiding design and construction defects and improving maintenance and housekeeping;
 - (6) basics of HVAC systems and their relationship to indoor air quality (including psychrometrics, filtration, ventilation and humidity control), HVAC inspection and assessment, and remediation of HVAC systems;
 - (7) survey protocols for effective assessment, covering the areas described under subsection (b)(5) - (8);
 - (8) interpretation of data and sampling results;
 - (9) interviewing building occupants, minimum requirements for questionnaires, and interpreting results;
 - (10) writing mold management plans and mold remediation protocols, including format and contents (including structural components, HVAC systems, and building contents), defining affected areas (including floor plans), identifying and repairing moisture sources and their causes, developing a scope of work analysis, specifying containment and air filtration strategies, determining post-remediation assessment criteria, and clearance criteria;
 - (11) post-remediation clearance testing and procedures, including review of mold remediation plans, visual inspections, sampling strategies, and quality assurance; and
 - (12) case studies.
- (d) Remediation worker training. Remediation worker training shall consist of at least four training hours that includes lectures, demonstrations, audio-visuals, and hands-on training. The training shall include all course information and material required under this subsection. An individual must successfully complete worker training and become registered as a mold remediation worker before performing mold remediation activities.
- (1) The training must be provided by either:
 - (A) a licensed mold remediation contractor or licensed mold remediation company; or
 - (B) a mold training provider accredited by the department.

- (2) The principal instructor for the training must be:
 - (A) a licensed mold remediation contractor; or
 - (B) an individual who is approved under §78.66 to teach mold-related courses.
- (3) The training shall adequately address the following areas and shall include hands-on training in the areas described in subparagraphs (C) and (E) - (F):
 - (A) sources of indoor mold and conditions necessary for indoor mold growth;
 - (B) potential health effects and symptoms from mold exposure, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;
 - (C) workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;
 - (D) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the worker, and the roles of other professionals;
 - (E) an overview of how mold remediation projects are conducted, including containment and air filtration; and
 - (F) work practices for removing, cleaning, and treating mold.
- (e) Remediation contractor training. The remediation contractor training course shall consist of at least 40 training hours that includes lectures, demonstrations, audio-visuals and hands-on training, course review, and a written test of 100 multiple-choice questions. The course requirements in paragraphs (3) and (7) - (8), require hands-on training as an integral part of the training. The course shall adequately address:
 - (1) sources of indoor mold and conditions necessary for indoor mold growth;
 - (2) potential health effects, in accordance with a training protocol developed in consultation with state professional associations, including at least one representing physicians;
 - (3) requirements concerning workplace hazards and safety, personal protective equipment including respirators, personal hygiene, personal decontamination, confined spaces, and water, structural, and electrical hazards;
 - (4) requirements concerning worker protection, including components of and development of respiratory protection plans and programs, workplace safety plans, and medical surveillance programs;
 - (5) technical and legal considerations for mold remediation, including applicable regulatory requirements, the role of the mold remediation contractor, the role of the mold remediation worker, the roles of other professionals, insurance, legal liabilities, and recordkeeping and notification requirements;
 - (6) building sciences, moisture control, and water intrusion events;
 - (7) an overview of how mold remediation projects are conducted and requirements thereof, including

- containment, and air filtration;
- (8) work practices for removing, cleaning, and treating mold, including state-of-the-art work practices and new technologies;
 - (9) development of a mold remediation work plan from a protocol, including writing the work plan, detailing remediation techniques for the building structure, HVAC system, and contents, delineating affected areas from floor plans, developing appropriate containment designs, determining HEPA air filtration requirements, and determining dehumidification requirements;
 - (10) clearance testing and procedures, including a review of typical clearance criteria, visual inspection of the work area before clearance, and achieving clearance;
 - (11) contract specifications, including estimating job costs from a protocol and determining insurance and liability issues; and
 - (12) protecting the public and building occupants from mold exposures.
- (f) Continuing education training courses.
- (1) The continuing education courses for mold assessment technicians, mold assessment consultants, and mold remediation contractors shall be at least eight training hours in length.
 - (2) Continuing education training for mold remediation workers shall be at least four training hours in length and shall be provided by a person specified under subsection (d)(1).
 - (3) Continuing education training shall include a review of state regulations, state-of-the-art developments, and key aspects of the initial training course.
- (g) Course tests.
- (1) Each training provider shall administer a closed-book written test to students who have completed any training course required under this chapter, except that no examination is required of students in remediation worker training.
 - (2) The test for the initial training course for assessment technician shall consist of 50 multiple-choice questions.
 - (3) The test for the initial training course for assessment consultant and remediation contractor shall consist of 100 multiple-choice questions.
 - (4) Training providers may include demonstration testing as part of the test for the initial training course.
 - (5) The continuing education tests shall consist of at least ten questions.
 - (6) Students passing the test shall receive a course completion certificate.
 - (7) Training providers shall use course tests provided or approved by the department or the department's designee.

