



The Florida Senate

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Committee on Community Affairs

IMPORTED DRYWALL

Statement of the Issue

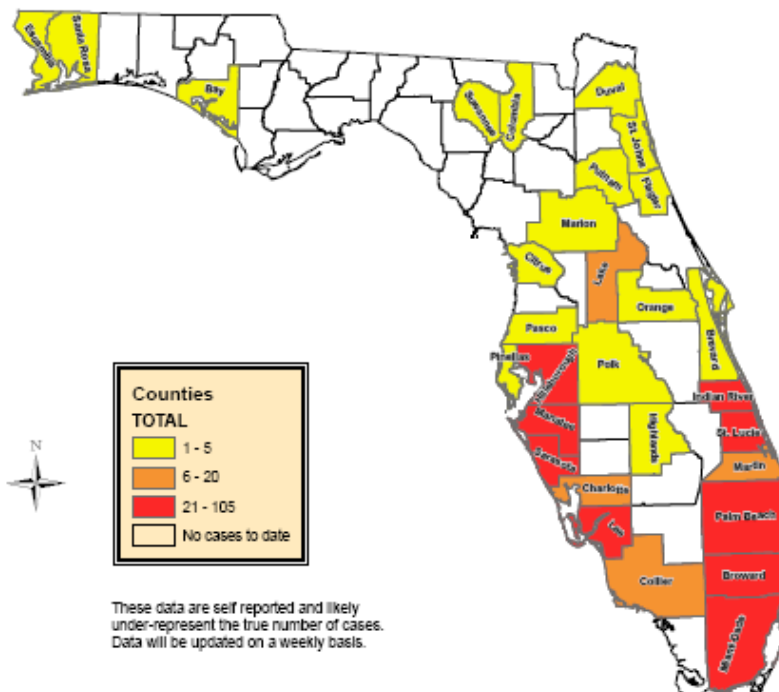
Since 2003, the United States has been importing drywall, a wide flat board used to create interior walls, that is now under investigation for causing harm to homes, personal possessions, and even human health. The damage caused by defective drywall is also having significant economic ramifications for homeowners and builders. The drywall was imported from China making recovery from the manufacturer challenging. The federal government in coordination with state agencies is researching the science behind the problem, considering remedies for affected homeowners, discussing greater consumer protections, and involving China in the investigation. Seventy-seven percent of the cases of defective drywall that have been reported to the Consumer Product Safety Commission are from Florida, but the cases reported thus far are probably just a fraction of the homes affected by Chinese drywall. Florida residents are asking the Legislature for answers to health concerns, mortgage abatement assistance, remediation assistance, and help dealing with insurance companies.

Discussion

Between 2004 and 2007, numerous homes were built with drywall from China. The drywall is being blamed for making newer homes smell, causing metal to deteriorate, and potentially even threatening the health of the residents. With their money tied up in homes that are valueless and even potentially dangerous to live in, homeowners are turning to their government officials to help them with this defective drywall crisis.

Reports of Drywall "Cases" to DOH County Health Departments

September 8, 2009
(N = 549 in 30 counties)



Between the housing boom and the hurricanes that devastated the gulf coast, it is estimated that as many as 100,000 houses were built with imported drywall. Most of the drywall was imported from China through companies such as Knauf Plasterboard Tianjin, Beijing New Building Materials (BNBM), and Taian Taishan Plasterboard.¹ As of September 4, 2009, the U.S. Consumer Product Safety Commission (CPSC) had received 1,192 reports from residents in 23 states and the District of Columbia who believe their health symptoms or the corrosion of certain metal components in their homes are related to the presence of defective drywall produced in China. The bulk (76%) of the complaints have been from homeowners in Florida. State and local authorities have also received more than 549 reports of problems associated with Chinese drywall.² The nature and extent of the Chinese drywall problem is still unknown, but it is causing homeowners and homebuilders substantial hardship throughout the state.

