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INDOOR ENVIRONMENTAL ISSUES AND INFORMATION . . . TODAY

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The "Toxic Mold Protection Act" Enacted But Not Implemented

On October 7, 2001, California Governor Gray Davis signed SB 732, better known as the "Toxic Mold Protection Act," into law. Upon signing the bill, Governor Davis said, "I am very proud that once again – when it comes to the environment – California is leading the way...[SB 732] represents the toughest environmental health laws anywhere in America."

The Act requires the State Department of Health Services (DHS) to convene a multi-disciplinary task force to determine the feasibility of establishing permissible exposure limits to indoor molds. If the task force determines that permissible exposure limits are feasible, mandatory notice requirements for landlords and building owners are automatically triggered under the legislation. The Act specifically provides that it "shall be implemented only to the extent that the department determines that funds are available."

Despite the Governor's tough talk on the subject, the implementation of SB 732 has failed to get off the ground due to DHS funding woes. DHS has taken the position, that funds for this massive undertaking are currently not available. To date, DHS' action on SB 732 consists solely of collecting contact information from those interested in serving as a task force member/volunteer.

Sandy McNeil, a research scientist with the DHS, has been designated to head up the task force. "DHS has been clear with legislators that the assigned duties under SB 732 are extensive," said McNeil, "It would be far worse to do a slipshod job than to do nothing at all." DHS estimates it will take \$700,000 in funds to implement the first 2-3 years of the task force's fact-finding and reporting mission, and then another \$400,000 annually to maintain and modify the findings as required under the Act.

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According to McNeil, if DHS receives proper funding, it will first undertake to actively recruit task force members from a variety of disciplines including doctors, contractors, owners, rental managers, tenants, scientists, and attorneys. The task force would then review medical and field studies, analyze test results and invite experts in to educate and assist them in determining whether permissive exposure levels are feasible and whether regulations (as opposed to guidelines) are appropriate to handle indoor mold contamination. Currently DHS has received 85 unsolicited applications to serve on the task force.



The Toxic Mold Protection Act was authored by State Senator Debra Ortiz whose district includes Sacramento and Citrus Heights – the community that recently awarded a family of three, \$2.7 million in personal injury damages allegedly caused by the indoor mold in their rented apartment. Her staff has a different perspective on why the Act has yet to be implemented. “The Legislature has done its part in passing the bill and laying out the framework. Now it is up to the Administration to carry out the Act,” said Ana Matosantos, of Senator Ortiz’s office. It is unlikely, given the \$17 billion dollar budget deficit, that there will be any funds appropriated specifically to implement the Act. However, Ms. Matosantos notes that “Senator Ortiz is doing all she can to get DHS to carry out the Act’s mandate.”

While the bill became effective in January 2002, there are no current disclosure requirements for landlords or owners regarding indoor molds until the task force convenes and publishes the results of their investigation to the Legislature.

Regardless of the cause, it is apparent that there will not be any action taken to implement the Toxic Mold Protection Act anytime soon.

The winter edition of Gordon & Rees LLP’s Environmental/Toxic Tort Newsletter can be found on-line at www.gordonrees.com.

Center for Disease Control Reports – No Established Link between Indoor Mold and Health Effects

While California’s Department of Health Services attempts to research the issue, its federal counterpart, the Center for Disease Control (CDC), has already published its initial conclusions that there is no evidence of a causal link between exposure to residential indoor mold mycotoxins and particular health symptoms.

The CDC is the federal agency charged with “protecting the health and safety of people by providing credible information to enhance health decisions.” The National Institute for Occupational Safety and Health (“NIOSH”), a subdivision of the CDC, recently published an article in the American Industrial Hygiene Association stating that currently “there is inadequate evidence to support the conclusion that exposure to mycotoxins in the indoor (nonindustrial) environment is causally related to symptoms or illness among building occupants.” E.H. Page and D.B. Trout, *The Role of Stachybotrys Mycotoxins in Building-Related Illness*, 62 AIHAJ 644 (Sept./Oct. 2001).

The conclusion is made after an extensive literature search of scientific articles and studies addressing alleged health effects resulting from the exposure to mold mycotoxins. The search included a review of the available medical and scientific literature as well as research reports.

NOISH recognized that mold can indeed produce more than 300 known toxins; however, while a “wide spectrum of health effects” have been attributed to mycotoxins, current case studies are insufficient, poorly defined and have not adequately measured mycotoxin exposure.

While supporting remediation for known health effects of mold exposure (such as allergic sinusitis), NOISH concluded, “there is inadequate evidence to support recommendations for greater urgency in cases where mycotoxins-producing fungi have been isolated.” *Id.*

For more information, see the [CDC website www.cdc.gov/nceh/asthma/factsheets/molds/default.htm](http://www.cdc.gov/nceh/asthma/factsheets/molds/default.htm), which answers 13 frequently asked questions on mold and lists a bibliography of available articles.

