

# Sustainability Issues in Public Procurement



**BRIAN PANGRLE, JD, PHD**  
**LEE & HAYES, PLLC**

# Brief Background



- **Patent Attorney: Administrative Law**
- **Bid Protests: DOE, State of New Mexico and Local Governments (including lobbying in NM)**
- **Product Development Manager for Procter & Gamble, ETC for Europe, Middle East and Africa**
  - Development team for first concentrated liquid laundry detergent (smaller size, shipping less water, etc.);
  - Responsible for regulatory tests and assisting with compliance in various European countries (Blue Swan, Blue Angel, etc.);
  - Representative to AmCham Consumer Affairs and Public Health Sub-committee (lobbying European bodies)

# Interests



- Efficient government spending with taxpayer participation and oversight (e.g., open meetings for presentation of ideas, observation, etc.);
- Non-profit Management;
- LEAN – continuous improvement (e.g., TPS);
- Globalization (Brazil, India, Indonesia, etc.); and
- Sustainable practices:
  - Systems approach
  - Critical thinking/reasoning
  - Legal framework (e.g., procurement, international law, etc.)

# Conclusion from Paper



Significant issues exist on the path to a sustainable procurement code. In particular, issues exist with respect to definitions of sustainable, objective measures of sustainability, and harmonization. Reflecting on the experiences of the U.S. Forestry Service, one may argue that sustainability requires, inherently, a global approach. The path to global harmonization may start with local government efforts aimed at green procurement and industry efforts to survive or progress (e.g., aluminum industry and building industry). Lastly, in the U.S. at least, while harmonization among the states has taken place for various legal codes, the Model Procurement Code has an arduous path to travel. At some point in time, however, we may expect that the Model Procurement Code will indeed be a sustainable procurement code and adopted by a majority of the states, following the path of other model codes.

# How to Get There?



# Outline



- **Perspective from US Forestry Service**
  - MacCleery Paper
- **Perspective from William McDonough**
  - Cradle-to-Cradle (Mirra® Chair)
- **Model Procurement Code**
  - ABA (Miller)
- **“LEAN” Procurement**
  - TPS (Schuiski of Agilean/Sazama WMS)

# Is the “Land Ethic” only half a loaf?



- **Delivered at the conference “Building on Leopold’s Legacy,” sponsored by the Wisconsin Academy of Sciences, Arts and Letters in Madison, Wisconsin, on October 4-7, 1999.**
- **Douglas W. MacCleery is Assistant Director of Forest Management for the U.S. Forest Service in Washington, D.C.**

# MacCleery's Perspective



- **ALDO LEOPOLD'S LAND ETHIC: IS IT ONLY HALF A LOAF UNLESS A CONSUMPTION ETHIC ACCOMPANIES IT?**
  - **OR**
- **IS THE SHIFT TO "ECOLOGICAL SUSTAINABILITY" ON U.S. PUBLIC LANDS MERELY A SOPHISTICATED "NIMBYISM" MASQUERADING AS A "PARADIGM SHIFT"?**

# MacCleery's Perspective



- The “dirty little secret” about the shift to ecological sustainability on U.S. public lands is that, in the face of stable or increasing per capita consumption in the U.S., the effect has been to shift the burden and impacts of that consumption to ecosystems somewhere else. For example, to private lands in the U.S. or to lands of other countries.

# McDonough's Perspective



- Traditional regulations are aimed at limiting environmental destruction, and if a system is highly destructive regulations will never be able to compensate for poor design.
- So when regulations are relied on as the exclusive means of protecting the environment they can become part of the problem, a way of diluting pollution without examining the design flaws at its source.
- There is an alternative . . . an opportunity for re-design, a chance to make energy and manufacturing systems so inherently healthful, productive and socially beneficial regulations become unnecessary.
- This shift from mere compliance to creative innovation is a key to competitive advantage in the global marketplace.

# Cradle-to-Cradle

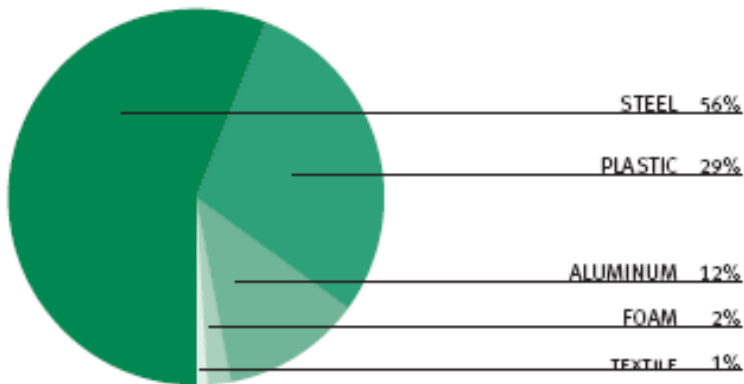


- Material Chemistry and Safety of Inputs—What chemicals are in the materials we specify, and are they the safest available?
- Disassembly—Can we take products apart at the end of their useful life, to recycle their materials?
- Recyclability—Do the materials contain recycled content, and more importantly, can the materials be recycled at the end of the product's useful life?

