

In deciding to “Sunset” the Texas Mold Program and Texas Mold Assessment and Remediation Rules (TMARR), the Sunset Commission should consider carefully their duty, and should remember it is NOT supposed to be easy to “undo” legislative intention and legislative statutes. Statutes are passed by the “will of the people” and a representative vote. A sunset commission report must be absolutely “bullet proof” in terms of “doing away” with settled law or pre-existing rules. Legislators DON NOT like to have a bureaucratic undoing of passed and settled statute, and neither do Judges on the bench. The proposed sunsetting of the Texas Mold Assessment and Remediation Rules (TMARR) has a long list of unintended consequences, the Sunset Commission did NOT consider. One of these is the unintended effect of “other agencies”. The TMARR is also an “Insurance law” required by other “settled and passed legislation”. This is NOT addressed in the Sunset Commission Staff report. This is a MAJOR oversight and mistake by the Sunset Commission AND the DSHS Self Audit Report. It is **required** by the sunset laws and regulations that this MUST be addressed. If the rule is not “at home” in the DSHS, then it should be explored to “transfer” it to a better home, BEFORE elimination. That option and the other agency impact has not been addressed or even recognized. The proposed sunsetting or ending of the Texas Mold Assessment and Remediation Rules is misguided and the reasoning is ignorant of the purpose and effect of the law as written by the very Department proposing its demise. There are just plain ignorant portions of the proposal and affects, and then there are some pretty nasty legal ramifications with homeowners, commercial and property underwriting and surety laws.

It is my opinion that the Sunset Commission recommendations on Eliminating the Texas Mold Program and the TMARR is an arbitrary and capricious act based on poor interpretation of law, and very poor and superficial “evaluation”. This particular proposal crosses over the main purpose for the law, and that is the “underwriting decisions” on a consumer purchasing insurance and the ability of the insurer to make decisions based on prior mold claims.

The mold rules were propose for three reasons: 1) consumer protection from unscrupulous contractors and consultants by instituting standards and defining what a mold remediation is, 2) licensing programs to detail “what” constituted assessment, analysis, remediation, and to determine and address the water source, and minimal standards on conduct, and 3) the mitigation and underwriting requirement for the “insurance workaround” of collecting more for premiums to cover their mold losses, but allowing the insurers to “not cover” mold. The rationale of ending the mold rules and program is stated in the May 2014 Staff Report, issuing “reasoning” and I use that term pretty loosely with this proposal is stated as such:

On Page 47: ***DSHS’ mold assessment and remediation program is another case in point. While state law allows Texas homeowners and owners of properties with less than 10 residential dwelling units to take mold samples and perform mold clean up without a license, the State requires DSHS to license and regulate individuals, companies, and laboratories that perform this function. Texas is one of the few states to adopt licensing requirements for mold businesses, but several indicators suggest this program is redundant and unneeded.***

<sup>3</sup>“Mold: An Old Contaminant Creates New Concerns for Homeowners,” Ohio State Bar Association, last modified April 25, 2013, <https://www.ohiobar.org/forpublic/resources/lawyercanuse/pages/lawyercanuse-283.aspx>

**RESPONSE:**

The Sunset Commission did not read the DSHS Self Evaluation Report very well. The “redundancies” that DSHS was talking about is the “Indoor Air Quality Guidelines” that are guidelines and redundant. That requirement was dumped on DSHS in 2003 (page 46 Sunset Commission Report) The report also states it cannot be considered “redundant” because Texas is one of only two states that had mold regulations. There are NO federal regulations, and “guidelines are rarely followed. The rule has:

- 1.) Lowered mold remediation costs. In 2004, costs for mold remediation were running about \$80,000- \$120,000 for a \$160,000- 250,000 house. Today mold remediation for houses usually cost less than \$50,000 and most usually less than \$25,000, and the mold problem actually gets fixed.
- 2.) There are actually less mold remediation projects and they are actually “mold remediation” rather than “money extraction” services by unscrupulous “mold remediators and assessors”.
- 3.) Standardized the mold remediation and assessment process in Texas. In other states “anything goes” and as a trainer, I see it and have to argue with out of state mold remediation and assessment practitioners.
- 4.) Consumer protection and education is now stabilized by the requirements of the provision of the “Consumer Mold Information Sheet” by all licensees, AND there is a “Code of Ethics that must be complied with and illustrated the need for licensing at the time of the legislative action requiring the development of the TMARR:

