

HOW TO GET SUED WITHOUT REALLY TRYING

Mold Remediation Outside the Standard of Care

With the exception of Texas, there are currently no detailed regulations that dictate procedures for mold remediation in the United States. Because of this, some people believe that anything goes, and they throw science, caution, and common sense to the wind.

In the absence of comprehensive regulations, the legal community is left to settle disputes that stem from improper remediation. While industry standards are often *enforced* by legal action, the truth is that the legal community does not *define* what constitutes proper or improper remediation. Instead, it evaluates the actions of contractors against a number of existing professional and governmental guidance documents commonly referred to as the industry standard of care (see list at end). With multiple areas of consensus between documents from such reputable organizations, the standard of care may be viewed as a type of de facto regulation where none exists (see list at end).

Contractors who do not understand or refuse to follow the standard of care create a myriad of problems for themselves, as well as for the clients and building occupants they were hired to help. This was made painfully obvious during a recent remediation project at an office building that had been converted from an old strip mall.

After receiving numerous complaints about odors and ill health symptoms from its employees, the tenant's representative hired an indoor air quality consulting firm to conduct an investigation of the 41,000 square foot structure. Many of the occupant complaints focused on noxious odors and visible fungal growth in the bathrooms. Workers reported that maintenance personnel had resorted to poking holes in the drywall ceiling to drain the water from roof leaks after rain storms. In another area, roof leaks caused a section of the suspended ceiling to collapse.

The investigator found multiple water sources from leaking plumbing, roof leaks, and roof-mounted HVAC units. Subsequent testing confirmed the presence of active fungal growth, including *Stachybotrys*, *Memnoniella*, *Chaetomium*, and *Trichoderma* in multiple locations in the building.

Based on testing and visual observations, the investigator issued a report outlining the need for remediation using work practices consistent with the industry standard of care. It was recommended that the owner hire a contractor with sufficient training and contract with a mold expert to develop a detailed work plan for the contractors to follow.

Trouble Begins

Shortly after the inspection reports and specifications were provided to the tenant's representative, the building owner's representative selected a contractor to conduct the remediation. Against recommendations from the inspector, the owner's representative failed to pre-qualify bidders and make them submit proof of comprehensive mold remediation training (e.g., courses provided by the Restoration Industry Association [formerly ASCR], the Indoor Air Quality Association, Mid-Atlantic Environmental Resource Council, or the Institute of Inspection, Cleaning, and Restoration Certification).

In addition, the owner's representative selected the lowest cost bid which, while not uncommon, was lower than estimated to adequately address a project of that size and scope. The owner's representative later disclosed that he had not thoroughly read the specifications or inspection report, and instead told the contractor which materials he wanted removed. This shows that it is not only remediation contractors who possess an anything-goes attitude. Building owners who are more concerned about their bottom line than the wellbeing of their occupants can suffer the same consequences as cowboy contractors.

Performance Problems

After several weeks of work the inspector returned to conduct a post-remediation inspection consisting of a detailed visual inspection and the collection of post-remediation bioaerosol samples. The clearance criteria for the air sampling and conditions for the visual inspection were clearly defined in the work plan. This allowed all parties involved to have a mutually agreeable endpoint consistent with the industry standard of care.

A quick inspection of the work areas showed numerous signs that the work plan and basic concepts from the standard of care documents were not followed. When the inconsistencies were brought to the attention of the remediation contractor, his response was that his crew followed the New York City Department of Health *Guidelines on Assessment and Remediation of Fungi in Indoor Environments*.

While the NYC *Guidelines* is a part of the standard of care, it is only a single document. As mentioned at the beginning of this article, there are numerous areas of consensus between the documents, so contractors *must* look at the big picture when applying the concepts to each particular project.

In any case, a simple comparison between the visual observations and recommendations from the NYC *Guidelines* proved that the contractor was not sticking to his own narrow interpretation of

the standard of care. In fact, the inspector was quickly able to cite the following sections of the NYC document and blatant project deficiencies.

- **“3. Remediation: In all situations, the underlying cause of water accumulation must be rectified or fungal growth will recur.”**
Observations: Plumbing leaks were still present in the bathroom and saturated sections of drywall were observed. The contractor stated that the water could not be shut off during remediation because of the difficulties and length of time required to bleed the system.
- **“3.3 Level III: Large Isolated Areas (30-100 square feet).....The following procedures *at a minimum* are recommended: The work area and areas directly adjacent should be covered with a plastic sheet(s) and taped before remediation, to contain dust/debris.”**
Observations: The area where the suspended ceiling had collapsed was remediated without any engineering controls whatsoever.
- **“3.3 Level III: Large Isolated Areas: Seal ventilation ducts/grills and areas directly adjacent with plastic sheeting.”**
Observations: Numerous ventilation ducts were not sealed to prevent contaminants from impacting the HVAC system and exiting the work area. The few ducts that were covered with plastic sheeting had failed due to the use of painters tape.
- **“3.3 Level III: Large Isolated Areas: All areas should be left dry and visibly free of contamination and debris.”**
Observations: Significant amounts of dust, severely water-damaged ceiling tiles, and chunks of ceiling debris were left inside containment. Contents that were slated for cleaning and removal prior to gross remediation were still inside the work areas with dust and debris on them.

