



Environmental risk bulletin

Water intrusion and mold: Property acquisition due diligence guidance

Questions often arise about what due diligence practices should be employed to identify and address water intrusion and mold risks at sites proposed for acquisition. Currently, there are no federal regulations or standards for due diligence or remediation of airborne mold and surfaces containing mold; however, there are numerous best practices and guidance documents available.

Mold contamination may fall under the general disclosure requirements for real estate transactions in various jurisdictions. Furthermore, various regulatory general duty clauses may also be applicable to employers that require protection of workers from serious and recognized workplace hazards such as mold.

One or more of the standards, guidelines and best management practices discussed herein should be employed during pre-acquisition due diligence. For higher exposure occupancies such as residential, hospitality, and healthcare properties, it is expected that multiple due diligence and property management controls will be utilized.

Sites that have a history of mold / water intrusion events may require additional due diligence and a more aggressive management program of preventative measures and inspections. Also, pre-acquisition investigations of these sites may need to be more thorough (moisture meter, indoor air sampling, etc.) and/or engage a mold matter professional/consultant to recommend and conduct appropriate activities.

It is expected that active use of a formal water intrusion and mold prevention plan will need to be implemented for some period

of time before risks can be considered controlled or minimized. Many insurance carriers are reluctant to provide unrestricted coverage unless a plan has already been in place for some period of time and there have been no recent mold-related incidents.

ASTM E1527-13 Phase I Environmental Site Assessments

Assessment of mold is excluded from the scope of this standard. However, a mold review may be added to a Phase I ESA as an ASTM Non-scope Consideration based on an agreement between user and assessor. Such a review is sometimes referred to as a Moisture Intrusion/Mold Growth Inspection or a Limited Microbial Survey. This includes a building inspection of readily observable areas for the presence of moisture, water damaged materials, and visible or olfactory evidence of microbial matter. This does not typically include the collection and analysis of bulk samples or air samples, nor building material assessments with moisture meters. Site owner interviews and questionnaires specified by the standard may also be modified to include questions about the presence of moisture or mold.

CSA Z768-01 (R2016) Phase I Environmental Assessment

This Canadian standard is similar in intent as the above ASTM standard. Mould is listed as a Special Attention Item, which assessors are required to identify. The purpose of the standard is to identify the presence of contamination including any substance of concern, or a condition, in concentrations above appropriate pre-established criteria (including in structures). Scopes of work and agreements between client and assessor can address the level of inspection/due diligence for water intrusion/mold assessment.

ASTM E3026-15 Standard Guide for Readily Available Moisture Affected Materials and Conditions Conducive to Elevated Moisture in Commercial Buildings: Visual Moisture Assessment Process

This standard expands on the Visual Moisture Assessment (VMA) Process and provides practical means for visual identification of moisture affected materials and physical deficiencies conducive to elevated moisture. This can be as a result of water infiltration through the building envelope or substructure, or generated within the subject building as a result of processes or mechanical systems. Moisture measurements and sampling for mold are non-scope considerations. (replaced ASTM E2418)

ASTM E2018-15 Guide for Property Condition Assessments: Baseline Property Condition Assessment Process

This standard can be used along with representative observations to identify building physical deficiencies that have or could lead to water intrusion and/or mold growth. The “expected useful life” of building systems (roof, plumbing, etc.) provided in a PCA can identify vulnerabilities for future water problems. PCAs are commonly completed to assist with negotiating an appropriate purchase price and to avoid future operations and maintenance surprises.



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Documentation review - existing water intrusion, mold abatement and/or indoor air quality reports

Property buyers should inquire with sellers about the existence of historical reports including previous water intrusion or mold remediation project documentation. Review of existing reports by a person qualified to assess mold-related findings is a standard best management practice. The focus of the review should be to confirm that the root cause of water intrusion and mold growth has been addressed. Also, it should be verified that all previously identified areas of water intrusion and mold growth have been properly remediated.

“A primary focus of the review should be to confirm that the root cause of water intrusion and mold growth has been addressed.”

Site-specific water intrusion and mold prevention plan

Property buyers should also inquire with sellers about the existence of a water intrusion and mold prevention program. This is another document that should be subject to a detailed review. How long have the plan and/or other program controls been in place?

A formal mold Operations & Maintenance (O&M Plan) should already exist for the site and there should be evidence of implementation (completed inspection forms, corrective actions, etc.). If one does not already exist, a formal written plan should be completed immediately following acquisition along with training of key staff to assist with effective program implementation.

Site-specific mold prevention plans identify roles and responsibilities for building inspections, maintenance, and response and remediation of water intrusion and mold events. Documentation, employee training, and occupant awareness of water intrusion and mold concerns are critical elements. In the event of a water intrusion or mold event, identification of root causes and moisture sources is essential. Documentation of corrective action (including the moisture source) is also essential.

Owner / property manager inspections: pre-work inspections

Property inspections of interior and exterior building areas are critical elements of Water Intrusion and Mold Prevention plans. Periodic and post-incident (high wind, rain storms, flooding, other severe weather) inspections can identify water intrusion conditions early and allow for quick response and remedy. Evidence of ongoing inspections should be readily available for review. Inspections are also recommended during building construction/renovation projects to prevent water penetration or use of wet materials.

While no format is prescribed or universally utilized, most inspections involve visual evaluation of the building envelop, plumbing fixtures, and related features. Inspections, typically limited to visual observations, should be performed by individuals knowledgeable in identifying water intrusion risks/mold conditions. Documented inspections of work areas prior to and following commencement of water intrusion/mold corrective actions should also be performed and typically involve observing physical site conditions.

Conclusion

Generally, a property buyer should not rely solely on the due diligence performed on behalf of a seller. Although, seller reports, mold prevention plans, inspection forms, maintenance records, water intrusion corrective action reports, and mold remediation reports should be shared and reviewed, a property buyer is best served by an independent pre-acquisition review conducted on their behalf using the due diligence practices discussed above.

“Property buyers should inquire with sellers about the existence of a water intrusion and mold prevention plan. How long have the plan and/or other programs been in place?”

If concerns still remain during the transaction and negotiation of the purchase and sale agreement, the parties might consider incorporating a water intrusion and mold discovery time period and funding for investigation and abatement. Pollution liability insurance may also be available to address future third party claims.

Note the ASTM and CSA standards cited here are subject to change and periodic updates. It is recommended that you consult with these organizations to ensure the most recent version is being utilized. See <https://www.astm.org/> and <http://www.csagroup.org/>

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