The problems associated with Chinese drywall

The CPSC, in conjunction with the Environmental Protection Agency, the Centers for Disease Control and Prevention-Agency for Toxic Substances and Disease Registry (CDC-ATSDR), and the Florida Department of Health, are researching the potential hazards of Chinese drywall. The defective drywall is associated with a sulfurous odor (the smell of rotten eggs or fireworks), corrosion of household metals such as copper, and health complaints such as asthma, nosebleeds, coughing, headaches and insomnia. Preliminary studies indicate that the imported drywall contained elevated amounts of sulfur, strontium, iron, and organic compounds associated with acrylic paints when compared to domestic counterparts.³ The CPSC is testing the Chinese drywall and will inspect the gypsum mines where the Chinese drywall was mined. The CPSC expected to have a preliminary report in late September on the potential effects of Chinese drywall, but new Consumer Product Safety Commission Chairwoman Inez Tenenbaum stated that she plans to have the report out by late October.⁴ Customs reports received by the Los Angeles Times claimed that some Chinese-made drywall contained radioactive material, but state and federal tests so far have not detected an unusual level of radioactivity in the drywall.⁵

In addition to the unascertained health effects, the risk of damage to personal property is also not yet fully understood. People who suspect they have Chinese drywall are advised to check the copper coils on their air conditioning system to see whether they are blackened and corroded. Chinese drywall may also corrode other metal items such as silver jewelry. Homeowners with Chinese drywall have reported that they have had to replace their air conditioners and other appliances much more frequently than would be necessary under normal conditions. Concerns still exist that the corrosive off-gassing from the drywall might affect copper wiring and be a serious fire hazard, though no fires have been reported to date.⁶ The Florida Department of Health and the Consumer Product Safety Commission have websites designated to assisting homeowners to ascertain whether their homes have Chinese drywall.

In a market where many houses are already depreciating in value or even facing foreclosure, houses that have defective drywall are being rendered valueless, exacerbating the current housing crisis. Houses with defective drywall may even depress the property value of adjacent homes. One estimate is that the cost of remediation might be around \$100,000 per home.⁷ Yet with so many questions being raised about the nature of the Chinese

¹ See *Origins of Chinese Drywall*, SARASOTA HERALD-TRIBUNE, available at www.heraldtribune.com/assets/swf/SH16188424.swf (last visited August 10, 2009).

² See Florida Department of Health, Reports of Drywall "Cases" to DOH County Health Departments, Sept. 8, 2009, available at <http://www.doh.state.fl.us/ENVIRONMENT/community/indoor-air/images/FLCountiesDryStats.pdf>.

³ Environmental Protection Agency, Drywall Sampling Analysis, May 7, 2009 available at <http://www.epa.gov/oswer/docs/chinesedrywall.pdf>.

⁴ See Consumer Product and Safety Commission, CPSC Investigation of Imported Drywall, July 2009, available at <http://www.cpsc.gov/info/drywall/drywallstatus07092009.pdf>; but see Lesley Clark, *U.S. to Probe Chinese Drywall*, THE MIAMI HERALD, Sept. 9, 2009, available at <http://www.miamiherald.com/business/story/1227762.html>.

⁵ Consumer Product and Safety Commission, CPSC Press Statement Regarding Drywall and Phosphogypsum, available at <http://www.cpsc.gov/info/drywall/phosphogypsum.pdf>.

⁶ Consumer Product and Safety Commission, Investigation of Imported Drywall Status Update, August 2009.

⁷ See, e.g., Rachel Boles & Ronald Kozlowski, *Economic Losses From Chinese Drywall Could Reach 25 Billion Insurers Warned*, NATIONAL UNDERWRITER, July 27, 2009, available at

drywall problem, many are unsure of what measures would ensure effective remediation. Investigations continue regarding whether the defective drywall can cross contaminate normal drywall and whether it can degrade other structural features of the house. The Florida Department of Environmental Protection has issued a statement that the Chinese drywall can be disposed of in landfills in the same way as normal drywall.⁸

Many financially responsible homeowners are unable to meet the cost of rent in addition to their mortgage and the cost of remediation. Some homeowners' choose not to overextend themselves financially, by staying in their homes while they pursue legal remedies and begin remediation efforts, but they worry that they are jeopardizing their health or the their families. Alternatively, when health concerns are a priority, the homeowners may choose to move out despite their inability to meet simultaneous rent and mortgage payments.

The lack of information on defective drywall coupled with homeowners' desperation for a solution has led to a number of different types of scams targeting victims of Chinese drywall. Florida Attorney General Bill McCollum has issued a consumer advisory encouraging homeowners to avoid scams related to Chinese drywall. The two most prevalent scams involve bogus tests to determine the presence of the product and quick cure remedies which falsely claim to remove the corrosive properties of the product.⁹

Home builders in Florida have also been suffering. Florida's construction industry has long been one of the pillars of Florida's economy, but many face bankruptcy due to the magnitude of the Chinese drywall problem. There is no indication that these builders knew that the drywall they were using was defective. WCI Communities Inc. built at least 200 homes using defective drywall and estimated that they could be subject to \$40 million in potential drywall claims. Now WCI is in bankruptcy, but has set up a trust of \$900,000 in seed money and a small ownership stake in the reorganized company for homeowner damages and remediation costs.

