

# The Growing Concern about

# MOLD

## LEGAL COMPLICATIONS

Part 2 of a series intended to clarify the facts about mold and based on a panel sponsored by CTDA at Coverings 2006. Panel participants were Greg Mowat of Forensic Tile Consultants, a forensic tile investigator; Will Spates, president of Indoor Environmental Technologies, Inc. and an indoor air quality professional; Dave Gobis, executive director of the Ceramic Tile Education Foundation and a TCNA national installation trainer; and Richard Kahanowich, a prominent attorney and senior partner with the law firm Zimmerman & Kahanowich of Los Angeles. Donato Pompo of Ceramic Tile and Stone Consultants, LLC was the moderator.

Part 1 of this series established that today's "tighter" construction methods have the potential to seal moisture problems into a building. Mold is the result of moisture and as such is not the problem itself, but it is the symptom of a moisture problem. The difficulty is that many showers and other wet areas are not installed correctly, per industry standards, and this leads to moisture intrusion. Mold needs food in order to grow, and a wet environment within wall cavities is just the right situation to enable mold to propagate. Gypsum water resistant green-board and the organic mastic that's typically used to adhere the tile to the board are substantial food sources that perpetuate the growth of mold. They're no longer recommended for wet areas. Cementitious mortar beds and other backings are highly alkaline, and therefore not a good source of food or a friendly environment for mold.

### DEFINING THE PROBLEM

Will Spates is president of Indoor Environmental Technologies, Inc. and an indoor air quality professional. He points out that mold is a fungus, nature's way of recycling organic matter back into the soil. It's the direct result of moisture where there is an adequate nutritional source to fuel the growth of fungus. Mold reproduces rapidly through microscopic spores at the rate of millions per square inch! These spores are spread by air movement and are released into the environment all around us.

Although it's most often harmless, mold has the potential to degrade organic materials and can be present on a surface or actually permeate and colonize in materials causing them to rot within. It is most dangerous when it is concealed in wall cavities where a persistent moisture problem exists with an abundant supply of food.

Photos courtesy Ceramic Tile and Stone Consultants LLC





If a water-damaged area is not properly and promptly remediated, then mold spores that are typically present, will germinate, grow and multiply. This is often the case with damp building materials. Eventually those building materials will degrade and potential negative effects from the mold will start to affect the quality of the indoor air.

Although mold is not a great health risk, some people are hyper-sensitive and have allergies that can be adversely affected by mold. Mold produces allergens and pathogens that can produce mycotoxins, which are toxic substances that can cause allergic reactions such as sneezing, runny nose, red eyes, and skin rashes. Generally, only people with asthma or compromised immune systems are likely to be adversely affected by mold. The American Industrial Hygiene Association has concluded that a substantial proportion of building-related illness (BRI) and sick building syndrome (SBS) is associated with indoor moisture and mold contamination. They say there is an abundance of evidence from investigations that symptoms of eye, nose, and throat irritation as well as cough and tiredness and fatigue are present in excess around persons or populations in certain buildings subjected to dampness and mold.

So mold does need to be controlled, but more to the point—water needs to be managed to avoid moisture intrusion problems and the resulting damage, including mold. Slight surface instances of mold can be cleaned off of finishes such as ceramic tile and stone with detergents and warm water. But when there is water intrusion into wall cavities, a severe mold problem can develop. Special remediation may be required using containment tents to isolate affected areas, HVAC ventilation systems to control the air flow, and controlled containment and removal of the infected areas to avoid cross-contamination of other areas of the building. These cases get very detailed and expensive, and require the employment of Indoor Air Quality Professionals.

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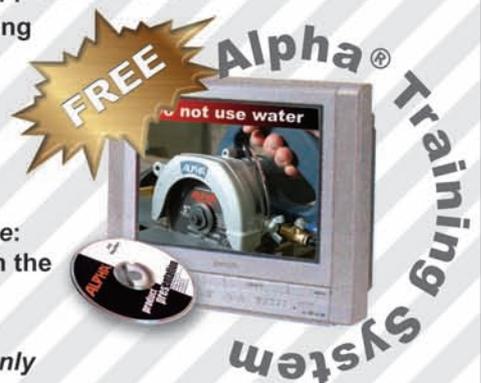
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## THE LEGAL COMPLICATIONS

As the result of a series of high insurance payouts (claims were more than \$5 billion in 2003 alone), insurance companies have adjusted their coverage. Damage from mold, like rust, rot, and mildew is specifically excluded in standard homeowners and commercial property insurance policies. Mold contamination is covered under these policies only if it is the result of a "covered peril." For example, the costs of cleaning up mold caused by water from a burst pipe are covered under the policy because water damage from a burst pipe is a "covered peril."

Some states have adopted legal remedies to the lawsuits. California's SB 800 limits lawsuit claims by plaintiffs who must show cause and the resultant damage to validate their claim, and it provides a right to repair to encourage early resolution. The insurance industry responded by offering wrap-up insurance that enables the builder to manage risk by covering all participants on a project under one policy. Wrap-ups benefit subcontractors by enabling them to obtain insurance to work on a project, for which they would otherwise not be able to secure insurance, and avoid claims against their own loss history.

Installers are in a precarious position if mold is discovered while they are performing remodeling work. In the past, installers would largely ignore mold conditions when replacing faulty tile installations, but today they put themselves at risk if they don't address these issues. Installers should insist on having mold remediation experts evaluate major mold conditions; particularly if a persistent moisture problem is present.

## POSITIVE STEPS

The good news is that in response to the flurry of news and legal activity directed at mold, various stakeholders are developing standards and guidelines to determine how best to identify and remediate mold issues.



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IICRC S520 ([www.iicrc.org](http://www.iicrc.org)) was developed and released in 2003 to establish practical procedures for remediating mold issues and is currently being updated.

EPA ([www.epa.gov](http://www.epa.gov)) also publishes remediation guidelines.

New York City Department of Health and Mental Hygiene ([www.nyc.gov](http://www.nyc.gov)) produced Guidelines on Assessment and Remediation of Fungi in Indoor Environments in 1993. NY identifies five levels of contamination and states that areas of 30 sq. ft or less (Level I and II) can be remediated by regular building maintenance staff who have gone through some basic training. The use of respiratory protection, gloves, and eye protection is always recommended. Extensive contamination of over 30 sq. ft. (Level III, IV, and V) particularly if heating, ventilating, air conditioning (HVAC) systems or large occupied spaces are involved, should be assessed by an experienced health and safety professional and remediated by personnel with training and experience handling environmentally contaminated materials.

The construction industry organization Responsible Solutions to Mold Coalition (RSMC) is a good resource for getting some of the basic facts on mold ([www.responsible moldsolutions.org](http://www.responsible moldsolutions.org)).

Kahanowich warns that mold lawsuits may be limited but that they will continue to persist. Attorneys will focus on the defect, as well as the negligence, and will bundle the mold damage in with the water intrusion defect. The insurance companies are then obligated to defend the whole case and not only a portion of it. Condominiums, hotels and tract housing projects are subject to a greater degree of liability since they can be considered a mass produced product.

Whether you are a developer, architect, general contractor, installer, distributor or manufacturer you have risk with potential mold problems. Products and methods must be specified and detailed properly, installation products that contain anti-microbial ingredients must not be misrepresented, and industry standards must be strictly met to avoid failures.

Controlling moisture and preventing water intrusion is the key to avoiding mold development. If we keep moisture outside of our wall assembly, mold cannot develop. ♦

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