

July 12, 2016

Attorney General Kamala D. Harris
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Ms. Mia Marvelli
Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Mr. Ric Moore (Executive Officer)
Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833-2944

Dear Attorney General Harris, Ms. Marvelli and Mr. Moore:

Our goal with this letter is to address professional engineering evaluations and California (CA) Building Official's (CABOs)¹ acceptance of professional engineering work, by any CA licensed professional or specialty engineer, in the context of CA law of which we are aware.

Superseding a CA Professional Engineer's Decision Making Process

Our membership has been involved with statements from CABOs and Registered Design Professionals (RDPs) within 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 IP²] _____ or _____ [the implication is approval denied] _____.
3. I'm telling you again; you are either going to provide _____'s 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 _____'s testing; we are going to assure that you have _____'s test report; the only way I can do that is to see _____'s test report.
5. I've never been allowed to see _____'s test report and all I've got is a piece of paper with a PE stamp on it.

All these statements have been made in a manner to "encourage" providing proprietary IP, engineering analysis, software and/or test data.

It was further strongly suggested that the best way to get an approval is to have an "ICC report." The obvious quid pro quo is that providing an "ICC report" eliminates the need for providing proprietary testing, analysis, etc.

¹ Also California Building Department Contractor. Jurisdictions are hiring plan review and inspection companies under contract to act as their agents in performance code mandated plan review and inspections.

² IP = intellectual property

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The consequence of these statements is twofold; delayed or denied use of innovative IP that meets or exceeds what is found in the building code; and an implied tying agreement between building official members of ICC and their association, which owns the ICC-ES [product or technical evaluation process](#)³. The “building official” can easily “force” the use of an ICC-ES evaluation due to their “approval authority.” The path of least resistance can be to acquiesce to avoid downstream pain.

The fact is ICC needs money to provide services, and building official members have authority. This can help ICC revenue streams as follows:

1. “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.” [\(2015 ICC annual report, page 54\)](#)
2. In 2014 ICC-ES & ES, LLC contributed \$29.2 million ([2014 ICC annual report, page 67](#)) in assets to ICC.

Obviously ICC-ES generates important non-member revenue for ICC, which supports ICC initiatives and its overall economic health.

Statements 1 through 5 above 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 than it should. Clearly, this type of opinion and approach directly affects the [CA concept of free, fair, vigorous and competitive marketplaces](#). The statements 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 [CA professional engineer or specialty engineer](#) is credible; and that person or group has performed the due diligence needed to provide detailed evidence of a [CA professional engineer law violation](#), they have every right to provide this information to Mr. Ric Moore of [the CA Board of Professional Engineers](#) (BPELSG) to discuss and take appropriate action.

We believe professional engineering and the building code are intended to encourage innovation and IP creation which promotes [CA's vigorous trade](#).

The business logic path that follows suggests that in all cases where an [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) is involved:

1. A [product evaluation report](#) shall gain immediate CABO or RDP [approval](#) as an “alternative material, design or method of construction to that found in the building code” via an [ANSI ISO/IEC 17065 product certification](#) or via a sealed design/report by an RDP, which is then [CBC Section 1703 compliant and CRC compliant](#)⁴.
2. One of the functions of a [research or product evaluation report](#), as defined in Chapter 17 of the CBC, is founded on the premise of protecting proprietary knowledge/IP and not divulging it to competitors. Any testing undertaken is proprietary and to protect this work it is reviewed and affirmed by an [ANSI ISO/IEC 17065](#) report, which can then be approved.
3. This approach is intended to certify compliance with the relevant CA building code or building specifications adopted by the local jurisdiction.
4. To amplify:
 - a. The work of an [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) shall be approved by a CABO or the registered design professional (RDP). This is true unless a CABO or RDP, upon

³ Technical evaluations = product evaluation report = technical evaluation reports = **1703.4.2 Research reports**. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

⁴ http://codes.iccsafe.org/app/book/content/2015_CALIFORNIA/2013%20CALIFORNIA%20BUILDING%20CODE%20VOL%202,%20SUPPLEMENT%20JULY%202015/Chapter%2017%20-%20Structural%20Tests%20and%20Special%20Inspections.pdf

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denial of an [ANSI evaluation report](#) or sealed design/report, provides in writing the key provisions of the administrative law, building code, and/or professional engineering law that have not been complied with.

- i. This includes all specific citations along with commentary on what section of the law are non-compliant.
- ii. Appropriate evidence supporting non-compliance shall be provided as well.
- b. The building code and any administrative law is a legal contract. Given this, a CABO or RDP shall also provide the specific path to cure any deficiency so that the [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) can take actions to cure.
 - i. Failure to approve without providing actions to cure can be a denial of an ANSI accredited firm's or a [professional or specialty engineer's](#) license to work in their area of expertise, which restrains trade.
 - c. When each deficient element is fully cured, approval shall be granted. If not fully cured, approval will remain denied until cured.

This is a review of the CBC, CRC, California Administrative law and California Engineering law. Given this review, implementing an "alternative material, design or method of construction to that found in the building code" shall be evaluated and approved by a CABO or RDP via a technical evaluation report through any group listed on the [ANSI Accredited Product Certification Body website](#) or by any [CA licensed professional or specialty engineer](#) using the process defined above. The goal is to ensure that all [ANSI 17065 accredited organizations](#) or [CA licensed professional or specialty engineers](#) are treated consistently and in the spirit of [CA's concept of a free, fair, vigorous and competitive marketplace](#).

Please let me know if any of the above information is incorrect. Otherwise SBCA will encourage our members to expect that this assessment is accurate, will take action accordingly and will expect outcomes accordingly as well.

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

Respectfully yours,



Kirk Grundahl, P.E.
Executive Director