



January 7, 2009

Assemblyman Brian Kavanagh  
431 LOB  
Albany, NY 12248

RE: Assembly Bill 648

Via Email: [KavanaghB@assembly.state.ny.us](mailto:KavanaghB@assembly.state.ny.us)

Dear Assemblyman Kavanagh:

On behalf of the American Industrial Hygiene Association (AIHA) I would like to offer comments on a bill introduced by you, Assembly Bill 648, a bill relating to mold safety and protection as well as changes to the insurance law in New York.

AIHA members in New York and around the country share your interest and commitment to address an issue that has received high-profile media attention, considerable litigation nationwide, and may impact the health of countless individuals. In the last five years, a considerable number of states have considered legislation pertaining to mold. Many of these measures addressed inspection and remediation while others addressed the issue of insurance and real estate. While numerous measures were introduced, few of the major bills were enacted into law. Legislation also stalled on the Federal level. And while a very small number of states have enacted legislation requiring licensing for those involved in mold it is somewhat early to determine whether or not such laws have had a major impact.

While I sense that public policymaking on this issue has lessened over the course of the last year or two, the issue still has considerable interest and should be carefully looked at. AIHA will continue to monitor this issue in the states and on the federal level to provide interested parties with the latest information.

AIHA and our members support any legislation or regulation that would assist in addressing the issue of mold, so long as such regulation/legislation addresses the issue in a way that provides adequate protection for the public and workers. One of the goals of AIHA is to assure that "good science" is included in the consideration of public policy. A key role of AIHA members in our society is protecting individuals from exposure to hazardous substances, (i.e., lead, asbestos, noise, radiation, biological chemicals) including exposure to fungi and other potentially hazardous microorganisms, commonly referred to as "mold".

Founded in 1939, the American Industrial Hygiene Association is the premier association of occupational and environmental health and safety professionals. AIHA's 10,000+ members play a crucial role on the front line of worker health and safety everyday. Members represent a cross-section of industry, private business, labor, academia, and government.

I have taken a quick look at AB648 and have several comments and suggestions. However, it should be noted that my comments and suggestions are limited to the sections of the bill dealing directly with mold analysis and remediation and not the area of insurance. I am hopeful this information will assist you as you move forward with this legislation. AIHA offers the following comments on the issue of mold:

**AIHA believes that proper definitions must be used.** AIHA has reviewed dozens of legislative measures addressing the issue of mold and we have come to realize there must be language that adequately defines mold assessment/inspection and mold remediation. Any legislation or regulation should use the following definitions:

“Mold Assessment” means an inspection, investigation, or survey of a dwelling or other structure to provide the owner, building manager, or occupant with information regarding the presence, identification, or evaluation of mold; the development of a mold management plan or remediation protocol; or the collection or analysis of mold samples.

“Mold Remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold contaminated material or mold that was not purposely grown at a given location.

These definitions provide those drafting regulations with the authority to develop specific guidelines and qualifications for individuals involved in either assessment or remediation. These definitions have been mentioned in several legislative measures across the U.S. and have been approved by a consensus group of experts representing three AIHA technical committees.

**AIHA does not believe it is possible to define, or set, a single occupational exposure level for mold, due largely to the current state of scientific study in this area.** AIHA does not believe it is possible for any single study to accurately delineate levels of exposure to mold or mold by-products that may be harmful to human health.

Previous testimony in the U.S. House of Representatives from the Centers for Disease Control stated: “Molds are ubiquitous in the environment, and can be found almost anywhere samples are taken. It is not known; however, what quantity of mold is acceptable in indoor environments with respect to health. For these reasons, and because individuals have different sensitivities to molds, setting standards and guidelines for indoor mold exposure levels is difficult and may not be practical.”

In May of 2004, the Institute of Medicine of the National Academy of Science released a long-awaited report on indoor mold and health. The report concluded that scientific evidence links mold and other factors related to damp conditions in homes and buildings to asthma symptoms in some people, as well as some other respiratory symptoms; however the available evidence does not support an association between either indoor dampness or mold and the wide range of other health conditions that have been ascribed to them.

As you can see, this is a very complex issue, and AIHA recommends careful consideration of any legislative or regulatory action. If, and when, the state of New York moves forward on development of standards addressing mold, the state should refrain from any attempt to determine a specific exposure level for mold.

**AIHA is concerned about the competency of individuals involved with inspection, assessment, analysis and remediation of mold.** This, of course, is of great concern to everyone involved with the issue. AIHA supports efforts to ensure that individuals are properly educated and trained in the occupational and environmental hazards of mold.

Over the course of the last couple of years, we have seen an influx of various organizations offering training programs and certifications to individuals wishing to become involved with mold assessment and/or remediation. Many of these programs are excellent, but some raise serious questions about the training being offered, the individuals being trained, and the certification being offered.

A certification does not necessarily mean that an individual is qualified. One of the problems encountered today is the abundance of new certifications being granted. There are more than 300 titles in occupational and environmental health and safety, yet nationally recognized and accredited bodies grant only a dozen or so.

Only specifically qualified persons should be utilized for the design and management of mold assessments, directing others performing initial mold assessments, writing protocols for mold remediation, and conducting post-remediation inspections. This would include, but not be limited to, Certified Industrial Hygienists (CIH) with education, training, and experience in specific areas of science. A CIH is, we believe, one of the leading professional disciplines currently qualified and capable of the recognition, evaluation and control of mold. There are other individuals who have undergone considerable training and education, i.e., certified safety professionals (CSP), who may also meet the minimum qualifications to be considered qualified and capable to control mold.

