

**Statement of Randy Noel, on behalf of
The National Association of Home Builders
Before the
Senate Commerce Committee,
Subcommittee on Consumer Protection, Product Safety and Insurance
May 21, 2009**

Introduction

Chairman Pryor, Ranking Member Wicker and members of the Subcommittee, thank you for this opportunity to testify today on the topic of Chinese drywall and how the home building industry is attempting to respond to this unexpected crisis. My name is Randy Noel and I am a builder from the New Orleans area of Louisiana. I'm here today also in my capacity as a former president of the Louisiana Home Builders Association, and a current National Life Director of the National Association of Home Builders Board of Directors. With more than 30 years in the industry, I have had extensive experience not only with the day to day operations of a residential construction company, but also with building code development and general liability insurance issues in the state of Louisiana, and at the national level.

I want to talk with you today about what the National Association of Home Builders knows on the Chinese drywall situation, and to discuss the perspective of home builders on the issue. NAHB is committed to offering a constructive role in resolving this issue.

The National Association of Home Builders is a Washington, D.C.-based trade association representing more than 200,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Known as "the voice of the housing industry," NAHB is affiliated with more than 800 state and local home builder associations around the country. NAHB's builder members will construct about 80 percent of the new housing units for 2009. Taken collectively, the residential construction industry has been estimated to contribute up to 15% of the annual Gross Domestic Product (GDP). Given the downturn in the housing industry and the larger U.S. economy, many of NAHB's members are currently struggling to remain afloat and the annual estimate of new home construction has fallen from an average of 1.6 million per year, to about 500,000 for

2009, making the current economic crisis the worst housing downturn since the Great Depression.

Potential Scope

NAHB first became aware of the problems with Chinese drywall in late 2008 when a consumer approached association staff concerned about rumors he had heard that some “Chinese drywall” in newer homes in Florida was causing problems with copper wiring and creating potential health concerns for homeowners. At the time, staff attempted to research the rumor only to find that there was no information publicly available about any problems or concerns in the Florida market, or the surrounding region. In fact, even a Google search failed to return any hits on the term “Chinese drywall.” Following up on the issue, staff began canvassing the membership to look for members who had found problems with drywall, and ultimately, media coverage of concerned homeowners began to move the issue forward very quickly. Since that time, NAHB has been working aggressively to educate itself about the various aspects of the issue, attempting to determine the scope of the potential problems, and talking to its membership about the ways in which the industry can address and resolve the problems.

In keeping with media reports, NAHB has found that a vast majority of the builders experiencing problems with drywall are in the state of Florida. Thus far, we have been unable to produce an accurate estimate of the number of homes that are potentially impacted in Florida, but continue to attempt to determine the scope. My fellow Louisiana builders have attempted to identify the scope of problems in our state, and have done preliminary estimates that indicate that perhaps 500 homes in the state are impacted, and we have begun the work of trying to determine which builders would have received the product. At the present time, we believe that most of the Chinese product imported into the state went predominantly to a few medium- and larger-sized builders. We are aware of a few drywall issues in Virginia and litigation against a builder in North Carolina. While many builders have heard of multiple news reports and stories on the issue, they have not brought any active cases in their states to NAHB’s attention.

Use of Drywall in Home Construction

Gypsum board, known commonly as ‘drywall’, has been used without incident throughout residential and commercial construction and has been since the 1950s. In an average home [2,500 sq. ft.], there is approximately 8,740 square feet of drywall, with 6,285 sq. ft. contained within the walls and 2,455 sq. ft. within the ceilings. Approximately another 235 square feet of surface area of a house is made up of wood/concrete, or other building materials. In most instances, builders use ½” thick drywall boards in home construction.

State and/or local building codes determine how drywall is incorporated into a residential structure. Building codes identify the minimum requirements for using and installing building components in all single and multi-family residential construction. These codes derive from model codes developed by the International Code Council (ICC), which incorporate national standards for product performance such as the American Society for Testing and Materials (ASTM). Current standards related to drywall concern packaging, marketing, shipping, handling and storage of gypsum panel products and characteristics of the drywall such as the need for water resistance and fire resistance. They do not relate to the composition of the drywall beyond the requirement that the core consist essentially of gypsum.

For the typical NAHB member, a small business with fewer than 10 employees who builds fewer than 25 homes per year, subcontractors perform the drywall work. A home builder will contract with a drywall subcontracting firm to do the work on one or more houses in a year, and it is the job of the subcontracting firm to obtain the product that will be used in the completion of the home. The builder typically does not specify a particular brand name, or source, of the drywall, but rather specifies the amount of product required, the characteristics of the product (as it relates to dimension or thickness) and the timing required to complete the work. Subcontractors in turn coordinate with their suppliers—many of whom work only with professional builders and subcontractors and who do not sell to the general public—to obtain the product they need to meet their contractual obligations with the builder. It is notable however that in the past few months, NAHB has been made aware of builders who did specify in their subcontracts the use of domestic drywall only to find out years later as this issue unfolded that Chinese drywall was installed.

