GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General

April 14, 2008

The Honorable Adrian M. Fenty
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Fenty:

Enclosed please find a copy of a Management Alert Report (MAR 07-I-009) issued July 25, 2007, to the Department of Consumer and Regulatory Affairs (DCRA) and the Department of Human Resources (DCHR). The MAR addresses the fact that District government engineers are exempt from professional licensure requirements, a condition which may jeopardize public health and safety. DCRA's response to the MAR, dated September 4, 2007, and DCHR's response, dated March 6, 2008, are also enclosed.[1]

Although the OIG is conducting an ongoing inspection of DCHR and a full report of inspection will be completed later this fiscal year, we are providing this information to you now so that you are aware of the issues addressed in the MAR and the corrective actions proposed by DCRA and DCHR.

If you have questions, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540.

Sincerely,

Charles J. Willoughby
Inspector General

CJW/ebs

Enclosures

cc: See Distribution List

[1] Some portions of DCHR's response have been redacted at DCHR's request.

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DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION

MANAGEMENT ALERT REPORT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS AND DEPARTMENT OF HUMAN RESOURCES

D.C. ENGINEERS' EXEMPTION FROM LICENSURE LAW QUESTIONED

MAR 07 - I - 009
JULY 25, 2007

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General

July 25, 2007

Linda Argo
Director
D.C. Department of Consumer and Regulatory Affairs
Government of the District of Columbia
941 North Capitol Street, N.E.
Washington, D.C. 20002

Brender Gregory
Director
D.C. Department of Human Resources
Government of the District of Columbia
One Judiciary Square
441 4th Street N.W. - Suite 300S
Washington, D.C. 20001

Dear Ms. Argo and Ms. Gregory:

This is a Management Alert Report (**MAR-07- I -009**) to inform you of a questionable exemption in the law that applies to the licensing of professional engineers in the District of Columbia. District government engineers are exempt from professional licensure requirements, a condition that, according to engineering licensure experts, may jeopardize public health and safety. This issue came to our attention during our current inspection of the D.C. Department of Human Resources (DCHR). The Office of the Inspector General (OIG) provides these reports when we believe a matter requires the immediate attention of District government officials.

Background

D.C. Code § 47-2853.04(a) states:

> The following non-health related occupations and professions have been determined to require regulation in order to protect public health, safety or welfare, or to assure the public that persons engaged in such occupations or professions have the specialized skills or training required to perform the services offered: . . . **Professional Engineer.** (Emphasis supplied).

The D.C. Code requires most professional engineers operating within the District to be licensed, but exempts all District government engineers from this requirement. D.C. Code § 47-2853.133 states: "Unless licensed to practice engineering under this subchapter, no person shall engage directly or indirectly in the practice of engineering in the District or use the title 'engineer', 'registered engineer', 'engineering design', [or] 'professional engineer'. . . . " D.C. Code § 47-2886.10(4) provides an exemption from licensing requirements for "[t]he performance of engineering work by any person who acts under the supervision of a professional engineer, or by an employee of a person lawfully engaged in the practice of engineering, and who, in either event, does not assume responsible charge of design or supervision." However, D.C. Code § 47-2886.10 further states: "Nothing in this part shall be construed to affect or prevent the following: .... (5) The practice of engineering as a consultant, officer, or employee of . . . the government of the District of Columbia . . . . "

A 2005 survey by the National Council of Examiners for Engineering and Surveying indicates that 75% of the 40 U.S. states and territories responding to the survey did not exempt their employees from local professional engineering licensure laws.[1]

Professional engineers in the District government have varied duties and responsibilities. For example, environmental engineers evaluate proposals to remediate soil and ground water contamination and assist in developing plans to respond to contamination-related emergencies; civil engineers ensure that roads, buildings, bridges, water systems, and sewage systems are structurally sound; and other professional engineers' duties include reviewing plumbing, heating, cooling, electrical, and other systems in District buildings to ensure fire safety and compliance with building codes.

Observation

According to the D.C. Board of Professional Engineers (Board), unlicensed D.C. government professional engineers present a public health and safety risk if they have not demonstrated their engineering expertise by completing the licensure process.

