

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
IN RE: CHINESE-MANUFACTURED DRYWALL MDL NO. 2047
PRODUCTS LIABILITY LITIGATION

This Document Relates to: All Cases

SECTION: L
JUDGE FALLON
MAG. JUDGE WILKINSON

.....
THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER NO. 13A

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PRETRIAL ORDER NO.13A

Before the Court is a multitude of claims filed by Plaintiff property owners alleging damages caused by Chinese-manufactured drywall. The Court hereby modifies the initial Threshold Inspection Program (herein "TIP") protocol to move toward a more streamlined, less complex TIP, which may be modified further as the parties move toward the initial trial settings in order to facilitate prompt and efficient case management. The Threshold Inspection Program is being run under the supervision of the Court. The TIP process is being modified in a way that reduces disturbance to the homeowner and destruction to the premises as much as possible under the circumstances. The parties have selected 30 initial cases and are in the process of implementing the preliminary TIP group in order to help the Court determine the following:

1. Whether the revised protocol is reasonably calculated to serve as the basis for inspection of all cases filed before the Court;
2. Whether this protocol is reasonable regarding the scope of information to be gathered, and not overly intrusive to the homeowner or destructive to their property; and

3. Whether the Court-appointed Inspectors are able to accomplish the inspections in a competent and economical manner.

For the purposes of the TIP, each counsel for plaintiff will complete a form, attached hereto as Appendix "A", that will be sent to the Court approved inspector, that will identify the counsel's name, each plaintiff's name, the affected address, and case or civil action number. The Court-approved inspector shall compile a list of such addresses and make it available to counsel and the Court on a regular basis.

A. Objectives Of The TIP.

1. Examine plaintiff's property for the presence and extent of Chinese-manufactured drywall.

2. To the extent possible, identify, document, and preserve available markings in order to assist in ascertaining the manufacturers, suppliers, and/or distributors of the drywall in the property.

3. Examine the property to determine the alleged impacts of the drywall, if any, on other aspects of the property including, but not limited to, wiring, HVAC, plumbing, and related fixtures and appliances.

4. Collect physical samples of drywall, marked and unmarked, found in the property.

The Threshold Inspection is not an exhaustive property inspection, and is not intended to address health effects associated with allegedly defective drywall, quantify property damages, or serve as a basis to preserve all relevant evidence prior to a repair or renovation. Those issues will be the subject of subsequent discovery (and testing); and will be addressed in subsequent Pretrial Orders. The findings of the TIP are limited by design

and therefore may not be adequate for evidence preparation and/or trial preparation.

B. Court-Approved Inspector.

The Court has determined that Crawford & Company will carry out the inspections.

C. Attendance And Conduct At Inspections.

Attorneys or consultants from each interested party may attend the court ordered inspections, in order to resolve on site issues where possible. The Court-approved inspectors may inspect and sample pursuant to this protocol, and note any significant deviation from this protocol and those individuals responsible for them.

In the event of an unresolved dispute regarding the inspection protocol, the Court Appointed inspector will proceed with the inspection per the protocol, so as not to disrupt or delay the inspection process.

Any party may videotape the inspection process at their cost if they elect to.

D. Threshold Inspection Program form.

The Threshold Inspection Program forms (“TIP forms”) must be completed, databased, and imaged by the Inspector and made available to the PSC, DSC and the property owner’s lawyer within five days from the date of inspection. The Threshold Inspection Program forms are attached as Appendix B.

E. Data To Be Obtained In The Threshold Inspection.

1. Identification of damage potentially caused by drywall.

- a. Observations and documentation by notations of any apparent odors.
 - i. Presence of sulfur-like odor in the premises, as documented by the Inspector at the inspection and/or by report of the premises’ occupant(s) to the Inspector, shall be noted on the

TIP form.

- ii. Presence of any strong odor (e.g., air freshener) that could be serving to mask wallboard odor or act as another odor source should be noted on the TIP form.