Seeking Resolution

Nearly a month and several failed clearance attempts later, tensions rose. The employee's union filed grievances against their management over the lack of adequate access to bathrooms. The tenant's representative wanted answers to why the project was extending weeks past the deadline.

To help complete the project safely and expeditiously, the inspector was asked to observe cleaning techniques and offer suggestions. The inspector convinced the contractor to remove sections of drywall that appeared fine, but were listed for removal in the work plan due to the likelihood of water damage from hidden sources. The resulting “remediation” is better described as a free-for-all. Workers entered containment in street clothes and removed mold-contaminated

drywall with hammers and bare hands. Drywall dust was cleaned with a shop-vac, even though a HEPA vacuum was literally within reach. Decontamination consisted of patting down clothing before leaving the containment.

For the inspector, what was supposed to be observation of work practices quickly turned into an impromptu onsite training session in order to minimize exposure to the workers, employees, and cross contamination to other areas of the building.

The Real Consequences

In most instances, failure to follow the mold remediation standard of care ends up costing both the building owner and the contractor more time and money than would have been spent if the project had been done right the first time. In this case, time was a considerable cost as the project went more than a month longer than originally anticipated.

Monetary expenses are another serious cost incurred by working outside the standard of care. The re-cleaning required due to improperly addressing contents, unnecessary expenditures on materials, and additional man hours had a significant impact on the bottom line. Initially estimated at \$20,000 and bid at \$6,000, this remediation cost in excess of \$50,000. In the end, the building owner also lost a tenant.

The stress of a mold remediation gone bad can lead to strained communications, mistrust, loss of worker productivity, grievances, and legal action. Most important, though, failure to follow the standard of care can jeopardize the health of both mold remediation workers and building occupants. To do so is both morally irresponsible and counterproductive to maintaining a successful business.

Documents That Comprise the Mold Remediation Industry Standard of Care

- Texas Mold Assessment and Remediation Rules (25 TAC Sections 295.301-295.338)
- Occupational Safety & Health Administration (OSHA), *A Brief Guide to Mold in the Workplace*
- Health Canada, *Fungal Contamination in Public Buildings: A Guide to Recognition and Management*
- American Conference of Governmental Industrial Hygienists, *Bioaerosols: Assessment and Control*
- American Conference of Governmental Industrial Hygienists, *Field Guide for the Determination of Biological Contaminants in Environmental Samples*
- The Institute of Inspection Cleaning and Restoration Certification (IICRC), *S500 Standard and Reference Guide for Professional Water Damage Restoration*

- The Institute of Inspection Cleaning and Restoration Certification (IICRC), *S520 Standard and Reference Guide for Professional Mold Remediation*
- New York City Department of Health, *Guidelines on Assessment and Remediation of Fungi in Indoor Environments*
- American Industrial Hygiene Association, *Report of Microbial Growth Task Force*
- Environmental Protection Agency, *Mold Remediation in Schools and Commercial Buildings*
- Wonder Makers Environmental, *Fungal Contamination: A Comprehensive Guide for Remediation*

Key Areas of Agreement Among the Industry Standard of Care Documents

- Interior mold is a result of water intrusion or high humidity.
- Rapid drying of water intrusion (within 48 hours) is recommended to prevent mold growth.
- Interior water/humidity sources should be eliminated to prevent recurrence of mold growth.
- Fungal contamination of interior surfaces is unacceptable from a health/hygiene standpoint.
- Fungal contamination can cause allergic, infectious, and poisonous health effects.
- A single heavy exposure may cause serious health problems.
- Area/building evacuation may be necessary before/during mold remediation, particularly if high risk occupants are present.
- Mold remediation should begin promptly upon discovery.
- Interior fungal growth should be physically removed.
- All mold growth indoors should be remediated properly, not only *Stachybotrys*.
- Porous materials colonized by mold should be disposed of.
- Remediation work should be conducted in unoccupied areas.
- Respirators and other personal protective equipment should be used during all remediation projects.
- Work practices and engineering controls should be used to minimize dust generation during remediation.
- Specialized cleaning procedures should be employed for dust with potential spore contamination.
- Engineering controls should be progressively more stringent as the size of the remediation increases.
- Hidden fungal growth should be considered when determining the scope of a project.
- Large projects involve more than 100 square feet of fungal growth.
- Use of trained personnel is recommended for large projects.

- Containment barriers, negative pressure, HEPA air filtration, and decontamination areas should be used for large remediation projects.
- Post-remediation procedures should include a thorough visual inspection.
- Following remediation visible dust on surfaces in the work area requires re-cleaning.
- Post-remediation air sampling is recommended for large projects or high risk occupants.
- Professionals should be used to interpret sample data.

About the Authors

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