Lennar Homes, which has said it built at least 400 affected homes, have remained financially sound and have taken action to remove the defective drywall and replace it with domestic drywall. For some residents, companies such as Lennar and GL Homes have also paid for the cost of temporarily relocating these residents while the repairs are made.¹⁰

Recovering Losses

Although some builders may pay for remediation, the costs may be more than the building industry can handle. How much of these costs may be covered by insurance is still unknown. Although the total costs are still far from clear at this point, the National Underwriter speculates that the total economic losses could fall in the \$15 billion to \$25 billion range.¹¹ Some reports indicate that general homeowner's insurance policies will not cover the costs of the defective drywall.¹² Builder's insurance is more likely to cover the costs of the damage caused by the Chinese drywall but will depend on the specific exclusions in each policy.¹³

casualty.com/Issues/2009/July%2027%202009/Pages/Economic-Losses-From-Chinese-Drywall-Could-Reach-25-Billion-Insurers-Warned.aspx.

⁸ Florida Department of Environmental Protection, Interim Drywall Disposal Guidance, May 28, 2009, *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/shw/solid_waste/policymemos/SWM-19-17.pdf.

⁹ One possibly promising solution is being touted by Sabre Technical Services. This company believes that the sulfur compounds emitted by Chinese drywall can be neutralized by chlorine dioxide. The Environmental Protection Agency has yet to verify this company's claims. *See* Dick Hogan, Firm calls its Chinese drywall fix a success; others unsure, *news-press.com*, August 18, 2009.

¹⁰ *See* Nirvi Shah, Family's saga over drywall ends happily, *Miami Herald*, August 15, 2009, *available at* <http://www.miamiherald.com/business/story/1187264.html>.

¹¹ Rachel Boles & Ronald Kozlowski, NATIONAL UNDERWRITER, July 27, 2009, *available at* <http://www.property-casualty.com/Issues/2009/July%2027%202009/Pages/Economic-Losses-From-Chinese-Drywall-Could-Reach-25-Billion-Insurers-Warned.aspx>.

¹² John Sadler, *ClaimsJournal.com*, July 27, 2009, *available at* <http://www.insurancejournal.com/news/national/2009/07/27/102525.htm>.

¹³ *Id.*

From a legal standpoint, the least cost avoider, and therefore the entity that would most deserve to bear the financial burden of the Chinese drywall claims, would be the manufacturer. Unfortunately, the manufacturers of the defective drywall are foreign companies and it has yet to be seen how they will be held accountable. Precedent in other claims against Chinese companies for defective products suggests there is little chance of recovering damages. A piece of legislation recently introduced at the federal level would help consumers in holding foreign manufacturers accountable in U.S. courts.¹⁴

A number of the Chinese drywall cases have been consolidated into a single case taking place in New Orleans under Judge Eldon E. Fallon.¹⁵ The hearings on property damage are expected to commence in January of 2010. Reports from a recent status conference indicate that trials that involve property damage alone would proceed before personal injury claims as they are expected to be resolved more quickly. Domestic builders and foreign manufacturers are named as defendants in the suit. None of the law suits filed in Florida have been tried.

The government's response to the Chinese drywall problem

Federal Organization	Roles/Activities	Timeline
Consumer Protection Safety Commission (CPSC)	<ul style="list-style-type: none"> • Visited four affected homes in the Tampa area and observed firsthand the noxious smells and varying levels of corrosion in electrical outlets, circuit breakers, mirrors, plumbing fixtures, and air conditioning coils 	Completed (March 2009)
	<ul style="list-style-type: none"> • Hosted a joint meeting with the Environmental Protection Agency (EPA) and Centers for Disease Control (CDC) and Prevention/Agency for Toxic Substances and Disease Registry (ATSDR) to establish coordination of a federal action plan 	Completed (April 2009)
	<ul style="list-style-type: none"> • Coordinating with its Chinese government counterpart (General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)) regarding producers of Chinese drywall using the LuNeng mine and mines in other regions and submitted an initial list of questions 	Completed (April 2009)
	<ul style="list-style-type: none"> • Chinese experts joined CPSC staff on inspections of homes in Florida and Louisiana and held technical discussions with EPA and the CDC 	Completed (June 2009)
	<ul style="list-style-type: none"> • Requested and received approval to visit specific mines and manufacturers in China 	(Mid-August 2009)
	<ul style="list-style-type: none"> • Piecing together the supply chain using Customs and Border Protection databases, sending requests for information to drywall importers and builders, and trying to determine how much Chinese drywall was imported 	Ongoing
	<ul style="list-style-type: none"> • Conducting In-Depth Investigations of complaints including evaluating the relationship between drywall emissions and consumer reported health effects with EPA and others (see sections below) 	Ongoing
	<ul style="list-style-type: none"> • Hosted a call among attorneys general of impacted States to coordinate end exchange information about State-level efforts 	Completed (August 2009)
	<ul style="list-style-type: none"> • Based on EPA and the Berkeley Laboratory tests 	Ongoing