The District government has professional engineer and supervisory professional engineer positions, but applicants for most of these positions are not required to be licensed. Employees of the Department of Consumer and Regulatory Affairs (DCRA) stated that DCRA does not currently require applicants for any professional engineer position to be licensed, although it is considering a requirement that supervisory engineers be licensed. DCRA is the District agency with the greatest number of professional engineering vacancy announcements on the DCHR website. The District's professional engineering licensure standards are more stringent than the job qualification standards used by DCHR when hiring for most professional engineering positions. Applicants for professional engineering licensure must have at least 4 years of engineering experience and pass an examination to demonstrate their engineering knowledge.

[1] The engineering licensing board from each responding state or territory provided the information used for this survey item.

Members of the Board, which oversees professional engineering licensure, stated that the D.C. Code should not exempt District employees from professional engineering licensure requirements. The three Board members who responded to OIG inquiries, including the Chair and Vice Chair, agreed that unlicensed D.C. government professional engineers present a potential public health and safety risk. According to DCRA interviewees, many of these engineers work without the supervision of licensed professional engineers, but are responsible for determining such things as structural safety and reviewing plans submitted by professional engineers who are required to be licensed. DCRA interviewees and Board members indicated that many licensed private-sector professional engineers who submit plans to District agencies are not confident in the abilities of unlicensed D.C. government professional engineers to review plans adequately.

Recommendation

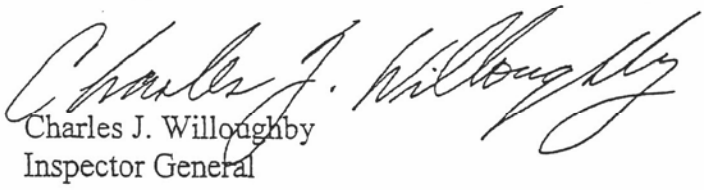
The questionable exemption cited above may jeopardize public health and safety. Accordingly, we recommend that you take the following actions immediately:

> Determine through collaboration with the D.C. Board of Professional Engineers, Office of the Attorney General, the Office of Risk Management, and District agencies employing professional engineers: (a) which District government professional engineering positions should require licenses; and (b) whether current District law should be changed to accommodate this concern.

Please provide your comments to this MAR by **August 10, 2007**. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreement with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions or desire a conference prior to preparing your response, please contact [redacted], Deputy Assistant Inspector General for Inspections and Evaluations, at 202-727-[redacted]

Sincerely,



Charles J. Willoughby
Inspector General

CJW/ld

cc: Daniel M. Tangherlini, City Administrator
The Honorable Carol Schwartz, Chairperson, Committee on Workforce Development and Government Operations

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

September 4, 2007

Mr. Charles Willoughby
Inspector General
717 14th Street, NW
Washington, DC 20005

RE: Management Alert Report MAR-07-I-009

Dear Mr. Willoughby:

This letter is in response to your inquiry regarding a "questionable exemption in the law that applies to the licensing of professional engineers in the District of Columbia". The District of Columbia Department of Human Resources (DCHR) has convened a working group comprised of DCHR, the Department of Consumer and Regulatory Affairs (DCRA), DC Department of Environment (DDOE), DC Department of Transportation (DDOT), and the Office of the Attorney General (OAG). DCRA is actively participating in the working group. All of the group's findings, recommendations, and actions taken will be reported by the DCHR.

Thank you for bringing this matter to my attention. If you need additional information, please contact DCRA Service Integrity Officer at (202) 442-

Sincerely,

Linda K. Argo
Acting Director

cc:

RECEIVED
2008 MAR 14 PM 3:29

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources

Office of the Director

CONFIDENTIAL

March 6, 2008

Charles J. Willoughby
Inspector General
Office of the Inspector General
717 14th Street, N.W., 5th Floor
Washington, D.C. 20005

Dear Mr. Willoughby:

This is in response to your July 25, 2007 Management Alert Report **(MAR-07-I-009)**, by which you refer to the exemption in the District of Columbia licensure law applicable to engineers employed by the District government. Specifically, the MAR states that, according to licensure experts, the exemption may jeopardize public health and safety.