The use of drywall sourced from China spiked during the housing “boom” years of 2005-2007 when several separate situations converged to create a severe drywall shortage in the United States. First, with mortgage rates at historic lows and the associated factors leading to more home purchases in the U.S., a building boom was instigated by a dramatic increase in home buying activity. Second, the domestic producers were experiencing a lag in production capacity, with many domestic producers attempting to move quickly to bring new capacity on line to meet demand for drywall. Third, the historically devastating Hurricanes Katrina and Rita led to a sudden and unexpected need for additional drywall for repairs and remodeling of hurricane-ravaged homes and businesses in the Gulf region. While the U.S. had typically sourced the majority of its drywall from domestic producers, with Mexican and Canadian producers providing the balance, these three factors led to the increase in supply sourced from China.

It’s important to note that in all of the cases that NAHB is aware of, it appears that the problems with the drywall did not become evident until long after the homeowner had taken

possession of the house. In discussions that NAHB has had with builders on their use of drywall in home construction, builders note that had drywall that was off-gassing a foul-smelling odor been on-site or installed in a new home under construction, their site supervisors would have called in their subcontractors to address the issue and replace the drywall. Many builders cite the common sense conclusion that as the home builder they would not move forward with the sale of a house that was off-gassing an offensive odor because not only would it have been completely inappropriate and unprofessional, but the home buyer would have immediately contacted the builder to rectify the situation after taking ownership of the house.

Industry Goals

NAHB and its members praise the work being done by Congress, the Consumer Product Safety Commission (CPSC), and other federal agencies to investigate the source of the drywall problem, and determine the appropriate response and necessary outcomes. While NAHB members who have homeowners impacted by Chinese drywall are continuing to work on a daily basis to respond to the situation, we find that we are increasingly coming to the same conclusion: that the CPSC and other federal agencies must provide both homeowners and builders/remodelers/contractors with the information necessary to not only fully and finally identify the cause and source of the problem so that it will not be repeated, but to also provide a reliable test for drywall problems and a method to appropriately remediate in cases where the problem has occurred. While NAHB has spoken with its own NAHB Research Center and other research entities about the possibility of looking into the situation on our own, we believe that the best possible scenario would be for a national consensus to be developed on these issues based on the work currently being done by the federal government. Understanding the time constraints presented in trying to perform the necessary tests on drywall to determine answers to these questions, NAHB urges the government to move as quickly as the science will allow to provide information to consumers of the product.

As noted above, NAHB is determined to play a constructive role in resolving this issue. Our members are trying to be responsive to homeowners and others who raise the question of whether drywall in their homes is made in China and whether the drywall is causing current issues or will likely develop them in the future. As builders, we live or die by our reputation. Home building is a very competitive business and a builder who does not pay attention to quality, value and customer service won't be in business very long.

One of the challenges we face as an industry is illustrated by our decision to decline an on air interview on the *Nightline* television program that was scheduled to air last night regarding the Chinese drywall situation. We talked with the *Nightline* producers on background and provided them with industry information but despite our best efforts, we could not locate a builder

member to appear on camera to discuss this matter because of the current uncertainty about how to identify the affected drywall, and how to fix it.

Testing and Remediation

At present time, we are not aware of any consensus on the scientific cause of the issues with drywall, and as the CPSC has noted, there is no definitive test to determine if a home has a drywall problem. Consequently, NAHB supports the CPSC's current efforts to identify the actual scientific cause of the problem, and develop an appropriate testing protocol to identify problematic drywall. Once the cause is identified and a testing protocol established, it will greatly help builders identify potential homeowners who may have problems.

Over the past few weeks, NAHB has been made aware of a concerning new development in the area of drywall testing: the dramatic increase in the number of companies in the marketplace claiming to have the capability to test someone's home to determine whether or not they have, or will have, a "toxic drywall" problem. One specific example involves a company in Louisiana who claims that for a "documentation fee of \$1100 (no travel charges within the Parish) and a fee of \$1350 per sample," they can identify homes that have, or will have a problem.

Similarly, until the problem with the drywall is identified, it will be difficult to determine how it can be remediated. We are aware that some builders have opted to remove and replace all of the drywall – but that is very expensive – some estimates indicate that the cost is \$100,000 per home or more, while others indicate that the cost to remediate each home would be approximately 1/3 of the value of the house—and many of our members do not have the financial ability to incur such a cost without the benefit of insurance. It is imperative that research continue to determine whether there is a viable solution short of full removal and replacement of all of a home's existing drywall. Further, the remodelers in our membership are also interested in determining the best remediation strategy for homes in which only a portion of the drywall is identified as problematic. An appropriate remediation strategy should also touch on how to handle those homes and the wiring and electrical systems that they contain.

Potential Health Effects

The health effects associated with the drywall present a serious issue that merits further research. NAHB supports research that will lead to scientifically sound and reliable data on whether scientific evidence exists linking chemical emissions and "off-gassing" from the drywall to the reported health complaints. This is vitally important not only to the homeowners who have been so incredibly impacted by the drywall problems, but also for those who will be going into the affected homes to remediate the problem.

