

For questions or comments,  
please contact  
[mpietrykowski@gordonrees.com](mailto:mpietrykowski@gordonrees.com)

May/June, 2002

Vol. 1, No. 3

## INDOOR ENVIRONMENTAL ISSUES AND INFORMATION . . . TODAY

**SAN FRANCISCO**  
Embarcadero Center West  
275 Battery Street  
Suite 2000  
San Francisco, CA 94111  
Telephone: (415) 986-5900  
Fax: (415) 986-8054

**SAN DIEGO**  
101 West Broadway  
Suite 1600  
San Diego, CA 92101  
Telephone: (619) 696-6700  
Fax: (619) 696-7124

**LOS ANGELES**  
300 South Grand Avenue  
Suite 2075  
Los Angeles, CA 90071  
Telephone: (213) 576-5000  
Fax: (213) 680-4470

**ORANGE COUNTY**  
18881 Van Karman  
Suite 1500  
Irvine, CA 92612  
Telephone: (949) 271-9331  
Fax: (949) 271-9301

### Federal Bill to Address “Toxic Mold” Problem

U.S. Representative John Conyers, of Michigan, plans on introducing a bill aimed at protecting consumers from the physical and financial effects of “toxic mold” damage. The bill will be called “The Melina Bill,” named after the young daughter of Conyers’ office manager. Melina experienced grave health effects after 24 hours in her family’s new home, which was allegedly contaminated with mold.

Conyer’s bill requires states to license and monitor mold inspectors and remediators, calls on the CDC to authorize a long-term study, allows states to tap federal dollars to clean mold disasters, requires that mold insurance be available to consumers and requires homeowners and real estate developers to disclose mold problems with house sales.

### The New EPA Guide to Mold and Moisture in Residential Homes

The EPA has just posted a new guide to mold and moisture for homeowners and renters on its website. The guide covers the potential health effects of indoor mold and tips for mold prevention, testing and cleanup.

The guide explains that there is not enough known about the potential health effects of mold and, therefore, recommends responding to indoor mold with caution. However, there are a number of statements in the guide which may alarm lay persons visiting the site and encourage litigation. The following are excerpts from the guide:

- Molds have the potential to cause health problems.
- Molds produce allergens, irritants, and in some cases, potentially toxic substances.

*Continue to Page 2*

Continued from Page 1...EPA Guide to Mold

- It is impossible to get rid of all mold and mold spores indoors; some mold spores will be found floating through the air and in house dust.
- Mold can grow on, or fill in, the empty spaces and crevices of porous materials, so the mold may be difficult or impossible to remove completely.
- Avoid exposing yourself or others to mold.
- Avoid breathing in mold or mold spores.
- Mold may be hidden. For example, removal of wallpaper can lead to a massive release of spores if there is mold growing on the underside of the paper.
- Use respirators, gloves and goggles that do not have ventilation holes when cleaning mold yourself, or hire a professional remediator.



The guide notes that there are no federal guidelines to determine whether a particular mold remediation actually removes the indoor mold. Therefore, the guide suggests that the remediation can be considered finished when visible mold and moldy odors are no longer present and people are able to re-occupy the area without health complaints or physical symptoms.

However, the guide concludes that realistically, at this point, whether the remediation is successful is “[u]ltimately...a judgment call; there is no easy answer.”

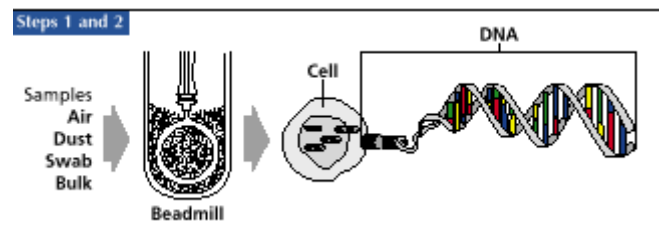
The guide can be found at [www.epa.gov/iaq/molds/moldguide.html](http://www.epa.gov/iaq/molds/moldguide.html).

## Innovations in Mold Testing Data

With the proliferation of personal injury mold litigation, fast and reliable testing data has become even more crucial in determining proper remediation and response strategies. Traditional laboratory methods require several weeks to properly analyze mold samples. Moreover, the results are often contested in litigation due to the extreme variability in sampling methods and lab techniques employed. The increased need for faster and more accurate testing data continues to result in new innovations in the indoor bio-environmental testing industry.

### Cutting Edge DNA Technology

The Environmental Protection Agency’s National Exposure Research Branch has introduced the use of real-time Polymerase Chain Reaction (PCR) techniques to identify over 100 species of fungi and bacteria commonly associated with water intrusion in buildings. The PCR technique, which uses DNA technology, is fast, sensitive and capable of consistent reproduction of results in later testing of the same small sample. The EPA has established licensing agreements with a limited number of laboratories with the expressed intent of commercializing these methods.