295.304, (b) All credentialed persons or approved instructors shall, as applicable to their area of credentialing or approval:

- (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 as set forth in this subchapter;*
- (3) *not participate in activities where a conflict of interest might arise, pursuant to §295.307 of this title (relating to Conflict of Interest and Disclosure Requirement) 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 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 any advertising, announcement, presentation, or competitive bidding; (TOXIC BLACK MOLD for instance)*
- (12) *not make a representation that is designed to take advantage of the fears or emotions of the public or a customer; (TOXIC BLACK MOLD for instance)*
- (13) provide mold-related services at costs in keeping with industry standards; and

Additionally, the Department does not indicate “what” those “indicators” are, but refer to an antiquated webpage from the Ohio Bar Association. Not very credible, because this is a FAQ

site for OHIO residents, and that has nothing to do with Texas Insurance case law, specifically litigation and case history specifically Texas jurisprudence with respect to mold cases, not some generalized obscure state bar association website. The two mold cases that should be addressed are; the Feiss and Ballard cases. Both are settled law and were the landmark cases why we have a mold law in Texas, and are State of Texas Supreme Court ruling and Texas District Court ruling, NOT Ohio.

No.04-1104 IN THE SUPREME COURT OF TEXAS

RICHARD FIESS and STEPHANIE FIESS, *Plaintiffs-Appellants* v. STATE FARM LLOYDS  
*Defendant-Appellee*

BALLARD v. FIRE INSURANCE EXCHANGE **Case Number:** 99-05252 **Date:** 12-17-2001

**Court:** District Court, Travis County, Texas Court finding for Plaintiff in \$32 million, award on appeal undisclosed.

**RESPONSE:**

**THE DEPARTMENT AND SUNSET COMISSION NEEDS TO COME CLEAN AND STATE WHAT THESE “INDICATORS” ARE TO DISPOSE THIS PROGRAM.**

The Sunset Staff report goes on:

*The U.S. Environmental Protection Agency provides guidance for mold remediation in structures; the American Industrial Hygiene Association a national entity, provides certification of mold assessors; and multiple other private sector trade groups train and certify mold remediators.*

4“Mold Remediation in Schools and Commercial Buildings,” United States Environmental Protection Agency, last modified April 18, 2013, [http://www.epa.gov/mold/mold\\_remediation.html](http://www.epa.gov/mold/mold_remediation.html).

**RESPONSE:**

**AIHA does NOT have certification programs for mold remediators or assessors. They are an INDUSTRIAL HYGIENE group and the AIHA backed the Texas mold regulations and wanted to require all assessors to be Industrial Hygienists, so AIHA was on board with the original regulations. See comments to preamble to the TMARR. Additionally, the Sunset commission also wants to end the “Voluntary Indoor Air Quality Standards in State Buildings”. So the Department proposes to get rid of a “voluntary program” for state buildings, that is a guideline, because it is not mandatory and not followed, and then proposes to get rid of the Texas Mold Program. The problem is that “guidelines” do not work, and this was known in the comment period of the original TMARR.**

Page 48. *As previously mentioned, all 19 programs suggested for deregulation have little impact on public health and safety, and 10 of them had little to no enforcement actions in the last three fiscal years. “Eliminating the regulation of these practices would not affect the practice of other practitioners whose profession may be regulated, nor would the*

*recommendation require other regulated professionals to perform any work currently performed by participants in these 19 programs.”*

**RESPONSE:**

Mold does have a “health component” and it is recognized, again in passed law and “references” as an allergen and sensitizer. The department’s own powerpoint presentation states that very clearly and the “mold health effect policy” of the State of Texas from the DSHS Mold Program Website:

**“Required Training Module on Potential Health Effects of Molds (PowerPoint presentation) (164K PowerPoint)**

The information in this training module, developed by the Department of State Health Services (in consultation with state associations, including at least one representing physician) is required to be used by accredited training providers as part of the training protocol for mold assessment technicians, mold assessment consultants, mold remediation contractors and mold remediation workers, as per section 295.320 of the Texas Mold Assessment and Remediation Rules.”

Texas DOES recognize Mold as a “health effect” contrary to what was presented by the Sunset Commission. Where did the Sunset Commission get the contrary viewpoint on health? Whose testimony?

