Salmon River

Professional Engineering

AGENCY GUIDANCE

Idaho Board of Professional Engineers and Land Surveyors | AGC 1 | 6-30-2020

Guidance Documents

Agency Guidance Documents are interpretations of existing laws and rules of the Board. They are not new laws or rules. “Agency guidance” means all written documents, other than statutes, rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" includes memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons.

Point of contact

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Purpose

The purpose of this document is to describe prior Board opinions and decisions regarding engineering practice in Idaho that requires a P.E. license. This document includes the practice requirements for professional engineers as opinions and decisions of the Board as they have interpreted the existing laws and rules.

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BUILDING AND AGENCY OFFICIALS

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BOARD URGES ENGINEERS TO COOPERATE WITH BUILDING OFFICIALS

A Kootenai County Building Official asked the Board some questions relating to the authority of building code plan examiners and building inspectors who are not licensed engineers. The Board responded as follows:

Question 1. Is it acceptable and allowable for an unlicensed plans examiner or building inspector to require an engineer's supporting calculations for any specific design, even though the licensed engineer may say that the design is based on their "best judgment"?

Board opinion: The 2018 International Building Code (107.1-107.2.1) authorizes the Building Official to require submittal of calculations to substantiate the design. The engineer must follow the laws and rules adopted by the state and local jurisdictions, and therefore should cooperate with the legitimate requirements of the plans examiner or building inspector.

Question 2. Is it acceptable and allowable for an unlicensed plans examiner to review these calculations and make requirement comments for:

a. Compliance with specific requirements of the adopted building codes and referenced standards.
b. That the design addresses complete load paths as required in the adopted building codes.
c. That the design uses the correct design criteria as adopted by the jurisdiction.

Board Opinion: The 2018 International Building Code (107.1-107.2.1) authorizes the Building Official to require submittal of construction documents (as described in IBC 107.1 and 107.2). The plans examiner or building inspector may comment on anything contained in the construction documents, but is not allowed to practice engineering unless duly licensed. The engineer must follow the laws and rules adopted by the state and local jurisdictions, and therefore should cooperate with the legitimate requirements of the plans examiner or building inspector.

Question 3. Is it acceptable and allowable for an unlicensed plans examiner or building inspector to ask for justification by calculation for use of prescriptive methods of construction on the building code that are beyond the design limits set forth in the code?

Board Opinion: It is appropriate for engineers to provide documentation of their use of prescriptive methods of construction when they are beyond the design limits set forth in the code.

Question 4. Is it acceptable and allowable for an unlicensed plans examiner to perform calculations for verification purposes as long as the results are not provided to others as a design or requirement? This scenario historically may result in a request for the licensed

engineer to review their calculations and make any changes they determine to be necessary?

Board Opinion: Performing calculations for verification purposes (i.e. to check the math on a calculation) is not the practice of engineering.

In addition, the Board suggested that if the Building Official does not have the expertise to do a thorough and appropriate review of the construction documents, they should seek assistance from a person who possesses that expertise.

Keywords: Building Officials, Building Code, Inspectors

Approved 11-1-2011, NB48 Updated 6-10-2020

BUILDING OFFICIALS DESIGN REVIEW

At its meeting on November 16, 17 & 18, 2006 the Board reviewed an email from a Kootenai County Building Official. In that communication, he asked several questions. While the Board does not generally answer "hypothetical" questions, his questions seem to address real current situations, so the Board chose to answer them, even though there was a limited amount of detail on the background. Listed below are his questions followed by the Board answers.

Question: In the definition of "Engineer", what exactly does "special knowledge" mean? Does it mean the accumulation of ALL knowledge that one receives when the result is a degree in engineering? If that interpretation is accurate, that would then allow a person with SOME training to determine reasonably simple vertical and lateral load path solutions if the methods are readily available (and they are, even in the IBC). To go even further, there is software available either from engineered wood manufacturers or for purchase (in our office we have StruCalc). I understand the concept of "bad input = bad output", but does one ALWAYS need an engineering degree to provide good input? If some solutions don't have to be sealed and signed, where do we draw the line?

Answer: The Board would only be willing to consider a response to this question when we know the specific provisions provided to the Building Official by the Code and what latitude is provided to the Building Official by the Code under which the plans are being reviewed. If the Code requires that a design professional prepare the plans, they must be prepared by someone licensed as a design professional by an agency of the State of Idaho.

Question: If structural solutions are for one's own project and not offered to another person, does that require the seal and signature of a licensed engineer? The definition of the "Practice of Engineering" seems to indicate that to be the case.

Answer: Ownership is immaterial. If professional engineering is being practiced, it

must be by a licensed individual.

Question: Is “partial engineering” of a structure allowed? We have some very vocal licensed engineers who insist that partial engineering is illegal and we should not accept such submittals.