Mold
of the
Month:
Aureobasidium



This yeast-like fungus is commonly found on caulk or damp materials in homes, such as painted wood

or windows in bathrooms. Aureobasidium may be pink or black in color. Although it seldom causes infections, it can be allergenic. It has been reported to cause chromoblastomycosis (in an immune compromised patient), which is a chronic cutaneous infection of the skin caused by a species of dematiaceous fungi. This is one type of mold that is also a type of mildew. It grows in cooler climates, and along with Cladosporium is commonly found growing on siding.

Minnesota Appellate
Court Finds County
Potentially Liable for
Failure to Warn of Air
Borne Mold Dangers



Plaintiffs who live nearby the Ramsey County compost site in Maplewood, Minnesota, allege health problems due to exposure to fungi, bacteria and bioaerosols caused by mismanagement of the site.

Specifically, plaintiffs claim that mold exposure caused them to have a lung disease called hypersensitivity pneumonitis and skin lesions as well as diminished use, enjoyment and value of their homes from the resultant odors.

In a recent ruling, the Minnesota Appellate Court rejected the county's motion for summary judgment and held that the county could be sued by plaintiffs for nuisance and for failing to warn nearby residents of known health dangers arising from the site.

Is Mold the New Asbestos:
The Similarities and Differences
Between Asbestos Litigation and
the Relatively New Field of
Personal Injury Mold Litigation

The number of mold related claims and lawsuits continue to rise, fueled by heavy media attention and seven figure jury awards. Building owners and insurance companies are bracing for what some are calling "the next asbestos." Even worse, unlike asbestos, mold, once abated, can easily grow back under suitable conditions.

Both asbestos and molds are known indoor air contaminants. Certified industrial hygienists who used to test the air for ambient asbestos levels now perform air and surface testing for mold samples. Many mold remediators got their start 20 years ago as asbestos abatement remediators. Moreover, protocols for asbestos and mold removal are similar. Both contaminants allegedly can cause health problems simply from being inhaled. The litigation upon first blush even appears similar: plaintiffs are commonly tenants, new buyers, or employees, and defendants are builders, previous owners, employers, and contractors. Despite these superficial similarities, important distinctions serve to dispel the wishful thinking that mold will serve as the next "gold mine" in personal injury litigation.

First, symptoms related to mold exposure do not have the latency period of asbestos that triggered multiple insurance policies over decades of alleged exposure. The only scientifically validated symptoms that arise from indoor mold exposure are allergies, which normally surface within minutes of exposure. Second, the proliferation of mold claims have been met with immediate policy exclusions being written into most insurance policies. If the insurance industry effectively avoids coverage, interest in pursuing mold claims will diminish. Third, mold is a naturally occurring substance and is not incorporated into a "product." Therefore, the strict liability theories behind the manufacture and distribution chain available in asbestos will not come into play for mold exposure cases. Finally, unlike asbestos, there is a lack of scientific evidence linking indoor mold exposure to serious health effects.

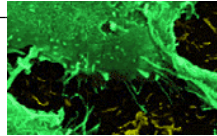
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At this point, experts claiming that a plaintiff has suffered from residential mycotoxin exposure are discounted and written off as practicing "junk science" by the established scientific and medical communities.

Endotoxins - What Evil Lurks in Your Sewage Water?



Endotoxins are toxins found within the outer membranes of certain bacteria (called Gram-negative bacteria). The bacteria does not have to be alive for endotoxins to be toxic to humans. Exposure can occur through inhalation, intestinal tract absorption, or skin cuts. Endotoxins are linked to water systems (especially ones containing sewage or recycled water). Endotoxins have also been found in buildings with humidifiers and those with sewage leaks. Health effects vary widely depending on the individual, dosage, and type of exposure. However, once in the bloodstream at high enough levels, endotoxins may cause fever, shock or even death. Sampling for the presence of suspected endotoxins should be done by professionals with specialized equipment and training.

Upcoming Mold Seminars Featuring Gordon & Rees Attorneys:

MICROBIAL & CONTAMINATION: SAMPLING, LABORATORY, REMEDIATION & LEGAL ASPECTS

March 7, 2002

Union City, CA

Featured Speaker: Michael J. Pietrykowski, Partner

Mr. Pietrykowski's expertise includes litigating personal injury and/or property damage claims in both residential and commercial property settings.

DRI'S MOLD AND RELATED TOXIN LITIGATION AND CLAIMS HANDLING CONFERENCE

April 11-12, 2002

Hotel Del Coronado

San Diego, CA

Featured Speaker: Sara M. Thorpe, Partner

Ms. Thorpe's expertise includes litigating and providing advice on insurance coverage issues related to mold.

MEALEY'S MOLD LITIGATION CONFERENCE

May 9-10, 2002

The Westin Hotel

Philadelphia, PA

Featured Speaker: Michael J. Pietrykowski, Partner

MEALEY'S TOXIC TORT SEMINAR

June 20-21, 2002

The Ritz-Carlton Huntington Hotel

Pasadena, CA

Featured Speaker: Michael J. Pietrykowski, Partner

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