

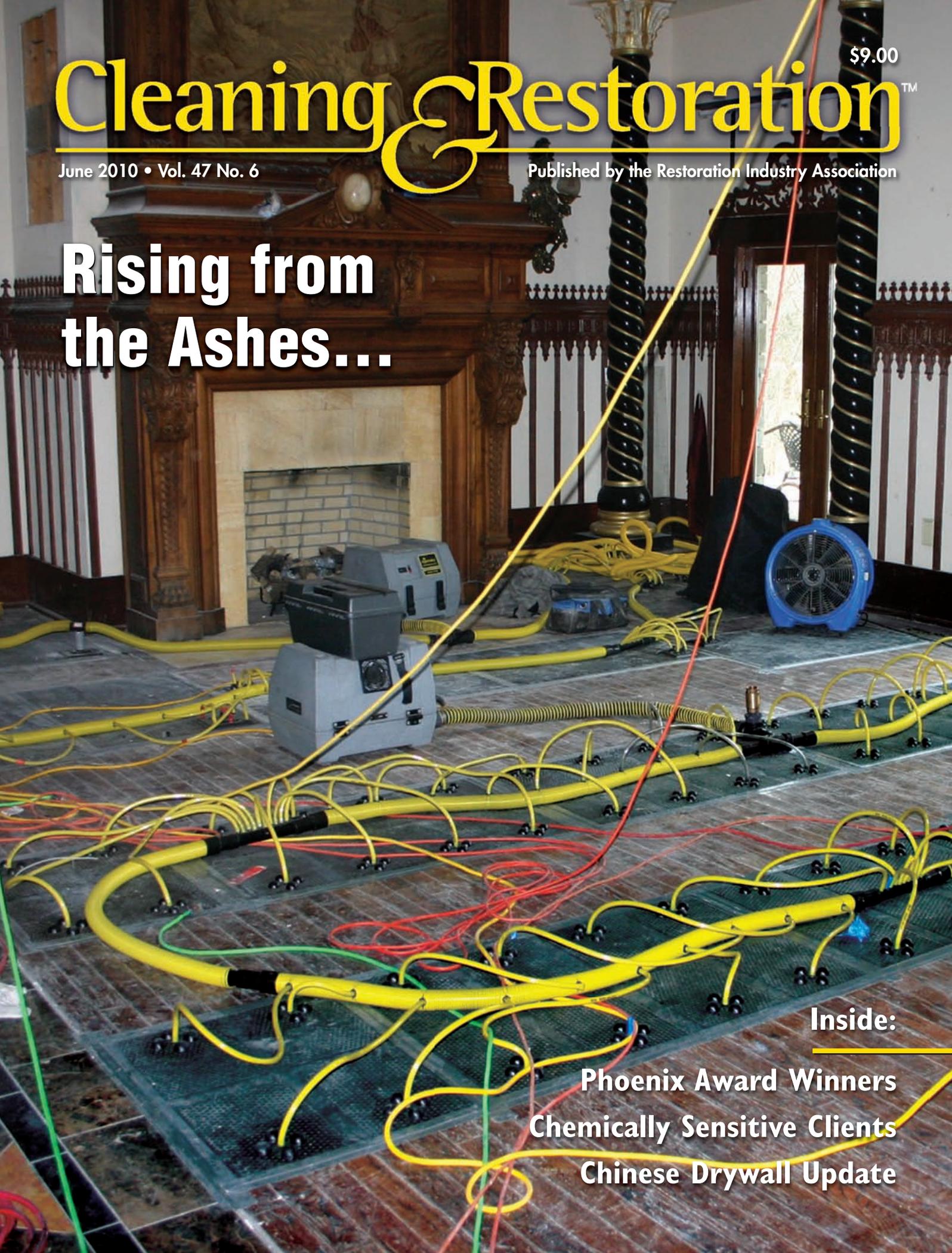
Cleaning & Restoration™

\$9.00

June 2010 • Vol. 47 No. 6

Published by the Restoration Industry Association

Rising from the Ashes...



Inside:

**Phoenix Award Winners
Chemically Sensitive Clients
Chinese Drywall Update**

Corrosive Drywall Crisis Creates Remediation Opportunities

By Allan Burt

Editor's Note: This is part one of a two part series on the issues surrounding the identification and remediation of Chinese drywall. Part two will appear in the July 2010 issue.