*** All observations of HVAC systems, electrical systems, appliances, plumbing fixtures, light fixtures, and other affected materials shall be documented as set forth below by notation on the TIP form and by digital photographs, particularly regarding corrosion and/or discoloration, pitting, and/or residue on copper surfaces or lack thereof.**

- b. **HVAC system(s)** by removal of service panel and visual inspection of the heat exchange coil in each Air Handler Unit. Separate notations on the TIP form should be made for: 1) condition of copper U-bends of the coil, 2) condition of straight copper tubing around the coil, 3) condition of electrical system by removal of service panel and visual inspection of the electro-mechanical portion of the Air Handler Unit.
- c. **Circuit breaker panels** by removal of service cover and visual inspection of circuit breaker panels, following relevant requirements with regard to safety.
- d. **Appliances** by removal of cover or grating over compressor area of refrigerator(s) or other similar refrigerated appliances and visual inspection of the copper tubing on/around the compressor and the heat exchange coil.
- e. **Plumbing fixtures** by visual inspection of all exposed plumbing

connections (e.g., kitchen sinks, dishwasher connections, bathroom fixtures, hot water heater).

- f. **Light fixtures** by visual inspections of chrome-finish or metallic light fixtures.
- g. **Other fixtures and metallic hardware** by visual inspections of other fixtures and metallic hardware.
- h. **Electrical Receptacles** by visual inspection of one switch per room around the home.
 - i. Exposed ground wires [Note: if ground conductors are insulated with only a stripped end, this should be documented and mapped on a floor plan.]
 - ii. Stripped ends of current-carrying conductors and the screws or terminals where they are connected.

[NOTE: Circuit breakers should be turned off and devices confirmed to be de-energized if they are to be removed from utility boxes.]

2. **Means of Drywall Identification.**

The following are methods of identifying the presence and identity of Chinese-manufactured drywall with respect to the TIP form:

a. **Agreement:**

By reference to documents that the parties may exchange and can agree establish the identify of the manufacturer of Chinese-manufactured drywall located in the home. If the identity of the drywall manufacturer(s) is not in dispute because the parties have

agreed as provided in this paragraph, the inspection shall go forward but will be limited to physical inspection aimed at documenting the approximate amount of the subject drywall in the home and the apparent effects of the drywall in the premises as provided herein; and obtaining at least one sample from each distinctly identified piece of drywall in the home.

b. Sampling:

- i. A total of thirty (30) randomly selected drywall sheets will be examined during this inspection.
- ii. When discovered, markings on drywall will be documented by notation on the TIP form and digital imaging of drywall installed on interior walls and/or ceilings, i.e., walls or ceilings that can be accessed using the optical scope methodology described herein and/or observed directly (e.g., attic examination).
- iii. Full sheets of drywall will be examined. It is not permitted to examine locations such as closets or other confined spaces where partial sheets are predominantly used.
- iv. In addition to the random sampling, two (2) wall sections that are located in the most inspected area of the home may also be sampled. (See subsection 3.b. below)

3. Determination of sampling locations.

- a. Selecting Walls and Ceilings to Be Sampled (to be done prior to

arrival at inspection where feasible).

- i. Using the floor plan for the property previously supplied by representatives of the owner or builder (where reasonably available) or drawn by the inspector where the floor plan is not available, the inspector shall randomly inspect at least 7 (seven) interior walls that are greater than 8 feet in length and reasonably accessible so as to allow for the inspection of 28 different drywall sheets. The 7 randomly selected walls will be assigned a number sequence beginning with "1". For each hole that is made in the randomly selected walls, the inspector should examine four (4) drywall sheets, an upper and lower sheet for the cut wall and opposite wall. The cut wall lower sheet will be designated as "A", the cut wall upper sheet will be designated "B", the opposite wall lower sheet will be designated as "C" and the opposite wall upper sheet as "D".*See Appendix "G"*
If the seven (7) holes made do not generate the inspection of twenty-eight (28) separate sheets of drywall, additional randomly selected holes will need to be made so that twenty-eight (28) distinct sheets of drywall can be inspected. A minimum of two (2) drywall sheets from ceilings must also be inspected. The ceiling sheets should be selected randomly and based on ease of access. **Do not include walls or ceilings with wall lengths less than 8 feet in length, such as*

