

MFC NEWS

“Building Understanding”

MFC will find out the truth about buildings and answer the hard questions. Volume 1, Issue 2

Spring 2006

About MFC News

Myles F. Corcoran and his Team would like to share the best of what we've learned over the past 16 years about well constructed buildings and resolving construction disputes.

Please help us make this a “Construction Community” endeavor by sending us your feedback, comments, wisdom and tips for future issues. Call 831-476-4502 or Email us at: mfcnews@mfcbuild.com

Quote of the Day

“When you use sealant with peel and stick flashings, verify that the products are compatible.”

Myles F. Corcoran

MFC Celebrates It's 16th Successful Year in Business!

Wisdom Corner

A water molecule is 2 microns in diameter. 1/32 inch = 794 microns

MFC Staff

Coming Soon...
MFC Teleconference Seminars
First Tuesday of the month
2-3pm
Starting Fall 2006!
See topics below

Product Tip Flashing Products for Vertical Wall Penetrations

After 26 years in the construction industry and the last 16 consulting and specializing in water intrusion problems, we've seen countless moisture related defects in the field.

It has been standard in the industry for years to flash the doors, windows and vents, but there had not been a flashing product on the market to seal around the plumbing and electrical penetrations. For years builders have relied upon caulking to try and seal these vertical penetrations. But caulking is unreliable and the seal around the penetration is only as good as the person applying the caulk.

Now there are panel flashing products that provide affordable and reliable ways to seal these penetrations. They are non-conductive, impervious to rust and corrosion, and designed to work under multiple finishes such as stucco, brick, wood siding and stone veneers.

MFC uses these in our designs to help us assure quality homes and buildings. Check out www.quickflashproducts.com for examples of these convenient products.

MFC Staff

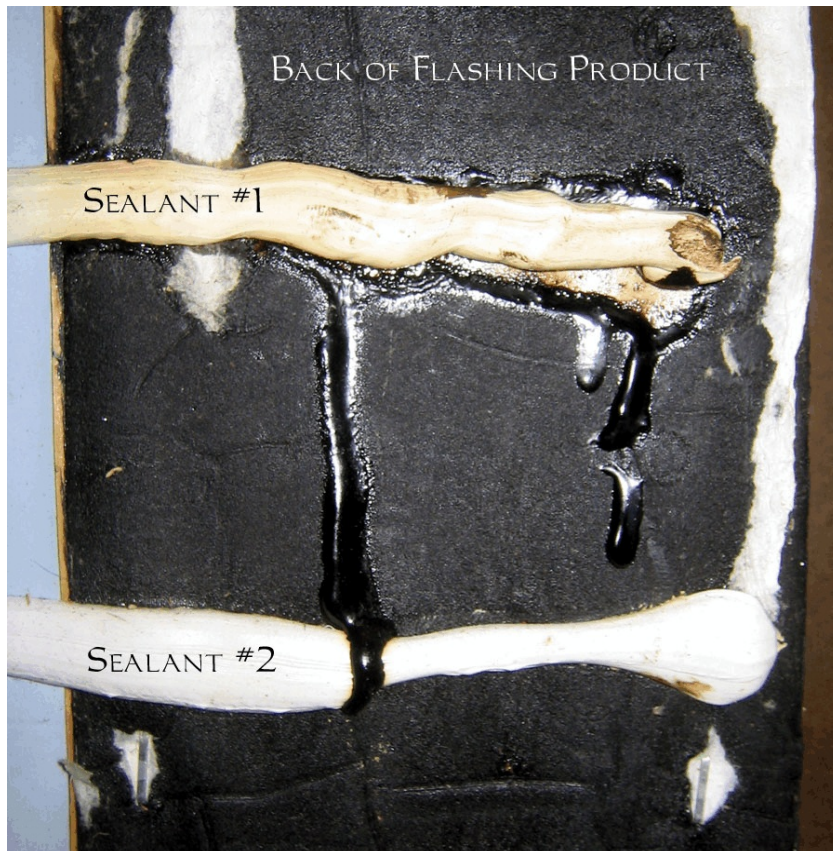
Building Tips

In a construction industry with intense competition and constantly changing technology, builders are challenged to try and keep up with current materials and techniques. Products often develop more rapidly than the knowledge Construction Professionals have about using them. This can lead to problems.

A great example of this is the rapidly evolving world of “peel and stick” window flashings. In the last decade, the industry has increasingly recognized that new technologies are needed for sealing windows. As a result, numerous products are now available for this application. We recommend using at least 35 mil thickness. To test to be sure you are using a good bituminous flashing material drive a nail through it and see if adhesive material sticks to the nail showing it to be “self sealing.” Use rollers to apply it to avoid wrinkling the flashing paper creating channels water can get through, even though using a roller to apply can take more time. Finally seal all edges susceptible to water penetration.