Answer: The Board has issued an opinion in the past that allows an engineer to “qualify” his responsibility by including a statement such as “Structural Only” alongside the seal. More specifically, an engineer who stamps a plan which contains work done by others must clearly identify the work for which he or she is responsible. If an engineer were to be involved only in a portion of a structure, such as a beam, the engineer would have a responsibility to assure the load path and connections to the beam and beyond the beam are properly analyzed and appropriate components specified.

Question: We always ask for supporting calculations. A few licensed engineers become outraged that we ask for them. We aren’t qualified to review them. Actually, one of our plans examiners is [a] licensed engineer, although he doesn’t perform all of the structural review. Even if we don’t review the accuracy of the calculating, we still need to determine if the correct design criteria has been used. It’s very common to have a cover page with the correct design criteria listed, only to find that other factors have been used in the calculations. Are we wrong to require supporting calculations?

Answer: In the Board’s opinion, asking for design calculations is a reasonable request to make of an engineer.

Keywords: building official, codes, standards, calculations, engineers, architects, design criteria, special knowledge, IBC, submittals

Approved 4-2007, NB 39 Updated June 10, 2020

STATE OF IDAHO

BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

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February 12, 2014

Lynn Transtrum, Building Official
City of Pocatello, Building Dept.
911 N 7th Ave.
P.O. Box 4169
Pocatello, ID 83205-4169

Dear Mr. Transtrum,

At its meetings February 10-11, 2014, the Board reviewed your letter regarding the work of engineers and architects. The Board licenses only engineers and surveyors and these individuals are only allowed to practice within their area(s) of competence based on education, examination and experience. The areas of examination that have been taken are shown on our website for each engineer licensed by the Board.

It is the Board's opinion that the Idaho State Building Code currently adopted allows the individual jurisdiction's Building Official to require appropriate design professionals prepare designs that are submitted to them for permitting. It gives you the widest latitude in this requirement since you are the reviewing official (ICC Chapter 1, Section 107). In addition, this code also allows you to require a design professional in responsible charge to be your single point of contact and requires that individual to coordinate the work of the other design professionals you require for the project or that they elect to use on the project.

For the Board,

Keith Simila, P.E.
Executive Director

JLS:ks \BPEPLS\Meeting Correspondence\2014\Feb 2014\CityofPocatelloBuildingDept.doc

EQUAL OPPORTUNITY EMPLOYER

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS

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June 25, 2007

Bob Ankersmit, Plan Review Supervisor
Kootenai County Building and Planning Department
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000

Dear Mr. Ankersmit:

At its meeting on June 13, 14 & 15, 2007, the Board reviewed your email to David Curtis dated May 7, 2007 regarding the Board interpretation of a section of the International Residential Code. The Board concluded that a Building Official for an Authority Having Jurisdiction has the authority to make the judgment as to whether or not residential foundation plans must be prepared under the responsible charge of a licensed engineer or architect. Some residential foundations would be well within the prescriptive portions of the codes cited, while others might require engineering judgment and knowledge; therefore the Board believes that it is within the authority of the Building Official of the Authority Having Jurisdiction to make that determination based on the complexity of the project. The Board urges all Building Officials to make the decision with public safety the paramount concern.

Please call if you have any questions.

For the Board,

James H. Milligan, P.E., Ph.D.
Board Chair

JHM/DLC/dc:Ankersmit, Bob.2007-06 Meeting

EQUAL OPPORTUNITY EMPLOYER

CITY ENGINEER PE REQUIRED

Questions

A. In the State of Idaho is it required for a City Engineer to have a professional engineers license?

B. If one is not required what limitations are placed on a non-licensed City Engineer?

C. Can a non-licensed City Engineer review and approve subdivision and capital improvements plans submitted to the City by a licensed engineer?

D. Can a non-licensed City Engineer manage construction of public works project that require a licensed engineer to design?

P.E. from southeastern. Idaho

Answers

A. Prior opinions stated that it is not possible or practicable for a party to hold the office of city engineer without an Idaho P.E. license.
B. Not applicable based on the answer above.
C. City or other government officials decide who they want to review documents and there is no requirement that reviewing official be licensed engineers unless they hold the title of City Engineer, County Engineer, etc.
D. City or other government officials decide who they want to manage construction of public works projects. However, 54-1218, Idaho Code requires the construction to be reviewed by a professional engineer. In some cases, record drawings must be completed by a P.E.

Keywords: PE, Licensure, City Engineer, Construction

Approved 11-9-2018, NB62

STATE OF IDAHO

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June 25, 2007

A.J. Maupin, P.E., State Onsite Wastewater Coordinator
DEQ, Water Quality Division, Wastewater Program
1410 N. Hilton
Boise, Idaho 83706

Dear Mr. Maupin:

At its meeting on June 13, 14 & 15, 2007, the Board reviewed your email to David Curtis dated June 1, 2007 regarding the Board interpretation of the need for engineering supervision of the design of onsite evapotranspiration systems. The Board concluded that engineering expertise and professional judgment would be required for a number of the aspects of these systems including the alarm system; embankment (if necessary); and quality control of sand specifications and liner material and installation. The failure of a system such as this could have an adverse effect on public health and safety through contamination of groundwater, etc. Some aspects would require interdisciplinary input such as from agronomists, etc., but the overall design should be under the responsible charge of a professional engineer who is familiar with the technical matters involved.