confined spaces, closets with lengths less than 8 feet, small entryways, etc., where it is likely that the wall or ceiling was constructed exclusively or predominantly with partial sheets of drywall. Do not include walls or ceilings in bathrooms or "wet" areas. Do not include ceiling spaces between floors (i.e., the only ceilings that will be numbered and inspected are those with accessible attic spaces above them). Record the letters/numbers assigned to each inspected wall and ceiling sheet directly on floor plan. If a printed floor plan is unavailable, a hand-drawn floor plan of the house is adequate and need not be to scale, but should be prepared in a manner that can be easily understood and evaluated by anyone reviewing the records of the investigation. Do not include exterior walls in sampling.

- ii. As previously stated, the inspector shall assign to interior walls greater than eight feet (8') in length sequential numbers beginning with "1". The random selection criteria, Super Cool Random Number Generator, shall be employed to identify the walls. See Appendix C. Once on site, the inspector can eliminate those wall which are inaccessible.
- iii. See Appendix D for an illustration of a property floor plan that has been numbered, with the selected walls circled for sampling.

- b. Then the inspector should identify at least two (2) sections of walls (a lower and upper section in a wall) that appear to be the most impacted based on the inspection conducted by observation. To the extent those sections have been previously identified by the random selection process above, they will be inspected accordingly. If they have not been selected, then 4" diameter samples/holes shall be taken of these sections with the objective of capturing product identification marks contained on the drywall sheets.

4. Drywall Inspection Procedures.

A borescope¹ inspection should then be conducted up and down the wall cavity for the randomly selected walls and drywall sheets. Photos of the board end tape and any markings, (including video of the markings, for completeness if necessary), should be preserved, if and when a drywall marking is located.

**** The purpose of this exercise is to inspect 4' x 8'-12' sheets of drywall that were likely installed on their side by cutting 4" hole saw openings for access by the borescope in order to locate and photograph the markings, and to cut three 4" diameter discs capturing as many of the character markings as possible to be labeled and stored for possible lab testing.*

The inspector may employ flexibility in an effort to hide the sample location behind furniture or wall hangings. A HEPA vacuum should be running with the hose nozzle held at the cutting site while each hole is being cut in order to collect as much dust

¹Extech model BR200 (or) Rigid microEXPLORER

as possible from the tool as it punctures the drywall. The hole saw tool must be cleaned in tap water and dried before re-use. Once the sample has been taken, it is to be stored in a double zip lock bag and properly labeled with the locator mark on the inner bag, and all other identifiers (i.e. address, date, sample #) on the outer bag.

a. Where to drill the 4" holes on the randomly selected interior walls:

Starting at the left side of the selected wall, measure approximately forty (40") inches from the left side and sixty (60") inches from the floor to allow for access to the upper and lower sheets on both the cut and opposite walls. Use a stud finder to prevent hitting a stud. Use discretion for locating the 4" diameter inspection/sample hole in a less obtrusive location when possible. Mark this location with sticker described in Appendix F.

b. If no identifiable marks are observed, go to the next selected wall/ceiling.

c. If an identifiable mark is found, and it is the 1st distinct marking, cut three 4" samples, 2" apart capturing as much of the lettering/markings on the drywall as possible. Label and mark the sample by address, date, and sample #.

d. After sampling is concluded, cleanup any debris, and plug the holes made during the inspection with nylon or other plastic caps using clear silicone bathroom/kitchen caulk. Photograph exemplary repaired sites.

e. Ceilings Locations on upper most floor with attic access. Enter

the attic space and remove insulation in order to uncover drywall markings. Inspect all sheets that are easily accessible. A minimum of 2 ceiling sheets must be inspected to provide a total of 30 sheets for inspection. Document by notation and photograph as previously described. If the ceiling drywall sheets are not accessible through the attic, then additional interior wall holes should be drilled so that at least thirty (30) full drywall sheets can be inspected

