

Bobby Jindal
GOVERNOR



Bruce D. Greenstein
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

April 6, 2011

The Honorable Joel T. Chaisson, II, President
Louisiana State Senate
P.O. Box 94183, Capitol Station
Baton Rouge, LA 70804-9183

The Honorable Jim Tucker, Speaker
Louisiana State House of Representatives
P.O. Box 94062, Capitol Station
Baton Rouge, LA 70804-9062

Dear President Chaisson and Speaker Tucker:

In response to House Concurrent Resolution No. 185 (HCR 185) of the 2009 Regular Session, the Louisiana Department of Health and Hospitals (DHH) submits the enclosed report. HCR No. 185 urges and requests DHH, the Department of Insurance, and the Louisiana State Licensing Board for Contractors to investigate the health risks associated with living in homes that contain drywall imported from China, to study the potential homeowners insurance coverage issues, including triggers, endorsements, and exclusions to policies that are related to drywall imported from China, and to determine whether such material should be identified as a substandard, unsafe building material, and report findings and recommendations to the legislature.

DHH is available to discuss the enclosed report and recommendations with you at your convenience. Please contact Kathy Kliebert, DHH deputy secretary, at (225) 342-7092 with any questions or comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce D. Greenstein".

Bruce D. Greenstein
Secretary

Enclosures

Cc: Senator Willie L. Mount
Representative Kay Katz
Senator Dan "Blade" Morrish
Representative Chuck Kleckley
Representative Tim Burns
David R. Poynter Legislative Research Library

FOREIGN DRYWALL INVESTIGATION

REPORT PREPARED IN RESPONSE TO HCR
NO. 185 OF THE 2009 REGULAR SESSION

APRIL 2011

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EXECUTIVE SUMMARY

House Concurrent Resolution No. 185 (HCR 185) requests the Louisiana Department of Health and Hospitals (LDHH) to investigate the health risks associated with living in homes that contain drywall imported from China. LDHH maintains a database of self-reported drywall cases and health symptoms. Between February and December 2009, LDHH received 950 calls from Louisiana homeowners reporting foreign drywall in their homes based on the criteria of corrosion on metal surfaces, air conditioner coil failures, building/renovation date, odors and drywall labeled “made in China.”

Approximately 510 of these households participated in the self-reported health survey. Survey results show the most frequent self-reported health effects to be headache, nosebleed, dry cough and asthma exacerbation. The number of health effects reported increases proportionally with the number of case criteria for drywall in the homes. Studies by the Consumer Product Safety Commission (CPSC) will assist federal and state health agencies in characterizing the health risks of specific compounds and their emission rates from imported drywall.

HCR 185 also requests that the Louisiana Department of Insurance (LDOI) study the potential homeowner’s insurance coverage issues, including triggers, endorsements, and exclusions to policies that are related to drywall imported from China. LDOI maintains that an insurance contract provides specific coverage to the specific risk insured; therefore each claim should be handled based on the contract negotiated between the insured and the insurer. Coverage for remediation and/or repair may be available under certain policies of insurance; however, concern has been raised as to how an “ensuing loss” related to defective drywall should be handled by the insurer.

This issue has resulted in numerous lawsuits being filed by insureds. Insurance Commissioner Donelon may issue a report regarding “ensuing loss” to the extent that rulings from pending litigation including, but not limited to, the multi-district litigation in the United States District Court, Eastern District of Louisiana may provide legal guidance of this issue. It is recommended that the Legislature, Congress and the Louisiana Recovery Authority continue to assist consumers by implementing the assistance program that to date has been funded to the extent of at least \$5 million under the “Road Home” program.

As summarized in HCR 185, the Louisiana State Licensing Board for Contractors (LSLBC) is requested to determine whether drywall imported from China should be identified as a substandard, unsafe building material. LSLBC maintains that accepted Louisiana construction codes referring to international drywall standards do not address the chemical composition of the gypsum core or paper lining of the material. These codes are recognized around the world as being the standard reference and contain no prohibition of use of any drywall regardless of the country of origin.