Please call if you have any questions.

For the Board,

James H. Milligan, P.E., Ph.D.
Board Chair

JHM/DLC/dc:Maupin, A.J.2007-06 Meeting

EQUAL OPPORTUNITY EMPLOYER

BOARD EXECUTIVE DIRECTOR DAVID CURTIS, P.E. WRITES ON REGULATORY AGENCIES AS QUALITY CONTROL/QUALITY ASSURANCE

One of the most disturbing trends that I have observed over the past nineteen years as Executive Director of the Board is what I perceive as a misuse of regulatory review. Most work done by professional engineers and professional land surveyors is subject to review by a regulatory agency of the federal, state or local government. Whether the work product is a plat, a set of building plans, or plans depicting water and sewer improvements, our work is commonly reviewed by employees of those regulatory agencies. More and more, the Board is receiving expressions of concern from those regulatory agencies that engineers and surveyors are submitting incomplete, inaccurate, or otherwise significantly deficient plans. In some cases, the work product does not even comply with published and easily available checklists of items that the agency uses for review purposes and has made public. Too often, engineers and surveyors seem to be using the regulatory review process as their first quality control review. The regulatory agencies end up doing the design by "red-line." The Board has advised some regulatory agencies that they should not feel compelled to accept work products for review that are grossly deficient and appear to have been prepared without knowledge of the codes and standards against which their adequacy will be judged. In some cases, the Board has even suggested that the agency require a statement from the design professional upon subsequent submittal that, in the opinion of the design professional, the submittal is in compliance with all applicable statutes, rules and codes. If the work product accompanied by such a statement is then found to be substandard, the professional submitting it might be subject to accusations of incompetence or negligence. My point here is that professionals should conduct quality control and quality assurance functions before they submit a work product for regulatory review.

Keywords: regulatory review, plans, compliance, peer review, quality control, quality assurance

Approved April 2007, NB 39

STATE OF IDAHO

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March 9, 2009

Mike Reno, Supervisor, Land Based Systems
Central District Health Department
707 N. Armstrong Place
Boise, ID 83704

Dear Mr. Reno:

At its meeting on February 26, 2009 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors met and discussed your concern over a professional engineer sealing, signing and dating information contained in a document which bears the title block of the R.C. Worst Company of Coeur d'Alene. The Board voted to inform you that the situation appears to be one where an engineer is making a site specific adaptation of a pre-engineered product, pre-approved by DEQ, using siting and design criteria provided by the District Health Department. While it may not fit exactly under the definition of a "standard design plan" and the requirements of Idaho Code Section 54-1223(5), we are of the opinion that the professional engineer in this case has not taken responsibility for work in violation of the law.

Please call if you have any questions.

Sincerely,

John W. Howe, P.L.S.
Board Chair

JWH/DLC/dc:Central District Health Department, Mike Reno.2009-02 Meeting

EQUAL OPPORTUNITY EMPLOYER

WHEN ARE SEALED PLANS REQUIRED?

A City Building Official wrote regarding the authority of a Building Official to waive the requirement for the submission of plans prepared by a licensed design professional. The Board responded that waiver of the requirement was a judgment call of the Building Official and hinged on whether compliance with the applicable code can be assured by the Building Official without the design documents. In the Board's opinion, whether that can occur depends upon several factors, key of which are the complexity of the systems, size of the project, criticalness of the systems operation, and construction conditions expected to be encountered. First, if the systems to be installed are simple, incorporating components with which the code official is familiar, and only required to accomplish basic code functions with which the code official is familiar, waiver might be considered. Second, if only a minimal number of system components are required and interactions between systems and components are clearly understood and verifiable, again, waiver could be considered. On the other hand, a small project may be a complex one, in which case the waiver should not be considered. Third, if the systems only fulfill basic comfort functions, and their failure would not adversely affect the health, safety or function of the building, waiver may be justified. The final factor is the construction conditions expected to be encountered on site during construction. Stamped drawings provide the code official with record documents establishing construction standards regardless of whether the code official is able to verify all details of construction. If such documents are not available, the code official is accepting the obligation of confirmation by observation that all aspects of construction are satisfactory. If it is anticipated that key components may be concealed without the code official being able to establish their adequacy by observation, the presence of design documents provides a means of assuring adequacy of construction without the requirement that the Building Official observe all elements of construction. The Board believes that judicious application of the four criteria above provides the guidance necessary for the code officials to make appropriate decisions regarding the waiver of design documents being prepared by a licensed design professional.