5. Details on the collection of 4" drywall samples.

- a. Inspectors should review their notes and photos, and identify drywall sheets with distinct manufacturers, brands, or markings. Inspectors should collect three 4" discs, 2" apart, gathering as much of the character markings as possible, as described below, from each sheet identifying a distinct manufacturer, brand, or marking, as well as sheets that are unmarked and/or unidentifiable. The inspector need only collect a single sample from any sheet found to identify a specific, distinct manufacturer, brand, or marking, from each household, unless the marking or brand is written or printed in some different way from other sheets identifying such manufacturer. In other words, this paragraph should not be construed to require the inspector to obtain samples from multiple sheets of drywall marked in an identical fashion with the same manufacturer or the same phrase or marking, e.g., "MADE IN CHINA," (in the exact same ink, font, and format) in

different locations throughout the home. In such instances, the inspector should collect only one such sample of identically-marked sheets of drywall. The inspector must be assured that the markings are exact duplicates. The fact that two markings share a similar word or ink shall not imply that they are from the same manufacturer. The locations of the samples should be marked on the floor plan. It is important to follow good labeling and chain of custody practices in order to maintain sample integrity from the time of collection through the final analysis and reporting.

- b. Using a permanent marker, write the sample ID on the outside of the plastic bag. Ensure that the marker will not smudge or fade if exposed to moisture.
- c. The sample ID is composed of the address ID, sample date, and sample location following the pattern AAAAA-MMDDYYYY-LL.
 - i. AAAAA is the 5 digit address ID for the residence being sampled which address should include a GPS location suitable for geocoding.
 - ii. MMDDYYYY is the date where MM is the 2 digit month, DD is the 2 digit day, and YYYY is the 4 digit year.
 - iii. LL is the 2 digit location identifier from the field form identifying the inspection / sampling location.
 - iv. Example: If the date is August 3rd, 2009 and the randomly

generated sample comes from sheet A-1 in the house with address ID 12345, and the inspection revealed that a sample was required, the sample ID would be 12345-08032009-A1.

- d. Photograph the sample inside the container with the sample ID visible. Record the photo number on the Phase II Field Form.
- e. At the end of the inspection, gather all of the samples for shipment. Using the field form filled out throughout the day, count the number of samples that the field form indicates should have been collected and ensure that this number matches the samples to be shipped.
- f. Securely pack the samples in an appropriate shipping container. Complete one chain of custody form for each address. Ship the samples to a location determined and maintained by Crawford & Company using a copy of the Chain of Custody (COC) form provided in Appendix E.

F. Record Keeping.

1. Each inspection team will be provided with a batch of addresses to inspect. To the extent possible, these batches will be arranged geographically to allow for efficient movement between addresses. Each batch will be assigned a batch ID. This ID will be marked on the field forms and will provide a means of tracking task and data completeness throughout the process. Appendix B provides a blank field form. Using the blank form in Appendix B, fill in the appropriate information to document the

inspection process and any required samples. Ensure that the form is filled out completely, leaving no sections blank.

2. At the end of each day of inspection, inspection teams will bulk-upload the photos, scanned copies of the field forms, and COCs to the data repository. (These uploads will be transferred to a plaintiff and defense accessible web database and provided to Plaintiff Liaison counsel by overnight CD or DVD.) The documents will be uploaded into a folder identified by the batch ID with subfolders identified by address ID. The following naming conventions will be used to identify the various documents to be uploaded.

- a. Field Forms – All field forms for a residence will be electronically stored and named “XXXXXX-Field Forms.pdf”, where XXXXXX is the address ID.
- b. Chains of Custody – The COC for a residence will be completed and photographed and the original sent with the samples documented and named “XXXXXX-COC.jpg”, where XXXXXX is the address ID.
- c. Photos – The photos will be placed in a folder named “Photos” in the address folder and the photos will be uploaded ensuring that the photo filename from the camera is maintained throughout the export process, and that the photos are in JPG format. A description of location and identification will precede each subject photo. The identification will include location by sample #, date, address and Field Form.

- d. The Floor Plan - The floor plan will be photographed and documented/named "XXXXXX-FP.jpg" and transmitted along with the aforementioned forms. The original will be transmitted with the samples.