78.70. Responsibilities of Credentialed Persons. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Persons who are licensed, registered, or accredited under this chapter shall, as applicable:
 - (1) adhere to the code of ethics prescribed by §78.72;
 - (2) comply with work practices and procedures of this chapter;
 - (3) present to the department or the department's representative upon request any identification card, credential, or certificate issued by the department or the department's representative or designee;
 - (4) comply with the requirements of §1958.155 of the Act (relating to Conflict of Interest; Disclosure Required);
 - (5) maintain insurance coverage required under §78.40 while engaging in mold-related activities regulated under this chapter;
 - (6) comply with the recordkeeping responsibilities under §78.74 at both the Texas office and work site locations as applicable;
 - (7) cooperate with department personnel and representatives or designees of the department in the discharge of their official duties, as described in §78.85; and
 - (8) notify the department of the following changes no later than the indicated time period after such changes occur, on a department-approved form in a manner specified by the department:
 - (A) withdrawal of licensed mold remediation contractor or licensed mold remediation company from association with a mold remediation project – five calendar days.
 - (B) addition of licensed mold remediation company to association with a mold remediation project – one calendar day.
 - (C) change in mailing address or telephone number – 30 calendar days.
 - (D) change of persons who have an ownership interest of 10% or more in a person licensed or accredited under this chapter, including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list – 30 calendar days.
 - (E) addition or deletion of a responsible person – 30 calendar days.
- (b) All individuals who are required to be licensed or registered under this chapter must have a valid department-issued identification card, credential, or certificate, as applicable, present at the worksite when engaged in mold-related activities.
- (c) The licensee overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client and the property owner (or the property owner's designee), if not the same, are provided a copy of the department Consumer Mold Information Sheet (CMIS).
 - (1) The licensee shall provide the CMIS on the earlier of:
 - (A) the first contact with the client, potential client, or property owner or designee of the property owner, or

- (B) at least one calendar day before the initiation of any mold-related activity.
- (2) In an emergency as described in §78.110(e), the licensee shall ensure that the Consumer Mold Information Sheet is provided to the client and the property owner (or the property owner's designee), if not the same, as soon as practicable but not later than the following calendar day after the licensee identifies the emergency.
- (d) Credentialed persons are responsible for determining whether the mold-related activities in which they will engage require additional credentials beyond those required under this chapter.
- (e) No person shall sell, assign, or transfer a credential, identification card, certificate, or approval issued under this chapter. A person shall obtain a new credential or approval after the transfer of a person that is not an individual before activities requiring a credential or approval under this chapter may be conducted.
- (f) The individual that is designated by a licensed mold assessment company or mold remediation company as its responsible person shall not be the responsible person for another licensee with the same category of license.
- (g) Consumer complaint information.
 - (1) A licensed or accredited person shall notify each client of the department's name, web address, mailing address, and telephone number for the purpose of directing complaints to the department.
 - (2) The information shall be displayed on written documents provided by the credentialed person to a client, property owner, or third party, including mold assessment reports and protocols, mold remediation work plans, bids, estimates, contracts, bills for service, and information brochures.
- (h) Office requirement. A person licensed under this chapter must maintain an office in Texas. An individual employed by a person licensed under this chapter is considered to maintain an office in Texas through that employer.