Keywords: Building official, review, drawings, stamped, sealed

Approved 5-2004, NB 35 Updated 6-10-2020

PRACTICE OF ENGINEERING

Canadian PEng and UK Charter Engineers

Commissioning Requires PE

Engineer of Record and Shop Drawings

Engineers Must Show Monuments on Plans

Industrial Exemption Authorized

Nondestructive Testing and Visual Inspections

Operating Water and Wastewater Facilities

PE Disclaimer of Preliminary Plans Allowed

Practice of Engineering and Bridge Inspection

Practice of Engineering and Forensic Engineering

Practice of Engineering and SPCC Plans

Practice of Engineering and SWPPP Plans

River Stabilization Requires a PE

Standard of Care and Current Codes

Testifying Engineer Doesn't Require License

Use of PE Title

BOARD APPROVES CANADIAN PENG AND UK CHARTER ENGINEER LICENSING

The Idaho Legislature concurred on a rule change in the last session that defined a new international comity license process. The rule authorizes the Board to approve the licensing system in another country as substantially equivalent to Idaho's. Once approved, the Board may authorize the waiver of prescriptive examination requirements if PE applicants have obtained eight (8) or more years of licensed practice in their country with no disciplinary actions taken against them. The Board passed a motion to approve both the Canadian and United Kingdom Chartered Engineer system as substantially equivalent. Applicants possessing a PEng or CE credential may apply for an Idaho PE license by comity without the requirement of 2-years of U.S. experience and the passage of the two licensure examinations (FE and PE), if otherwise qualified by education and experience.

Keywords: PEng, Chartered Engineering, Canada, United Kingdom, UK, Professional Engineer, Comity, International

Approved 11-6-2015, NB 56

BOARD EXPRESSES OPINION ON "BUILDING COMMISSIONING"

In response to an inquiry from Larry V. Osgood, P.E., Administrator of the State Department of Administration, Division of Public Works, the Board expressed an opinion regarding services provided by a Commissioning Authority or Commissioning Agent or Commissioning Consultant. Services performed include participation in design, installation and start-up. The Board opinion stated, in pertinent part,

> "After reviewing the services performed by the Commissioning Agents, the Board concluded that persons performing those services would be practicing professional engineering as defined in Idaho Code and that those services could only be performed under the responsible charge of a person licensed as a professional engineer."

Key words: commissioning, responsible charge, public works

Approved 6-2001, NB31

THE ENGINEER OF RECORD AND SHOP DRAWINGS

The president of the American Institute of Steel Construction, Inc. recently wrote Governor Cecil D. Andrus and asked for a clarification of the responsibilities of the engineer-of-record and the fabricator on projects in Idaho. The Governor's office routed the request to the Board for an interpretation and the following are excerpts from the Board's letter to the president:

"In current practice, the level of design effort put forth by the engineer-of-record and the subsequent level of involvement of the fabricator seems to fall into one of two categories. In the first category, the engineer-of-record designs the entire structure including beams, columns, base plates, connections, etc. In this instance, the fabricator's preparation of shop drawings which are used to reduce the engineers design to individual fabricated steel members, and the submittal of shop drawings to the engineer-of-record, is to allow the engineer-of-record to confirm that the fabricator has properly interpreted the project design drawings.

In the second instance, the engineer-of-record may design the major components of the structure, but leave the preparation of the details of the connections, etc. to the fabricator. These details, in the form of shop drawings, are submitted to the engineer-of-record to allow the engineer-of-record to confirm that the fabricator has properly interpreted the intent of the engineer-of-record in view of the overall design.

Idaho Code Section 54-1202 defines the "practice of professional engineering" as

"any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and the responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, or to certify elevation information, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data."

In the first instance cited above, the engineer-of-record would be practicing engineering as defined in Idaho Code, but the fabricator would not, since the preparation of shop drawings by the fabricator is only to facilitate the manufacture or fabrication of the engineer's details in a form necessary for use within the fabricator's shop. The engineer-of-record would be required to place his or her professional engineer seal, signature and the date on the design documents.

In the second instance cited above, the engineer-of-record would be practicing engineering as defined in Idaho Code and would be required to place his or her professional engineer seal and signature and the date on the design documents. Because the fabricator is designing connection details, etc. for the structure that would be compatible with the overall needs of the structure, and since such design would require the application of engineering principles and data, the fabricator would also be practicing engineering. Since the fabricator in this instance would be practicing engineering, the person in responsible charge of the design of the connections, etc. would be required to be licensed as a Professional Engineer in the State of Idaho. The shop drawings that resulted from this effort by the fabricator would have to bear the seal and signature of the professional engineer in responsible charge of those activities, as well as the date. Sealing of the shop drawings by the fabricator does not relieve

the engineer-of-record of the ultimate responsibility for the adequacy of the overall design."