G. Previously Conducted Inspections.

If a Plaintiff or Defendant has hired an Inspector who has carried out an inspection of a particular premises prior to the date of this Order that the Plaintiff or Defendant who conducted the inspection believes meets the standards set forth in Section E herein, such Plaintiff's or Defendant's Inspector may complete the Threshold Inspection Program form, attach the relevant documentation of the previously conducted inspection, and submit the completed Threshold Inspection Program form to Liaison Counsel. Liaison Counsel will forward the forms and supporting documentation to the Plaintiffs Steering Committee ("PSC") and Defense Steering Committee ("DSC"), which will review the Threshold Inspection Program form to determine if the previously conducted inspection and Threshold Inspection Program form is adequate for Pretrial Order #13 purposes. If not, a Threshold Inspection pursuant to Pretrial Order #13 will be required.

H. Certified Laboratory.

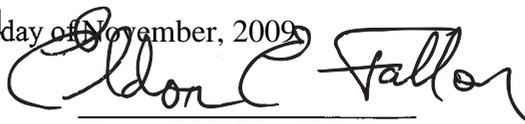
PSC and DSC will agree on the selection of one or more Certified Laboratories to store all samples taken during the Threshold Inspection Program. Inspectors will provide all samples, with chain of custody forms, to one of the Certified Laboratories. Any Party may seek leave of the Court to request that any sample(s) taken during the Threshold Inspection be analyzed. Any destructive sampling of drywall must be accomplished in a

manner that leaves a sufficient amount of the drywall sample for further testing, unless the PSC and DSC agree with the suggested sampling and results are provided to all Parties. The laboratory analytical methods to be used for the samples will be determined by the Plaintiffs Steering Committee and Defense Steering Committee in cooperation with the Certified Laboratories, and order of the Court. The cost of laboratory analysis of a sample(s) will be borne by the Party requesting it; if multiple Parties request laboratory analysis of a sample(s), the cost will be shared on a *pro rata* basis.

I. Case Selection And Costs Of The TIP.

Plaintiffs will advance the actual costs of the thirty (30) initial inspections pursuant to the TIP. After manufacturers, suppliers, contractors, builders or other defendants are identified pursuant to the TIP, the Plaintiff's Profile Form and the Defendants' Profile Forms, Plaintiffs will apply for reimbursement of the costs of the initial thirty (30) TIP inspections. Funding and reimbursement issues relating to inspections beyond the initial thirty (30) inspections will be determined by the parties or the Court in a subsequent Pre-Trial Order.

Thus done and signed this 23rd day of November, 2009.



Honorable Eldon E. Fallon
United States District Judge

APPENDIX A

PLAINTIFFS' IDENTIFICATION TABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED DRYWALL
PRODUCTS LIABILITY LITIGATION

*
*

MDL NO. 2047
SECTION: L

THIS DOCUMENT APPLIES TO:
CIVIL ACTION NO. _____

*
*

JUDGE FALLON
MAG. JUDGE WILKINSON

SECTION I - CONTACT ATTORNEY INFORMATION	
Attorney Name:	
Attorney Address:	
Attorney Phone:	Attorney Cell Phone:
Attorney Email Address:	

SECTION II - OWNER INFORMATION
Plaintiff Name(s):
Affected Address:

APPENDIX B

TIP INSPECTION FORMS

VISUAL INSPECTION FORM

GENERAL PROPERTY INFORMATION

Address ID: _____ Date of Inspection: 1/07/1900

DRYWALL IDENTIFICATION

Wall Designation (Letter)	Panel Designation (1-4)	Vertical Measurement from Floor (inches)	Horizontal Measurement from Left (inches)	Photo Location (0-9)	Manufacturer	Photo Folder Location	Comments

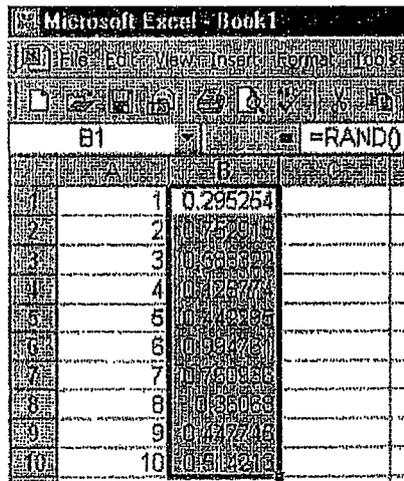
Comments

APPENDIX C

GENERATING RANDOM NUMBERS FOR INSPECTIONS.

