

## **Mold: The Contractor's Perspective**

**By Walter G. Wright, Jr.**

The past few years have seen a growing interest in a living organism that has been in existence for millions of years-mold. This interest is driven to a great extent by a perception that mold is growing in a variety of structures, impairing property values and/or threatening the occupants' health. Whether there is adequate scientific evidence to support the conclusion that exposure to mold causes illness to building occupants, is a matter of debate. Unfortunately, this is now beside the point.

Today, the discovery of mold in residential, office, or commercial structures generates fear and a search for one or more defendants whose conduct allegedly caused the problem. Lawsuits have been filed across the country against property managers, building product manufacturers, architects, engineers, real estate brokers, lessors, HVAC suppliers, and insurance carriers. Unfortunately, the list also includes contractors and builders.

It is not unreasonable to ask how liability can be imposed upon a builder or contractor for the growth of this material. The answer lies in how mold growth begins in a structure. It may occur if the environment inside the structure provides:

1. Moisture (does not require standing water)
  - a. Leaks (plumbing, sewer, roof, drip pans in air conditioners or floods)
  - b. Construction Defects (improper flashing, etc.)
  - c. Improper Manufacturing or Installation of Products
  - d. Design Defects (either architectural or engineering)
  - e. Owner/Tenant Misuse or Neglect of Systems (plumbing or air conditioning)
2. Nutrient Base (almost any object containing carbon-based matter such as insulation, drywall, textiles and glues)
3. Air
4. Temperature (40F to 100F)

Molds produce spores, which may become airborne. The inhalation of certain types of spores is typically the focus of concern. However, it is important to remember that mold or fungi spores are also found in the outside ambient air. Therefore, some concentration of spores will naturally be found in a building or structure.

The lawsuits against contractors and builders have to date involved allegations that the structure was constructed in a manner that allowed water intrusion or leakage facilitating mold growth. HVAC and plumbing providers have faced similar claims based on their alleged negligence in designing, servicing or constructing these systems. The damages alleged will often include:

1. Cost to remove the mold
2. Cost to correct the conditions facilitating mold growth
3. Adverse impact on value of the property
4. Evacuation/moving costs
5. Decontamination of personal property costs

In some actions, the plaintiff's claim will include impacts on health such as asthma, sinus problems, etc. The structures involved in these cases have involved courthouses, schools,

single-family residences, apartment complexes, office buildings, and commercial facilities.

The possibility of mold claims is probably a reality for the foreseeable future. Therefore, contractors and builders would be well advised to consider actions they might undertake to proactively address this issue. These might include:

1. Quickly investigate any complaints regarding water intrusion, etc. The contractor may ultimately deny responsibility. If not, it is smarter to resolve a \$10,000 warranty claim (if legitimate) than a \$100,000 mold abatement demand.
  2. Ensure that the construction contracts adequately clarify responsibility for various aspects of the project (i.e., HVAC, plumbing, foundation integrity, etc.).
  3. Review insurance policies and determine whether mold related claims are covered. Insurance companies are placing exclusions in many policies.
  4. Ensure that the structure owner/manager understands the importance (and his or her responsibility) for maintenance to prevent water intrusion/leakage.
  5. Relevant company personnel should familiarize themselves with the types of mold and the conditions that facilitate its growth.
  6. If the decision is made to sample for and/or remediate mold, exercise extreme care in selecting a consultant. There are no federal or state licensing requirements for companies performing these services. Further, there are no federal or state action or exposure levels. Therefore, you will be dependent upon the judgment of this company as to the necessary procedures. Use a firm that is both experienced and trustworthy to make these decisions.
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