

# Green legal challenges

There are legal considerations involved with sustainable roofing

by Craig Silvertooth

JUST A FEW YEARS AGO, green, or sustainable, building projects were viewed either as expensive curiosities or diversions of left-leaning environmentalists.

But now, the economics of building green are better: New products have emerged; consumer demand has grown; and construction practices have improved.

In addition, political, economic and social climates are forging a new dynamic in which sustainable development is becoming mandatory in some parts of the world and increasingly will be in the U.S.

Although the array of new materials and practices available offers tremendous benefits to building owners and customers, the sustainable building landscape is rife with complex legal challenges.

## A new legal climate

Risk transfer is a perennial challenge in the contracting world, and with the advent of roof systems with objectives in addition to acting as a barrier to the elements, we see multiple trades working in an environment that traditionally has been the sole province of roofing contractors. Now, the roofing industry must ask where the lines of liability are drawn and how it can protect itself from litigation.

Product failures and warranties are another concern. Contractors and manufacturers are increasingly likely to be ensnared in litigation arising from products failing because of new green technologies.

Fraud and misrepresentation claims are certain to increase, as well. In the rush to profit from the green movement, some companies are making claims that are downright false or can't be validated. The Federal Trade Commission already is examining claims that certain products or services provide environmental benefits and has taken a firm position that substantiation must exist for any green claim. State attorney generals are doing likewise, and foreign governments, particularly within the European Union, are likely to promulgate even more stringent rules.

## New opportunities

One need only look at carbon labeling to get a sense of what's headed our way. Europe is well along in moving to a system in which products are required to bear an environmental impact statement, or "carbon footprint stamp." It's only a matter of time before North America has a similar system in place.

In addition, roofing is unique among other construction sectors because roof systems can provide solutions that save and produce energy. Solar collection technology is potentially transformational for the industry because it permits property owners to generate renewable energy "on-site." But renewable distributed generation can be a tricky business because a power purchase agreement—an intricate legal contract between an electricity generator and purchaser—frequently is involved.

Another area in which the roofing industry is favorably poised is the field of landscaped roof systems. These systems show great promise in efforts aimed at carbon mitigation and sequestration, as well as mitigating environmental damage associated with storm water runoff. Landscaped roof systems have the potential to capture and store carbon from greenhouse gases, but the ability to quantify performance is critical. If landscaped roof systems underperform, legal contracts are certain to be violated.

The same is true with storm water runoff. Regulators increasingly are looking for opportunities to minimize pollutants in runoff, and it's only a matter of time before the roofing industry is identified as a potential partner in the effort. And if the industry's efforts do not deliver, litigation is sure to follow. On the other hand, the potential value makes the effort to determine actual environmental benefits a worthy exercise.

## Looking ahead

The roofing industry is in an enviable position within the construction sector at this point. But for those who are unaware, the sustainable building landscape is a potential minefield. The challenge is to educate yourself to fulfill your potential. 🌀 ● ❄️

Craig Silvertooth is executive director of the Center for Environmental Innovation in Roofing.