This instruction set assumes that the user is using a computer with Microsoft Office Excel installed.

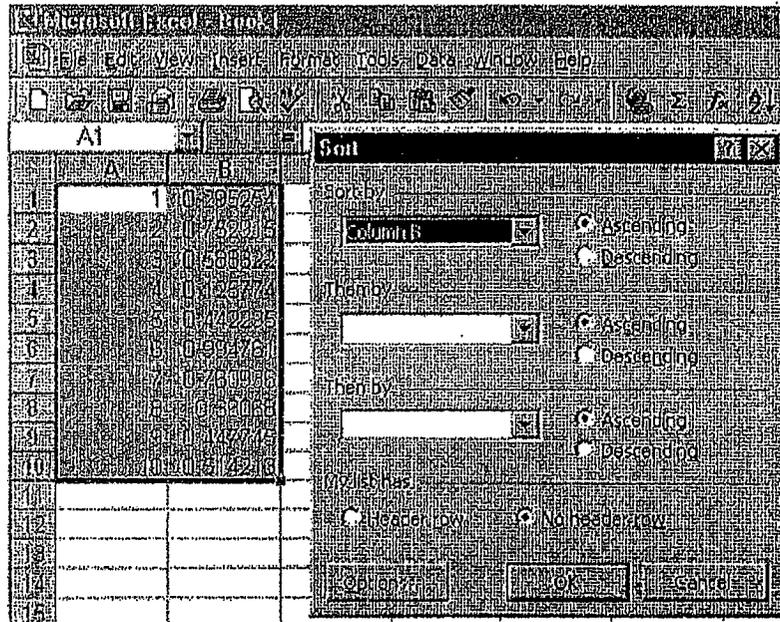
1. Determine the number of walls/ceilings from the floorplan. This number becomes the number "N" below.
2. Open Microsoft Excel.
3. Make a list of all possible values, 1 through N, in column A.
4. Make a parallel list of random numbers using the RAND function in Excel. Accomplish this by typing "=RAND()" in the cells in column B. You should end up with something similar to the screenshot below.



The screenshot shows a Microsoft Excel spreadsheet with the following data:

	A	B
1	1	0.295254
2	2	0.750709
3	3	0.665592
4	4	0.257707
5	5	0.292808
6	6	0.822726
7	7	0.760363
8	8	0.850888
9	9	0.777205
10	10	0.512210

