


Submitted by the County Executive and Introduced By Presiding Officer Norma Gonsalves,
Deputy Presiding Officer Richard Nicoletto, Alt. Deputy Presiding Office Howard Kopel,
and Legislators Denise Ford, Francis Becker, Vincent Muscarella, Michael Venditto,
Laura Schaefer,
Dennis Dunne, Rose Walker,
and Donald MacKenzie

LOCAL LAW NO. 13 - 2014

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE IN
RELATION TO LICENSING ENVIRONMENTAL HAZARD REMEDIATION PROVIDERS

Passed by the Nassau County Legislature on September 22, 2014
Vote: ayes 18, nays 0, abstained 0
Became a law on September 25, 2014 with the approval of the
County Executive.

APPROVED AS TO FORM

Deputy County Attorney

WHEREAS, asthma and other respiratory conditions have increased significantly in the United States and indoor environments, where most people spend a majority of their time, are believed to play an important role in predisposing vulnerable populations to asthma and other respiratory diseases; and

WHEREAS, scientists have found evidence to establish a causal link between the presence of asthma triggers, irritants, pathogens, fungi and mold within certain indoor environments and a number of respiratory conditions existing in many people at those locations and that these asthma triggers include but are not limited to; stachybotrys chartarum, soot from smoke or fire damage and flood damage, mold or environmental pathogens including bird or bat droppings or potentially infectious materials as defined by 29 CFR 1910, including H1N1, viruses, bacteria, organic dust, blood borne pathogens, chemical spills, construction dust and sewage; and

WHEREAS, vulnerable populations, located within Nassau County, with profound immune-suppression, obstructive or cavity lung diseases, allergic rhinoconjunctivitis, asthma acerbated by moldy, materials, pneumoniosis and other vulnerable populations are at particular risk for not only a number of respiratory diseases, but other immune deficiencies as well; and

WHEREAS, without an environmental hazard remediation licensing program or approved decontamination plan for emergency remediation, large scale remediation of damage caused by fire, flooding or other sources of environmental exposure are generally addressed in a manner that is haphazard, incomplete, insufficient and unsafe and an approved licensing program for environmental hazard remediation would result in a uniform standard requiring training and licensure and would ensure that environmental hazard remediation is done efficiently, effectively and safely; now, therefore

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. A new title is hereby added to chapter twenty-one of the Nassau County Administrative Code as follows:

Title D-22

ENVIRONMENTAL HAZARD REMEDIATION PROVIDERS

Section	21-31.0	Definitions
	21-31.1	License Required, Display
	21-31.2	Types of Licenses
	21-31.3	Application for Environmental Hazard Remediation Provider License; Fee; Insurance
	21-31.4	Application for Environmental Hazard Remediation Technician License; Fee
	21-31.5	Issuance of License
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	21-31.7	Denial or Revocation of License; Appeals
	21-31.8	Non-Transferability of License
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	21-31.12	Disclaimer of Liability
	21-31.13	Penalties for Offenses

21-31.14. Discretion of the County Executive to Modify or Suspend
21-31.15 Severability