Numerous drywall studies are currently underway; some of which may lead to the establishment of exposure limits by CPSC. Until that time, the LSLBC is limited on making recommendations on the unacceptable percentages of organic compounds which would constitute the material to be classified as being defective and qualifying it to be considered as substandard. As identification and remediation protocols are still being established, the costs to remediate properties proven to contain affected drywall cannot be estimated at this time. Since the problem with this product appears to be a product liability issue, the LSLBC would support any position that holds manufacturers responsible for the economic loss and reduced resale values of properties.

The Attorney General's Office may wish to consider a measure prohibiting cyber-based marketing companies from shipping drywall test kits to Louisiana addressees and to closely monitor individuals and companies providing non-recommended testing and remediation services to Louisiana consumers.

JOINT AGENCY FOREIGN DRYWALL INVESTIGATION

BACKGROUND

Following the 2005 hurricane season, large numbers of Louisiana residences in storm-damaged areas required extensive renovation and rebuilding. The high demand for building material led to shortages that favored the importation of foreign drywall to supplement the depleted U.S. stock, most notably drywall from China. In early 2009, Louisiana residents reported a high number of cases of premature corrosion of copper and air conditioning coil failures in new and renovated homes constructed with Chinese drywall. Additionally, homeowners reported failures of electrical equipment including components of televisions, computers and home appliances. “Rotten egg” and “match-strike” odors were reported in homes with foreign drywall. Homeowners expressed concern related to recurring or chronic respiratory health conditions and eye, nose and throat irritation. Many homeowners reported moving out their residences because of these issues, and that some insurance companies have canceled their homeowner policies, citing vacancy or failure to maintain the home in an insurable condition. These issues have led to collaborative efforts among the Louisiana Department of Health and Hospitals (LDHH), the Louisiana Department of Insurance (LDOI), and the Louisiana State Licensing Board of Contractors (LSLBC) as requested by the Louisiana Legislature in House Concurrent Resolution No. 185 (HCR 185) to assess the nature and scope of health, insurance and safety of Chinese drywall building materials [1].

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

As stated in HCR 185, LDHH is requested to investigate the potential hazardous effects that drywall imported from China may have on the health of occupants of a home containing such materials, specifically, determining whether the gases that are emitted from this foreign drywall pose any health risk to the occupants of an affected home [1].

In March 2009, LDHH initiated a state-federal collaboration between several federal agencies including the Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA) and the U.S. Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) along with other affected state health departments in Florida and across the nation as the number of homeowner complaints began to increase. This collaboration resulted in a workgroup that held weekly phone conferences, and has matured via regularly scheduled conference calls, site visits and sampling in homes to assess the nature and scope of the tainted drywall issue.

In August 2009, LDHH organized a state interagency workgroup to share information regarding foreign drywall as related to specific state agency duties. LDHH joined with LDOI, LSLBC, the Louisiana Attorney General’s Office, Louisiana Recovery Authority, Louisiana Home Builder’s Association, Louisiana State Uniform Construction Code Council, Louisiana Office of State Fire Marshall, Louisiana Department of Agriculture and Forestry, Louisiana State University Agriculture Center, and several members of the National Association of Home Builders. Monthly meetings were summarized and transmitted to Louisiana State Representative Tim Burns, author of HCR 185, by the Louisiana Department of Insurance [2].

HEALTH SURVEY RESULTS

In late February 2009, LDHH received several calls from homeowners expressing concern not only regarding home component failures, but also for potential health hazards. These few initial reports prompted an expansion of LDHH’s Indoor Air Quality (IAQ) Hotline to develop a tracking mechanism

for resident reported cases. Approximately 950 drywall calls¹ have been received by LDHH's IAQ Hotline staff between February 20, 2009, and December 31, 2009, an overwhelming majority of which are from Louisiana residents living in the Southeastern region of the state. A phone survey was administered to agreeable callers by LDHH staff and captured information on the physical characteristics of the home, health effects experienced by members of the household and demographic information [3]. Survey responses were entered into a Microsoft Access database, duplicates were removed, the data was analyzed and a descriptive report was developed. The report is descriptive rather than analytic to avoid drawing biased conclusions from the self-selected respondents and self-reported complaints; rather LDHH attempted to characterize the scope and nature of the drywall issues in Louisiana.

