

WSHB UPDATE

Air Testing For Mold Deemed Unreliable By Centers For Disease Control

It is a common scenario. A property manager, home-builder or commercial landlord is contacted by a resident or tenant who reports that they have performed indoor air quality testing that reflects "elevated" levels of mold. Is the proper response to conduct further air testing?

Not according to the Federal Government's Centers for Disease Control and Prevention (CDC). In a recently updated article titled "Dampness and Mold In Buildings," the CDC states the following:

CDC does not recommend routine sampling for molds. Generally, it is not necessary to identify the species of mold growing in a building. **Measurements of mold in air are not reliable or representative.** If mold is seen or smelled, there is a potential health risk; therefore, no matter what type of mold is present, you should arrange for its removal. Furthermore, sampling for mold can be expensive, and standards for judging what is and what is not an acceptable or tolerable quantity of mold have not been established.

There are too many variables impacting results and the sample size is too small for air testing for mold to be reliable. Air sampling's lack of utility in determining the level of mold found in indoor air may be a surprise to some, given the frequent references to these tests in mold litigation. But the limitations of this type of testing were recognized more than ten years ago in the standard text in this field, *Bioaerosols: Assessment and Control* by the American Conference of Government Industrial Hygienists (ACGIH):

Investigators should bear in mind that samples provide information about a site as it existed at the time tested. However, the findings may not represent conditions at a time in the past or future, even the relatively recent past or near future. Changes in the kinds, concentrations, and proportions of biological agents in the air can be rapid and substantial.

Bioaerosols: Assessment and Control, Section 2.4.2.2

Ten years ago the ACGIH concluded that air testing provided a "snap shot" of conditions at the exact time and place of the sampling, but nothing more. The CDC's current position is that such a snap shot is not reliable, representative or worth the cost. Any claim based solely on air sampling results is inherently suspect. There is no reason

to respond to questionable testing by conducting more of it.

This does not mean that mold or moisture in a building can be ignored. But the scientific value of air sampling is non-existent. Landlords, builders and property managers still need to investigate, repair and remediate where necessary. But the urge to perform "defense" air testing in response to a claim should be tempered by the knowledge that the results of all air sampling, plaintiff and defense, has little if any scientific or evidentiary value.

Rather than performing costly air testing to determine airborne mold levels, a potential defendant may be better served by having a qualified Certified Industrial Hygienist perform a thorough visual inspection and then develop a comprehensive plan to eliminate moisture and remove all water and mold damaged materials. Attacking the admissibility of plaintiff's test results is a common defense strategy. But if a defendant chooses to engage in the same type of testing, subsequent arguments that the methodology is unreliable and lacks validity may ring hollow when made in Court.

Wood, Smith, Henning & Berman continues to have the premier mold defense practice in the country. Our clients have never been held liable by a jury for personal injuries as a result of mold exposure. Our practice includes the defense of mold claims at both trial and arbitration, as well as pre-litigation counseling, including the supervision and review of testing and remediation protocols and consulting on mold personal injury and property damage issues across the nation. If you would like more information on our mold defense practice, or our firm in general, please feel free to contact us.



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