The Sunset Commission in it’s proposal to end the mold program (and 19 others) are justifying it “because we do not enforce the regulations”. That is a problem, because NOW the Department has to answer for “misappropriation and misallocation of funds”. The Department in the case of Lead, Asbestos, and Mold programs have set the fees for these programs for licensing at the maximums, but have a history of only allocating one-half to two-thirds of the money. Now that we have opened this Pandora’s box, I am calling for a full SUNSHINE AIUDIT of the history of fee funds paid in in the form of revenues from licensees and business and project owners, and the funding history throughout the existence of the program. We have that for the asbestos program. The misappropriation of the asbestos funds and absconding it ILLEGALLY is in excess of \$27 million. Look no further than the funding handbook of the DSHS and the appropriation bills. So this “sunsetting” is based to cover up “ misappropriations”? DSHS has a micromanagement approach from the field inspectors, to mid level managers, to PSQA, then to the actual enforcement branch. It seems there can be “streamlining” of the bureaucratic micromanagement process, in reduction of managers as opposed to “doing away with it all” approach.

From Page 52 Sunset Commission report:

*“This recommendation would discontinue state regulation for the following activities to streamline DSHS’ operations and fulfill Sunset’s charge to examine and eliminate programs that are not critical to ensuring public welfare. While an anecdotal argument can be made to*

*illustrate harm by any program listed below, state regulation does not and cannot prevent such harm. Under this recommendation, all regulatory functions related to the following activities would cease on the effective date of the provision in the resulting Sunset bill:....”*

**RESPONSE:**

I do not even know what to say to that unsupported and ignorant statement. In the January “proposed rules” archive, dated January 30, 2004. In the proposed rule analysis there was stated: “On the other hand, costs may decrease for some property owners, particularly homeowners, as the new regulations may discourage fraudulent and overzealous practices by licensees. Based on reports in news media, some companies took advantage of the public’s fear of “toxic mold” resulting in unneeded or excessive testing and remediation. Some companies, having no performance standards as guidance in remediation, and would unnecessarily remove or clean items.” This was borne out in an article in the Indoor Environment Connections magazine. Indoor Environmental Connections Magazine Dec. 2008, Page 10 “Industry Views: The Best and Worst of EQ in 2008: *“In my opinion, there is no doubt that the fundamental intent of the mold legislation in Texas was to curb the consulting and remedial extremism amplified through lawsuits in, what I refer to as, the Texas Mold/Insurance Wars of 2001-2004.”* Larry Robertson, Tech. Director, Indoor Environmental Consultants, Jewett, Texas

From the Department’s own “Consumer Mold Information Sheet”:

*“How is a property owner protected if a mold assessor or remediator does a poor job or actually damages the property? The Rules require licensees to have commercial general liability insurance in the amount of \$1 million, or to be self-insured, to cover any damage to your property. Before hiring anyone you should ask for proof of such insurance coverage. You may wish to inquire if the company carries additional insurance, such as professional liability/errors and omissions (for consultants) or pollution insurance (for contractors), that would provide additional recourse to you should the company fail to perform properly.”*

*“Receiving a certificate documenting that the underlying cause of the mold was remediated is an advantage for a homeowner. It prevents an insurer from making an underwriting decision on the residential property based on previous mold damage or previous claims for mold damage. If you sell your property, the law requires that you provide the buyer a copy of all certificates you have received for that property within the preceding five years.”*

The Rule was as Mr. Robertson stated is an “Insurance Law”. There are two instances of sunseting the rule and closing the program would not just “illustrate harm” but actual harm, and it is NOT an “anecdotal argument”. Remember that little blurb on the CMIS with the underwriting decision”? See the Insurance rule below:

<http://www.tdi.texas.gov/pubs/consumer/cb074.html>

### **Certification Required for Certain Types of Claims**

If you hire a mold remediator, all repairs and remediation must be inspected. The remediator must also give you a **Certificate of Mold Remediation (MDR-1)** no later than 10 days after the work is done. The certificate is proof that the mold has been removed and the cause of the mold is fixed. *If you don't have a certificate for the repairs or remediation, an insurance company can deny you coverage in the future based on past mold damage or claims.* If you sell your property, the law requires that you provide the buyer with a copy of all certificates you have for that property.

