

MOLD AND OTHER HAZARDS: WHAT SHOULD YOU DO WHEN RE-ENTERING NEW ORLEANS?

New Orleans and its citizens face daunting environmental challenges in the wake of Hurricane Katrina. Foremost among them may be mold. Mold is ubiquitous in the environment, but needs two things to survive: food and water. Both were plentiful during the flooding of homes and businesses. Mold can digest most things, and commonly thrives on porous, wet materials such as carpeting padding, upholstery, wallpaper, drywall, ceiling tiles, insulation material, some leather, paper, wood, and food. Some types of mold — such as *Acremonium*, *Alternaria*, *Aspergillus*, *Chaetomium*, *Cladosporium*, *Fusarium*, *Penicillium*, and *Stachybotrys* (commonly known as “black mold”) — can produce toxic substances called mycotoxins, which are alleged to cause a variety of adverse health effects.

Mold raises a number of possible questions for persons re-entering New Orleans, such as:

- How do you know if your home or building has a mold problem? Is visible inspection enough?
- If there is a mold problem, how do you address it?
- Should you hire a professional to determine if there is a mold problem and/or remediate the problem? If so, who is qualified to perform mold assessments and remediation?
- Are there regulatory or other standards that govern mold assessment and remediation, or protection of tenants, employees, and customers?
- Are mold assessment and remediation costs covered by insurance?
- Should or must a prior mold problem be disclosed to a prospective buyer or tenant of the property?
- What should be done to document the mold assessment or remediation for purposes of insurance claims or protection from potential legal action?

Although complete responses to these questions depends on the particular facts and are beyond the scope of this notice, a few points may be mentioned. Currently, there are no applicable environmental or health-based regulatory standards for mold. Both the OSHA and U.S. EPA, however, have issued pertinent guidelines on exposure to mold and recommendations on how to assess and clean up mold-stricken property.

See A Brief Guide to Mold, Moisture, and Your Home (EPA 402-K-02-003 and A Brief Guide to Mold in the Workplace (OSHA, SHIB-03-10-10, 2003).

OSHA’s general duty clause (29 U.S.C. 654) applies to mold issues, and requires employers to furnish their employees a workplace free from recognized hazards. OSHA has also adopted a ventilation standard (29 C.F.R. 1910.24). Useful references include national consensus standards, e.g., ANSI and IICRC, which contain standards and guidelines on ventilation, water

damage restoration and mold remediation. These references should be considered by employers before reopening businesses affected by Hurricane Katrina.

Generally, mold problems are first addressed by visual inspection. Sometimes sampling, including of surface, air, and water, is recommended by an industrial hygienist. OSHA's Guide recommends cleanup methods and levels, depending on the size of the area affected, as well as personnel protective equipment (PPE) for cleanup workers. While there is no OSHA standard applicable to residences, home dwellers should also take appropriate precautions in assessing and cleaning mold in homes and apartments.

Louisiana law prohibits the same person from performing a mold assessment and mold remediation on the same property. La. R.S. 37:2187. Effective July 1, 2004, mold remediation contractors are required to be licensed by the Louisiana Board of Contractors, La. R.S. 37:2185, and the Board maintains a list of such contractors. Several other consultants have knowledge in mold assessments.

Insurance coverage for mold damage under homeowners, flood, comprehensive general liability, and other policies will depend on the particular facts and policy language. Certain policies issued in recent years likely contain mold and/or pollution exclusions, although there are indications that these provisions may not exclude coverage under all circumstances.

Mold certainly is not the only environmental issue confronting those returning to New Orleans. Oil, gasoline, chemicals, sewage, household wastes, and other contaminants may be present in flood waters and in sediments and sludges that remain after the water is removed. Proper assessment, cleanup, and disposal of contaminated materials, and protection of employees, tenants, customers, and other third parties, are significant concerns. There will likely be questions about who is responsible for paying for the cleanup of particular properties, and what cleanup standards must be met before the property is placed back into commerce. In addition, regulators and waste businesses will be addressing what means of collecting, treating, and disposing of hurricane-related wastes, including hurricane debris, make the most sense based on environmental, economic, and other considerations.

Jones Walker's environmental attorneys are on top of these issues and have the knowledge and experience necessary to provide sound, practical advice to clients. Businesses may consult Jones Walker regarding re-entering and reopening their businesses and facilities to employees and the public. Similarly, residents may address with the firm the most cost-effective methods to address mold and contamination in the home and dealing with insurance claims relating to mold and environmental-related property damage. Jones Walker also has relationships with mold assessment and remediation contractors and can assist in selecting, contracting, and working with the contractors that best fit your particular problem or need.

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