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Superstorm Sandy and the Remediation of Water Damage, Mold Growth and Bacterial Threats

As business slowly returns to normal in areas of the East Coast impacted by Superstorm Sandy, property owners are confronting questions about how best to address water damage, prevent or remediate mold and microbial growth, and address bacterial threats from potentially contaminated flood waters. When water damage, flooding, or moisture intrusion events occur, there are a number of important considerations to take into account to address potential or actual mold, microbial, and bacterial threats:

1. Prompt Action is Essential

- Quick action is the key to preventing water damage from becoming a significant mold, microbial or bacterial problem.
- Act quickly to stop any ongoing source of water intrusion, evaluate the source and extent of water damage, mold-impacted building materials, and bacterial threats, and prepare an appropriate plan of action.
- Analyze insurance policies early in the process and put carriers on notice of any water damage, mold growth, and bacterial threats promptly. Many insurance policies require prior approval of selected consultants and contractors, as well as remedial scopes of work developed for the impacted property.
- Determine whether there are notice obligations under existing loan agreements, management, partnership, joint-venture agreements, and leases with tenants.

2. Retain Qualified Professionals

- Consider retaining a qualified environmental consultant with a licensed Certified Industrial Hygienist (CIH) on staff. Often, a CIH can best determine the source and extent of water damage and the appropriate scope of work to prevent or remediate mold and bacterial growth.
- Avoid the mistake of hiring only a remediation contractor. A more prudent approach is to engage a third-party consultant or CIH to conduct an assessment of water/moisture and mold/bacteria-impacted building materials, develop the appropriate scope of work for remediation, and monitor the performance of such work by a carefully selected remediation contractor.
- The third-party consultant/CIH should confirm that all water damage and related mold and bacterial growth have been appropriately remediated in accordance with the developed scope of work and prevailing industry standards. This provides an important double-check on the quality of the remediation.

3. Consider Carefully Whether Indoor Air Sampling is Necessary or Appropriate

- A thorough visual assessment with moisture metering conducted by a qualified CIH is the most effective way to confirm whether mold and/or conditions conducive to mold are present, and ultimately whether mold has been remediated successfully.
- Sampling methods for mold are not standardized and often yield highly variable results. Indoor air sampling often leads to results that are difficult to interpret, or that indicate a problem when there is none. The quantity of mold spores in air can vary greatly depending upon the season, the weather conditions, and the time of day, regardless of whether indoor mold growth actually is present.
- There are no regulatory standards against which to compare air sampling results for health or environmental assessments. In many cases, the objective should be to demonstrate that there is a lower concentration of mold spores in indoor air than in outdoor air.
- Before any post-mold remediation indoor air confirmation sampling is conducted, the third-party consultant/CIH should confirm via a thorough visual assessment and moisture metering that all water damaged and/or mold-impacted building materials have been remediated in accordance with the site-specific scope of work and prevailing industry standards, and that no excessive moisture or visible mold growth remains.

4. Document Assessment Findings, Remediation, and Results of Confirmation Sampling

- It is essential to document that the assessment and remediation work conducted was thorough, and that all impacts resulting from the water intrusion event have been successfully remediated. Maintaining such documentation will help avoid future obstacles in financing, leasing and sale transactions.
- The third-party consultant/CIH should prepare an assessment report that documents the initial assessment findings and recommendations for remediation. Once the remediation has been completed by a qualified contractor, the consultant/CIH should prepare a second, final report documenting that the conditions identified in its assessment report were remediated in accordance with its recommendations, that no mold or bacterial growth, or conditions conducive to mold or bacterial growth, remain, and that no further investigation or remediation is necessary.

5. Communicate with Building Occupants

- It is important to maintain open lines of communication with building occupants, and to provide information regarding the remedial measures being taken and the timetable for completion.
- Avoid the temptation to hide the problem from building occupants, and the reluctance to provide bad news. Sharing information with building occupants in most cases actually reduces the potential for and significance of third-party claims. It would be prudent to discuss this process with legal counsel.
- Document any complaints received from building occupants and users, and all actions taken in response thereto, and establish a protocol for responding to information requests and complaints. If such a protocol is established, stick to it.

6. Don't Cut Corners

- Avoid the temptation and resist any contractor recommendations to simply clean porous building materials such as drywall, insulation and carpeting. The wiser approach is to remove and replace porous materials, and limit cleaning to non-porous materials. While this approach can increase demolition and replacement costs, it more effectively reduces the risk of future mold and bacterial growth and related remediation costs and third-party claims.
- Evaluate incidental regulatory requirements, such as whether proper abatement of asbestos containing materials or lead paint is required in connection with the remediation project, and have any such work conducted by qualified professionals.
- Clean and maintain HVAC systems, replace air filters, drip pans, etc., during remediation.

Following these general guidelines can greatly reduce the risk that water damage becomes a significant loss or source of liability. Additional information helpful in responding to water damage, mold and bacterial growth is available from the New York City Department of Health and the U.S. Environmental Protection Agency via the links below:

- <http://www.nyc.gov/html/doh/html/epi/moldrpt1.shtml>
- <http://www.epa.gov/mold/pdfs/checklist.pdf>

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