Litigation

The lack of current scientific conclusions on the causes, impacts and remediation strategies on the drywall issue has not stopped the litigation and threatens to obscure many of the legitimate issues. More than 60 separate lawsuits have been filed in 7 states – the bulk of those in Florida and Louisiana – and attorneys are advertising for the creation of class action lawsuits in multiple jurisdictions as they look for clients allegedly injured due to this exposure. Predictably, some have tried to use the dearth of science to take advantage of the issue, like those who use the term “toxic drywall” or “toxic Chinese drywall.” The obvious implication of such terms is clear – this drywall is poisonous and very dangerous to human health. In regard to Chinese drywall, the reality according to the CPSC is that at this time any such relationship linking chemical emissions from the drywall to the reported health complaints or long-term health effects are unknown.

NAHB supports the right of all potentially injured parties to seek redress through the courts, but we believe that this attempted rush to judgment is premature and all concerned would benefit from a stay of the litigation until the CPSC and other agencies have concluded their investigations, identifying the scientific cause of the problems associated with the drywall, and establishing a workable remediation strategy. Litigation is an inefficient means to resolve construction defect and other contract disputes because it is expensive, time-consuming and unlikely to produce the desired result. Moreover, litigation frequently leaves homeowners with insufficient funds to perform repairs once legal fees and costs are deducted from any court recovery they may receive (if any). We are encouraged by reports that the CPSC is developing a set of affected home criteria for dealing with the drywall.

In the vast majority of cases, the result that homeowners and home builders most desire is very simple – a repair to an alleged defect or other similar correction, which is why NAHB spearheaded the effort several years ago to enact Notice and Opportunity to Repair (NOR) laws. These laws, which require homebuyers to provide builders with notice and opportunity to repair before filing suit, increase the likelihood that construction defect disputes will be resolved without costly and time-consuming litigation.

Insurance Coverage

As noted above, as a commitment to their customers, some builders have opted to remove and replace the drywall.

Builders, subcontractors, and remodelers who are sued by homeowners for damages caused by defective Chinese drywall may have coverage under their own liability insurance policies, or under policies issued to other parties – if they are an additional insured under these policies. Homeowners also will seek coverage for their losses under their homeowner insurance policies. However, one insurance company has filed suit against a builder seeking a declaration that no

coverage exists for claims related to Chinese drywall based on policy provisions including the pollution exclusion, and it seems likely that other insurance companies will also seek to deny coverage.

We urge Congress to continue to explore ways to identify possible sources of funding to help offset the costs of remediation, particularly if it is determined that the ultimate responsibility lies with manufacturing entities situated in China.

Potential Concerns Regarding S. 739, the *Drywall Safety Act of 2009*

Again, NAHB applauds Congress for its active interest and quick response to the drywall issue. Specifically, we thank Senators Nelson and Landrieu for bringing attention to the issue through the introduction of S. 739, the *Drywall Safety Act of 2009*.

However, of note is a concern that NAHB has with the draft of S. 739 as introduced. Specifically, Section 4 of the legislation attempts to ensure that no potentially problematic drywall is still entering or being sold in the United States by banning as a product with a product defect any drywall that contains over 5 percent organic compounds by weight. We believe that this 5 percent parameter comes as a result of some preliminary analysis conducted by the Florida State Department of Health. While NAHB is not questioning the organic compound results of the sample analysis in this case, we are concerned that attempting to ban all products with 5 percent organic compounds by weight may actually lead to a massive disruption of the domestic drywall industry, and a potentially significant obstacle to a future housing market recovery. Put simply, the 5 percent organic compounds by weight parameter may accidentally capture most, if not all drywall in the United States, not simply the imported drywall that is subject to investigation at this time. The paper backing on all drywall is technically considered as an 'organic' substance, as is—for example—the wax emulsion that is contained in moisture resistant drywall which is used in places like bathrooms in order to protect against mold. In many instances, the paper backing alone could bring the organic compound weight of the drywall to 5 percent, regardless of the content of the drywall's core. We urge the Subcommittee and the bill sponsors to investigate other ways in which to target the drywall that is of concern, without potentially banning all drywall produced in the United States.

Importantly, it is with appreciation that we note that the Senators sponsoring the legislation and their staffs have indicated an understanding of the industry's concerns with the 5 percent parameter, and that they are actively engaged in attempting to find a better way to identify the potentially problematic drywall.

Conclusion

NAHB appreciates this opportunity to testify on the issue of Chinese drywall and to share our member's experiences and concerns. We look forward to continuing to work with Congress and the federal agencies to provide any information we can on the industry and its use of drywall, and to disseminate and educate the nation's home builders on the appropriate testing protocols and response to this issue. We share the goal of ensuring a satisfactory resolution for the homeowners who have been impacted by this situation, as well as to ensure that such a situation will never be repeated.

Thank you.