

Risks in the Materials Transparency Movement

Materials transparency refers to an advocacy movement that promotes requiring manufacturers to fully disclose the material content and chemical makeup of building materials used in construction of the built environment. This disclosure is in reference to a pre-determined list of substances that have been identified for potential harmful human health and environmental impacts.

Requiring materials transparency encourages assessment of the potential lifecycle health and environmental impacts posed by the use of the products. With disclosure, many manufacturers are reconsidering their formulations, redirecting their supply chains, and creating less-hazardous alternatives to their existing products.

Recognizing the Movement and the Professional Response

The materials transparency movement has grown as some clients consider removal of certain substances from consideration for their projects. In addition, USGBC's current LEED rating system includes optional credits for collecting product environment and health information. Other rating systems and voluntary standards reference health product disclosures and other specific requirements. Thus, for clients that care about such third-party validations, the existence of disclosure information becomes important.

The movement received additional support in 2014 when The American Institute of Architects (AIA) approved a policy statement to address and encourage materials transparency. The AIA pronouncement states that architects should be environmentally responsible because building materials impact the environment and human health "before, during, and after their use." It further provides that architects' knowledge of the lifecycle impacts of building materials "is integral to improving the craft, science, and art of architecture." While the advancement of professional ethics seems to be one goal of the AIA's public policy, it also recognizes that the materials transparency movement represents an opportunity to give design firms a competitive advantage by tapping their "thought leadership" and stimulating design innovation.

Understanding the Limitations of Professional Practice

According to the information published by the AIA in AIA Document B503, *Guide to Amendments*:

"Architects, based on education, training and licensure requirements, lack the knowledge, expertise and ability to assess the environmental and health impacts of varying types and quantities of substances contained in building products." Even if design professionals may lack the scientific expertise and skills set to interpret data when

it is disclosed, acquiring the documentation of specific components of building products in disclosure forms serves an important purpose. It gives building owners the choice to engage independently qualified professionals to assess products and guide the owner in decisions on restricted compositions.

According to the AIA, “materials transparency is the new normal” because of the growing expectation that everyone involved in a building project should have access to this information. The goal of understanding the composition of building materials and products and their environmental and health impacts also presents opportunities for design firms because of their role in the supply chain. For instance, some architecture firms have signed “transparency policy statements” committing the firms to assessing the reported content of building products and materials during selection and recommendation to the project owner. This is another negotiated service that firms can provide as part of their overall design services.

Disclosure documents can be requested in several scenarios:

- A firm might have an internal policy to refer to the information in product disclosures in its decision-making process on product selection. The information might affect the design firm’s recommendations to the owner, but the design firm is only relying on the information provided by the manufacturer.
- A specific owner might want the firm to collect product manufacturer statements disclosing product content because the owner is pursuing LEED or another third-party certification. The design firm’s purpose is to acquire the information only as a check-off to obtain points toward a certification level. The firm should be specific as to its role in collecting the information.
- The project client might include as part of the design program a requirement that products specified for the project contain few or none of the substances found on public health or environmental impact lists. The professional services contract should specify which definitive lists of substances are to be used during the evaluation of building products or materials. The owner should be aware that it must engage consultants with the necessary expertise to analyze the information included in manufacturer-provided disclosures. Responding to the owner’s requirements in this case is a significant change in the scope of the design

firm’s services and this increase should be reflected in increased compensation.

Addressing the Service and Risk Through Contract Language

Absent specific contract language, the design firm’s involvement and reliance on the manufacturers’ disclosure documents will be judged in relation to the standard of care for the professional services performed. The question to be addressed is whether the actions and services of the design firm were consistent with what is generally accepted as being within their professional expertise and training. Design firms may unwittingly negate the protection of the standard of care by contractually agreeing to provide assessment beyond the normal standard.

The AIA Contract Documents program worked with a special AIA Materials Risk Taskforce and the Materials Knowledge Working Group to develop guidance and model language so that the duties of the architect are clearly articulated and, therefore, limited. That language is included in AIA document B503 and addresses the potential use of environmental and health product disclosure documents in providing architectural services.

The guidance suggests increased communication and specific contract language to reduce the design firm’s potential liability associated with materials transparency. While a carefully crafted professional services agreement can clarify the role of the design firm, it cannot, by itself, protect against third-party claims. When health and environmental aspects of building products and materials become an increasingly important factor in the specification process, the likelihood of a third-party claim increases.

Clearly Communicating the Services Provided

To minimize a design firm’s risk with professional liability claims, the firm’s contract should state the reasons for seeking disclosure of product content information. Doing so gives the client and any third party a clear understanding of the design firm’s role. It makes sense for the firm to disclaim any responsibility for any detailed chemical or toxicological assessment of a product or material that in turn impacts the environment or health of building occupants.

Product content and composition is only one factor among many that a design professional considers before

recommending to the client the use of a product, material, or system. Project owners have to be made aware of the considerations that go into the specification process. Design firms should not allow their clients to assume that a design professional is able to step into the role that is more appropriate for a properly credentialed professional, such as a toxicologist, industrial hygienist, or health care

professional, in evaluating or verifying manufacturer-provided information on the environmental and human health aspects of a specific product. With proper contract language and client communication, design firms can promote the evolution of safer products through materials transparency disclosures without increasing their professional liability exposures and business risks.



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