In 2004, hurricane damage and flooding in the southeastern United States coupled with a nationwide home building boom created a strong demand for gypsum wallboard, which outstripped domestic supplies. Drywall was imported from China beginning as early as 1999, with an increase in quantities between 2004 and 2007. Approximately 550 million pounds or seven million sheets of drywall were imported, which was enough for 40,000 homes. Approximately 60 percent was delivered to Florida, predominantly for new home construction and 11 percent to Louisiana, for storm-related water damage.

The rest was scattered across 35 other states, including the District of Columbia and Puerto Rico. In the years since its arrival in the United States, some of the drywall imported from China has caused corrosion of mechanical and electrical systems along with an unpleasant odor. The preferred descriptive term for this building material is *corrosive drywall* frequently abbreviated as CDW.

State and Federal Involvement

Homeowners in Florida began reporting sulfur-like odor issues to the Florida Department of Health (FLDOH) by June



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2008. Subsequently, the FLDOH took the investigative lead in developing procedures for the evaluation, identification and confirmation of corrosive drywall installations. The FLDOH's initial case definition for drywall associated corrosion in residences was published March 31, 2009. Initially, the primary confirming factors for the presence of corrosive drywall in a residence were noticeable odor, corrosion attacking copper tubing on HVAC evaporator coils, premature coil failure with associated refrigerant leakage, visible black corrosion on un-insulated electrical wiring and Chinese factory markings on the back of installed gypsum wallboard.

Florida homeowners were encouraged to report drywall problems to their Department of Health (DOH). As complaints, reports of problems and health effects continued to escalate, a revised case definition was released on December 18, 2009. This revision delineated a more rigorous set of criteria which included laboratory analysis of samples and investigative processes through which suspect drywall could be confirmed as corrosive, after having progressed through the staged categories of *possible*, *probable* and, finally, *confirmed*. By adding the necessity for specialized laboratory testing of samples and the associated development of a sampling plan, this revision also mandated participation of "trained professionals" to collect and analyze samples for case definition confirmation only. (The FLDOH website contains an overview of CDW issues, a detailed chronology of associated events, as well as invaluable information. www.doh.state.fl.us/environment/community/indoor-air/casedefinition.html)

Initially, private research investigators began studying CDW and its unique characteristics. The FLDOH also initiated evaluation of imported drywall and of the indoor air in affected homes. Finally, as a result of political pressure from the senators of Louisiana and Florida, several federal agencies: the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) became involved in the direction and performance of basic scientific research into the chemical characteristics and human health effects related to CDW.

The Technical Symposium on Corrosive Imported Drywall in November 2009 (copies of the materials presented are available at <http://www.drywallsymposium.com/presentations.html>) first brought together the results of both public and private scientific research efforts into corrosive drywall, its properties, emissions and their effects.

The first report describing results of the federal agencies' research were published at the end of November 2009. In addition to testing of drywall itself, the CPSC published results of residential indoor air testing and field corrosivity



testing on 51 homes in five states. The CPSC database has approximately 2900 reports of contaminated drywall. Based on information gathered from all of the federal research, the CPSC and the Housing and Urban Development (HUD) issued interim guidance – "Identification of Homes with Corrosion from Problem Drywall" – on January 28, 2010. This closely mirrors the FLDOH revised case definition. This information, updates and related data is available at <http://www.cpsc.gov/info/drywall>.

Pressure for resolution of the problems experienced by homeowners has continued to build while the corrosive drywall remains in place and continues to off-gas, causing damage to building materials, systems and components. Chinese manufacturing companies have maintained that drywall they supplied to the United States is safe, and have thus far refused to participate in litigation involving them. When the CPSC travelled to China, they were prevented from visiting any of the mines from which the gypsum raw material came from for manufacturing and exporting to the United States.