Between 2/20/09 and 12/31/09, 510 households were surveyed [4]. The survey instrument includes the original Florida Department of Health (FDOH) case definition to identify homes experiencing adverse effects potentially due to imported drywall. For homes constructed after January 1, 2004, two or more criteria are required to meet the case definition. Homes constructed prior to January 1, 2004 require the presence of three or more criteria to meet the case definition. The case criteria include 1) the presence of sulfur-like or other unusual odors, 2) confirmed presence of Chinese manufactured drywall in the home, 3) observed copper corrosion, 4) failure of air conditioner evaporator coil, and 5) confirmation by an outside expert or professional for the presence of corrosion and/or air conditioner evaporator coils. Nearly 91% of households surveyed met one or more of the case criteria (N=462); while approximately 70% of households met two or more of the case criteria and 53% met three or more of the criteria [4].

The four most commonly reported health symptoms by adults were headache (26%), respiratory infection (18%), eye irritation/redness (17%), and dry cough (14%). The most common symptoms reported among children less than 18 years of age were respiratory infection, dry cough, headache, nosebleeds and shortness of breath. For both adults and children the most common "other" symptom reported was allergies and respiratory problems [4]. Children do not always respond to chemicals in the same way that adults do; they may receive larger doses because they have a greater lung surface area. They may be exposed to higher levels of contaminants than adults in the same location, because they are shorter and closer to potentially contaminated surfaces such as the floor; and because of the relatively smaller diameter of their airways [5].

The proportion of households reporting more than one selected² health effect generally increased with the number of case criteria that the household met. More than half of all households surveyed reported that at least one member in each of their households had a selected health effect (n=273; 54%) [4].

HEALTH EDUCATION

In June 2009, LDHH collaborated with health professionals from CDC/ATSDR to release an imported drywall guide for health care providers [6]. This guide was created to educate and assist physicians in the treatment of patients presenting symptoms related to sulfur gas exposures. LDHH strongly encourages residents who believe their health symptoms are related to the presence of tainted drywall in their homes should immediately contact their health care providers. The guide was mailed to all Louisiana residents in

¹ The number of calls received may not represent the number of households that contacted LDHH during this period of time as some individuals called more than once and more than one household member may have called LDHH to inquire about the drywall issue.

² Selected health effects include headache, nosebleed, dry cough, irritated throat, eye irritation/redness, and asthma exacerbation.

LDHH's survey database (433 households at release date of August 4, 2009), who were encouraged to share the guide with their physicians as part of their health care treatment.

The health guide notes the most sensitive populations include patients with asthma, chronic obstructive pulmonary disease (COPD), and the elderly and young children with compromised respiratory function. Short-term exposure (hours) to low concentrations of sulfur gases can result in eye irritation, sore throat, stuffy nose/rhinitis, cough, shortness of breath/chest pain, nausea and headaches [7,8,9,10,11]. Chronic exposures (days to weeks) to low concentrations of sulfur compounds can result in the symptoms previously listed in addition to fatigue, loss of appetite, irritability, poor memory, dizziness, and insomnia [12,13,14].

VISUAL INSPECTIONS & AIR SAMPLING INVESTIGATIONS

On May 13-14, 2009, based on a review of LDHH's survey database, LDHH selected and performed visual inspections of 11 Louisiana homes with suspected foreign drywall. Two teams of environmental health professionals including LDHH regional sanitarians and engineers, spent 60-90 minutes at each of the homes documenting the case criteria via inspection and photography as well as confirming resident reported health effects [15].

As a follow up, on May 20, 2009, the EPA's Emergency Response Team (ERT) and CDC/ATSDR representatives along with LDHH visited five of the most severely affected homes for preliminary indoor air screening. Two of these five homes were selected as test homes for in-depth indoor air sampling in the State of Louisiana. Two Louisiana households agreed to the necessary sampling requirements; sampling was conducted following the EPA's Indoor Air Monitoring Protocol [16] in two test homes as well as one reference home from June 22, 2009 through July 2, 2009.