“Peel and stick” window flashings are often used in conjunction with sealants for waterproofing window openings. However, many common sealants react chemically with the peel and stick flashings, some actually dissolving the black adhesive side of the material. The problem, as we understand it, is caused by the vapors which leave the sealant as it cures reacting with the scant/adhesive layer of the flashing.

Typically, manufacturer instructions and literature are not clear enough about this issue. At the very least, it would take some research and a phone call or two to identify which sealants are compatible with which flashings. For the average homeowner and contractor, it is very easy to choose incompatible products.



Our office has conducted extensive tests regarding this issue. We tried several locally available flashing products, in conjunction with a full spectrum of sealants. The results were, to say the least, surprising. More than half of the dozen sealants tested caused reactions, with three completely dissolving the flashing material. The worst failures involved the only peel and stick flashing product available at a certain local supplier.

This photo shows that the sealant has dissolved all the way through the bituminous material, revealing the whitish plastic backing beneath.

The manufacturer of this particular product recommends that only neutral-cure silicone sealants be used in contact with their product, IF any sealant is to be used at all.

On a recent project we observed the reaction was so bad that black “goo” was dripping out several feet below the windows at the stucco weep screed. In most cases, this reaction could be going on within the walls without any visible signs.

Our advice for contractors and window installers is to research the products being used and confirm that they are compatible. In addition, we recommend that a physical test be made to confirm compatibility, as some manufacturers have given bad advice on this issue in the past. Note that it may take some time for the reaction to develop as the sealant cures.

We welcome interest in our caulking experiment. One Mock-up panel is available for view at our office for those interested in the results, and the specific products to use (or not use).

- Peter J. Kennedy, Inspector/Consultant

FEATURED ARTICLE

A Tale of Two Slabs

by Gary Morgerman, Founder and President of
Construction Mediation Inc. (CMInc), NY

Two owners were each trying to resolve separate disputes over the most fundamental structural component in a building, its slab on ground. For one it was the worst of times. He paid \$100,000 to learn what every construction professional knows: nothing is perfect, especially when it comes to a slab on ground. For the other it was the best of times. He learned the same lesson for only \$1,000.

The route each took to resolve its construction dispute demonstrates the effective use of Early Neutral Evaluation and Mediation, the misuse of Arbitration and shows why an evaluative mediator who is a construction expert and can play the role of devil's advocate to the substantive issues in dispute will be more successful in helping the parties achieve a settlement in this increasingly popular method of resolving construction disputes than a mediator who is a layman and can only play the role of a facilitator.

The Disputes

One slab was in a wine distribution warehouse, the other in an airline hangar, each covering about 100,000 square feet. The finished slabs each had its defects. There were random hairline cracks, some rough spots and shading in the surface of the hangar slab. Cracks in the warehouse slab were more extensive than in the hangar and wide enough in some spots that separation was visible and minor surface spalling had occurred along a number of the cracks.

Beyond an almost identical, boiler-plate concrete specification that controlled the slab construction, there was nothing in the job documents of either project that required the slabs to meet higher standards than those expected by the custom of the trade or the standards of the industry. The owners, however, had their own standards.

The hanger owner, the CEO of a national airline, expected a blemish-free slab surface with a showroom finish, one that shareholders, scheduled to attend a banquet at the hanger to inaugurate a new passenger route, could eat off of. He had stopped progress payments demanding that the slab be "fixed."

The owner of the warehouse, who had been using the wine distribution center for over two years out of necessity but had complained about the condition of the slab since its completion, demanded a new slab or equal compensation, no more, no less.

Each construction contract specified arbitration as the means to resolve disputes. This was the route the warehouse owner took when faced with the contractor's adamant and continued refusal to meet his demand. The other owner, however, was shown a different path; early neutral evaluation followed by mediation.

Early Neutral Evaluation

Instead of stonewalling the owner as the warehouse contractor had, the hanger contractor tried another approach. After realizing his argument to the owner that the slab conformed to industry standards despite its "minor shortcomings" was falling on deaf ears, he called in a construction claims expert (this writer) to make an early neutral evaluation of the slab situation. He was confident the consultant would support his position. The expert was also a construction mediator.

[Intervention by an early neutral evaluator is an excellent, cost-effective consideration at the first rumblings of a construction dispute, a move that can nip it in the bud. Such a construction expert can be hired by either side individually or both sides jointly, to give each a neutral, bias-free opinion about the dispute. One side can even offer to engage an expert for the other when the other side, and its attorney, seem unsophisticated about construction disputes or when negotiations are at impasse.]