¹⁴ Foreign Manufacturers Legal Accountability Act of 2009, S. 1606, 111th Cong. (2009).

¹⁵ In re Chinese-Manufactured Drywall Products Liability Litigation, 2009 WL 1725973, June 15, 2009.

	<p>described below, plan to issue a preliminary health risk assessment</p> <ul style="list-style-type: none"> • Conducting an engineering analysis (Phase I) to examine various components harvested from affected residences and determining any acute effects that might signal an impending safety problem • Conducting an engineering analysis (Phase II) to test the reaction of new components to elevated levels of gases as part of an accelerated corrosion test program • Testing conducted by federal and state agency radiation laboratories found no radiation safety risk to families in homes built with manufactured drywall • Hosts a <i>Drywall Information Center Website</i> (http://www.cpsc.gov/info/drywall/index.html) 	<p>Ongoing</p> <p>Future</p> <p>Completed (August 2009)</p> <p>Ongoing</p>
Environmental Protection Agency (EPA)	<ul style="list-style-type: none"> • Conducting an elemental analysis of 15 drywall samples for organic and inorganic materials including review and interpretation of the data • In partnership with radiation labs in Florida, tested some imported drywall for alleged radioactive phosphogypsum 	<p>Ongoing</p> <p>Completed (August 2009)</p>
Lawrence Berkeley National Laboratory	<ul style="list-style-type: none"> • Chamber study testing (Phase I) the same 15 drywall samples as EPA to identify chemicals and irritant gases emitted from the drywall • Testing (Phase II) higher emitting materials and characterizing factors that influence long-term emissions such as temperature, moisture, ventilation, etc. 	<p>Ongoing</p> <p>Future</p>
Environmental Health and Engineering	<ul style="list-style-type: none"> • Sampling in-home indoor air on 50 homes and laboratory analysis 	<p>Ongoing</p>
Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR)	<ul style="list-style-type: none"> • Assisting in the development of a public health awareness publication 	<p>Future</p>
American Standards Testing Materials (ASTM)	<ul style="list-style-type: none"> • Revises and updates applicable national construction standards, which are adopted by reference in the Florida Building Code 	<p>Future</p>

Senators Bill Nelson and Mary Landrieu have been active in tackling the Chinese drywall problem. They helped to garner support for funding for the U.S. Consumer Product Safety Commission’s investigation of the Chinese drywall problem and have proposed other legislation to require a recall of the defective drywall¹⁶ and to set more stringent standards on the quality of imported drywall.¹⁷

Senator Nelson joined with other Senators to send letters to the U.S. Small Business Administration, the Department of the Treasury, and the Department of Housing and Urban Development (HUD). The letters sent to the Department of Treasury and HUD requested that both find ways to help affected owners who face trouble paying both a mortgage and a rental payment each month if they leave their tainted homes.¹⁸ In addition, Senator Nelson wrote a letter to President Obama requesting that the President mobilize HUD and FEMA to assist victims

¹⁶ S. Res. 91, 111th Cong. (2009).

¹⁷ Drywall Safety Act of 2009, S. 739, 111th Cong. (2009).