# Mirra® Chair by Herman-Miller

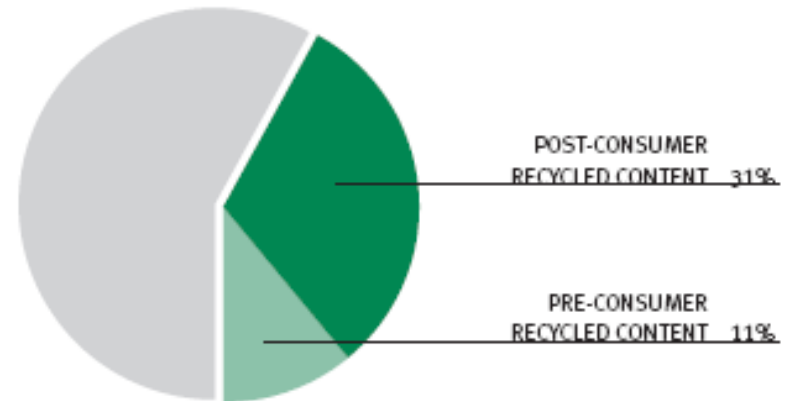
## Material Content

The Mirra chair's components are constructed from steel, plastic, aluminum, foam, and textile.



The Mirra chair is up to **96 percent recyclable** at the end of its useful life.

Mirra is comprised of **42-percent recycled** materials. The recycled content breaks down by 31-percent post-consumer and 11-percent pre-consumer content.



- Every material has been scrutinized down to the molecular level.

# MPC



- Sustainable procurement stands to benefit from harmonization. In the U.S., a history exists of “uniform laws” and “model codes” that have been adopted throughout the states. Harmonization through such efforts can lead to significant efficiencies.
- For example, in the 1950s, a model probate code was promulgated that aimed to facilitate estate planning, administration and adjudication. In 1969, the Uniform Probate Code followed. Since 1969, the Uniform Probate Code has been adopted in whole by about 15 states, in part by other states and influenced probate reform in yet other states. Other uniform or model codes include the Uniform Commercial Code, the Model Penal Code and the Model Procurement Code, which has been adopted by about 20 states.

# MPC



- Recent revisions to the Model Procurement Code were sponsored by the American Bar Association's Section of Public Contract Law and Section of State and Local Government Law.
- Revisions aimed to (i) reduce transaction costs for all governmental entities at the state and local levels; (ii) reduce transaction costs to private sector suppliers of goods and services; (iii) substantially increase available levels and ranges of competition through modern methods of electronic communications; and (iv) encourage the competitive use of new technologies, new methods of performing, and new forms of project delivery in public procurement, particularly in the construction area.

# MPC – Sustainability?



- A procurement code that promotes sustainability may choose to explicitly state that the evaluation factors are integral to a life-cycle analysis, a land ethic or other analytical philosophy that promotes sustainability, which is inherently an optimal and the most advantageous result.
- The concept of life-cycle appears in various places in the MPC, for example, 3-202(5): “Those criteria that will affect the bid price and be considered in evaluation for award shall be **objectively** measurable, such as discounts, **transportation costs**, and **total or life cycle costs**”.

# Sustainability Issues in Procurement



- If a company produces a pen for \$3 using sustainable practices and another company produces a pen for \$1 in upfront costs but \$2.50 in environmental damage, then the \$3 pen is the optimal choice. While such an example may seem extreme, consider superfund cleanup and health costs.
- How to achieve: Objective measures, pre-qualification and on-site audits (coordinating w/other agencies as to environmental record, hiring/diversity issues, etc.)

# MPC



- Article 11 of the MPC covers assistance to small and disadvantaged businesses. A disadvantaged business is a small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages (11-101(1)).
- The corresponding commentary recognizes that problems of small and disadvantaged businesses are widespread and may be addressed more broadly than solely through the public procurement process. A sustainable procurement code *inherently accounts* for disadvantaged people or communities, especially where unsustainable practices cause or maintain such disadvantage.