In response to the MAR, the D.C. Department of Human Resources (DCHR) has formed a Committee comprised of DCHR staff and officials in agencies employing engineers.[1] The purpose of the Committee is to determine: *(1) Which District government professional engineering positions should require licenses; and (2) Whether the current District law should be changed to require District government professional engineers to have licenses.* The following is our response:

DETERMINATION

1. *Which District government professional engineering positions should require licenses?*

   The DCHR and the four (4) agencies employing the majority of engineers have agreed to work towards requiring that at a minimum, persons in supervisory engineer positions be required to have a professional engineer license.

[1] The Committee consists of representatives from the DCHR, the D.C. Board of Professional Engineers (BPI), the Office of Risk Management, the Office of the Attorney General for the District of Columbia (OAG); and the following District government agencies employing the majority of professional engineers: District Department of Transportation (DDOT), Office of Property Management (OPM), Department of Consumer and Regulatory Affairs (DCRA), and District Department of the Environment (DDOE).

However, it is our recommendation that no specific engineer positions be identified until after the DCHR researches how engineering positions should be classified and determines the best grade structure and career ladder based on surrounding jurisdictions best practices.

2. *Whether the current District law should be changed to require District government professional engineers to have licenses.*

   The DCHR and the agencies employing professional engineers have agreed that D.C. Official Code § 47-2886.10 (5) (2006 Repl.) should ultimately be amended to require that all engineers supervising District government employees engaged in the practice of engineering be required to have a professional engineer license at the time of appointment. However, the agencies still would need to address the insufficient number of licensed professional engineers currently in supervisory positions. As you may be aware, any changes in the law would likely not be applicable to current District government employees in engineer positions.

ANALYSIS

D.C. Official Code § 47-2886.10 (5) (2006 Repl.) allows engineers employed by the District government to practice engineering without a professional engineer license. We agree that the exemption may jeopardize public health and safety.

Because of the concerns raised by the MAR, the Committee requested a legal opinion from the OAG regarding the following:

(1) *Whether engineers employed by the District of Columbia are exempt from licensure requirements otherwise imposed by District law; and*

(2) *Whether the scope of practice for professional engineers is governed by the Professional Engineers' Registration Act, effective September 19, 1950 (D.C. Official Code § 47-2886.01 et seq. (2005 Repl.), or the Non-Health Related Occupations and Professions Licensure Act of 1998 ("Licensure Act"), effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.01 et seq. (2005 Repl.).*

PORTION REDACTED

The Compensation and Classification Administration, DCHR, conducted a survey of engineers currently employed in the four (4) agencies listed in page 1 of this letter. This survey, which had 124 respondents, gathered information pertaining to the *grade and step, education, licensures and certifications, years of work experience, supervisory status, plan review or recommended-writing capabilities, and signatory authority.* A copy of the results of this survey is enclosed.

The chart below indicates the information received pertaining to the number of engineers who possess a professional engineer license:

Agency	Number of Survey Respondents	Number of Professional Engineers
DDOT	73	9
OPM	12	6
DCRA	24	1
DDOE	15	1

The BPI reviewed a list of employees with the position title and occupational series of "Engineer" in the four (4) agencies, and provided the following break-down:

Agency	Number of Employees with a D.C. Professional Engineer License
DDOT	12
OPM	5
DCRA	2
DDOE	2

The DCHR conducted yet another survey to determine whether the four (4) agencies currently employed a sufficient number of licensed professional engineers; and whether the licensed professional engineers were assigned to the appropriate areas within each agency to oversee, supervise, and sign-off on the work of unlicensed engineers. The responses to this survey are included in the chart below:

Agency	Number of employees with a D.C. professional engineer license	Number of professional engineers licensed outside of the District	Do you have a sufficient number of professional engineers given the work of agency?
DDOT	12	10	No
OPM	5	0	Yes
DCRA	2	0	No
DDOE*	--	--	---

*DDOE did not submit a response to the questionnaire.