AIHA does not believe the skills necessary to conduct proficient mold assessments can be obtained through attendance at a training course held over a period of a few days. Combining education and demonstrating competency in specific areas of knowledge, is essential.

AIHA considers the following minimum qualifications and competencies necessary to define a "competent professional":

- Bachelor of Science in industrial hygiene, environmental health, or an engineering, life science, chemistry or physics discipline;
- Two years of experience under the direction of a CIH, CSP and/or licensed Professional Engineer with significant experience in building science, mold assessments, and exposure assessment. At least one of the two years must involve the performance of indoor environmental quality assessments.
- In addition to the qualifications above, the competent professional should have competence (from education, training and experience) in:
  - Exposure assessment
  - Indoor Environmental Quality (IAQ)
  - Heating, ventilating and air conditioning (HVAC)
  - Microbial assessment and remediation
  - Building science
  - Legal/communication
  - Microbiology/mycology
  - Health effects

AIHA is not opposed to standards that allow all individuals to become involved in mold inspection and remediation through training and examination; but any legislation or regulation needs to recognize those individuals who may meet the minimum competencies already

deemed necessary. Again, AIHA remains concerned about individuals becoming certified in mold after simply attending a three or four-day training course and taking a short examination.

**Need for accredited laboratories to analyze mold samples.** Recognized sampling and analytical methods should be used where sampling is conducted to identify the mold or assess potential mold exposure. If sampling is conducted, it is AIHA's position that only laboratories accredited for the appropriate analyses by a nationally recognized accrediting authority, or an accrediting body recognized by the National Cooperation on Laboratory Accreditation (NACLA) or its equivalent should conduct mold analysis. Laboratories accredited by AIHA's Environmental Microbiology Laboratory Accreditation Program (EMLAP) meet this requirement.

This recommendation comes with substantial previous interest and involvement on both the state and federal levels:

The New York City Department of Health guidelines on mold contain specific language that refers to the use of qualified laboratories. This language states, "The American Industrial Hygiene Association offers accreditation to microbial laboratories (Environmental Microbiology Laboratory Accreditation Program (EMLAP)). Accredited laboratories must participate in quarterly proficiency testing (Environmental Microbiology Proficiency Analytical Testing Program (EMPAT))".

The Environmental Protection Agency guide on indoor air quality suggests, "sample analysis should follow analytical methods recommended by the American Industrial Hygiene Association, the American Conference of Governmental Industrial Hygienists, or other professional guidelines".

The Occupational Safety and Health Administration (OSHA) in October 2003 issued a safety and health information bulletin "A Brief Guide to Mold in the Workplace" stating that "sampling and analysis should follow any other methods recommended by either OSHA, NIOSH, EPA, the American Industrial Hygiene Association, or other recognized professional guidelines".

Final mold rules in the State of Texas, adopted in 2004, state that a laboratory must be accredited by the AIHA EMLAP or by an equivalent program.

New York State regulations already recognize the AIHA laboratory accreditation program in regulations addressing asbestos sampling and industrial hygiene sampling for workplace safety and loss prevention programs.

### **SPECIFIC COMMENTS ON AB 648**

- S. 4850. Definitions. (3). "Toxic Mold Risk Assessor". I am not sure where this definition or title came from, but I would caution you in creating another new term when existing professionals, i.e., certified industrial hygienists, certified safety professionals, etc., are already qualified to meet requirements to establish the level of risk to public health. In addition, many of those in the scientific community question the use of the term "toxic" as it infers that there is a difference between "mold" and "toxic mold".
- S. 4851. (1) AIHA questions whether or not language should be included that states "minimum levels of exposure at which indoor mold growth is harmful to human health". We believe removing this language does no harm to the section, yet provides no

requirement for the Department to determine any level of exposure, which is nearly impossible to determine at this time.

- S. 4852. (1) AIHA agrees with language in this section requiring the Department of Environmental Conservation to promulgate rules and regulations. AIHA would suggest amending within the many requirements the term “mold testing labs” to now read “accredited mold testing labs”.
- S. 4852. (3) AIHA suggests amending this language to include “representatives from professional associations whose members are qualified to conduct and/or oversee mold assessments and remediation”. There are other sections within the bill where such language should also be included.
- General Suggestion. Throughout the legislation, there seems to be an inconsistency in the use of terms defining individuals overseeing mold assessments and/or remediation. The definitions use the term “toxic mold risk assessor”. Further on in the proposed bill is language using the term “mold risk assessor, and even later on language stating “state-certified mold inspector”. We suggest discussion on which of these terms the state wishes to use as it moves forward.

## CONCLUSION

I apologize for the length of these comments; however I believe all of them to be important as you move forward in addressing this issue. AIHA shares your concern about the potentially harmful effects microbial growth may have on the health of the public, workers and other exposed individuals. We hope our comments are helpful in your efforts to address this concern.

Should you have any questions or need additional information regarding AIHA’s expertise and interest in this area or questions about what other states are doing to address this issue, do not hesitate to contact me. I am sure that members of our local sections in New York will also be in touch with you regarding this legislation.

Sincerely,

*(signature)*  
*Aaron K Trippler*

Aaron K. Trippler  
Director, Government Affairs

cc: AIHA New York Local Section Officers  
Peter O’Neil, AIHA Executive Director