

March 2010

## Environmental Alert

---

### **First-in-the-nation statewide mandatory green building standards code; expected to generate future construction and design claims**

#### **Overview**

On January 12, 2010, Governor Arnold Schwarzenegger announced that the California Building Standards Commission unanimously adopted the first-in-the-nation mandatory Green Building Standards Code (CALGREEN). These mandatory building regulations will apply to all new construction in California including, but not limited to, all residential and commercial buildings. The CALGREEN Code will take effect on January 1, 2011, and will become the baseline for regulating green construction statewide. The California Air Resources Board estimates that the mandatory provisions will reduce greenhouse gas emissions by three million metric tons in 2020. Additionally, the provisions are estimated to reduce water use by 20 percent and divert 50 percent of construction waste from landfills.

#### **Requirements**

The CALGREEN Code will require, among other things: inspections of energy systems (the furnace, air conditioner and mechanical equipment) for nonresidential buildings to ensure that they are working according to design efficiencies; the use of low-pollutant emitting interior finish materials such as paints, carpet, vinyl flooring and particle board; reductions in indoor water use and diversion of construction waste. The mandatory CALGREEN provisions will be administered by state and local building departments by using a preexisting enforcement infrastructure that currently enforces health, safety, fire, energy and structural building codes. It is therefore predicted that verification of the CALGREEN Code for local building inspectors should be a relatively simple transition. Also, unlike many private green building certification programs, such as Leadership in Energy and Environmental Design (LEED), the CALGREEN Code will not require businesses or property owners to pay additional fees for certification. CALGREEN is being evaluated as a possible model by other states as they develop their own green construction standards.

#### **Comment**

So what will CALGREEN mean for the future of construction defect and design claims? A unique wave of potential claims can be anticipated because of the new statewide standard. These include litigation regarding alleged breaches of guarantees created by “green” certifications, product delays based upon the mandated use of green products, and the alleged failure to recognize or to comply with the changed green standards. The liability risks of green construction will develop in the coming years as more claims are filed and work their way through the court system.

The new code should also result in certain risk-management benefits to builders in California. Having a mandatory code with a tier structure in place should allow one to build to a certifiable green standard without having to pay costly fees for third-party certification programs. A clear statewide standard may also help

companies avoid unnecessary environmental and design-related lawsuits caused by the difficulty with complying with different local codes. It must be recognized, however, that the CALGREEN Code merely sets the minimum requirements for all new structures in California; every local jurisdiction retains the administrative authority to decide what is best for their own communities, and they are encouraged to take additional actions that will reduce greenhouse gas emissions, improve energy efficiency and conserve natural resources.

If you have questions about the CALGREEN Code or would like to discuss ways in which our attorneys can help you manage the risks involved with this new standard, please contact Ian A. Stewart, a member of the Construction Practice Group in Los Angeles, William Enger, a Coordinator of the Construction Insurance Practice Team in Los Angeles, or Gregory K. Lee, an Associate in Los Angeles, at 213.443.5100 or at [william.enger@wilsonelser.com](mailto:william.enger@wilsonelser.com), [ian.stewart@wilsonelser.com](mailto:ian.stewart@wilsonelser.com), or [gregory.lee@wilsonelser.com](mailto:gregory.lee@wilsonelser.com).

---

Contact us at [alerts@wilsonelser.com](mailto:alerts@wilsonelser.com).

This communication is for general guidance only and does not contain definitive legal advice.  
© 2010 Wilson Elser Moskowitz Edelman & Dicker LLP. All rights reserved.