Keywords: shop drawings, fabricator, engineer-of-record, seal, stamp, connections

Approved 7-1992, NB 18 Updated 6-10-2020

ENGINEERS MUST SHOW LAND SURVEY MONUMENTS ON PLANS

The last session of the legislature passed House Bill No. 173 which was submitted by the Board. This bill amended Idaho Code Section 55-1612 and makes engineers subject to disciplinary action by the Board if they do not indicate on their plans the presence of land survey monuments which appear on a corner perpetuation record, BLM or GLO plat, record of survey or subdivision plat. It makes anyone liable for civil penalties if they prepare plans that do not indicate the presence of land survey monuments which appear on a corner perpetuation form, BLM or GLO plat, record of survey or subdivision plat, and the construction of the facility depicted on the plans results in the destruction of a land survey monument.

Keywords: monuments, plans, plat, record of survey, corner record, destruction, appear, discipline.

Approved October 1993, NB 20

ENGINEERS - ARE YOU SHOWING LAND SURVEY MONUMENTS ON YOUR PLANS?

The 1993 session of the Idaho legislature passed a law which requires professional engineers to show the presence of land survey monuments on their plans. Such monuments include any monuments that have been placed in GLO surveys, Records of Survey, subdivision plats, or perpetuated on Corner Record forms. Engineers who fail to comply with the law are subject to disciplinary action by the Board.

Approved July 1994, NB 21

INDUSTRIAL EXEMPTION PASSES LEGISLATURE

During their last session, the Idaho legislature passed House Bill No. 720 which put an "industrial exemption" into the licensing law. The bill was proposed by the Idaho Mining Association and received support from the Idaho Association of Commerce and Industry and the Division of Environment of the Department of Health and Welfare. Specifically, the law, which went into effect upon signature of the Governor, exempts from the license requirement "The practice of engineering by

employees of a corporation or a company as long as the services provided by them are for internal corporate or company use only."

Keywords: Industrial exemption, practice of engineering, internal corporate use, company.

Authorized July 1994, NB 21. Updated 6-10-2020

NONDESTRUCTIVE TESTING OR VISUAL INSPECTION INTERPRETATION

At its meeting held in Coeur d'Alene, Idaho on April 28,29, 1988 the Board adopted the following: INTERPRETATION - ISSUED BY THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

This Board interprets Section 54-1202(11), Idaho Code, to mean that the nondestructive testing or visual inspection of a building's structural, electrical, mechanical, thermal insulation and roofing/waterproofing subsystems does not constitute the practice of engineering. However, the analysis or interpretation of test results, as a result of the nondestructive testing or visual inspection, which requires the application of engineering principles and data, or the design or evaluation of modifications which would go beyond normal maintenance would be considered to fall within the definition of the practice of engineering, and an individual who advertises or practices in this area shall be registered as a Professional Engineer in the State of Idaho.

Keywords: testing, nondestructive, visual, inspection, practice of engineering

Approved: 11-1988, NB13. Updated 6-10-2020

STATE OF IDAHO

BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

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November 20, 2009

Roger J. Hales
Naylor & Hales, P.C.
950 W. Bannock Street, Suite 610
Boise, Idaho 83702

Dear Mr. Hales:

At its meeting on November 16-18, 2009 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors reviewed your letter to them dated November 4, 2009. In that letter you asked that the Board ". . . consider and determine whether an engineering license, in its opinion, includes the operation of a drinking water or wastewater facility."

Idaho Code Section 54-1202(11) defines "professional engineering" and "practice of professional engineering" as

". . . any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any **public or private utilities**, structures, buildings, machines, **equipment, processes, works, or projects**, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, **when such service requires the application of engineering principles and data**. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering." (**Emphasis added**)

The Board is of the opinion that operation of a water or wastewater facility could fall within the above definition.

The Board is of the opinion that some engineers possess the skills necessary to operate a drinking water or wastewater facility, but all engineers must comply with the Rules of Professional Responsibility, specifically, IDAPA 24.32.01.101.01, which states in pertinent part,

"A Licensee shall undertake to perform assignments only when qualified by education or experience in the specific technical field involved . . ."

If the Idaho Board of Drinking Water and Wastewater Professionals has concerns with the competency of any individual professional engineer in regard to operating a drinking water or wastewater system, they should familiarize themselves with the process to notify this Board of that concern. Information on that process can be obtained at http://www.ipels.idaho.gov/forms_pubs/Complaint_and_Disciplinary_Guidelines.htm

Please call if you have any questions.

For the Board,

William J. Ancell, P.E.

Board Chair

WJA/DLC/dc:Hales, Roger.2009-11 Meeting

Updated 6-10-2020

PE DISCLAIMER FOR PRELIMINARY PLANS

House Bill No. 380 passed by the 2008 Session of the Idaho Legislature contained amendments to Idaho Code Section 55-1613 which require a professional engineer who prepares construction plans which may disturb land survey monuments to retain the services of a professional land surveyor to conduct a field search to determine whether monuments exist at the location of corners. If they exist, the monuments must be reference out by a professional land surveyor prior to construction and reestablished and remonumented by a professional land surveyor after construction.