The state-federal technical team prepared a comprehensive report detailing the results of the sampling events conducted by the EPA ERT in the States of Louisiana and Florida [17]. The report, released on October 29, 2009, noted that indoor air tests found only very limited or occasional indications of sulfur compounds of interest (hydrogen sulfide, carbon disulfide and carbonyl sulfide). It was further noted that several irritant compounds, including acetaldehyde and formaldehyde emitted from an unidentified household source, were detected that could exacerbate conditions such as asthma in sensitive populations.

Based on elemental analyses of the drywall and air sampling studies released by CPSC in November 2009, sulfur-based compounds are thought to be responsible for the corrosive nature of metal components and failure of air conditioning systems in homes containing drywall imported from China [18].

On April 2, 2010, CPSC released 1) the results from a study of drywall emissions from the Lawrence Berkeley National Laboratories (LBNL), 2) the results from a study of sulfur reducing bacteria in drywall from Environmental Health and Engineering and 3) the interim remediation guidance for drywall [19]. The LBNL study supports that certain Chinese drywall emits reactive hydrogen sulfide at rates much higher than other, non-Chinese drywall, and that hydrogen sulfide has a strong association to corrosion in homes with problem drywall [19]. Furthermore, there appears to be no difference in the presence or absence of sulfur-reducing bacteria between the imported Chinese drywall and U.S. domestic drywall samples tested, including the Chinese samples found by LBNL to have some of the highest reactive sulfur gas emissions [19]. The interim remediation guidance addresses possible safety hazards related to corrosion in drywall homes and calls for the replacement of all possible problem drywall; all fire safety alarm devices, all electrical components and wiring and all gas service piping and fire suppression sprinkler systems [19]. Additionally, in March 2010, CPSC issued an alert to fire safety professionals to be on the lookout for and to report to CPSC any fires that appear to be connected to problem drywall [20]. Long-

term corrosion investigations underway at Sandia National Laboratories and the National Institute of Standards and Technology are scheduled for release in the summer of 2010 [19].

LDHH will continue to track resident-reported health effects related to Chinese drywall and continue to strongly encourage any residents who are experiencing health symptoms they believe are related to the presence of tainted drywall in their homes to immediately contact their health care providers for medical assistance. Homeowners are furthermore encouraged to additionally report their cases to CPSC; federal aid will vary by state as CPSC case counts will determine the level of aid received by affected Louisiana homeowners.

LOUISIANA DEPARTMENT OF INSURANCE

HCR 185 requested the Louisiana Department of Insurance to study the potential homeowners' insurance coverage issues, including triggers, endorsements, and exclusions that may restrict or prohibit recovery in claims instituted to address problems in homes that contain drywall imported from China [1].

The Louisiana Department of Insurance's (LDOI) position regarding the pollution exclusion is outlined in Directive No. 137 (June 28, 1996) issued by then Commissioner Jim Brown which stated that the absolute and total pollution exclusion was not appropriate in Homeowners Liability and Personal Automobile Liability insurance and directed insurers to submit revised forms to the LDOI where necessary [21]. Directive No. 137 stated that consideration would be given for pollution exclusions that are limited to government imposed clean-up cost or limitations or exclusions that are narrowly drafted to limit or exclude particular hazards or classes of risk. The issue of the pollution exclusion was discussed by the Supreme Court of Louisiana in the case of *Doerr vs. Mobil Oil*, 774 So.2d 119, and it remains one of the leading jurisprudential pronouncements in this area.

Each insurance contract provides specific coverage to the specific risk insured; therefore, each claim will be responded to based on the contract negotiated between the insured and the insurer. Furthermore, coverage for remediation and/or repair may be available under certain policies of insurance.

Most homeowners' insurance policies provide broad coverage for property damage to the insured premises; however, many homeowners' insurance policies exclude coverage for certain causes of loss. The most common exclusions are wear and tear, marring, and deterioration; inherent vice, latent defect, and mechanical breakdown; smog, rust, mold, and wet or dry rot; release, discharge or dispersal of contaminants or pollutants; and settling, cracking, shrinking, bulging, or expansion of walls, floors, or ceilings.