§ 21-31.0. Definitions

1. Unless the context specifically indicates otherwise, the meaning of terms used in this Title shall be as follows:

- a. "Commissioner" means the Nassau County Commissioner of Consumer Affairs or his or her designee.
- b. "Environmental contractor" means any person who, or legal entity that, contracts with an owner or an owner's agent to inspect a suspected environmental hazard or to implement any measure or measures that result in the remediation of an environmental hazard in a building. Such term shall not refer to an employee or agent of said environmental contractor that inspects or remediates environmental hazards on behalf of his or her employer.
- c. "Environmental hazard(s)" means any condition that constitutes an indoor air quality violation as defined by any United States statute or regulation, any New York State Law or regulation, any local law or any regulation promulgated by the Commissioner, and which hazard was caused by fire, flood, storm, chemical spills, dust, sewage, mold, pathogens or other biological contaminants and not caused by the presence of asbestos or lead.
- d. "Environmental hazard assessment process" shall include; (i) the sampling of physical evidence from a building where a suspected environmental hazard exists which sampling shall be taken in accordance with any applicable United States statutes and regulation; New York State Law or regulation; local law or regulation of the Commissioner, which he or she might, from time to time, issue; or any generally accepted standard within the industry and analyzed by a laboratory accredited or certified by any government agency, university, or industry group; (ii) a written, thorough, investigative evaluation of the alleged environmental hazard site, which shall be made after a thorough investigation of the building's history and detailed inspection of the environmental hazard site; (iii) a written explanation which either supports a finding that there is an environmental hazard or that there is not an environmental hazard based upon standards adopted by any United States statutes and regulation, New York State Law or regulation; local law or regulation of the Commissioner, which he or she might, from time to time, issue, or any generally accepted standard within the industry; (iv) a written proposal of a remediation plan, specifying the chemicals and methodology to be used, which shall be specific to the environmental hazard site; and (v) an itemized estimate of the cost of any environmental hazard remediation pursuant to the plan. Any person providing an environmental hazard remediation plan shall have an affirmative duty to specify the least costly method or methods available for the remediation of any environmental hazard. Any person conducting an environmental hazard assessment shall provide to the owner of the building an itemized estimate of the cost of the process prior to conducting the

assessment. The owner of the building shall be under no obligation to utilize the services of the person that conducted an environmental hazard assessment for any subsequent environmental hazard remediation. An environmental hazard assessment may be abridged, simplified or dispensed with, at the discretion of the owner of a building which contains five or less dwellings. Any writing produced by or through the environmental hazard assessment process shall be the property of the owner of the building for which the environmental hazard assessment was conducted.

e. "Environmental hazard remediation" means the removal, cleaning, sanitizing, treatment and/or other preventive actions to eliminate any and all environmental hazards, including lead and asbestos present at the environmental hazard site pursuant to any environmental hazard remediation plan by or under the direct personal supervision of a licensed environmental hazard remediation technician. No environmental hazard remediation activity may violate any United States statute or regulation, any New York State Law or regulation, the Nassau County Fire Prevention Ordinance, or any town or village local law, ordinance or regulation.

f. "Environmental hazard site" means a commercial building, office building, store, factory, warehouse, hotel, restaurant or a multiple or single family dwelling within the boundaries of Nassau County but not under the ownership and/or control of the County of Nassau or any other municipality, New York State or the United States where a determination has been made pursuant to an environmental hazard assessment that an environmental hazard exists.

g. "Licensee" means a person, company or corporation permitted to perform environmental hazard assessment or environmental hazard remediation by this Title.

h. "Owner" means any homeowner, multiple dwelling owner, tenant, building owner, or any other person who is legally authorized to order, contract for, or purchase the services of a Licensee.

i. "Person" means any individual, firm, partnership, association or corporation.

j. "Principal(s)" means an individual owner of an environmental contractor, if the environmental contractor is a sole proprietorship, the general partners if the environmental contractor is a partnership, and the officers, directors, and stockholders holding more than 5% of the outstanding stock if the environmental contractor is a corporation.

§ 21-31.1. License Required, Display

1. No person shall, within the County of Nassau, establish, engage in or carry on, directly or indirectly, environmental hazard assessment or remediation, either separately or in conjunction with some other business, without first having obtained a license or licenses in accordance with and subject to the provisions of this Title.

2. Such licenses shall be displayed in a conspicuous place at the designated place of business of the licensee or his or her employer. A copy of such licenses shall be prominently displayed outside any environmental hazard site where remediation is or will be performed or any site where an environmental hazard assessment is occurring or has occurred. On site copies of licenses shall remain in place for thirty days after work is completed.

3. Such license shall not in any way supplant the licensing and display requirements of any applicable United States or New York laws and regulations.

§ 21-31.2. Types of Licenses

1. An environmental hazard remediation provider license shall be issued to environmental contractors. All environmental hazard remediation providers, or at least a principal thereof, shall also hold an environmental hazard remediation technician license. An environmental hazard remediation provider may employ unlicensed workers or contractors as long as those unlicensed workers or contractors are under the direct supervision of a licensed environmental hazard remediation technician.

2. An environmental hazard remediation technician license shall be issued to an environmental hazard remediation provider or their principals and any person employed by, seeking employment by or under contract to a remediation provider for the purpose of environmental hazard assessment and environmental hazard remediation. An environmental hazard remediation technician may directly supervise no more than ten (10) unlicensed employees or contractors performing a remediation or remediations.