In response to an inquiry from a P.L.S., the Board issued an opinion that it would be acceptable for a professional engineer who prepares preliminary road plans to place a note on those plans which states "The Professional Engineer who is in responsible charge of the preparation of these Preliminary Roadway Plans certifies that he has complied with Section 55-1613 of the Idaho Code as to the existence and location of found survey monuments. He is not responsible for the preparation of the Final Roadway Plans or the construction of the roadway."

The Board went on to state that before a professional engineer could sign such a statement, he would need to have adequate documentation from the professional land surveyor on the matter.

Keywords: monuments, disclaimer, road plans

NB 42 November 2008. Updated 6-10-2020

PRACTICE OF ENGINEERING - BRIDGE INSPECTION AND RATING
Question – is a PE required for Bridge Inspections and Load Ratings?

A procurement solicitation from a state agency initially advertised a contract for bidding bridge inspection services and bridge load rating analysis. Later it was determined that the solicitation needed to follow the Qualifications Based Selection (QBS) process as the contracted work required a licensed professional engineer. The solicitation was modified and followed the QBS process. The question is whether bridge inspections and load ratings require a PE license?

Answer

The following are the National Bridge Inspection Standards (NBIS) qualifications for bridge inspectors (Team Leader) as identified by the Federal Highway Administration in the Code of Federal Regulations. Public road agencies are required to follow these standards:

§ 650.309 Qualifications of personnel.

(a) *A program manager must, at a minimum:*

(1) *Be a registered professional engineer, or have ten years bridge inspection experience; and*

(2) *Successfully complete a Federal Highway Administration (FHWA) approved comprehensive bridge inspection training course.*

(b) *There are five ways to qualify as a team leader. A team leader must, at a minimum:*

(1) *Have the qualifications specified in paragraph (a) of this section; or*

(2) *Have five years bridge inspection experience and have successfully completed an FHWA approved comprehensive bridge inspection training course; or*

(3) *Be certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) and have successfully completed an FHWA approved comprehensive bridge inspection training course, or*

(4) *Have all of the following:*

(i) *A bachelor's degree in engineering from a college or university accredited by or determined as substantially equivalent by the Accreditation Board for Engineering and Technology;*

(ii) *Successfully passed the National Council of Examiners for Engineering and Surveying Fundamentals of Engineering examination;*

(iii) *Two years of bridge inspection experience; and*

(iv) *Successfully completed an FHWA approved comprehensive bridge inspection training course, or*

(5) *Have all of the following:*

(i) *An associate's degree in engineering or engineering technology from a college or university accredited by or determined as substantially equivalent by the Accreditation Board for Engineering and Technology;*

(ii) *Four years of bridge inspection experience; and*

(iii) *Successfully completed an FHWA approved comprehensive bridge inspection training course.*

(c) *The individual charged with the overall responsibility for load rating bridges must be a registered professional engineer.*

A PE license is not required to conduct bridge inspections; however, it is required to perform load ratings.

Keywords: bridge inspection, load rating, practice of engineering

Approved 1-2-2018, NB60

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June 13, 2017

Sent Via Email To: batzer@batzerengineering.com

Stephen A. Batzer, Ph.D., P.E.
Batzer Engineering, Inc.
10798 Viney Grove Road
Prairie Grove, AR 72753

Re: Your Letter of Inquiry dated May 17, 2017

Dear Dr. Batzer:

I am the attorney for the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors ("Board"). The Board has asked me to respond to your letter of May 17, 2017, in which you have asked for an opinion regarding investigation and testimony by forensic engineers as expert witnesses.

Generally, expert witnesses who testify in court need not become licensed in the state simply because they assist a litigant and render an opinion. However, it is not unusual for engineers from other states to do more than testify. For example, in one recent matter, an out of state engineer came to Idaho, made several tests, applied engineering principles, wrote an engineering opinion letter and billed the client for engineering services, all without becoming licensed.

Hence, the Board will examine each matter coming to its attention on a case-by-case basis. The statute defining the practice of engineering is the key to any determination made by the Board. The relevant language of Idaho Code § 54-1202 is as follows:

> "Professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public for any

> project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects or to certify elevation information, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

Idaho Code § 54-1202(10).

In short, if an out-of-state engineer intends to perform services as described above on a project within Idaho, then that person should seek a license by comity, irrespective of whether the person performs the service in preparation for testifying as an expert.

Yours very truly

MICHAEL J. KANE

MJK:tlp
cc: Mr. Keith Simila, Executive Director, IPELS
James L. Szatkowski, P.E., Deputy Director, IPELS

PRACTICE OF ENGINEERING SPCC PLANS

Are SPCC plans required to be signed and sealed by a P.E.?