5. Sort on the RAND functions in column B.

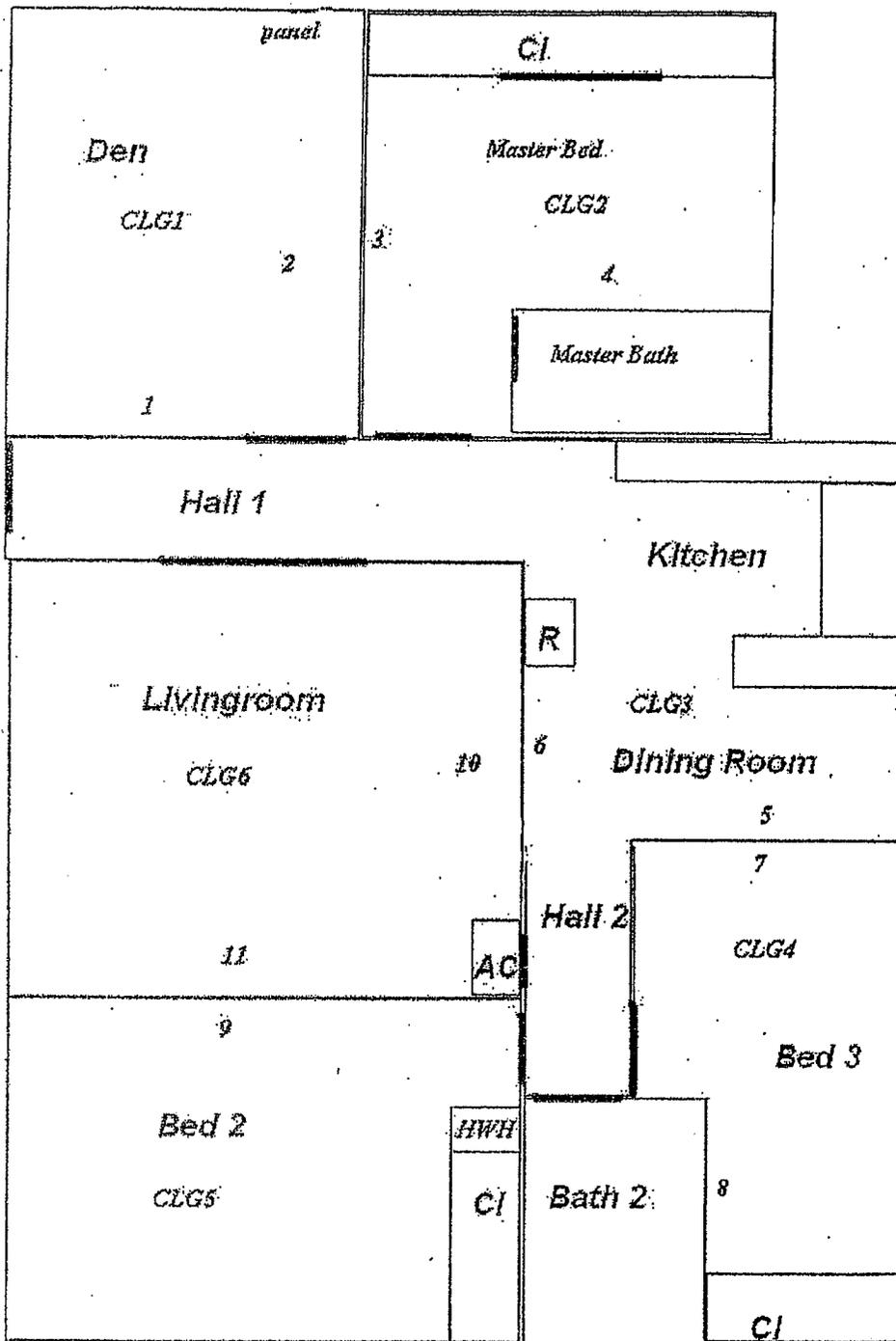


6. Transfer the first 35 values of column A to the field form to be used as the randomly selected inspection locations.

Microsoft Excel - Book1		
File Edit View Insert		
A24		
A	B	C
4	0.363375	
1	0.093376	
8	0.665113	
5	0.918129	
9	0.290009	
10	0.390376	
3	0.186249	
2	0.905302	
7	0.833566	
6	0.157176	

APPENDIX D

Sample Collection and Identification Tracking



*Single Story Basic Floorplan.
Indicates location of Breaker Panel, HVAC, refrigerator, and hot water heater*

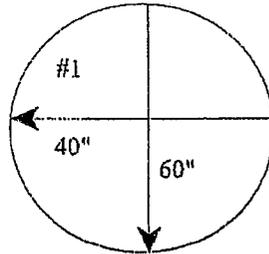
APPENDIX E

CHAIN OF CUSTODY FORM

APPENDIX F

Location Stickers

Use the 1 1/4" Diameter yellow stickers and draw two lines through the center dividing the circle into quarters. Write the inspection number on the sticker and indicate the location of the sample by recording the number of inches from the nearest wall end and floor or ceiling as appropriate. **Example:** The first sample 40" from the left of a wall sample and 60" from the floor will be recorded as:



The location sticker will be placed on the ziplock storage bag containing the sample and that bag placed in a 2nd ziplock bag.

APPENDIX G

