Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Bill 20-569, the "Air Pollution Disclosure and Reduction Act of 2013"

Committee on Transportation and the Environment
The Honorable Mary Cheh, Chairperson

Committee on Economic Development
The Honorable Muriel Bowser, Chairperson

Council of the District of Columbia

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Good morning Chairperson Cheh and members of the Committee on Transportation and the Environment, and good morning Chairperson Bowser and members of the Committee on Economic Development. I am Johanna Shreve, the Chief Tenant Advocate for the District of Columbia in the D.C. Office of the Tenant Advocate. I am here this morning to present testimony regarding Bill 20-569, the "Air Pollution Disclosure and Reduction Act of 2013" – more specifically the provisions dealing with the problem of "indoor mold" in rental accommodations.

I would like to begin by thanking Chairperson Cheh and her Committee staff, as well as the other advocacy groups here today, for tackling this important issue and for the productive discussions with relevant agencies leading up to this hearing. I also thank both Chairperson Cheh and Chairperson Bowser for expeditiously convening this hearing on the bill.

While there is no quick and easy policy fix to the District's mold problem, my main points today are simple and straightforward:

1. As the OTA client intake data indicates, mold afflicts a significant number of District renters, sometimes in very serious ways.
2. The absence of a "mold policy" in the District represents a conspicuous gap in a regulatory regime which is supposed to help secure the tenant's right to safe and sanitary housing.

3. This *status quo* all but ensures that the District's "mold problem" will only worsen, thus it is imperative that decisive steps be taken towards filling the regulatory gap.

OTA "mold" cases

First, I will discuss OTA intake cases regarding mold and other relevant inquiries received by our office. OTA clients have consistently reported mold problems ever since the agency's start-up in 2006. Through our case management system, OTA case managers and attorney advisors typically handle between 250 and 300 cases per month. About thirty (30) cases -- approximately half of all intake cases involving housing code violations -- also involve a complaint about mold. Additionally, we are receiving an ever-increasing number of inquiries through our on-line "Ask the Director" program. A commensurate number of these inquiries involve complaints about mold.

Conceptually, we divide these cases into two categories. The first category is cases that involve obvious wetness or dampness due to a known flood or leak scenario. Such scenarios are covered, at least to a degree, by the housing code, thus DCRA can and does cite housing code violations in these instances. But the abatement order only extends to the replacement or treatment of the material that has clearly been encroached by water. The

landlord is considered to have abated the problem so long as no perceptible signs of wetness or dampness remain. The problem is that there could be a self-perpetuating and festering problem behind the wall.

The second "less clear" category is visible interior surface mold or suspected air-borne mold, where no underlying cause and no ongoing wetness or dampness can be readily detected. Nevertheless, the impact on the tenant can be real and serious. Such scenarios are not explicitly covered by the housing code, thus DCRA does not cite housing code violations in these instances.

It should be noted that in some instances, tenants have secured professional verification of the existence of toxic mold that requires extensive remediation. If remediation does happen, the tenant may be required to temporarily vacate the unit while the remediation takes place. More often, however, either there is no remediation, or the method of remediation appears to be unsatisfactory. A common complaint is that, despite the tenant's ongoing health concerns, the landlord has merely painted over visible mold on an interior wall. The most commonly reported "mold-related" ailment is respiratory problems, while others include bad odors, sore throats, headaches, and dizziness. A significant number of the complaints we receive call into question the basic habitability of the unit.

Too often, the OTA must advise the tenant that mold in and of itself is not a housing code violation, thus absent indications of an underlying cause a DCRA inspection would be unavailing. We advise such tenants of possible legal remedies that do exist: a civil action for injunctive relief and/or personal injury and other damages; or an action for injunctive relief at DC Superior Court's Housing Conditions Calendar. We refer tenants as appropriate to the legal service providers, such as those who have testified here today, and provide a resource list to others. Litigation however is often costly and is inherently time-consuming, giving an existing mold problem time to fester. The absence of a regulatory violation makes the burden of proof that much tougher for the tenant. Additionally, the tenant may find that securing an attorney is difficult or impossible. Rather than seek a solution through the legal system, it is likely that many tenants simply give up and move out.

Regulatory gap

The laws that appear most relevant make the existence of a regulatory gap readily apparent. For example, 14 DCMR § 106.1 entitles the tenant to a copy of a housing code violation report issued to the owner. Similarly, section 222 of the Rental Housing Act (D.C. Code § 42-3502.22) entitles a prospective tenant to a copy of housing inspection reports issued to the

owner by DCRA within the last twelve (12) months, or for any violation that remains unabated. But if there is no finding of an "underlying cause," there simply is no report to copy and make available to the tenant.

These laws are intended to provide the tenant with the basic consumer right to critical information about the service for which he or she is paying or will pay. Absent a DCRA citation for an "underlying cause," no such right currently exists for tenants regarding the presence of mold in the unit that he or she is about to lease. This gap in the law can and sometimes does prove to be hazardous to the health and safety of District residents.

As noted in previous testimonies, an increasing number of other jurisdictions have begun to address the mold issue in a variety of ways. It is time for the District to do the same in a way that is most appropriate for the District. Bill 20-569 would take a decisive and important first step. Specifically, it would define the "substantial presence of indoor mold" (section 201(3) & (4)); and, when a mold problem in the rental property meets that definition, it would require that the landlord disclose certain information to a prospective tenant (section 203(a) & (b)).

Possible amendments to the bill as introduced

There are a number of possible amendments to the bill that I believe ought to be considered, and I hope will be considered expeditiously. First

and foremost, the definition of mold for enforcement purposes, at a minimum, should be inclusive of the more severe situations confronted by the OTA's clients, and those of the advocacy groups who have previously testified. To better ensure that the legislation is effective, it is also important to carefully consider the capacities, resources, and needs of the enforcement agencies, namely DCRA and the Department of the Environment. Accordingly, the Committee, stakeholders, and the enforcement agencies, should reconvene to determine whether section 201(4) of the bill adequately addresses these considerations, and to develop any amendments to that section as appropriate.

Other dimensions to the mold problem and possible legislative solutions should also be further explored, including:

1. Whether the bill should create a mold remediation certification program to help ensure that mold remediation in the District is routinely done in a professional and competent manner;
2. Whether landlord and tenant responsibilities regarding mold prevention should be delineated in the relevant regulations, as is the case in the "cleanliness sanitation and safety" provisions of the housing code (14 D.C.M.R. §§ 801 & 802);

3. Where serious mold problems remain unabated, whether the relevant housing code provision (14 D.C.M.R. § 302) ought to be expanded to explicitly permit a tenant to void his or her lease;
4. Whether the bill should provide for tenant relocations at landlord expense, as is now the case for the abatement of lead-based paint hazards (Law 17-0381, the "Lead-Hazard Prevention and Elimination Act of 2008"; D.C. Code §§ 8-231.03(d)(1)(D));
5. Whether the bill should provide for District abatement and a property tax lien where the owner has refused to remediate a mold condition, as is now the case for the abatement of lead-based paint hazards (D.C. Code §8-231.05(e));
6. Whether education and outreach measures, such as currently exists regarding lead-based paint hazards, should be included in the legislation.

Thank you, Chairperson Cheh and Chairperson Bowser, for the opportunity to testify on this important measure, and for your leadership on behalf of the tenant community. I look forward to continuing to work with the Committees on this important legislation. This concludes my testimony and I welcome any questions you may have.