Similar to traditional microscopic testing methods, the PCR technique starts with air, dust or bulk mold samples collected from the field.

Continued to Page 3

Cont. from Page 2...Cutting Edge DNA Technology

The PCR method then extracts the DNA from the mold spores, places it in a specially designed mixture and uses a thermal cycling/fluorescence detection instrument to both identify and quantify the mold species present from the sample.

The traditional laboratory method for mold detection relies on the training, experience and direct observation of the individual scientist examining the sample under a microscope, usually after the sample has been cultured for one to two weeks. This process is both labor intensive, subject to human error and arguably can make the quantity of certain types of mold in a sample appear more or less present depending on the medium used to grow the sample in the lab.

Conversely, the PCR technique requires only one to two days to complete and relies on scientific instruments. This permits the results from the PCR technique to be replicated using the same sample and is much less prone to manipulation.

Presently there are only three laboratories authorized by the EPA to employ this new technology. The labs are Forensic Analytical, Aerotech, and P&K.

In the litigation context, instrumental testing data generated from PCR techniques is much less vulnerable to attack than the microscopic evaluation, which incorporates human bias.

## **Better Detection Methods for Finding *Stachybotrus Chartrum* in Mold Sample Cultures**

*Stachybotrus chartrum*, a fungus found on saturated wood materials, is at the top of the list of "toxic mold." Though the controversy over the potential dangers associated with this fungus continues, its detection, proper identification and quantification is clearly important in

any alleged mold exposure case. However, *Stachybotrus* has typically not grown as well as other types of mold in the same laboratory culture due to overgrowth of faster growing fungi such as *Aspergillus*, *Cladosporium* and/or *Penicillium*. This result has led to claims that *Stachybotrus* is universally underrepresented in laboratory samples.

There are a variety of methods employed to improve recovery of *Stachybotrus* from environmental samples. Some technicians employ the use of fungicides to selectively inhibit the growth of other fungi in the sample. Other technicians use different agar or food sources in a general mold sample to encourage the growth of *Stachybotrus* in a given sample.

Laboratories have also created proprietary mixtures of various compounds to best create an accurate *Stachybotrus* count from a sample. The scientific community is continuing to invest in more reliable techniques and technologies to improve accuracy and reliability in the area of indoor mold testing results.

---

**Mold of the**

**Month:**

***Trichoderma***



*Trichoderma* is one of the most widespread soil fungi and can also grow in carpet, on unglazed ceramics, and on paper in damp homes. Some species produce metabolites related to trichothecenes which can be toxic and may cause symptoms like those associated with *Stachybotrys chartarum*. It is also an allergen and may affect immuno-compromised individuals.

---

## Ed McMahon Sues for Toxic Mold Exposure



Ed McMahon, Johnny Carson's former sidekick on the Tonight Show, is not laughing at the "toxic mold" that has invaded McMahon's six bedroom

home. He is suing his home insurance company and several environmental cleanup contractors for \$20 million dollars. He claims that they failed to properly repair a broken pipe. The subsequent water damage resulted in "toxic" mold growth, which sickened his family and killed their sheepdog, Muffin. McMahon also contends that he has lost 50 years of memorabilia, all of his fine art, furniture and clothing. He also seeks punitive damages against the defendants involved.

## State Farm Will No Longer Write Homeowners' Policies in California

State Farm recently advised that it will no longer write Homeowners' policies in California. State Farm, the state's largest insurer with 20 percent of the market, cited the increased costs associated with mold claims as one problem contributing to the recent drop in profits. State Farm reported that water damage, including mold, accounted for 40 percent of claims in California last year. Although the distribution of claims remained constant from prior years, the dollar amount of those claims has risen about 20 percent per year. (Source: San Francisco Chronicle, "Home Insurance Crisis Looms," by Kathleen Pender, April 28, 2002.)

## RECENT MOLD PRESENTATIONS

In April 2002, Gordon & Rees partner Mike Pietrykowski was a featured speaker at the Western Regional Conference on Lead, Mold, Healthy Homes and Children's Environmental Health. Mr. Pietrykowski also spoke at the Mealey's Mold Litigation conference held in Philadelphia in May 2002.

---

### MEALEY'S TOXIC TORT SEMINAR

June 20-21, 2002

The Ritz-Carlton Huntington Hotel  
Pasadena, CA

Featured Speaker: Mike Pietrykowski, Partner

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

---

Gordon & Rees partner, Sara M. Thorpe, was a featured speaker at DRI's Mold and Related Toxin Litigation and Claims Handling conference in San Diego in April 2002.

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

---

Contributions to Mold Matters made by Mike Pietrykowski, Bill Peters, Molly McKay, and Heather Wadsworth. This is a Gordon & Rees, LLP publication. If you have any questions or comments regarding its contents, please contact us at [gordonrees.com](http://gordonrees.com).

*Disclaimer: This information is provided courtesy of Gordon & Rees LLP. The information should be considered general in nature and does not constitute legal advice.*