

Construction Certifications v. Successor Engineer

This article is the second in a series intended to address the practice of engineers providing illegitimate construction certifications. This particular article focuses on engineers providing construction certifications on projects that were based in part or in whole on another engineer's work that the second engineer chose to alter or deviate from during construction.

The scenario in this case is similar to the scenario in the previous article but differs in that this scenario includes much greater participation by the second engineer. In this scenario contractors are obtaining plans and/or reports prepared by one engineer then hiring a second engineer to "oversee and certify construction". With the plans and/or reports, used in part or in whole, from the first engineer and a cover letter from the second engineer, contractors are obtaining permits to perform work. Once the permit is issued the contractor and/or second engineer then proceed to deviate from the original engineers work during construction. Whether throughout construction or simply at the close of the project, the second engineer issues a letter "certifying the work" that was performed. Setting aside the efficacy of the situation, this article is intended to address the statutory requirements of the second engineer based on the role that he or she played.

Engineer of Record

In the scenario described above, who is the engineer of record? According to the Florida Administrative Code (FAC) **61G15-30** titled: *Definitions Common to All Engineer's Responsibility Rules*, the engineer of record is defined as follows:

FAC 61G15-30.002(1) Engineer of Record. *A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.*

FAC 61G15-30.002(4) Engineering Documents. *Engineering documents are designs, plans, specifications, drawings, prints, reports, or similar instruments of service in connection with engineering services or creative work that have been prepared and issued by the professional engineer or under his responsible supervision, direction or control.*

So while at first glance it would appear that the first engineer becomes the engineer of record without even knowing that his or her plans are being used by a contractor for permitting, FAC 61G15-30 goes on to state:

FAC 61G15-30.002(6) Public Record. *An engineering document is "filed for public record" when said document is presented with the engineer of record's knowledge and consent to any federal, state, county, district, authority, municipal or other governmental agency in connection with the transaction of official business with said agency.*

FAC 61G15-30.002 (7) "Engineering Documents Prepared for Public Record" *are those documents filed for public record with the Authority Having Jurisdiction (AHJ) to determine compliance with Codes and*

Standards and to be used for execution of the project. These documents are required to be signed and sealed.

Therefore, FAC 61G15-30 does not recognize the first engineer as the engineer of record if the documents, plans and/or reports, were filed for public record without the first engineer's knowledge and consent. However, while the FAC may not recognize the first engineer as the engineer of record, the building official and the AHJ issuing the permit may, especially if the contractor lists the first engineer on the permit application as the engineer of record.



Construction Modifications and Deviations

Whether recognized as the engineer of record or not, a permit has been issued based in whole or in part on the work of the first engineer. It then follows that as the work progresses any conflicts or departures from the permitted plans and/or reports require that the engineer of record be consulted and the AHJ notified. This point is reinforced within Chapter 1 Section 107 of the Florida Building Code.

FBC 107.4 Amended Construction Documents. *Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.*

On smaller projects or on projects where the conflicts or departures are of a minor nature, this notification can take the form of a construction certification or a final certification.

Construction Certifications

The construction certification that is sought by the contractor is required to satisfy the permit requirements of Chapter 1 of the Florida Building Code for the purpose of closing out the contractor's permit. As discussed previously, an engineering certification constitutes an affidavit under the Florida Building Code and as such the engineer issuing it has an obligation to: clearly state whether the work has been installed in accordance with the approved construction documents; clearly state the limits on his or her scope as well as any matters that the engineer does not intend to accept responsibility for; avoid untruthful, deceptive, or misleading statements; and has an obligation to avoid omitting relevant and pertinent information that would lead to a fallacious conclusion on the part of the building department.

So the permit was issued in whole or in part based on the work of the first engineer, the contractor has proceeded with the work and has departed from the work of the first engineer (the work that the permit was based on), and the second engineer has issued a certification of the work performed so that the contractor can close out his or her permit. The question now becomes, if the first engineer is not the engineer of record is the second engineer the engineer of record?

The answer is most likely no because the second engineer was clearly not in responsible charge of the preparation, signing, dating, sealing or issuing of the work of the first engineer. So then is the second engineer a successor engineer?

Successor Engineer

A successor engineer is an engineer who uses and/or relies upon the work, findings, and/or recommendations of a previous engineer. When a licensed engineer working on a project here in Florida steps in to take over for another engineer, the second engineer or successor engineer must comply with FAC **61G15-27** titled: *Procedures For The Adoption Of Another's Work*. Passages of particular note include:

61G15-27.001(1) *A successor professional engineer seeking to reuse already sealed contract documents under the successor professional engineer's seal must be able to document and produce upon request evidence that he has in fact recreated all the work done by the original professional engineer...*

Further, the successor professional engineer must take all professional and legal responsibility for the documents which he sealed and signed and can in no way exempt himself from such full responsibility...

A successor professional engineer must use his own title block, seal and signature and must remove the title block, seal and signature of the original professional engineer before reusing any sealed contract documents.

Given that only the engineer of record can direct changes to permitted reports and/or plans, the second engineer must become the engineer of record when he or she elects to deviate from or authorizes

changes to the work of the first engineer. Therefore, at this point the second engineer must first become the successor engineer to the first engineer if the second engineer wishes to serve as the engineer of record. If however the second engineer fails to recreate all the work done by the first engineer so as to authorize changes then the second engineer has violated FAC **61G15-27.001(1)**. Further, if the second engineer fails to notify the first engineer before stepping in as the engineer of record then the second engineer has violated FAC **61G15-27.001(2)** which reads:

61G15-27.001(2) *Prior to sealing and signing work a successor professional engineer shall be required to notify the original professional engineer, his successors, or assigns by certified letter to the last known address of the original professional engineer of the successor's intention to use or reuse the original professional engineer's work. The successor professional engineer will take full responsibility for the drawing as though they were the successor professional engineer's original product.*



Conclusion

Simply put, when an engineer is hired to “oversee and certify construction” of a project based on the plans and/or reports from another engineer knowing that the contractor intends to or may be forced to deviate from the original engineers work during construction, it is incumbent upon the second engineer to fulfill his or her statutory obligation to become the successor engineer. This would hold true even in

cases where the second engineer, never originally planning to, is forced to take over a project from the first engineer.

For the second engineer to issue a certification stating that the work outlined within a permit (based on the first engineer's work) has been completed, knowing that deviations had occurred without the first engineer's knowledge and without the second engineer properly assuming the role of successor engineer, will most likely result in the engineer having committed misconduct in the practice of engineering.

Postscript

While doing research for this article I once again found cases where this scenario played out within the sinkhole remediation industry. More specifically, due to the nature of the work, subsurface grouting requires that engineering decisions be made throughout the course of it (i.e. adequate depths of casing or underpin depths, pressures, etc.).

In one such example, the first engineer was shown as the engineer of record on the permit application by the contractor. The second engineer directed and/or certified substantive changes to the work of the first engineer that ultimately failed. After the work had failed and because the first engineer was listed as the engineer of record on the permit documents, a complaint was filed against the license of the first engineer. That engineer was forced to expend time, money and emotion to address and ultimately clear the complaint against his license.

When contacted, he stated: *"Unfortunately, most of the completion reports that are issued by these third party Engineers are deceptive, in that they typically don't state that the work was completed in accordance with the original engineer's recommendations, but rather summarize whatever work was performed"*.