78.72. Code of Ethics. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) The purpose of this section is to establish the standards of professional and ethical conduct required of all persons holding credentials issued under this chapter.
- (b) All credentialed persons shall, as applicable to their area of credentialing:
 - (1) undertake to perform only services for which they are qualified by credential, education, training or experience in the specific technical fields involved;
 - (2) meet or exceed the minimum standards for mold assessment and remediation in this chapter;
 - (3) not participate in activities where a conflict of interest might arise, pursuant to §1958.155 of the Act (relating to Conflict of Interest; Disclosure Required) and disclose any known or potential conflicts of interest to any party affected or potentially affected by such conflicts;
 - (4) provide only necessary and desired services to a client and not sell unnecessary or unwanted products or services;
 - (5) to the extent required by law, keep confidential any personal information regarding a client, including medical conditions, obtained during the course of a mold-related activity;

- (6) not misrepresent any professional qualifications or credentials;
 - (7) not provide to the department any information that is false, deceptive, or misleading;
 - (8) cooperate with the department or the department's representative or designee by promptly furnishing required documents or information and by promptly responding to requests for information;
 - (9) not work if impaired as a result of drugs, alcohol, sleep deprivation or other conditions and not allow those under their supervision to work if known to be impaired;
 - (10) maintain knowledge and skills for continuing professional competence and participate in continuing education programs and activities;
 - (11) not make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in documents or statements including any advertising, announcement, presentation, competitive bidding, mold assessment report, mold analysis, mold remediation protocol, or mold remediation work plan; and
 - (12) not make a representation that is designed to take advantage of the fears or emotions of the public or a customer.
- (c) Duty to report ethical violations. All credentialed persons:
- (1) have the responsibility of promptly reporting alleged misrepresentations or violations of the Act or this chapter to the department;
 - (2) are responsible for competent and efficient performance of their duties and shall report to the department incompetent, illegal, or unethical conduct of any practitioner of mold assessment or remediation; and
 - (3) shall not retaliate against any person who reported in good faith to the department alleged incompetent, illegal or unethical conduct.

78.74. Records. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) for mold remediation companies and contractors, subsection (c)(2) for mold assessment companies and consultants, subsection (d) for mold analysis laboratories, and subsection (e)(1) for training providers.
- (1) Records and documents shall be made available for inspection by the department or the department's representative or designee or any law enforcement agency immediately upon request.
 - (2) Licensees and accredited training providers who cease to do business shall notify the department in a manner specified by the department at least 30 calendar days before such event to advise how they will maintain all records during the minimum three- or five-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 calendar days after their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

- (b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the company and the records listed in paragraph (4) for each remediation worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) for each mold remediation project performed by the contractor and the records listed in paragraph (4) for each remediation worker training session provided by the mold remediation contractor.
- (1) A licensed mold remediation contractor shall maintain the following records and documents on-site at the location of the mold-related activities at a project for its duration:
- (A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and
 - (B) a listing of the names and license or registration numbers of all individuals working on the remediation project.
- (2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:
- (A) a copy of the mold remediation work plan specified under paragraph (1)(A);
 - (B) photographs of the scene of the mold remediation taken before and after the remediation;
 - (C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;
 - (D) all invoices issued regarding the mold remediation; and
 - (E) copies of all certificates of mold remediation issued by the company or contractor.
- (3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) in an electronic format. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.
- (4) A licensed mold remediation contractor or licensed mold remediation company that provides mold remediation worker training to meet the requirements under §78.68(d) shall maintain copies of the required training documents at a central location at its Texas office.
- (c) Mold assessment companies and consultants.
- (1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) for each project that the contractor performs:

- (A) the name and mold credential number of each of its employees who worked on the project and a description of each employee's involvement with the project;
 - (B) the written contract between the mold assessment company or consultant and the client;
 - (C) all invoices issued regarding the mold assessment;
 - (D) copies of all laboratory reports and sample analyses;
 - (E) copies of all photographs required under §78.140;
 - (F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and
 - (G) copies of all passed clearance reports issued by the company or consultant.
- (2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) until:
- (A) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project; or
 - (B) the company or consultant issues the final status report to the client, if a final status report is issued; or
 - (C) the company or consultant provides the signed Certificate of Mold Damage Remediation to a mold remediation contractor or company, if a Certificate of Mold Damage Remediation is provided.
- (d) Mold analysis laboratories. A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.
- (e) Training providers. Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department or the department's representative or designee.
- (1) The training provider shall maintain records for at least five years from the date of each training course.
 - (2) A training provider may maintain the records required under paragraph (1) in an electronic format. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

78.80. Fees. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Unless otherwise specified, the fees established in this section must be paid to the department before a license, registration, or accreditation will be issued or renewed.
- (b) Schedule of Fees.

