



*Your Essential
Connection*

January 24, 2003

Senator Eliot Shapleigh
Texas Senate
State Capitol
P.O. Box 12068
Austin, TX 78711

Via Email: eliot.shapleigh@senate.state.tx.us

Dear Senator Shapleigh:

The American Industrial Hygiene Association (AIHA) would like to take this opportunity to comment on legislation recently introduced by you, SB 243, relating to the regulation of mold assessors and remediators.

AIHA members in Texas and around the country share your interest and commitment to address an issue that has received high-profile media attention, considerable litigation nationwide, and impacts the health of countless individuals. In 2002, nearly a dozen states considered legislation to address this issue. While few bills were enacted, we suspect that this year we will see as many, if not more, measures introduced.

Founded in 1939, the American Industrial Hygiene Association is the premier association of occupational and environmental health and safety professionals. AIHA's 12,000 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.

The 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".

In reviewing SB 243, we note the legislation covers many aspects related to the issue of mold. Prior to providing you with our comments and suggestions, it is only proper to share with you AIHA's position on the issue of mold.

AIHA

Your Essential Connection:

*Advancing Occupational and Environmental Health
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AIHA does not believe it is possible to define or set permissible exposure levels for mold.

With the current science, AIHA does not believe it is possible for any single study to ascertain levels of exposure to mold or their products that may be harmful to human health. It is virtually impossible to specify levels at which the many different kinds of mold may be considered “toxic.”

As stated by Dr. Stephen Redd from the Centers for Disease Control at recent testimony before a U.S. House of Representatives oversight committee hearing on the issue of mold, “There are no accepted standards for mold sampling environments or for analyzing and interpreting the data in terms of human health. 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.” Therefore, AIHA believes other, more appropriate performance measures will need to be explored.

With respect to your legislation, SB 243, AIHA respectfully submits the following comments and recommendations for your consideration as the bill is further deliberated:

- 1) AIHA is concerned about standards for 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 assure that individuals are properly educated and trained in the occupational and environmental hazards of mold.

A significant portion of our membership is comprised of certified industrial hygienists. Certified industrial hygienists (CIH) are one of the leading professional disciplines currently qualified and capable of inspecting and remediating mold. A CIH has *already* met stringent education and experience requirements in order to become certified. Although CIHs are not licensed by the state of Texas, the CIH is protected under Texas law, which provides penalties for individuals claiming to be a certified industrial hygienist without the proper credentials (Texas Statutes, Title 132, Chapter 20, Article 9034).

In addition, draft advisory guidelines on mold in the workplace from the Occupational Safety and Health Administration recommends “consulting experienced safety and health professionals” for evaluation. The New York City Department of Health “Guidelines on Assessment and Remediation of Fungi in Indoor Environments” also includes language that states “a health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities”.

However, under your proposed legislation, *Sec. 1958.101 (a)*, a CIH would not be allowed to perform mold inspections, assessments or analyses unless they were to obtain either a mold assessment and/or mold remediation license.

While AIHA is not opposed to standards that allow other individuals to become involved in mold inspection and remediation through training and examination, we believe the legislation needs to recognize those individuals already deemed qualified, such as certified industrial hygienists. It is for these purposes that we recommend that CIHs be among those individuals exempt from licensing requirements provided under *Section 1958.102* of the bill.

Such action is not without legislative precedence. A bill introduced by Senator Mike Jackson and Senator Troy Fraser, SB129, expressly exempts a certified industrial hygienist from licensing requirements and includes a definition of a CIH for purposes of the bill. These provisions not only in our opinion strengthen the bill, but also immediately provide confidence to the public that these individuals have the necessary expertise to address the problem.

AIHA suggests that the following language be added under *Section 1958.102*: *“(d) an individual who is certified as a certified industrial hygienist is exempt from the licensing requirements under this chapter.”*

Should you wish to include a definition of a certified industrial hygienist for purposes of the bill, recommended language should include the following: *“Certified Industrial Hygienist” means an individual certified by the American Board of Industrial Hygiene as a certified industrial hygienist and whose certification has not expired or been suspended or revoked.”*

- 2) **AIHA is supportive of your recommendation that the department may adopt rules to effect reciprocity agreements with other states with similar licensing programs as specified in Section 1958.106 of the bill.** Your foresight in including this recommendation puts you ahead of many other jurisdictions in assuring competency, yet provides for government coordination of rules and regulations. One needn't go back too far in time to see the problems encountered by numerous states that did not enact reciprocity agreements when dealing with issues such as lead and asbestos.
- 3) **Need for accredited laboratories to analyze mold samples.** One of the requirements to address the potentially harmful effects of mold contamination is to identify the type of mold and the level of exposure. As stated earlier, AIHA does not believe that with the current science available it is possible to set minimum exposure levels. If sampling is conducted to identify the mold or assess potential mold exposures or other issues (or in research), AIHA feels it is advisable that only qualified laboratories should be used to correctly analyze samples collected as part of the investigation process.

This recommendation also comes with substantial previous interest and involvement on both the state and federal levels. The OSHA guidelines on mold in the workplace contain specific language that refers to the use of qualified laboratories. The OSHA 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))”. This identical language appears in the New York City Department of Health guidelines on mold and the Environmental Protection Agency guide on indoor air quality suggests that “sample analysis should follow analytical methods recommended by the American Industrial Hygiene Association, the American Conference of Governmental Industrial Hygienists, or other professional guidelines”.

With this background, AIHA suggests the following language be added to your legislation: *“Mold testing shall be conducted only by laboratories accredited for the appropriate analyses by a nationally recognized accrediting body or authority, such as the American Industrial Hygiene Association Laboratory Accreditation Program or equivalent program recognized by the National Cooperation on Laboratory Accreditation (NACLA) as meeting the international standard for competence (ISO/IEC Guide 58).”* The AIHA Laboratory Accreditation Program is recognized by NACLA.

In conclusion, AIHA shares your concern about the potentially harmful effects microbial growth may have on the health of exposed individuals. We hope our suggestions and recommendations 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, please do not hesitate to contact me. I am sure that members of our local sections in Texas will also be in touch with you regarding this legislation.

Sincerely,

(signature)

Aaron K. Tripler

Aaron K. Tripler
Director, Government Affairs

cc: AIHA Texas Local Section Officers
Steven Davis, AIHA Acting Executive Director