The consultant agreed with the hanger contractor's position that the slab's condition was well within the acceptable standards of the industry for such a facility. Anticipating this confirmation, the contractor promptly contacted the owner and requested that the expert be permitted to attend a meeting scheduled with the owner for the following week. Despite being openly apprehensive about an expert called in by the contractor, the owner okayed the expert's attendance and agreed to listen to whatever he had to say about the slab. When further advised that the construction expert was a mediator as well, he also agreed to hear about mediation.

Switching Hats

A mediator first task is to gain the trust of the parties for his/her neutrality. This is not an easy task even when hired mutually by the disputants, but convincing one party of your neutrality when hired unilaterally by the other is considerably more difficult. As promised, the owner listened as the expert/mediator went over his credentials and explained how he got called into the dispute. He then explained how mediation worked, emphasizing that a mediator has no power over the parties in a mediation, either side able to stop the process at will, at any time. After a surprisingly few number of questions, the owner conferred with his attorney and then said he wanted to give mediation a try. This general meeting was adjourned and the mediator caucused privately with the hanger owner and his attorney.

Mediation

Not long into the caucus the mediator had gained the owner's trust in his objectivity and expertise. (The mediator later learned that this quick acceptance was fortified by background checks on the mediator that were conducted by the owner's savvy lawyer days before this meeting.) The mediator repeated the evaluation he gave the contractor, played devil's advocate with the position taken by the owner and his attorney and answered their questions. After huddling once again with his attorney the CEO asked to meet with the contractor, who was waiting in an adjoining room, for a negotiation session under the mediator's gentle, but firm guidance.

Within an hour the owner agreed to accept a generous offer by the contractor to compensate him for the 'pain and suffering' from, his dissatisfaction with the slab. It was more than the contractor wanted to pay but it "saved face" for the airline owner, who now realized that his demands were unrealistic, and more importantly, it preserved for each an important business relationship as well as the cost in time, money and aggravation of a protracted dispute. The owner was entitled to compensation and the extra funds thrown into the settlement by the contractor was money well spent.

Each party further agreed to split the cost of the early neutral evaluator/mediator; a cost of a little more than \$1000 each and far less than it cost the parties in the warehouse dispute who were embroiled in a 'slug it out' arbitration.

The Arbitration

Perhaps the 'damn the torpedoes, full speed ahead' warehouse owner would have objected to the intervention by an evaluator/mediator but he, and every other involved in a construction dispute, should be given the option. Once an arbitration gets underway it takes on a life of its own and usually goes the distance, as occurred in this case.

Soon after the arbitration began it became clear to this writer (a member of the three-arbitrator panel) that the warehouse attorney, a former judge, was a great litigator but unsophisticated about construction. He and his client would have benefited from the insight of a construction professional. And, as the evidence unfolded, it became equally clear to the arbitration panel that the owner had seriously overestimated the value of his case.

During the two years the warehouse was in use the condition of the slab did not inhibit nor interfere with warehouse operations. The cracking condition had stabilized and random coring verified that the slab's thickness and reinforcement conformed to the specification. There was no differential settlement, nor were there new cracks or widening of existing ones for some time. All that was required were some epoxy repairs to correct the present condition. Beyond that the owner's recovery was limited to an allowance for depreciation, inconvenience and maintenance over the life of the warehouse. This was an easy call for the arbitration panel, a call that an early neutral evaluator could have made long before the arbitration went forward. Had this owner that input, taken heed and investigated, chances are he and the contractor each would have avoided the \$100,000 and 6 months of time the arbitration devoured. And unlike those in the hanger dispute, it is unlikely that these parties will ever do business again.

Conclusion

One case exhibits early neutral evaluation and mediation at their best. The other demonstrates the misuse of the time, money and expertise expended in an arbitration whose outcome was preordained and should have never gone forward, one that more than likely would not have gone forward had the participants gotten outside, independent help before expected and repairable cracks in their slab on ground became permanent battle lines drawn in the sand.

-Gary Morgerman, Founder and President of Construction Mediation Inc. (CMInc), NY
www.cminco.com

MFC is now able to act as your Neutral Expert to resolve Construction Disputes. This is a less expensive and more agreeable way to end disputes that come up during the building process. Please see our website for more information about Mediation, Arbitration and Dispute Review Boards. We can help you work with challenging personalities when communication has broken down and get the resolution process back on track. Please call us to learn more.

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Information coming about how to call in to participate

Future Topics:

How a Neutral Expert Could Save you \$\$\$

Top Defects MFC has Encountered and How to Avoid Them

Who is Responsible for Bad Design?

How to Tell if You Are Running An Organized Construction Business

Dispute Resolution v. Pain

The High Value of Value Engineering

The High Cost of Cutting Corners

How to Write an Effective Contract

Guest Speaker, Author of “A Tale of Two Slabs”

Do You Know Your Overhead

Why would I want a Foam Roof?

Please suggest other topics of interest to you as well as ones that you are an expert on and could be our guest speaker.

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