§ 21-31.3. Application for Environmental Hazard Remediation Provider License; Fee; Insurance

1. Applications for environmental hazard remediation provider licenses shall be made to the Commissioner. The application shall contain the following information:

a. Name and description of the applicant's business enterprise. Individuals using their own name or a trade name must present a certified copy of the business certificate on file in the Nassau County Clerk's Office. A partnership conducting business must submit a certified copy of the partnership certificate on file in the Nassau County Clerk's Office. A corporation must furnish a copy of the Secretary of State's Filing receipt. A corporation operating under an assumed name (or "DBA") must submit an Assumed Name Certificate that has been filed with New York State authorizing the use of that name in Nassau County. All corporations must furnish the original and current corporate structure naming all principals, officers, directors and stockholders including all minutes showing changes made to the corporate structure.

b. All applicants must maintain a bona fide establishment at a definite location within the State of New York. Any non-domestic corporation must submit a Certificate of Authority to do business in New York State.

c. All applicants or principals must submit acceptable evidence of identity. This proof must be a state-issued Department of Motor Vehicles Driver License or Non-Driver Identification Card of the owner or owners of the business.

d. The applicant's legal address, email address and landline telephone number and the addresses of all places of business within Nassau County and the address of a designated agent for service of process.

e. The name and address of the owner or owners of the business premises and the nature of the right of occupancy of the applicant to use said premises and a copy of lease or deed of the business premises.

f. A description of the nature of the all business to be conducted and/or being conducted by the applicant in Nassau County.

g. A statement that all principals are at least 18 years of age.

h. A statement as to whether or not the applicant or any principal has, within the past 10 years, been convicted of a crime or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore and such other facts or evidence as is deemed necessary to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.

i. Two photographs of the applicant or the principals, taken not more than 60 days prior to the date of application, which clearly depict the head and shoulders of the applicant and which shall be 2 inches wide by 2 inches tall.

j. All applicants or principals for a license will submit to fingerprinting of the individual owner, if the applicant is a sole proprietorship, the general partners if the applicant is a partnership, and the officers, directors, and stockholders holding more than 5% of the outstanding stock if the applicant is a corporation. All individuals fingerprinted in connection with an application for a license shall be subject to a review of their criminal history record by the Commissioner. All fingerprints and any applicable fees must be submitted in the form and manner as prescribed by Division of Criminal Justice Services ("DCJS"). Any decision regarding a prospective applicant's fitness for a license based upon a conviction contained in the criminal history background information obtained from the DCJS of any individual fingerprinted pursuant to this section must be made upon consideration of New York State Correction Law Sections 701-703-b and Sections 751-753.

2. Every application for a remediation provider license shall be accompanied by a non-refundable application fee of one thousand dollars (\$1000) in the form of a certified check or postal money order payable to the County of Nassau for a two-year license.

3. All applicants must furnish certificates of public liability and property damage insurance in the amount of one million dollars (\$1,000,000) per person, two million dollars (\$2,000,000) per

occurrence for bodily injury and one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate for property damage.

4. No applicant for a license or license renewal or its principal shall have any un-negotiated judgments, liens, tax warrants or unpaid child support orders.

5. Every license issued hereunder shall be valid for the operation of one establishment. Licensees may request additional licenses to operate additional establishments from the Commissioner for a fee of one hundred dollars (\$100.00) per establishment.

§ 21-31.4. Application for Environmental Hazard Remediation Technician License; Fee

1. Applications for environmental hazard remediation technician licenses shall be made to the Commissioner. The application shall contain the following information, unless such information has been submitted in an environmental hazard remediation provider application:

a. Name, legal address and email address of applicant.

b. All applicants must submit acceptable evidence of identity. This proof must be a state issued Department of Motor Vehicles Driver License or Non-Driver Identification Card of the applicant or the owner or owners of the applicant.

c. A statement that the applicant is at least 18 years of age.

d. A statement as to whether or not the applicant has, within the past 10 years, been convicted of a crime or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore and such other facts or evidence as is deemed necessary to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.