Construction defect is often a cause of loss that is excluded under a homeowner's policy of insurance. Because the actual drywall may be excluded, the concern has been raised as to how an "ensuing loss" to the home of an insured that contains defective drywall should be handled by the insurer or how an "ensuing loss" for a covered peril caused as a result of defective Chinese drywall should be adjusted between the insurer and insured. As previously stated, Insurance Commissioner Donelon may issue a report regarding "ensuing loss" to the extent that rulings from pending litigation including, but not limited to, the multi-district litigation in the United States District Court, Eastern District of Louisiana may provide legal guidance of this issue.

Many homeowners in Louisiana are leaving their homes after reporting foul smells, health problems and the corrosion of wiring and appliances due to drywall imported from China that contains higher than normal levels of the hazardous chemicals strontium and sulfur. Some insurance companies are canceling

these policyholders, citing vacancy or failure to maintain the home in insurable condition. LDOI has worked to ensure that policyholders who have been covered for more than three years by their homeowners insurer have the right to continue their coverage while vacating and remediating their home of defective Chinese drywall, even if the defective drywall constitutes a “material change in the risk,” as long as the homeowner reports the issue to the insurer [22]. Notification to an insurance company cannot be used against an insured and premiums cannot be raised by the insurer for such a report.

LDOI has formed a task force within the Department of Insurance to handle all insurance-related Chinese drywall questions or complaints [23]. Additionally, LDOI will continue to participate at the multi-state level in meetings and hearings on the implications to state regulators and insurers regarding defective Chinese drywall.

LOUISIANA STATE LICENSING BOARD FOR CONTRACTORS

The Louisiana State Licensing Board for Contractors (LSLBC) was cited by the Louisiana Legislature in House Concurrent Resolution No. 185 (HCR 185) and, as such, was requested to participate by providing information and offering recommendations on the need to prohibit the use of drywall imported from China, whether contractors should be required to disclose to the public the use of such materials, and whether there should be a warning issued to consumers about the potential risks associated with the use of such materials. The LSLBC was also requested to offer information and recommendations on establishing unacceptable levels of organic compounds that would qualify the material as being substandard to the extent its use could pose a hazard to the construction of homes and the safety of its occupants. Lastly, the LSLBC was requested to offer information and technical insight into the use of available measures to ensure that the costs of homeowner assistance are borne by the manufacturers in China and their distributors in the United States and not the taxpayers of Louisiana [1].

The Louisiana Legislature, through the passage of Act 12 of the 2005 First Extraordinary Session, charged the Louisiana State Uniform Construction Code Council (LSUCCC) with the responsibility of maintaining reasonable standards of construction in buildings and other structures [24]. The Louisiana State Uniform Construction Code (LSUCC) incorporates the International Building Code and the International Residential Code as published and maintained by the International Code Council (ICC); these codes establish the requisite standards that provide reasonable safeguards for health, safety and welfare.

These codes refer to the American Society of Testing Materials International (ASTM) standards for the locations where tested drywall is to be used. A review of ASTM Standards C 1396/C 1396M indicates that current standards address length, width and thickness tolerances but do little to address the chemical composition of the core material or the paper that is used as an aide in the handling of the material and its acceptance of architectural finishes whether they be paint, wallpaper, tile, etc. [25]. Though these codes are recognized around the world as being the standards by which construction can be made to protect health, safety and welfare, they contain no references that prohibit the use of any drywall regardless of the country of origin.

Likewise, the LSUCC requires that some building materials be labeled; this means that a third party, such as Underwriters Laboratories, has researched these products for particular purposes and attests that those materials are approved to be used in the intended ways and locations, thereby permitting them to be incorporated into construction projects. There is no such requirement for drywall used in home construction as is the case with most building materials.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from thousands of types of consumer products that pose a fire, electrical, chemical or mechanical hazard [26]. Drywall may fall under the jurisdiction of the CPSC if it is determined to be a consumer product. Certainly no construction materials should be incorporated into any project unless those materials have already been approved for use by the applicable building codes; however, construction materials, with the exception of lead-based paint and a few other products, have never before undergone so much scrutiny as is now the case with CPSC's research on imported drywall [27]. At their meeting on December 2, 2009, the CPSC considered whether tracking labels should be required on drywall so that consumers could more easily identify the manufacturer, date of manufacture, production lot, etc. Additionally, the CPSC should consider establishing criteria for safe building materials so that those requirements can be incorporated into established building codes, though it would be problematic to think that CPSC would have the time and resources to review and/or approve all materials. Since the requirement for safe building materials should have no geographic borders, the State of Louisiana should not develop mandatory safety standards specific to Louisiana.