If you repair damage resulting from an appliance-related leak, you need to get a Certificate of Appliance-Related Water Damage Remediation (WDR-1). The certificate verifies that the damage was properly replaced or repaired and that any related physical damage was properly remediated, repaired, or replaced. If you don't have the repairs or remediation certified by a WDR-1, an insurance company can deny you coverage in the future based on previous appliance-related damage or claims. **(Is the Appliance Water Damage Remediation licensees also being done away with in whatever department they are in?)**

Sec. 544.303. *PROHIBITION OF CERTAIN UNDERWRITING DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE. An insurer may not make an underwriting decision regarding a residential property insurance policy based on previous mold damage or a claim for mold damage if:*

- (1) the applicant for insurance coverage has property eligible for coverage under a residential property policy;*
- (2) the property has had mold damage;*
- (3) mold remediation has been performed on the property; and*
- (4) the property was:*
  - (A) remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.154, Occupations Code, that establishes with reasonable certainty that the underlying cause of the mold at the property has been remediated; or*
  - (B) inspected by an independent assessor or adjustor who determined, based on the inspection, that the property does not contain evidence of mold damage.*

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.021(a), eff. September 1, 2007.

**Sec. 544.305. PENALTY. An insurer that violates this subchapter is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82, 83, and 84.**

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.

This is evidence of a huge colossal amount of damage to the “public welfare” by the health issues of mold that has not changed in the ten years that the TMARR has been in existence, referring to the *Damp Indoor Spaces* by the IOMS is the standard and allergies and sensitivity and hypersensitivity are real concerns, and the insurance underwriting decisions. There is CONSIDERABLE impact on the “public welfare” for every homeowner and property owner holding and insurance policy, with potential for water damage. Additionally there is opening another “Pandora’s Box” or legal conundrums and paradoxes that would ensue because of the existing 10 years. That liability is controlled by the TMARR Chapter 295, Subchapter J, Rule 295.338.

*(a) A property owner is not liable for damages related to mold remediation on a property if a Certificate of Mold Damage Remediation has been issued under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner) for that property and the damages accrued on or before the date of the issuance of the Certificate of Mold Damage Remediation.*

*(b) A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if a Certificate of Mold Damage Remediation has been issued under §295.327 of this title for the property, the property is owned or occupied by a governmental entity, including a school, and the decision was made by the owner, the occupier, or any person authorized by the owner or occupier to make the decision.*

---

**Source Note:** The provisions of this §295.338 adopted to be effective May 16, 2004, 29 TexReg 4498; amended to be effective May 20, 2007, 32 TexReg 2642

Here is the CMDR-1, notice it is a Texas Department of Insurance form, NOT a DSHS form:

<http://www.tdi.texas.gov/forms/pcpersonal/pc326mdr1.pdf>

So on to the “Insurance Part”, and only a “Licensed” Assessor and remediator can issue the CMDR that prevents this underwriting decision. So if required by another law under the administrative act, The Sunset Commission violated their own rules in this report concerning this elimination of the TMARR, which is the effect on other agencies that the DSHS self-audit report and the Sunset Commission report neglect to take into account, NAMELY THE INSURANCE PROVISIONS OF HOMEOWNER AND COMMERCIAL AND PROPERTY PERIL SURITIES AND UNDERWRITING LAWS.

Sec. 325.0115. CRITERIA FOR REVIEW OF CERTAIN AGENCIES. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular occupation or profession.

(2) **"Public interest" means protection from a present and recognizable harm to public health, safety, or welfare.** The term does not include speculative threats, or other non-demonstrable menaces to public health, safety, or welfare. **For the purposes of this subdivision, the term "welfare" includes the financial health of the public when the absence of governmental regulation unreasonably increases risk and liability to broad classes of consumers.**

(b) In an assessment of an agency that licenses an occupation or profession, the commission and its staff shall consider:

(1) whether the occupational licensing program:

**(A) serves a meaningful, defined public interest; and**

**(B) provides the least restrictive form of regulation that will adequately protect the public interest;**

(2) the extent to which the regulatory objective of the occupational licensing program may be achieved through market forces, private or industry certification and accreditation programs, or **enforcement of other law;**

(3) the extent to which licensing criteria, if applicable, ensure that applicants have occupational skill sets or competencies that correlate with a public interest and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation or profession; and

**(4) the impact of the regulation, including the extent to which the program stimulates or restricts competition and affects consumer choice and the cost of services.**

The TMARR has been effective at controlling ALL of those. The rule states you MUST take into consideration "financial health" in the terms of "welfare", not strictly "health" only. The Sunset Commission did, arbitrarily and capriciously narrowly define "welfare" beyond what is legally allowed. The provision of the Sunset Commission Evaluation criteria is listed 325.011, "(6) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies, the extent to which the agency coordinates with those agencies, and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;". There was apparently ZEOR coordination with the Texas Department of Insurance on the issue to sunset the TMARR or the enforcement of the Texas mold program.

Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the

Insurance Code and other laws of this state. If TMARR was allowed to sunset there would be no licensees to assess, remediate or sign the CMDR-1, under the insurance laws for homeowners and property owners in the State of Texas. Here is the Full Insurance Law dealing with the mold portion:

**§21.1007. Restrictions on the Use of Underwriting Guidelines Based On a Water Damage Claim(s), Previous Mold Damage or a Mold Damage Claim(s).**

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by previous mold damage or by the filing of mold damage claims, a water damage claim, or certain appliance-related claims, under a residential property insurance policy.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(2) Underwriting guideline--A rule, standard, guideline, or practice; whether written, oral, or electronic; that is used by an insurer or an agent of an insurer to decide whether to accept or reject an application for a residential property insurance policy or to determine how to classify the risks that are accepted for the purpose of determining a rate.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by §823.003 of the Insurance Code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Chapter 981.

(5) Appliance-related claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance. An appliance means a household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(6) Water damage claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

**(e) Restrictions on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance.**

**(1) An insurer shall not use an underwriting guideline regarding a residential property insurance policy based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property if:**

(A) the applicant for insurance has property that is eligible for residential property insurance coverage;

(B) the property has had mold damage;

(C) mold remediation has been performed on the property; and

(D) the property was:

**(i) remediated in accordance with the requirements specified in Chapter 1958, Subchapter D of the Occupations Code, and any applicable rules promulgated by the Department of State Health Services pursuant to Chapter 1958 of the Occupations Code; and a Certificate of Mold Damage Remediation (MDR-1) is issued to the property owner under Section 1958.154 of the Occupations Code which certifies with reasonable certainty that the underlying cause or causes of the mold at the property have been remediated; or**

**(ii) inspected by an independent mold assessor or adjuster, who is licensed to perform mold assessment in accordance with rules promulgated by the Department of State Health Services under Chapter 1958 of the Occupations Code and the independent mold assessor or adjuster provides to the property owner written certification on a Certificate of Mold Damage Remediation (MDR-1) that based on the mold assessment inspection, the property does not contain evidence of mold damage.**

**(2) The Certificate of Mold Damage Remediation (MDR-1) is a form that is prescribed by the Department for use by mold remediators, assessors, and adjusters who will provide certifications. This form may be obtained from the Texas Department of Insurance website <http://www.tdi.state.tx.us> or by requesting such form from the Automobile/Homeowners Section or from the Department of State Health Services.**

In the DSHS Self Audit Report there was no mention of the Texas Chapter of the Environmental Information Association, the Texas Chapters of the American Industrial Hygiene Association (even though in the Sunset Commission they are referenced incorrectly as a "certification" body for mold remediation), and the Indoor Air Quality Association. The "Coastal Oyster Leaseholders Association" WAS however listed. Ridiculous? Yes. This announcement of the

intention to “sunset” the TMARR and Texas Mold Program was not announced to ANY license holder, in fact when it became known in the DSHS, we know employees were told to not speak of it. VERY bad when the agency that is given money and jobs from the licensees intentionally mislead, and suppress information flow to those licensees concerning our industry and regulations that affect it. Under the sunset commission the agency is to be judged in it’s information sharing in rulemaking (which the Asbestos Program is doing right now and there is NO information going to the licensees right now.).

## **RECOMMENDATIONS**

The DSHS can save a lot of money for the state and more efficiently execute their legislative and regulatory mandates in implementation of their programs. Most of this is common sense from a business perspective, but not within agencies and bureaucracies:

- 1.) Collect all project notifications fees for asbestos, lead, and mold projects at time of notifications. Currently DSHS inefficiently uses multiple staff to issue “invoices” sometimes multiple times that result in violations. In the Texas Asbestos and Mold programs, there is a list of Notices of Violations, and on average 85% of these “violations” are for failure to pay the fee. First rule: “Get the Money First”. These resulting “violations” have NO IMPACT on health or execution of the program, but foul the enforcement process with unnecessary cases that would all be ended with collecting the money first. The DSHS also quotes these “violations” as successful enforcement” when it is actually championing inefficiency and promoting stupidity.
- 2.) Appropriate ALL of the money licensees send in for the program. Most of the time only half of the money sent in from licensees and project notifications to these programs are actually “appropriated for the program”. I have included a letter to Michelle Pharr talking about such at thing, and there is a bold faced lie in it. Mold, asbestos, and lead programs are routinely misappropriated and the balance illegally washed into the general fund. I am submitting the proof from the appropriations bill for 2012 showing the “balance” of the asbestos program, i.e., expenses taken from “revenues” (fees from licensing and project notification) is “in the black” to the tune of \$27 million. This is “revenue positive”, and illegal as hell. STOP asking for money and fees for these license classifications and then spending the money on something else. I REQUEST AN AUDIT OF APPROPRIATIONS OF THE DSHS SPECIFICALLY IN THE MOLD, ASBESTOS AND LEAD PROGRAMS!
- 3.) Use personnel for the service they are paid. In the Self Audit report, page 235 the DSHS admitted they used an asbestos inspector for Abusable-Volatile Chemical (AVC) inspection during the 2005-2007. That is co-mingling of funds. Remember that the Asbestos Program is already “forced to donate (extortion)” \$27 million to the general fund, and then they use the asbestos inspectors for AVC inspections which is NOT revenue neutral.
- 4.) Page 288 of the Self Audit report shows a massive bureaucratic micromanagement process form field inspector, to managers, to the Policy, Standards, and Quality Assurance (PSQA) group to the enforcement then to general counsel, here is the excerpt:

“Centrally directed inspectors conduct inspections for the following programs: Asbestos, Abusable Volatile Chemicals, Bedding, Hazardous Substances, Environmental Lead, Community Right to Know, Worker Right to Know, and Mold Remediation. Staff conducts the inspections in accordance with a risk assessment designed for each activity in order to provide a fair, consistent, and effective compliance approach within the regulated community. **Inspectors report** these activities weekly to the Inspection Unit. Thereafter, staff turns in all associated paperwork, such as checklists, sample results, and report narratives, within timelines prescribed by each activity. **Group managers in the Inspection Unit receive and review the work** according to standards prior to forwarding to the PSQA Unit. **Specialists in the PSQA Unit review the findings of each inspection to determine whether to proceed with enforcement action;** if so, specialists forward the recommendation to the Enforcement Unit. **The Enforcement Unit, with support from the Office of General Counsel,** handles the due process requirements associated with prosecuting cases.”

That is 3 reviews of “known” violations from the witnessing field inspectors. This is exactly what the Federal Occupational Safety and Health Administration found was an impediment to the enforcement process. 3<sup>rd</sup> level managers with no knowledge of the severity or the violations or standards are reviewing practicing field inspectors work, whom DO have the knowledge of standards and violation severity. Currently the asbestos programs has the opinion of the building owner can use “ignorance of the asbestos laws” as a protection and lessening of the fines.

- 5.) Enforce meaningful fines. The fine has to be more than an “inconvenient cost” of doing business. For instance in Irving, Texas a building owner used 60 gallons of gasoline to remove floor tile and mastic from the Fazio's Department Store building. The work was done on a Friday night around 10:00 PM. The owner used temporary workers to remove asbestos containing ceiling tile, and then used gasoline to remove asbestos flooring mastic. The case went to Federal Court, and the Supervisor of the Company Califco, was sentenced to 12 months and one day in federal prison, and fined \$25,000. The business Califco was fined \$500,000. The DSHS fine? \$2,200 for failure to notify!!!! The fines from DSHS are so low they are viewed in Asbestos, MoOld, and Lead as a “cost of doing business”. Why pay the licensing fee, and notify (to let them know you are breaking the law), when you can just ignore it? Instead of paying for a \$100,000 asbestos abatement cost, or a \$25,000 mold project, just demo it all illegally, and IF caught, IF caught, the fines are usually less than \$5000.00. The construction, developers, and apartments KNOW that the fines are just “absorbed” as a “cost of doing business”. Meaning, there is no deterrent, and there is no real fulfillment of the regulations. The same is true in mold or any “enforcement capacity”. People only pay attention when you start “reaching in their wallet”.

Supporting attachments follow

Certificate of Mold Damage Remediation

Consumer Mold Information Sheet

2007 Fee Resource manual

Appropriations 2012

Michelle Pharr letter