- (1) Fees for Notifications:
 - (A) Notification of mold remediation, initial: owner-occupied residential dwelling unit--\$25
 - (B) Notification of mold remediation, initial: other than owner-occupied residential dwelling unit--\$25
- (2) Fees for Credentials:
 - (A) Mold assessment technician license or renewal--\$150
 - (B) Mold assessment consultant license or renewal--\$500
 - (C) Mold assessment company license or renewal--\$850
 - (D) Mold remediation worker registration or renewal--\$50
 - (E) Mold remediation contractor license or renewal--\$450
 - (F) Mold remediation company license or renewal--\$850
 - (G) Mold analysis laboratory license or renewal--\$750
 - (H) Mold training provider accreditation or renewal--\$750
- (3) Fees for Approval of Training Courses:
 - (A) Application for approval of initial mold training course--\$100
 - (B) Application for approval of initial mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0
 - (C) Application for approval of continuing education mold training course--\$100
 - (D) Application for approval of continuing education mold training course when submitted concurrent with application for mold training provider initial accreditation--\$0
- (4) Fee for a replacement or duplicate credential, certificate, or identification card --\$25
- (c) Late renewal fees for licenses, registrations, and accreditations issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).
- (d) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).
- (e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
- (f) All fees paid to the department are nonrefundable.

78.85. Inspections and Investigations. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) The department or the department's representative or designee may inspect or investigate the business practices of any persons involved with mold-related activity for compliance with this chapter.
- (b) The department or the department's representative or designee, upon presenting identification, shall have the right to enter any area or environment, including but not limited to any containment area, building, construction site, storage or office area, or vehicle to review records, to question any person, or to locate, identify, or assess areas of mold growth for the purpose of inspection and investigation for compliance with this chapter.
- (c) The department or its representative or designee conducting official duties is not required to notify in advance or seek permission to conduct inspections or investigations.
 - (1) It is a violation for any person to interfere with, deny, or delay an inspection or investigation conducted by the department or its representative or designee.
 - (2) The department or its representative or designee shall not be impeded or refused entry in the course of official duties by reason of any regulatory or contractual specification.

78.90. Administrative Penalties and Sanctions. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

Violations of the Texas Occupations Code, Chapters 51 or 1958, this chapter, or a rule or order of the executive director or commission may result in proceedings to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

78.92. Enforcement Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1958, and the associated rules may be used to enforce Texas Occupations Code, Chapter 1958 and this chapter.

78.100. Minimum Work Practices and Procedures for Mold Assessment. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) **Scope.** These general work practices are minimum requirements and do not constitute complete or sufficient specifications for mold assessment. More detailed requirements developed by an assessment consultant for a mold assessment or for a particular mold remediation project shall take precedence over the provisions of this section.
- (b) **Purpose.** The purpose of a mold assessment is to determine the source(s), location(s), and extent of mold growth in a building, to determine the condition(s) that caused the mold growth, and to enable the assessment consultant to prepare a mold remediation protocol.
- (c) **Personal protective equipment for assessors.** If an assessment consultant or company determines that personal protective equipment (PPE) should be used during a mold assessment project, the assessment consultant or company shall ensure that all individuals who engage in assessment activities and who will be, or are anticipated to be, exposed to mold are provided with, fit tested for, and trained on the appropriate use and care of the specified PPE. The assessment consultant or company must document successful completion of the training before the individuals perform regulated activities.
- (d) **Sampling and data collection.** If samples for laboratory analysis are collected during the assessment:
 - (1) sampling must be performed according to nationally accepted methods;

- (2) preservation methods shall be implemented for all samples where necessary;
 - (3) proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number must be recorded for each sample;
 - (4) proper chain of custody procedures must be used; and
 - (5) samples must be analyzed by a laboratory licensed under §78.62.
- (e) Mold remediation protocol. An assessment consultant shall prepare a mold remediation protocol that is specific to each remediation project and provide the protocol to the client at least one calendar day before remediation activities begin. The mold remediation protocol must specify:
- (1) the rooms or areas where the work will be performed;
 - (2) the estimated quantities of materials to be cleaned or removed;
 - (3) the methods to be used for each type of remediation in each type of area;
 - (4) the PPE to be used by remediators. A minimum of an N-95 respirator is recommended during mold-related activities when mold growth could or would be disturbed. Using professional judgment, a consultant may specify additional or more protective PPE if he or she determines that it is warranted;
 - (5) the proposed types of containment, as that term is defined in §78.10(9) and as described in subsection (g), to be used during the project in each type of area; and
 - (6) the proposed clearance procedures and criteria, as described in subsection (i), for each type of remediation in each type of area.
- (f) Building occupants. A mold assessment consultant shall consider whether to recommend to a client that, before remediation begins, the client should inform building occupants of mold-related activities that will disturb or will have the potential to disturb areas of mold contamination.
- (g) Containment requirements. Containment must be specified in a mold remediation protocol when the mold contamination affects a total surface area of 25 contiguous square feet or more for the project.
- (1) Containment is not required if only persons who are licensed or registered under this chapter occupy the building in which the remediation takes place at any time between the start-date and stop-date for the project as specified on the notification required under §78.110.
 - (2) The containment specified in the remediation protocol must prevent the spread of mold to areas of the building outside the containment under normal conditions of use.
 - (3) If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.
 - (A) Operation of equipment to recirculate air inside of containment without maintaining negative air pressure may be conducted when the specific conditions, phases, and time periods during which it may or must occur are specified in the mold remediation protocol before commencing this use of equipment.

- (B) Operation of equipment to recirculate air inside of containment without maintaining negative air pressure is prohibited during periods of active mold remediation activity.
- (h) Disinfectants, biocides and antimicrobial coatings. An assessment consultant who indicates in a remediation protocol 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 (EPA) for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by an assessment consultant to use such products 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 such products.
- (i) Clearance procedures and criteria. In the remediation protocol for the project, the assessment consultant shall specify:
 - (1) at least one nationally recognized analytical method for use within each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol;
 - (2) the criteria to be used for evaluating analytical results to determine whether the remediation project passes clearance;
 - (3) that post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and
 - (4) the procedures to be used in determining whether the underlying cause of the mold identified for the project has been remediated so that it is reasonably certain that the mold will not return from that same cause.

78.110. Notification of Mold Remediation Activities. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) General provision. A mold remediation contractor or company shall notify the department or the department's representative or designee of a mold remediation, as defined in §78.10(29), when mold contamination affects a total surface area of 25 contiguous square feet or more. The notification shall be:
 - (1) submitted to the department or its representative or designee no less than five calendar days before the anticipated start date of the mold remediation. The mold remediation contractor or company shall retain a confirmation that the department received the notification;
 - (2) submitted on a department-approved form in a manner specified by the department. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A." The "N/A" designation will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, start- and stop-dates, or scheduled hours of mold remediation;
 - (3) completed to identify the responsible person; and
 - (4) accompanied by the fee required under §78.80.
- (b) Start-date change to later date. When mold remediation activity is rescheduled to start later than the date or hours contained in the most recent notice, the mold remediation contractor or company shall submit a notification to the department in the manner specified by the department as soon as possible but before the start-date on the most recent notice. A written amended notification is required and shall be submitted in

the manner specified by the department.

- (c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the mold remediation contractor or company shall submit a notification to the department of the new start-date in the manner specified by the department at least five calendar days before the start-date unless the provisions of subsection (e) apply.
- (d) Start-date/stop-date requirement.
 - (1) In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e).
 - (2) Amendments to start-dates must be submitted as required in subsections (b) and (c). The cancellation of a mold remediation project shall follow the requirements applicable to a start-date change to a later date.
 - (3) The mold remediation contractor or company shall submit a notification with schedule changes including work-hour changes to the department no less than one calendar day before the most recent stop-date or the new stop-date, whichever comes first.
 - (4) An amendment is required for any stop-dates that change by more than one workday.
- (e) Provision for emergency. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.
 - (1) In an emergency, the mold remediation contractor or company shall submit a notification to the department as soon as practicable but not later than the following working day after the licensee identifies the emergency.
 - (2) The requirements of this section are applicable to an emergency with the exception of paragraph (a)(1). The contractor or company shall retain a confirmation that the notification was received by the department.

78.120. Minimum Work Practices and Procedures for Mold Remediation. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Scope. These general work practices are minimum requirements and do not constitute complete or sufficient specifications for a mold remediation project. More detailed requirements developed by an assessment consultant for a particular project shall take precedence over the provisions of this section.
- (b) Remediation work plan. A remediation contractor shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation protocol, and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed.
 - (1) The remediation contractor shall provide the mold remediation work plan to the client at least one calendar day before the mold remediation preparation work begins.
 - (2) The remediation contractor shall conduct the mold remediation in accordance with the work plan.
- (c) Personal protective equipment (PPE) requirements. If an assessment consultant specifies in the mold remediation protocol that PPE is required for the project, the remediation contractor or company shall provide the specified PPE to all individuals who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination, when the mold affects a total surface area for the project of 25 contiguous feet or more. The recommended minimum PPE is an N-95 respirator.

- (1) Each individual who is provided PPE must receive training on the appropriate use and care of the provided PPE.
 - (2) The remediation contractor or company must document successful completion of the training before the individual performs regulated activities.
- (d) Containment requirements. The containment specified in the remediation protocol must be used on a mold remediation project when the mold affects a total surface area of 25 contiguous square feet or more for the project.
- (1) Containment is not required if only persons who are licensed or registered under this chapter occupy the building in which the remediation takes place at any time between the start-date and stop-date for the project as specified on the notification required under §78.110.
 - (2) 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) If walk-in containment is used, supply and return air vents must be blocked and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.
 - (A) Operation of equipment to recirculate air inside of containment without maintaining negative air pressure may be conducted when the specific conditions, phases, and time periods during which it may or must occur are specified in the mold remediation protocol before commencing this use of equipment.
 - (B) Operation of equipment to recirculate air inside of containment without maintaining negative air pressure is prohibited during periods of active mold remediation activity.
 - (4) The mold remediation contractor shall ensure that the containment is maintained in accordance with the work plan and the requirements of this chapter until the containment is removed.
- (e) Notice signs. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas.
- (1) Notice signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words "NOTICE: Mold remediation project in progress" in black on a yellow background. The text of the signs must be legible from a distance of ten (10) feet.
 - (2) Notice signs must be displayed continuously during the period in which active mold remediation is ongoing.
- (f) Removal of containment. No person shall remove or dismantle any walk-in containment structures or materials from a project site before receipt by the licensed mold remediation contractor or remediation company overseeing the project of a written notice from a licensed mold assessment consultant that the project has achieved clearance as described under §78.140.
- (g) Disinfectants, biocides, and antimicrobial coatings.
- (1) A disinfectant, biocide, and antimicrobial coating may be used only if:
 - (A) its use is specified in a mold remediation protocol;

- (B) it is registered by the United States Environmental Protection Agency (EPA) for the intended use; and
 - (C) the use is consistent with the manufacturer's labeling instructions.
- (2) If a protocol specifies the use of a disinfectant, biocide, or antimicrobial coating but does not specify the brand or type of product, a remediation contractor may select the brand or type of product to be used, subject to the other provisions of this subsection. A decision by an assessment consultant or remediation contractor 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.
 - (3) A person who applies a biocide to wood to control a wood-infesting organism must be licensed by the Structural Pest Control Service of the Texas Department of Agriculture as provided under the Texas Occupations Code, Chapter 1951 (relating to Structural Pest Control) unless exempt under the Texas Occupations Code, Chapter 1951, Subchapter B (relating to Exemptions).

78.130. Mold Remediation of Heating, Ventilation and Air Conditioning (HVAC) Systems. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) All provisions of §78.100 shall apply to the assessment of mold in HVAC systems.
- (b) All provisions of §78.120 shall apply to the remediation of mold in HVAC systems.
- (c) Disinfectants, biocides and antimicrobial coatings. A licensee or registered worker under this chapter may apply a disinfectant, biocide or antimicrobial coating in an HVAC system only in accordance with §78.120(g). The licensee or registered worker shall apply the product only after the building owner or manager has been provided a material safety data sheet for the product, has agreed to the application, and has notified building occupants in potentially affected areas before the application. The licensee or registered worker shall follow all applicable manufacturer's label directions when using the product.
- (d) Other license requirements.
 - (1) Persons who perform air conditioning and refrigeration contracting (including the repair, maintenance, service, or modification of equipment or a product in an environmental air conditioning system, a commercial refrigeration system, or a process cooling or heating system) must be licensed by the department as provided under the Texas Occupations Code, Chapter 1302 (relating to Air Conditioning and Refrigeration Contractors).
 - (2) A person who performs biomedical remediation as defined under 16 TAC, §75.10(6) must be licensed by the department in accordance with 16 TAC, Chapter 75 (relating to Air Conditioning and Refrigeration) unless exempt under 16 TAC, §75.30 (relating to Exemptions) or 16 TAC, §75.100 (relating to Technical Requirements).