Gypsum board has long been thought of as a commodity resulting in the common understanding that the material was similar from manufacturer to manufacturer; consequently, the construction industry treated all drywall produced between 2004 and 2008 as being the same as the material that had been previously produced. There was no reason to believe that material from foreign manufacturers was any better or worse than domestically produced material.

The LSLBC does not know whether or not affected drywall has been imported into Louisiana since 2008; however, since the CPSC has since stopped all shipments of drywall produced in China, it is doubtful there is any significant supply stored in Louisiana warehouses, so it would be of little value to require contractors to disclose to the public the use of the material in the future.

On January 28, 2010, the CPSC released interim guidance on the identification of homes with corrosion from problem drywall [28]. The identification process is two steps, which includes 1) an initial or threshold inspection to find any visual signs of metal corrosion and evidence of drywall installation during the relevant time period, and 2) the identification of corroborating evidence or characteristics. Until these protocols become established, it would be impractical for contractors to be in a position to be able to properly advise the public as to any specific material that was incorporated into any specific projects constructed between 2004 and 2008.

The Centers for Disease Control (CDC) and the Florida Department of Health (FDOH) have not identified data suggesting there is an imminent or chronic health hazard due to the exposure to this material; see the FAQs posted on the FDOH website [29]. Since no scientific correlation has been made between health risks and exposure, any warning that would be given to consumers at this time would be inconclusive and could well give consumers information that may later to be proven erroneous. The LSLBC lacks the technical expertise and has no authority to provide health or safety warnings to consumers concerning the use of this or any material.

CPSC, CDC and other agencies are analyzing the chemical compositions used in the production of drywall and the relative exposure limits to each of these components. Until exposure limits have been established by the CDC and CPSC, there is little the LSLBC can do to make recommendations on the unacceptable percentages of organic compounds which would constitute the material to be classified as being defective and qualifying it to be considered as substandard and indicative of any potential health hazards to construction or to the safety of its occupants.

As indicated on Page 3 of HCR 185, the use of drywall imported from China has served to defraud home builders; likewise, since the majority of the homes constructed in Louisiana are self-contracted by homeowners, they, too, have been defrauded. The use of this material has and will continue to have great economic impact on these home builders and homeowners and will negatively impact the resale values of these homes. While the CPSC staff has recently released an interim remediation protocol, the costs to mediate and/or treat properties proven to contain affected drywall cannot be estimated at this time. Since the problem with this product appears to be more of a product liability issue than one of improper shipping, handling or installation, the LSLBC would support any position that holds manufacturers responsible to the home builders and homeowners for this economic loss and reduced resale values of these properties.

The Louisiana Recovery Authority (LRA) has approved funding for remediation and testing [30]. Based on information available from the National Association of Home Builders (NAHB) website, U.S. Department of Housing and Urban Development Secretary Shaun Donovan sent a letter to Sen. Bill Nelson on December 7, 2009, advising of their ongoing research on the problem drywall and upon the conclusion of their research, funding for remediation and testing could become available through their Community Development Block Grant (CDBG) program [31].

In March of 2010, the NAHB held a webinar to discuss some of the ways that builders can identify the presence of corrosive Chinese drywall in their homes and address the problem if they find it [32]. This identification process is evolving and additional information will become available in due time.

A quick search on Google provides sources for drywall test kits that can be ordered for as little as \$34.99 up to \$1,000.00. The Attorney General's Office may want to consider a measure that would prohibit cyber-based marketing companies from shipping test kits to Louisiana addressees and to closely monitor individuals and companies providing non-recommended testing and remediation services to Louisiana consumers.