e. Two photographs of the applicant, taken not more than 60 days prior to the date of application, which clearly depict the head and shoulders of the applicant and which shall be 2 inches wide by 2 inches tall.

f. All applicants for an environmental hazard remediation technician licenses will submit to fingerprinting of the individual owner, if the applicant is a sole proprietorship, the general partners if the applicant is a partnership, and the officers, principals, directors, and stockholders holding more than 5% of the outstanding stock if the applicant is a corporation. All individuals fingerprinted in connection with an application for a license shall be subject to a review of their criminal history record by the Commissioner, or his/her designee. All fingerprints and any applicable fees must be submitted in the form and manner as prescribed by Division of Criminal Justice Services ("DCJS"). Any decision regarding a prospective applicant's fitness for a license based upon a conviction contained in the criminal history background information obtained from the DCJS of any individual fingerprinted pursuant to this section must be made upon consideration of New York State Correction Law Sections 701-703-b and Sections 751-753.

g. Proof by an individual or the principal of a business applicant of the following course work offered through any educational provider accredited by the United States, by any state or municipality or any industry group or labor union or the Commissioner: OSHA Safety Standards for Construction or General Industry (minimum 10-hour course); NYS Asbestos Handler (minimum 32 hours); EPA Lead Worker (minimum 16 hours) (Lead RRP shall not be sufficient); Hazardous Waste Operations (HAZWOPER) (minimum 40 hours); Microbial Remediation (minimum 24 hours); Water Damage Restoration (minimum 20 hours) or IICRC WRT Certification; Fire Damage Restoration (minimum 16 hours) or IICRC FSRT Certification; PCB Awareness (minimum 4 hours); and Bloodborne Pathogens (minimum 4 hours); Infection Control Risk Assessment (minimum 4 hours).

h. Proof by an individual or the principal of a business applicant of valid lead and asbestos abatement licenses.

h. Until January 1, 2020, the Commissioner may accept proof of actual experience in environmental hazard remediation and evidence of enrollment in any of the course work indicated in this Title in lieu of actual course work.

2. Every application for an environmental hazard remediation technician license shall be accompanied by a non-refundable application fee of one hundred dollars (\$100.00) in the form of a certified check or postal money order payable to the County of Nassau for a two-year license.

3. No applicant for a license or license renewal or principal of an applicant shall have any un-negotiated judgments, liens, tax warrants or unpaid child support orders.

§ 21-31.5. Issuance of License

1. Upon receipt of the appropriate license application, fee and bonds required of the applicant, the Commissioner shall review the application and, if appropriate, issue a license to the applicant.

2. The Commissioner shall keep a record of all licenses issued, suspended and/or revoked, as well as any other matters herein described.

§ 21-31.6. Expiration and Renewal of License

Every license shall expire two years after its issuance. Every license may be renewed upon payment of the required renewal fee in the amount of five hundred dollars (\$500.00) for an environmental hazard remediation provider license and one hundred dollars (\$100.00) for an environmental hazard technician license and filing a renewal application with the Commissioner no earlier than 30 days, and no later than 15 days before the license is due to expire, certifying that no changes have occurred with respect to any of the facts or information required or supplied on the original application, or, if there have been any changes, the applicant shall furnish the

facts and information relating to such changes and shall comply with the requirements of this law.

§ 21-31.7. Denial or Revocation of License; Appeals

1. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers, or directors, or any of its stockholders owning more than 5% of its outstanding stock of the corporation has been convicted of a crime which, in the judgment of the Commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this Title, or has been convicted of any other crime which, in accordance with Article 23a of the Correction Law, would provide a justification for the Commissioner to refuse to issue or renew, or to suspend or revoke, such license.

2. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than 5% of its outstanding corporate stock has omitted or misrepresented the facts or circumstances underlying any information contained in the license application or colluded in the fixing of prices for environmental hazard assessment and remediation services.

3. A license may be denied or revoked when a person has been found by a court of any state to have practiced civil fraud, deceit, or misrepresentation in conjunction with any business.

4. The initial determination to deny, suspend, or revoke a license under this subsection shall be made in writing by the Commissioner.