A question came up regarding a requirement on whether Spill Prevention, Control and Countermeasure Plans (SPCC) are required to be sealed by a PE from another state.

Answer:
The Board rendered a decision that SPCC plans that contain engineering work for qualified facilities are required to be certified by an Idaho PE for projects physically located in Idaho. See EPA guidance at:
https://www.epa.gov/emergencies/docs/oil/spcc/qualfac_fs.pdf.

Keywords: SWCC, emergency response, PE, stamp, seal, EPA, qualified facilities, practice of engineering

Approved November 2013, NB 52

PRACTICE OF ENGINEERING SWPPP PLANS

A P.E. from the Idaho Transportation Department asks: are Storm Water Pollution Prevention Plans (SWPPP) required to be signed and sealed by a P.E.?

As we discussed, The Idaho Transportation Department's current practice is to have all plan sheets in the final PS&E bid document sealed by a licensed engineer. We have recently been approached with the question as to whether or not Storm Water Pollution Prevention Plans (SWPPPs) are required to be sealed by an engineer.

Per IC54-1202(10) it appears SWPPPs may not require an engineer's seal if they don't affect public welfare or the safety of life, health, or property. However IC54-1218(1) indicates that the PS&E documents of any public works projects that affect public health or safety must be prepared by a professional engineer. My question is do SWPPPs included in the PS&E bid documents need to be sealed by an engineer? As I read these two sections of code, I think the answer is yes, but I would like to request some clarification and guidance from the PE/PLS Board.

Respectfully,

P. E.
Idaho Transportation Department

IC54-1202(10), "Professional engineering" and "practice of professional engineering" mean any service or creative work offered to or performed for the public…wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data.

IC54-1218(1), It shall be unlawful for this state…to engage in the construction of any public works when the public health or safety is involved unless the plans and specifications and estimates have been prepared by, and the construction reviewed by, a professional engineer.

Answer:
The Board responded that SWPPPs that contain engineering work are required to be signed and sealed by an Idaho P.E. for all projects physically located in Idaho.

Keywords: SWPPP, storm water, PE, stamp, seal, ITD, roads, practice of engineering

Approved 6-2-2016, NB 57

RIVERBANK STABILIZATION REQUIRES PE

The Board received a request for inquiry related to work being performed along the Wood River in Blaine, County by a P.E. in Southern Idaho. Private land owners hired consulting firms to address stream bank stabilization to protect property along the river. Upon investigation it was determined that the persons performing the work had qualifications related to fisheries and hydrology, but not engineering. Review of the type of work included hydraulic engineering such as the placement and sizing of riprap and other stabilization measures. After review of the proposed measures, the Board determined that the hydraulic engineering component must be done by an Idaho licensed professional engineer.

Key words: PE, Licensure, Hydraulic Engineering, Construction

Approved 11-9-2018, NB62

STANDARD OF CARE REQUIRES CURRENT CODES AND STANDARDS

A Building Official for a local jurisdiction has notified the Board that he frequently receives submittals from professional engineers on building projects and the computer software utilized to aid in the design is based on a version of the Building Code which is not the version most recently adopted by the jurisdiction. The Board encourages all professional engineers to obtain and use current and up-to-date software in relation to codes and standards. To do otherwise might well be considered a violation of the Rules of Professional Responsibility entitled "Standard of Care" which requires licensees under duty to the party for whom the service is to be performed to "exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances."

Keywords: Building official, review, building code, standard of care

Approved: 6-2008, NB41 Updated 6-10-2020

LEGAL MEMORANDUM

DATE: **March 3, 2017**

TO: **Mike Kane**

FROM: **Barbara Beehner-Kane**

RE: **Must a testifying engineer be licensed in Idaho?**

FILE: **#825.00**

When you asked me to research this question, we briefly discussed the broadness of the question
.. . was the hypothetical situation in a courtroom under oath or in an administrative proceeding where the rules of evidence are not as stringent? Was the engineer testifying as to the standard of care required of an engineer licensed to practice in Idaho or was the testimony couched in terms of broad engineering questions.

In order to reduce this question to something concrete, I approached it as a question whether there were circumstances where Board had the authority to discipline an individual testifying as an engineer. I will be reproducing substantial sections of Idaho Code in order to reflect how I reached the determination that simply testifying in general is not a basis for disciplining an individual.

Idaho Code § 54-1222 makes it a violation and allows prosecution of "any person who shall practice, or offer to practice, professional engineering in this state without being licensed in accordance with the provisions of this chapter."

Idaho Code § 54-1202 defines "professional engineering" or the "practice of professional engineering" as:

> ... any service or creative work offered to or performed for the public for any project physically located in this state, such as consultation, investigation, evaluation, planning, designing, design coordination, teaching upper division engineering design subjects, and responsible charge of observation of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects or to certify elevation information, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service requires the application of engineering principles and data. A person shall be construed to practice or offer to practice professional engineering within the meaning and intent of this chapter who practices or offers to practice any of the branches of the

> profession of engineering for the public for any project physically located in this state or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter, or holds himself out as able to perform or who does perform for the public for any _project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering.

Idaho Code§ 54-1202(11).

The other statute to consider is Idaho Code § 54-1223, which is the savings clause for this chapter and states in pertinent part:

> A professional engineer licensed in Idaho may review the work of a professional engineer who is licensed in another jurisdiction of the United States or a foreign country on a project that is a site adaptation of a standard design plan to determine that the standard design plan meets the standard of care and is applicable to the intended circumstance, with or without modification...

Idaho Code§ 54-1223(5).

Is someone testifying as an engineer engaged in the practice of professional engineering as defined by the statute? Is the individual holding himself out as able to perform or who does perform for the public for any project physically located in this state, any engineering service or work or any other service designated by the practitioner which is the practice of professional engineering?

If Idaho Code § 54-1223(5) allows an Idaho engineer to review the work of a professional engineer licensed in another jurisdiction, does this statute include the foreseeable possibility that the Idaho engineer would be called upon to testify as to his review? Would then the reverse hold true? Would a foreign engineer be able to review the work of a professional engineer licensed to practice in Idaho and testify as to his findings?

In summary, while a specific matter with specific facts may change the analysis of the question, in general, the mere action of testifying will not trigger the authority of the Board to discipline an individual for practicing or offering to practice, professional engineering in this state without being licensed.

USE OF TITLE "P.E." IF YOU'RE LICENSED ONLY IN ANOTHER STATE

There have been several instances recently which have come to the attention of the Board in which a person licensed as a professional engineer in some other jurisdiction, but not in Idaho, was using the title "P.E." in correspondence and/or on business cards. Idaho Code defines a Professional Engineer" as a person who has been duly licensed as a professional engineer by "the board," and "the board" is defined as the **Idaho** Board. Persons licensed in other jurisdictions may use the title "P.E." on business cards, etc. for identification purposes, but they must clearly show that they are not licensed as a professional engineer in Idaho and they may not offer their professional services until such time as they become licensed in Idaho. When working as an exempt employee or subordinate to the Idaho P.E. on an Idaho project, such person should avoid the use of the title "P.E." entirely. The Board is concerned that, to do otherwise would risk confusion on the part of the public.

Keywords: title, P.E. business cards, offer, professional services

Approved 10-2002, NB 33 Updated 6-10-2020

RECORD DRAWINGS

Disclaimer for Record Drawings

Requirement for PE and Seal

DISCLAIMER FOR RECORD DRAWINGS

In response to an inquiry from the Department of Environmental Quality, the Board reviewed Idaho Code Section 39-118(3) and concluded that the services required to prepare the complete accurate record drawings or the statement in lieu of complete and accurate record drawings involves the practice of engineering and must be sealed, signed and dated by the professional engineer in responsible charge of their preparation. The Board later met with representatives of the American Council of Engineering Companies of Idaho (ACEC-Idaho) who asked for a clarification of the matter. The Board indicated that it had no objection to, and knows of no prohibition against, a professional engineer placing a "qualifying statement" adjacent to his or her seal on as-built or record drawings. The qualifying statement might reference such matters as the source of the information contained on the drawings and limitations of responsibility for sources not under the control of the professional engineer. ACEC-Idaho then posed some specific questions to the Board. Those questions and the answers provided by the Board follow.

Question: What "disclaimer" language would be applicable to an engineer's stamp on a record drawing?

Answer: Any "disclaimer" would have to be tailored to reflect the level of responsibility on each individual job and the language does not lend itself to standardization.

Question: What would be a good definition of the standard of care for the role of an engineer as being in "responsible charge" of construction observation?

Answer: When Idaho Code Section 39-118 applies, or when contract language similar to that in Idaho Code Section 39-118 is incorporated, it requires the preparation of record drawings by an engineer. Idaho Code Section 39-118 also requires field observation by the engineer or his designee, so the standard of care for supervision of construction observation should include the requirement that an engineer be retained by the owner to be in responsible charge of the construction observation.

Keywords: record drawings, stamping, construction observation, standard of care, disclaimer

Approved 11-2007, NB40

REQUIREMENT FOR PE SEAL ON "RECORD DRAWINGS"

In an opinion requested by the State Department of Environmental Quality, the Board has decided that responsible charge of the preparation of "record plans and specifications" or the statement of no material deviation in lieu of those documents which is required under Idaho Code Section 39-118 involves the practice of engineering as defined in Idaho Code. Since this activity involves the practice of engineering, the record drawings or the statement of no material deviation in lieu of them must be sealed, signed and dated by the professional engineer in responsible charge of their preparation.

Keywords: record drawings, practice of engineering, seal

Approved: 4-2006 NB37