

June 7, 2016

Attorney General Kathleen Kane  
Pennsylvania Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

Ms. Marsha A. Sajer, Chief Counsel  
Department of Labor & Industry, Uniform Construction Codes  
651 Boas Street, Room 1613  
Harrisburg, PA 17121

Mr. Juan Ruiz, Esquire  
Board Counsel  
Ms. Robin R. Shearer  
Board Administrator  
Board for Professional Engineers, Land Surveyors and Geologists  
One Penn Center, 2601 N. 3rd Street  
Harrisburg, PA 17110

Mr. Ian J. Harlow, Commissioner  
Bureau of Professional and Occupational Affairs  
2601 N 3rd St,  
Harrisburg, PA 17110

Dear Attorney General Kane, Chief Counsel Sajer, Board Counsel Ruiz, and Commissioner Harlow:

Our goal with this letter is to address professional engineering evaluations and Pennsylvania Building Official's acceptance of professional engineering work by any [Pennsylvania licensed professional engineer](#), in the context of Pennsylvania law that we are aware of.

**Pennsylvania Building Official/Building Official "Contractor Staff"<sup>1</sup> (PABO) Superseding a Pennsylvania Professional Engineer's Decision Making Process**

Our membership has been involved with statements from Building Officials and other members of the regulatory community that take on the following tone:

1. We do not take PEs at their word, I can tell you we have so many PEs that will stamp anything.....
2. Either you are going to provide \_\_\_\_\_ [this is specific to test data and/or proprietary product intellectual property (IP)] or \_\_\_\_\_ [implication was approval denied].
3. I'm telling you again; you are either going to provide \_\_\_\_\_ testing or you do not have them as far as we are concerned.
4. We are not taking a PE stamp with a blatant statement that you've got \_\_\_\_\_ testing, we are going to assure that you have a \_\_\_\_\_ test report; the only way I can do that is to see \_\_\_\_\_ test report.

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<sup>1</sup> Pennsylvania Building Departments are hiring plan review and inspection companies under contract to act as their agents in performance code mandated plan review and inspections.

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5. I've never been allowed to see \_\_\_\_\_ test report and all I've got is a piece of paper with a P.E. stamp on it.
6. All these statements have been made in a manner to "encourage" providing proprietary IP, test data or to strongly suggest that the only way to get an approval is to have an ICC or ICC-ES report. The consequence is denied approval.
  - a. The fact is that building officials are members of ICC.
    - i. "The ICC was created in 2003 from the merger of three regional code councils: Building Officials and Code Administrators International, Southern Building Code Congress International and the International Conference of Building Officials. As a result of the merger, International Code Council, Inc. is the sole statutory member of ICC Evaluation Service, Inc. ("ICC-ES"), International Accreditation Services, Inc. ("IAS") and International Code Council Foundation, Inc. ("ICCF"). Each entity has a separate board, distinct programs, and revenue stream." ([2015 ICC annual report, page 54](#))
  - b. In 2014 ICC-ES & ES, LLC contributed \$29.2 million ([2014 ICC annual report, page 67](#)) in assets to ICC.
  - c. ICC-ES generates important non-member income to support ICC activities and the overall health of ICC.

Statements 1 through 5 are very unsettling comments to say the least. While it is wished that these types of comments were atypical, it happens to our members more that it should. Clearly, this type of opinion and approach directly affects the [Pennsylvania concept of fair trade](#). They are also concerning in the context of both professional engineering responsibilities and general professional engineering law.

We assume that if anyone inside the building design, installation and building code plan review/inspection process does not believe a [PA professional engineer](#) is credible and that person or group has performed the due diligence needed to provide detailed evidence of a [Pennsylvania professional engineer law](#) violation, they have every right to provide this information to Mr. Juan Ruiz, Esquire of [the PA Board of Professional Engineers](#) (PBPE) to discuss and take appropriate action as the PBPE sees fit.

We believe professional engineering and the building code are intended to encourage innovation and promote the [Pennsylvania concept of fair trade](#).

The business logic path then suggests that, in all cases where an [ANSI accredited firm](#) or a [PA professional engineer](#) is involved:

7. An [ANSI accredited firm](#) or a [PA professional engineer](#) shall gain immediate PABO approval of a product evaluation (i.e., [IBC 1703.4.2 Research reports](#)).
8. Any testing undertaken is proprietary IP that has been reviewed and affirmed by an [ANSI ISO/IEC 17065](#) report which is then [IBC section 1703 compliant](#).
9. This approach is intended to certify compliance with the relevant Pennsylvania building code or building specifications adopted by the local jurisdiction.
10. To amplify:
  - a. The work of an [ANSI accredited firm](#) or a [PA professional engineer](#) shall be approved by a PABO unless a PABO, upon denial of this work, provides key provisions of the administrative law, building code, and/or professional engineering law that have not been complied with in writing.
    - i. This includes all specific citations along with commentary on what specifically is in non-compliance with appropriate evidence supporting the item of non-compliance.
  - b. Since the building code and any administrative law is essentially a legal contract, any PABO shall also provide the specific path to cure any deficiency so that the [ANSI accredited firm](#) or a [PA professional engineer](#) can take specific actions to cure.

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- i. Failure to approve without providing specific actions to cure can be a denial of a professional engineer's license to work in their area of expertise.
- c. When each deficient element is fully cured in writing, approval shall be granted.
- d. If not fully cured, approval will remain denied until cured.

This is a review of the Pennsylvania Building Code, Pennsylvania Administrative law and Professional Engineering law. Given this review, implementing the use of alternative materials, designs or methods of construction by any group listed on the [ANSI Accredited Product Certification Body website](#) or by any [PA professional engineer](#) shall be allowed to be used and approved for use by any PABO as systematically defined in item 10 above. The goal is to ensure that all [ANSI 17065 accredited organizations](#) or a [PA professional engineer](#) are treated consistently.

Please let us know if any of the above information is incorrect. Otherwise SBCA will encourage our members to expect that these concepts are accurate, and SBCA members will take corresponding action and will expect outcomes accordingly as well.

Thank you for your consideration and timely feedback if anything presented is incorrect and any further insight/counsel that can be provided so that SBCA members assuredly comply with Pennsylvania laws.

Respectfully yours,

A handwritten signature in blue ink that reads "Kirk Grundahl". The signature is written in a cursive, flowing style.

Kirk Grundahl, P.E.  
Executive Director

[Pennsylvania PE License No. PE084281](#)