¹⁸ Letter from Senator Nelson and Senator Landrieu to The Department of Treasury and HUD, July 28, 2009, *available at* <http://billnelson.senate.gov/news/TreasuryHUDLetter072909.pdf>.

of Chinese drywall and create a “one-stop” federal Drywall Assistance Center that homeowners can use to receive information about the status of the investigations and available federal resources.¹⁹

In request to a letter from Senator Webb, the IRS wrote a letter indicating that homes affected by Chinese drywall may be eligible for a casualty loss deduction if the investigations show that Chinese drywall does in fact emit an unusual or severe concentration of chemical fumes that causes extreme and unusual damage. “The amount of their casualty loss is the difference between the fair market value of their home immediately before and immediately after the casualty, limited to the adjusted basis of their home. Unfortunately, costs incident to a casualty (for example, temporary alternative accommodations) are nondeductible personal expenses, not deductible casualty losses.”²⁰

The state of Florida initially convened a Unified Command headed by the Florida Department of Health to address the imported drywall problem. Several state agencies coordinated to manage the scientific analysis and the plans for remediation. Coordination between state agencies on approaches to remediation has been suspended pending the results of the scientific studies and the CPSC’s October report.

The Florida Department of Health is working with the CPSC and other federal agencies to collect data on homes affected by Chinese drywall and to conduct scientific studies of the chemicals that are making the Chinese drywall so corrosive. The Department of Health is currently getting back data from air sampling tests the Department conducted on homes suffering from Chinese drywall. The Department is sharing their data with a technical panel comprised of members of the EPA, HUD, CDC-ATSDR, CPSC, and other state departments of health to ensure a unified interpretation of the scientific data. The panel’s report is expected to be available after October 23. In November, the Florida Department of Health plans to convene a technical symposium in Tampa to bring together scientists and engineers who have been investigating the hazards of Chinese drywall. The State Fire Marshal’s Office is monitoring the effects of Chinese drywall on smoke and carbon monoxide detectors, sprinklers, and simple wiring.

Unanswered questions

Right now there are more questions than answers. One of the most pressing questions is: What are the health implications of the Chinese drywall? This question is a very immediate one for those people who are trying to remain in their homes to avoid financial ruin. Residents are concerned not only about potential safety hazards of the toxic drywall on their health but want to know whether the effect of the drywall on their wiring makes their homes fire hazards. A second question is: How does a homeowner effectively remediate their home so that they can either live in it safely or resell it without the stigma of Chinese drywall making the home valueless? These are questions that can only be answered with more research. Yet they are some of the most important questions to individuals suffering from Chinese drywall.

Possible solutions

Victims of defective drywall are turning to the government for help with their problem. Apart from needing answers to their questions regarding remediation and health concerns, homeowners are looking for:

Mortgage abatements

Many individuals have been unable to obtain mortgage abatements while they solve their Chinese drywall problems. Often these residents are unable to make rent payments and mortgage payments at the same time. These owners are asking for assistance so that they can rehabilitate their homes and protect their health without ruining their credit.

¹⁹ Letter from Senator Nelson to President Obama, July 28, 2009, *available at* <http://billnelson.senate.gov/news/DrywallLetter072909.pdf>.

²⁰ Letter from the IRS to Senator Webb, July 2, 2009, *available at* <http://webb.senate.gov/pdf/maiC81.pdf>.

Certified remediation

With uncertainty revolving around the causes of Chinese drywall's detrimental effects, homeowners do not know what they need to do to fully remediate. They want guidelines for remediation so that they know their homes are free of the defective drywall and they want to be able to assure potential buyers that the homes are certified as properly remediated and free of toxins from defective drywall.

Tax assistance

A bill proposed in Louisiana would have allowed homeowners the opportunity to get a tax deduction in the amount of their costs of remediation. In Florida, some tax appraisers have been lowering property taxes to address Chinese drywall, but others remain concerned that they do not have the authority to lower property taxes for homeowners whose problem is still so poorly understood.

The Lee County Property Appraiser's Office sent letters to approximately 50,000 homes in Lee County built between 2004 and 2007 advising them that they could obtain a reduction in their property taxes if they can prove they have Chinese drywall. In Broward County the general counsel for the Broward Property Appraiser's Office has stated that homeowners who have documentation that the presence of defective drywall has decreased the value of the property may have their property taxes reduced. Palm Beach County and some Treasure Coast homeowners with defective drywall have been encouraged to send proof of Chinese drywall to their property appraiser. As of August 10, 2009, in Palm Beach only a limited amount of people have taken advantage of the potential tax breaks, which may be an indication that people are just learning what their problems are and what assistance is available.

Insurance

Victims of Chinese drywall have asked for assistance in dealing with their insurance companies. Insurance companies are stating that their policies do not cover damage due to defective drywall.

Conclusion

Florida appears to be the state that is most burdened by the Chinese drywall problem. The problem is causing homeowners to make difficult choices without much guidance, rendering property valueless, and exacerbating the housing crisis. There are many scientific and policy problems yet to be resolved that the Legislature may choose to address.