Problems with Chinese drywall began to surface more than a year ago; though a significant amount of effort has been put forth to try to understand the causes and effects, prudence requires that the research must continue. Until final science-based protocols have been established for identifying, remediating, handling and disposing of this material and the protocols have been vetted by the appropriate stakeholders, LSLBC recommends that home builders and homeowners be cautious before considering repairs to their affected properties. This recommendation is based on the fact that some early test results indicate that some standardized drywall repair procedures have failed to eliminate the problems that had previously been reported.

CONCLUSION

The importation of Chinese drywall into the United States and its incorporation into the built environment has had an adverse impact on homeowners, builders, contractors, and businesses. A countless number of individuals, businesses, corporations and local, state and national agencies have been working vigorously for over a year to determine the source of the problem, procedures to identify the problematic material, the means by which to remediate the affected structures and the proper ways to handle and dispose of this material. The recent release of CPSC's chamber studies will assist response agencies in further characterizing the health risks related to the tainted product and have provided inroads to the creation of an interim remediation protocol.

Furthermore, the outcome of class action litigation may provide measures that ensure homeowners do not bear the costs of remediation of affected properties. Awaiting resolution of these issues, representative agencies of this legislative response will maintain their current involvement in health, insurance and building material safety related to Chinese drywall. LDHH will continue to track resident-reported health effects and assist residents by providing them with relevant education materials.

Additionally, the agency maintains that residents who believe their health symptoms are related to the presence of tainted drywall in their homes should immediately contact their health care providers for medical assistance. LDOI will continue to participate at the multi-state level in meetings and hearings on the implications to state regulators and insurers regarding defective Chinese drywall. LDOP's agency task force remains available to address all insurance-related Chinese drywall questions or complaints from Louisiana policy holders. The LSLBC will continue to monitor research on Chinese drywall in order to remain vigilant in its obligation to Louisiana consumers. LSLBC will consider additional safeguards as warranted in order to protect the health, safety and general welfare of consumers in their dealings with representatives of the construction industry.

The ultimate party who is in the best position to correct the harm done to Louisiana citizens is the federal government. It is strongly recommended that Congress appropriate funding to assist affected parties. In light of CPSC staff's recent Interim Remediation Protocol release, Congress, the Legislature, and the Louisiana Recovery Authority must help consumers by implementing the assistance program that has been funded under the "Road Home" Program. Homeowners are encouraged to report their drywall cases directly to CPSC, as federal aid will likely vary by state as determined by CPSC case counts. It is recommended that CPSC consider establishing criteria for safe building materials so that those requirements can be incorporated into established building codes. Furthermore, the Attorney General's Office may wish to consider a measure prohibiting cyber-based marketing companies from shipping drywall test kits to Louisiana addressees and to closely monitor individuals and companies providing non-recommended testing and remediation services to Louisiana consumers.

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Regular Session, 2009

HOUSE CONCURRENT RESOLUTION NO. 185

BY REPRESENTATIVE TIM BURNS

A CONCURRENT RESOLUTION

To urge and request the Department of Health and Hospitals and the Department of Insurance, in consultation with the Louisiana State Licensing Board for Contractors, to investigate the health risks associated with living in homes that contain drywall imported from China, to study the potential homeowners insurance coverage issues, including triggers, endorsements, and exclusions to policies that are related to drywall imported from China, and to determine whether such material should be identified as a substandard, unsafe building material and report findings and recommendations to the legislature prior to the convening of the 2010 Regular Session.

WHEREAS, historically, drywall which is commonly used as a building material for interior walls and ceilings in residential dwellings was manufactured in the United States; and

WHEREAS, due to the construction boom from 2002 to 2007 and Hurricanes Katrina and Rita, a shortage of domestic drywall required many contractors to purchase a foreign product manufactured in China; and

WHEREAS, a Herald Tribune analysis of shipping records between 2006 and late 2007 indicated that more than five hundred fifty million pounds of drywall and associated building materials were imported from China to the United States, enough to build more than sixty thousand homes; and

WHEREAS, the analysis also found that the amount of drywall imported from China and entering Louisiana through the Port of New Orleans was approximately sixty million pounds, enough to build approximately seven thousand homes; and