The most significant information obtained from this survey is that while agencies employ some persons who possess professional engineer licenses, a significant number are licensed outside of the District of Columbia. Further, the majority of the agencies indicated that they currently did not have a sufficient number of licensed professional engineers to oversee, supervise, and sign-off on the work of unlicensed engineers.

The survey also asked *what resources are needed to ensure that the agency has a sufficient number of professional engineers licensed in the District of Columbia.* Overwhelmingly, agencies indicated that higher salaries were needed, and stated that the following resources were also needed:

- Professional engineering training;
- Time allotted to study for the examination;
- Reimbursement for professional engineering license preparation course;
- Modification of position descriptions and qualifications requirements to reflect professional engineering licensure requirement; and
- Recruitment support.

Next Steps

The DCHR and agencies employing professional engineers need to examine several issues such as the ones listed above, to address current recruitment obstacles for licensed professional engineers. The DCHR's first priority will be to ensure that agencies are aware that engineer positions are deemed *hard-to-fill* and appointees are eligible to receive recruitment and retention incentives such as *Additional Income Allowances* and *Hiring Bonuses.*

The Compensation and Classification Administration, DCHR, is researching how surrounding jurisdictions have classified engineer positions and determined grade structure. The results of this research could ultimately change the compensation and career path for all professional engineer positions within the District government.

Once reforms take place in areas such as recruitment, compensation, and training, which were raised by the agencies, specific positions will be identified and the DCHR will work with all the agencies employing professional engineers to address these issues.

Should you have any questions regarding this information, please contact me at 442-9600 or , Deputy Director, at

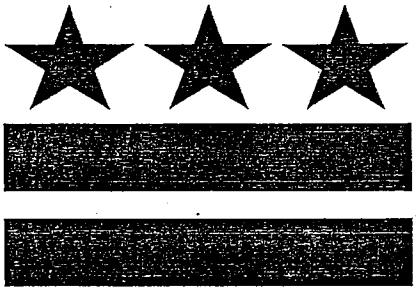
Sincerely,

Brender L. Gregory
Director

Enclosures

BLG/zp

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN RESOURCES



SURVEY OF ENGINEERS AS A PART OF THE RESPONSE TO THE OIG REPORT

CONDUCTED BY
COMPENSATION AND CLASSIFICATION ADMINISTRATION
D.C. DEPARTMENT OF HUMAN RESOURCES

Survey Team:

January 8, 2008

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources

TO:
Associate Director

FROM:
Associate Director

DATE: January 8, 2008

SUBJECT: Professional Engineer Survey Results

Attached are the results of the survey conducted by the Compensation and Classification Administration. The results were compiled from 124 respondents from four agencies. All respondents were classified as engineers. Amongst other information gathered, we collected information on what types of certification employees had obtained and whether or not employees had been granted signatory authority.

Along with the survey results, a copy of the coded survey as well as the data collected are included.

These findings and their conclusions will hopefully aid in determining the appropriate staffing levels needed to carry out the business of the District.

During the summer of 2007, the Office of the Investigator General (OIG) released a report regarding the licensing of engineers within the District. The OIG report raised questions about a loophole within DC Code that allows engineers employed by the District government to practice engineering without having been licensed by the District. Having unlicensed engineers performing tasks reserved for licensed professional engineers raises significant liability issues for not only the city but also the engineer because of the ethical and educational standards professional engineers are charged with maintaining. For example, in 1981 two walkways collapsed killing 114 people and injuring over 200 within a Kansas City, Missouri, Hyatt Regency. Approval for the faulty design was traced back to two engineers who, although not convicted in a court of law, were then stripped of their licenses to practice engineering in Missouri for skirting their ethical duties, namely for not performing structural integrity calculations. Ignoring design flaws led to their firm going bankrupt due to numerous multi-million dollar civil suits filed by impacted parties. Although this was an instance of severe negligence, the professional engineer licensing procedure supplies the guidelines and knowledge for engineers to follow which will hopefully limit such catastrophes and their repercussions.

