



Be Careful with "Green" Construction



As readers of Construction Law Musings can attest, I am an enthusiastic (if at times skeptical) supporter of [sustainable \(or "green"\) building](#). I am solidly behind the environmental and other benefits of this type of construction. However, I have likened myself to that loveable donkey [Eeyore on more than one occasion](#) when discussing the headlong charge to a

sustainable future. While I see the great benefits of a privately built and privately driven marketplace for sustainable (I prefer this term to "green" because [I find it less ambiguous](#)) building stock and retrofits of existing construction, I have felt for a while that the glory of the goal has blinded us somewhat to the risks and the need to consider these risks as we move forward.

Another example reared its ugly head recently and was [pointed out by my pal Doug Reiser](#) (@douglasreiser) at his Builders Counsel Blog (a great read by the way). Doug describes [a project that I mentioned previously here at Musings](#) and that is well described in his blog and in a recent newsletter from Stuart Kaplow (@stuartkaplow), namely, the Chesapeake Bay Foundation's [Philip Merrill Environmental Center](#) project. I commend Doug's post for a great description of the issues, but suffice it to say that the Chesapeake Bay Foundation sued Weyerhaeuser over some issues with a sustainable wood product that failed. While the case was dismissed on statute of limitations grounds, the case illustrates issues that arise in the "new" sustainable building world.

While at bottom, the legal considerations for us [construction attorneys](#) are [not all that different](#) (breach of contract, construction defects, failure to meet plans and specifications), some of the risks inherent in the process are either new or old ones wrapped in new materials. In short, we're using old materials in new ways and using new materials that hadn't been used before in these types of projects. This means that we don't have the years of engineering data to back up proper use of these materials and this [can lead to issues over time](#).

My fear is not that energy efficiency and other benefits of sustainable building will not be met, but that failure to see and anticipate these risks will lead to setbacks in the process. One major problem with a "green" project ([LEED](#) or otherwise) will do more to slow the

process than taking our time and doing things right the first time. As my dad used to say: its better to be 5 minutes late than speed to be there "on time" and get a speeding ticket that slows you down even more.

Thanks again to Doug and Stuart and please let me know your thoughts. Am I off base? What do you think?

Image via [Wikipedia](#)

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.