In June 2009, individual corrosive drywall lawsuits in various state jurisdictions were consolidated into a multi-district litigation,

MDL-2047 Chinese Manufactured Drywall Products Liability Litigation under Judge Eldon E. Fallon. The purpose was to centralize the cases under an experienced federal judge with the skills and expertise required to “steer this complex litigation on a steady and expeditious course, enable the efficient collection of common facts and conserve resources of the parties, their counsel and the judiciary.” Trial began on February 19, 2010. It is limited to about 2,000 plaintiffs who complied with requirements for inclusion by the court enforced deadline. Initially, only property issues will be addressed. All pre-trial orders as well as pictures and listings of all types of CDW and their labels and markings, are detailed on the website (<http://www.laed.uscourts.gov/Drywall/Drywall.htm>).

Judge Fallon, who is presiding over the MDL, has indicated that he will ultimately address the issue of what constitutes an acceptable remediation method. It is reasonable to believe that final MDL determinations will impact all CDW cases in some manner. He has already rejected as inadequate one method which involved increased ventilation and humidity control, while leaving the corrosive drywall in place. This was proposed and tested by one manufacturer/importer, Knauf/Tianjin. Although government studies have concluded that health exposures in the residences are generally below health guideline levels set by the EPA, Agency for Toxic Substances and Disease Registry (ATSDR) and others, complaints of health-effects persist; some families have been forced to evacuate their residences. Judge Fallon has already stated that after the property issues are litigated, he will take up the health issues.

Insurance

To date, remediation activity has been subjected to two major constraints. First, insurance coverage for removal and replacement of corrosive drywall appears to be non-existent for both home builders and homeowners due to numerous standard and environmental policy exclusions. These exclusions provide a basis for complicated litigation on whether coverage for the corrosive drywall occurrences exists. A recent insurance case in Louisiana found that the homeowner’s insurance carrier’s coverage denial, based on policy exclusions, was in error. Nevertheless, the industry’s pervasive coverage denial and the resultant lack of funds to remediate have impeded elective action by home builders and homeowners to proceed with attempts at remediation.

Builders have been crippled financially by the downturn in homebuilding. Their attempts to recover from suppliers and importers of corrosive drywall have been unsuccessful to date. In a few instances, nationally-prominent builders have carefully and methodically undertaken successfully, at their own expense, full remediation efforts for brand protection and customer satisfaction. This action, however, has been the exception.

Absent insurance coverage, the homeowner is also prevented from securing any re-imbusement for self-financed remediation. In December 2009, HUD announced that the funds cities, counties and states receive from its Community Development Block Grants program may be a resource to combat the corrosive drywall problem. HUD has also encouraged U.S. FHA-Mortgage Lenders nationwide to consider extending temporary relief to allow families who have problems paying their mortgages because of CDW. This would permit the homeowners to undertake repair of their own homes. Families with FHA-insured loans were encouraged to contact their mortgage lenders directly. HUD also encouraged non-FHA lenders to give affected families the same consideration.

With or without insurance coverage, remediation activity has been stalled until very recently due to the lack of satisfactory remediation guidance on how to move forward with confidence. On April 2, 2010, CPSC and HUD published remediation protocols. Federally-sanctioned remediation guidelines have removed this reluctance to act, which may prove a beneficial tipping point for restoration firms. The National Association of Home Builders will also be issuing investigative and remediation guidance to its members soon.

As a result of this information, builders and/or homeowners may embark on remediation and reconstruction to alleviate on-going corrosive conditions. It is likely that restoration firms may be contacted directly by a homeowner or builder who wishes to undertake electively self-directed corrective action. Frustrated homeowners, with no recourse to builders or insurance relief, may be among the largest consumers of remediation professionals’ services. A turn-key engagement could include relocation services, storage of household goods, de-commissioning the residence, interior demolition, remediation, reconstruction with multiple trades, restoration, odor polishing and re-occupancy. So, what does one need to know when they receive that call?

That question will be answered next month in part two, which explains general guidelines to remediation of CDW, opportunities for restoration contractors and well as cautions when performing this type of work. ■

Allan Burt is a trained commercial arbitrator for general, mechanical and residential construction disputes. His multi-faceted expertise enables him to understand construction projects from their inception through the impact of occupancy. In conjunction with NMAS’ physicians, he has developed “medical engineering” means and methods for investigating and resolving indoor environmental matters after building occupant health complaints have been received. He can be reached at Aburt@nmas.com.

Hot Points

- ▶ CPSC, EPA, CDC and ATSDR release research findings
- ▶ Drywall testing recommendations
- ▶ Remediation constraints