# LEAN



## **LEAN aims to:**

**Eliminate waste from a process so as to increase the efficiency of the process (service time), which can generate significant “value-added” opportunities.**

# Example



**Service Time is 9 days**  
**Work Time is 4 hours**



**Reduce Work Time by 50%?**

**Service Time is then 9 days – 2 hours (big deal!)**

**LEAN asks: Why is Service Time so long?**

# What are the Seven Wastes?



- 1. Defects – Activities that result in error, rework, or a work around
- 2. Inventory – The amount of materials or work-in-process within the system
- 3. Overproduction – Producing more work that is immediately needed
- 4. Transportation – Any movement or motion from one place to another
- 5. Waiting – Someone or something waiting with nothing to do
- 6. Unnecessary Processes – Activities still performed but no longer needed
- 7. Variation – Multiple methods or tools for performing the same activity

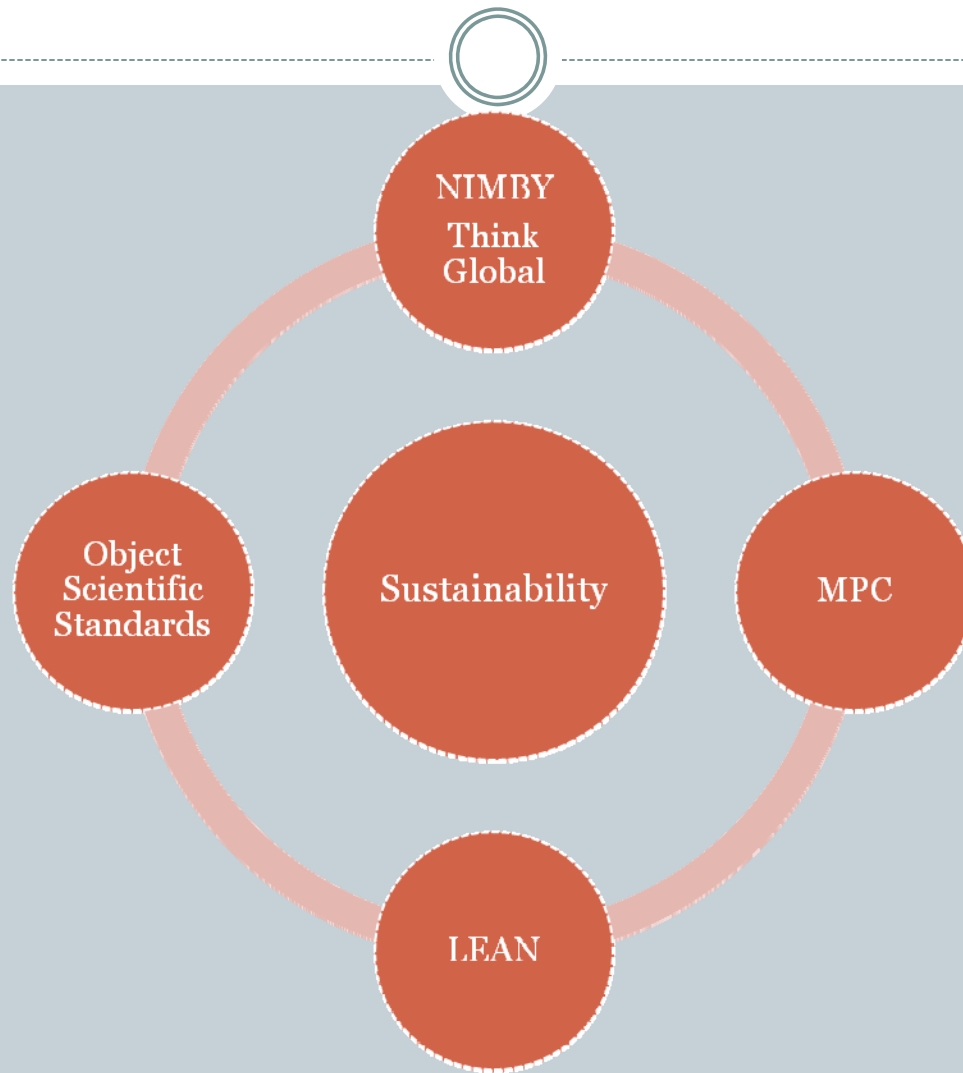
[http://www.agilean.com/seven\\_wastes\\_article.htm](http://www.agilean.com/seven_wastes_article.htm) (Schuiski/Sazama)

# Waste in the Office



- Waste in office may consist of too many handoffs, variation in processes, lack of coordination, printing documents, unnecessary walking and lack of proper understanding, etc.
- Goal: Moving from “Push” to “Pull”.
- MPC is a LEAN practice (reduce variation)

# How to Get There?



Thank You



**Thank you for your time!**