WHEREAS, a Louisiana couple has filed a class action lawsuit against certain drywall manufacturers in federal court in the Eastern District of Louisiana, alleging that the

wall board in their home began emitting a "rotten egg" odor which caused respiratory problems and corroding electrical equipment; and

WHEREAS, reports from various media outlets indicate that drywall imported from China was also used as a building material in homes located in at least ten other states, including Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas, and Virginia; and

WHEREAS, the Florida Department of Health tested drywall imported from China and discovered that it contained potentially hazardous levels of strontium sulfide, a material that can emit corrosive gases when exposed to moisture and humidity; and

WHEREAS, emissions from drywall imported from China and installed into homes have caused substantial safety hazards to the structures, including corrosion in electrical wiring, which can result in a fire hazard, failure of air conditioning units, and the failure of other household electrical products; and

WHEREAS, preliminary testing shows that drywall may be responsible for certain health hazards, and reports from occupants of homes containing this foreign product indicate that odors emitted from the materials are unbearable and essentially render their homes uninhabitable; and

WHEREAS, the Department of Health and Hospitals should investigate the potential hazardous effects that drywall imported from China may have on the health of occupants of a home containing such materials; specifically, determining whether the gases that are emitted from this foreign drywall pose any health risk to the occupants of the home; and

WHEREAS, most homeowners insurance policies provide broad coverage for property damage to the insured premises and as such many property owners will rely on their homeowners policies to provide coverage for problems in their homes that result from drywall imported from China; and

WHEREAS, many homeowners insurance policies exclude coverage for the following: wear and tear, marring, and deterioration; inherent vice, latent defect, and mechanical breakdown; smog, rust, mold, and wet or dry rot; release, discharge or dispersal of contaminants or pollutants; and settling, cracking, shrinking, bulging, or expansion of walls, floors, or ceilings; and

WHEREAS, the study should investigate whether the liability coverage exclusions applicable to pollution and construction defects are interpreted by Louisiana homeowners insurers as prohibiting recovery for problems arising from drywall imported from China; and

WHEREAS, the Department of Insurance should study the potential homeowners insurance coverage issues, including triggers, endorsements, and exclusions that may restrict or prohibit recovery in claims instituted to address problems in homes that contain drywall imported from China; and

WHEREAS, in Louisiana there are presently no mandatory product-safety standards for drywall; and

WHEREAS, the Louisiana State Licensing Board for Contractors should participate by providing information and offering recommendations on the following: whether there is a need to prohibit the use of such materials; whether contractors should be required to disclose to the public the use of such materials; and whether there should be a warning issued to consumers about the potential risks associated with the use of such materials; and

WHEREAS, the Louisiana State Licensing Board for Contractors should offer information and recommendations on establishing an unacceptable percentage of organic compounds by weight which would constitute a defective product and therefore qualify as a substandard building material that could potentially pose a hazard to the construction of the home and the safety of its occupants; and

WHEREAS, the Louisiana State Licensing Board for Contractors should offer information and technical insight into the use of available measures to ensure that the costs of homeowner assistance efforts are borne by the drywall manufacturers in China that produced and distributed the hazardous materials and their subsidiaries in the United States and not the taxpayers of Louisiana; and

WHEREAS, the use of drywall imported from China in residential dwellings of Louisiana serves to defraud home builders, threaten the safety of the occupants of those homes, undermine the public's trust in the quality of products used in the construction of their homes, and negatively impact the resale value of these homes.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Department of Health and Hospitals and the Department of Insurance, in consultation with the Louisiana State Licensing Board for Contractors, to investigate the

health risks associated with living in homes that contain drywall imported from China, to study the potential homeowners insurance coverage issues, including triggers, endorsements, and exclusions to policies that are related to drywall imported from China, and to determine whether such material should be identified as a substandard, unsafe building material and report findings and recommendations to the legislature prior to the convening of the 2010 Regular Session of the Legislature.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Department of Health and Hospitals, the commissioner of the Department of Insurance, and the executive director of the Louisiana State Licensing Board for Contractors.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE