

40 KAR 2:330. Mold remediation.

RELATES TO: KRS 367.83801, 367.83803, 367.83805, 367.83807

STATUTORY AUTHORITY: KRS 367.83805(1), 367.83805(2), 367.83807

NECESSITY, FUNCTION AND CONFORMITY: KRS 367.83805(1) requires the Department of Law, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish minimum standards for mold remediation companies that operate in the Commonwealth based on the five (5) general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(2) authorizes customer complaints regarding compliance by mold remediation companies with 40 KAR Chapter 2 promulgated pursuant to KRS 367.83805. This administrative regulation establishes the minimum standards for mold remediation companies that operate in the Commonwealth and incorporates by reference the forms to be utilized by mold remediation companies.

Section 1. Definitions. (1) "Customer" is defined by KRS 367.83803(1).

(2) "Indoor environmental professional" means a person qualified through training, education, and experience to assess mold problems, conduct and review sampling plans and results, and evaluate and develop plans to remediate mold in structures.

(3) "Mold" is defined by KRS 367.83803(3).

(4) "Mold remediation" is defined by KRS 367.83803(4).

(5) "Mold remediation company" is defined by KRS 367.83803(5).

(6) "Normal fungal ecology" means an indoor environment that may have settled spores, fungal fragments, or traces of actual growth whose identity, location, and quantity are reflective of typical settled spores, fungal fragments, or traces of actual growth for a similar indoor environment.

(7) "Postremediation evaluation" means the activity conducted by a mold remediation company to determine that the mold remediation has been performed and the mold remediation area, structure, and systems are free of mold contamination.

(8) "Postremediation verification" means sampling and analysis conducted to determine that a remediated area has been restored to a normal fungal ecology.

Section 2. Safety and Health. A mold remediation company shall:

(1) Assure that each principal and employee has training, education, and experience to:

(a)1. Perform the tasks required pursuant to this administrative regulation for mold remediation assigned to that person; and

2. Use and operate equipment, tools, and materials, that will be used or operated by that person during mold remediation or that are required pursuant to this administrative regulation;

(b) The training required by paragraph (a) of this subsection shall include, at a minimum, the following topics related to the mold remediation tasks required pursuant to this administrative regulation:

1. Safety and health;
2. Engineering controls;
3. Containment methods; and
4. Work practices;

(2) Use engineering controls and work practices to prevent exposure of occupants and the mold remediation company's employees and agents to mold;

(3) Determine the type of containment to use during mold remediation;

(4) Inform the customer in writing of the mold remediation company's determinations regarding containment, including, at a minimum, if the mold remediation company plans to:

(a) Use full or limited containment;

(b) Use negative pressure so that air pressure within the containment areas is less than in surrounding areas as a measure to prevent cross-contamination; or

(c) Advise the customer of other measures to be used to protect the occupants;

(5) If the mold remediation company makes a determination not to use containment, advise the customer in writing of the reasons for that determination;

(6) If mold is or will be disturbed, or if workers enter or will enter a containment area, ensure that workers use appropriate protective equipment, including, at a minimum:

(a) A respirator approved by the National Institute for Occupational Safety and Health (NIOSH) that is appropriate for the environment to be encountered;

(b) Goggles, if a full face respirator is not used; and

(c) Gloves; and

(7) Prior to contracting for mold remediation, inform the customer in writing:

(a) Of the potential health risks of mold exposure generally, by providing a copy of the most recent edition of the U.S. Environmental Protection Agency's A Brief Guide to Mold, Moisture, and Your Home, Document Number EPA 402-K-02-003;

(b) Of the areas to be vacated for the duration of the remediation and the estimated duration of the remediation;

(c) Of the need to advise tenants and occupants to avoid entering containment areas and work areas for the duration of the remediation and of any other measures customers should use to protect tenants and occupants; and

(d) About mold and indoor environmental professionals generally, by providing a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, to the customer prior to or during the initial visit to the property. If the Form MRC-1 is provided to the customer with other items, the Form MRC-1 shall be on top of or prominent among the other items.

Section 3. Contamination Prevention and Project Documentation. (1) Except as provided by subsection (6) of this section, a mold remediation company shall provide the customer with a written mold assessment and remediation plan prior to entering into a mold remediation contract with the customer.

(a) Portions of the mold assessment and remediation plan may be prepared by an independent indoor environmental professional if the customer has engaged one (1).

(b) The written mold assessment and remediation plan shall include, at a minimum:

1. The scope of work, including, at a minimum, the area or areas to be remediated, the tasks to be performed, and a price estimate;

2. An assessment of the source of moisture and, if applicable, measures to take to remedy or manage the moisture source. If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, the mold assessment and remediation plan shall include a statement to that effect;

3. An assessment of the extent of the mold problem to be addressed;

4. The containment and removal techniques that will be used to control the spread of mold contamination, including the written disclosures required by Section 2(4), (5), and (7) of this administrative regulation; and

5. A statement describing how the postremediation evaluation will be conducted, including:

a. Visual examination for removal of mold, and mold-contaminated or water-damaged materials and debris;

- b. Examination to determine that surfaces are free of dust;
- c. Examination to determine if mold-associated odors have been eliminated; and
- d. Sampling or testing for postremediation verification, if recommended. If postremediation verification is to be conducted, it shall be performed by an independent indoor environmental professional paid directly by the customer and reporting directly to the customer.

(2) If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remedying and managing the moisture source, or both, a mold remediation company shall not perform mold remediation work for the customer until the mold remediation company obtains a completed, signed, and dated Notice of Moisture Problem, Form MRC-3, from the customer and provides a copy of a completed Form MRC-3 to the customer.

(3) A mold remediation company shall not perform mold remediation work without a written contract. A mold remediation company shall ensure that a contract for mold remediation incorporates the mold assessment and remediation plan required by subsection (1) of this section.

(4) The mold remediation company shall obtain a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, with the customer's dated signature on each form and provide a copy of the completed Form MRC-1 and Form MRC-2 to the customer prior to entering into a contract with the customer for mold assessment or mold remediation.

(5) A mold remediation company shall provide the customer with a written change order to be signed and dated by the customer prior to performing additional work for which there is a cost to the customer or prior to a substantive or material departure from the mold assessment and remediation plan.

(6)(a) If, because of the size and scope of the work to be performed, it is not practicable to provide a mold assessment and remediation plan for a commercial or institutional customer and if the customer requests in writing that work begin prior to receiving the mold assessment and remediation plan, the mold remediation company shall, prior to entering into a mold remediation contract with the customer:

1. Obtain a completed, signed, and dated Commercial or Institutional Customer, Form MRC-4, from the customer and provide a copy of a completed Form MRC-4 to the customer; and
2. Provide the customer a price list that includes the amounts charged for labor and equipment.

(b) The mold remediation company shall provide updates to the customer regarding the work performed and the work not yet performed. The updates shall be provided on a periodic basis as agreed to by the customer.

(7) At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report that includes, at a minimum, a:

(a) Statement indicating if all visible mold, unrestorable mold-contaminated materials, and debris have been removed;

(b) Statement indicating if all mold-associated odors have been eliminated;

(c) Statement indicating if surfaces are free of dust;

(d) List of any unexpected conditions or events that arose during the mold remediation work that have the potential for:

1. A significant impact on worker or occupant health or safety; or

2. Interfering with achieving or maintaining an appropriate postremediation condition of the remediated area;

(e) Statement indicating if all salvable structures, systems, and contents have been dried to an appropriate moisture content; and

(f) List of independent indoor environmental professionals, if sampling or testing to verify the mold remediation is required by the contract.

(8) A mold remediation company shall maintain a copy of all documents required by this administrative regulation for a period of at least three (3) years following completion of the mold remediation work.

Section 4. Contamination Control. A mold remediation company shall:

- (1) Control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles;
- (2) Minimize dust generation; and
- (3) Ensure that mold contamination does not spread to less-contaminated or non-contaminated areas.

Section 5. Contamination Removal. A mold remediation company shall:

- (1) Physically remove mold contamination from the structure, systems, and contents to return the structure, systems, and contents within the remediated area to a normal fungal ecology; and
- (2) Return the structure, systems, and contents within the remediated area to a clean condition. The structure, systems, and contents shall be considered clean if:
 - (a) Mold contamination is removed;
 - (b) Unrestorable mold-contaminated materials are removed;
 - (c) Debris is removed;
 - (d) Surfaces are free of dust; and
 - (e) Remediated areas are free of odors associated with mold.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Read This About Mold Before You Sign A Contract", Form MRC-1, October 2012;
- (b) "Read This About Indoor Environmental Professionals Before You Sign A Contract", Form MRC-2, October 2012;
- (c) "Notice of Moisture Problem", Form MRC-3, October 2012;
- (d) "Commercial or Institutional Customer", Form MRC-4, October 2012; and
- (e) "A Brief Guide to Mold, Moisture, and Your Home", Document Number EPA 402-K-02-003, Reprinted September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. (39 Ky.R. 350; 780; 946; eff. 12-7-2012; Crt eff. 2-21-2020.)