5. Within sixty (60) calendar days of the initial determination to deny or revoke a license under paragraphs 1 through 4 above, an aggrieved applicant or licensee may request a formal hearing. Such request shall be addressed via certified mail to the Commissioner. Within a reasonable time thereafter, the Commissioner shall appoint an independent hearing officer with the authority to compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matters affecting the determination. The applicant shall be advised of the hearing date and his/her right to be represented by counsel at said hearing. The hearing officer shall render his/her Decision and Recommendation to the Commissioner within thirty (30) calendar days of the hearing. The Commissioner will notify the applicant/licensee within a reasonable time thereafter of his/her Final Determination with respect to the disposition of his license/application for license.

§ 21-31.8. Non-Transferability of License

No license shall be assignable or transferable except as hereinafter provided. A license to conduct business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twenty-five (25) percent of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the other members of such partnership. The

application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment fee of one hundred dollars (\$100).

§ 21-31.9. Restrictions

1. It shall be unlawful to use or cause to be used the title "Registered Professional Remediation Enterprise" or any other title in a manner as to convey the impression that an unlicensed individual, corporation, partnership or other business entity, or any person it employs, is licensed as an environmental hazard remediation provider.
2. No licensee pursuant to this Title shall collude with any person to fix prices for services provided pursuant to their license.
3. No licensee pursuant to this Title shall interfere with the right of any owner of any building that is not an environmental hazard site as defined in this Title from employing any contractor otherwise licensed by the Commissioner to do home improvements, repairs or services from performing any remediation activity.
4. No licensee pursuant to this Title shall interfere with the right of any owner to remediate a environmental hazard by demolition or partial demolition.

§ 21-31.10. Reports to the Commissioner

Every environmental hazard remediation provider shall immediately notify the Commissioner of any unreported environmental hazard site, any unlicensed environmental hazard remediation and its performance of an environmental hazard assessment or an environmental hazard remediation. A copy of all writings generated in connection with the environmental hazard assessment shall be filed with the Commissioner within thirty (30) days of the assessments completion.

§ 21-31.11. Regulations.

The Commissioner shall make such regulations as deemed necessary for the proper implementation and enforcement of this title.

§ 21-31.12. Disclaimer of Liability

This Article shall not create any liability on the part of the County of Nassau, its officers, agents, or employees, or any police officer for any act or damage caused as a result from reliance on this Article or any administrative decision lawfully made there under.

§ 21-31.13. Penalties for offenses

1. Notwithstanding any provisions to the contrary contained in this Chapter, the Nassau County Charter, the Nassau County Administrative Code or any other local law, a failure to comply with any of the provisions of this Title shall constitute a Class A Misdemeanor and shall be punishable by a fine not exceeding five thousand (\$5,000.00) dollars, or imprisonment for a period not more than one year, or by both such fine and imprisonment. The continuation of an offense shall constitute a separate and distinct violation hereunder for each day the offense is continued.

2. In addition to the penalties provided above, any offense against the provisions of this Title shall subject the person committing the offense to a civil penalty in the amount of One Thousand dollars (\$1000.00) for each day that the offense shall continue, collectible by and in the name of the County of Nassau.

§ 21-31.14. Discretion of the County Executive Suspend or Modify

The County Executive shall have discretion, by executive order, to temporally suspend or modify the applicability of any portion of this Title within any federally declared disaster area within Nassau County. Any suspension or modification of this Title shall not absolve any person from any penalties levied pursuant to this Title prior to the suspension or modification.

§ 21-31.15. Severability


If any clause, sentence, paragraph or part of this Title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 2. The numbering of this title and the sections thereunder may be altered by the County Attorney, or any other official editor of the Administrative Code, to ensure numerical consistency with the rest of the Administrative Code without the necessity for a vote to be taken by the County Legislature or by the members of any Standing Committee of said Legislature if this local law is passed by the affirmative vote of a majority of said Legislature.

Section 3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this ordinance is a "Unlisted" Action and has been determined not to have a significant effect on the environment. A record of such determination shall be maintained in a

file, readily accessible to the public, at the office of the Clerk of the Legislature.

Section 4. This local law shall take effect when filed with the Secretary of State of New York .

APPROVED


County Executive
DATE Sept. 25, 2014