78.140. Post-Remediation Assessment and Clearance. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Clearance criteria. For a remediation project to achieve clearance, a licensed mold assessment consultant shall conduct a post-remediation assessment using visual, procedural, and analytical methods. If walk-in containment is used during remediation, the post-remediation assessment shall be conducted while the walk-in containment is in place. The post-remediation assessment shall determine whether:
 - (1) the work area is free from all visible mold and wood rot; and

- (2) all work has been completed in compliance with the remediation protocol and remediation work plan and meets clearance criteria specified in the protocol.
- (b) Underlying cause of mold. 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 cause.
- (c) Analytical methods.
 - (1) The assessment consultant shall perform a visual, procedural, and analytical evaluation in each remediated area in order to determine whether the mold contamination identified for the project has been remediated as outlined in the remediation protocol.
 - (2) The consultant shall use only the analytical methods and the criteria for evaluating analytical results that were specified in the remediation protocol, unless circumstances beyond the control of the consultant and the remediation contractor or company necessitate alternative analytical methods or criteria. The consultant shall provide to the client written documentation of the need for any deviation from the remediation protocol and the alternative analytical methods and criteria selected, and shall obtain approval from the client for their use, before proceeding with the post-remediation assessment.
 - (3) Where visual inspection reveals deficiencies sufficient to fail clearance, analytical methods need not be used.
- (d) Passed clearance report. An assessment consultant 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. The report must include the following:
 - (1) a description of relevant worksite observations;
 - (2) the type and location of all measurements made and samples collected at the worksite;
 - (3) all data obtained at the worksite, including temperature, humidity, and material moisture readings;
 - (4) the results of analytical evaluation of the samples collected at the worksite;
 - (5) copies of all photographs taken by the mold assessment consultant; and
 - (6) a clear statement that the project has passed clearance.
- (e) Final status report. If the mold assessment consultant determines that remediation has not been successful and ceases to be involved with the project before the project passes clearance, the consultant shall issue a written final status report to the client and to the remediation contractor or company performing the project. The status report must include the items listed in subsections (d)(1) - (5) and any conclusions that the consultant has drawn.

78.150. Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner. *(New Section adopted effective November 1, 2017, 42 TexReg 4619)*

- (a) Not later than seven calendar days after the project stop-date, the licensed mold remediation contractor or company shall provide the property owner with copies of required photographs of the scene of the mold remediation taken before and after the remediation.
 - (b) Not later than ten calendar days after the project stop-date, the licensed mold remediation contractor or
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company shall provide a Certificate of Mold Damage Remediation to the property owner on a form adopted by the Texas Commissioner of Insurance. The top section of this certificate is signed by a licensed mold assessment consultant and a mold remediation contractor for projects performed under the Texas mold assessment and remediation rules. The Certificate of Mold Damage Remediation must include the following:

- (1) a statement by a licensed mold assessment consultant (not the licensed mold remediator) that based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold remediation protocol; and
 - (2) a statement on the certificate that the underlying cause of the mold has been remediated, if the licensed mold assessment consultant determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that same cause.
- (c) The bottom section of the Certificate of Mold Damage Remediation is signed by a licensed mold assessment consultant on mold remediation projects that may be legally performed by unlicensed persons, certifying the property does not contain evidence of mold damage.
- (d) The mold assessment company or consultant and the mold remediation company or contractor shall retain copies of the completed certificate in their business files in accordance with the requirements in §78.74.
- (e) If a property owner sells the property, the property owner shall provide to the buyer a copy of each Certificate of Mold Damage Remediation issued for the property under this section during the five years preceding the date the property owner sells the property.