DCHR Survey and Observations

To help provide a response to OIG's questions regarding the qualifications of District engineers, the Department of Human Resources' Compensation and Classification Administration conducted a survey of engineers within the District government. The survey, which had 124 respondents, gathered information through several prompts pertaining to grade and step, education, obtained licensures and certifications, years of work experience, supervisory status, plan

review/recommendation-writing capabilities, and signatory authority. Surveys were then administered to employees with engineering backgrounds at four agencies (DDOT, OPM, DCRA, and DDOE) via the agency's human resources advisor.

In the following chart, responding agencies are named along with the number of responses from the specific agency. "Survey Respondents" reports the number of respondents per agency received through the Compensation and Class-issued survey. "P.E." indicates the number of respondents to Compensation and Class's survey who stated they held a professional engineer's license. "Signatory" shows the number of employees from the Compensation and Classification survey who said they are able to sign their name on official documents.

	Survey Respondents	P.E.	Signatory?
DDOT	73	9	37
OPM	12	5	6
DCRA	24	1	22
DDOE	15	1	10

The OIG report raised concerns about the possibility that unlicensed/non-professional engineers were signing documents as the final approval. As mentioned before, such action would place the city in a difficult legal position and potentially cause engineers to be in violation of ethical standards. The Compensation and Classification survey posed two questions meant to address what the OIG found problematic.

To answer the first question, respondents were asked if they had obtained certain certifications or licensures, in particular a professional engineer's license. The individuals who stated they had a professional engineer's license all had valid licenses for the next several months. However, the jurisdiction in which their license was issued is not noted.

Question two dealt with whether or not respondents indicating they had signatory authority. As shown, there were significantly more people with signatory authority than licensed professional engineers. In part, the increased responses stating that individuals had signatory authority can be attributed to "signatory authority" including actions such as the signing of time and attendance sheets, sick and annual leave notices, and other functions typically carried out by managers.

Given the broad interpretations that can be made given signatory authority's definition, it is crucial that employees understand what their signature means when it is applied to a document. The OIG report raised concerns that under-qualified individuals may be signing engineering documents, which would open the District up to a significant amount of liability. To eliminate the possibility that such an indiscretion occurs, agencies must have chains of command in place and insure they are followed accordingly.

Most importantly, though, structures must be in place to insure agencies have a sufficient number of qualified individuals to sign documents. In the case of DDOE, the concern has been voiced that the number of licensed professional engineers is not sufficient to meet the demand for plans that need to be reviewed. In such instances, there is an increased chance, in the effort to complete reviews, that under-qualified employees will sign a document, which would be problematic for the District.

Recommendations

Moving forward, several issues need to be examined in order to increase the possibility that such shortages, as illustrated by the DDOE example, are limited or eliminated. If there is indeed a lack of professionally-licensed engineers within the District government, irrespective of what jurisdiction the license was obtained, agencies

should make concerted efforts to retain individuals for these positions. Engineering hires are presently eligible for additional income allowances, but the question arises: are agencies using this option to lure desired talent? Agencies should utilize this option, especially if it could mean the difference between acquiring a qualified individual or not.

Secondly, DCHR's Compensation and Classification Administration is currently examining the possibility of restructuring how engineering positions are classified. Currently, there are multiple engineering job titles and few definite attributes that can be assigned to them other than longevity. The Compensation and Classification Administration has conducted analysis of how jurisdictions within the Washington metropolitan region do in terms of classifying engineers. All jurisdictions examined have systems with Engineer I-IV, or something to that effect. Built within these standard job descriptions are standard pay scale ranges and job expectations, including licensures. Due to the lack of such a system, District pay for engineers is dependent more on what agency the engineer is employed by than their qualifications. Based on the survey, a majority of DDOE's environmental engineers are paid at a Grade 11 level, whereas a majority of engineers within the other surveyed agencies were more likely to be at the Grade 12 level. A new, unified classification method would help decrease such disparities. However, such a method would not be available until a later date and it would only be as good as how it is implemented. The District must have professional engineers sign every document that is to be made public (engineer drawings, plans, etc). The signature will serve as an assurance that all necessary actions have been taken to make certain that the public will not be harmed by the specific engineered structure. Additionally, non-

professional engineers must not be allowed to sign documents that are only to be signed by a licensed professional engineer.