

Idaho Board of Registration of Professional Engineers and Professional Land Surveyors

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BOARD STAFF

David L. Curtis, P.E., Executive Director
Email dave.curtis@ipels.idaho.gov
James L. Szatkowski, P.E., Deputy Director
Email jim.szatkowski@ipels.idaho.gov
Jennifer Rowe, Administrative Secretary
Email jennifer.rowe@ipels.idaho.gov
Edith Williams, Office Specialist
Email edith.williams@ipels.idaho.gov

Board Home Page www.ipels.idaho.gov

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NEWS BULLETIN

40th Edition

INTRODUCTION

This News Bulletin is distributed a minimum of twice per year by the Idaho State Board of Registration of Professional Engineers and Professional Land Surveyors to inform the public and the State's Professional Engineers and Professional Land Surveyors of those events which significantly affect the professions.

JAMES H. MILLIGAN, P.E., Ph.D REAPPOINTED TO THE BOARD

Governor C.L. "Butch" Otter has reappointed James H. Milligan, P.E., Ph.D. to a second five-year term on the Board. Milligan was first appointed in 1999 to complete the unexpired term of another Board Member, then was appointed to his first five-year term in 2002. Jim is the retired Civil Engineering Department Chair at the University of Idaho where he continues to teach as an Adjunct Professor. He is extremely active in the examination arena of the National Council of Examiners for Engineering and Surveying and we look forward to having him on the Board for another five years.

JAMES L. SZATKOWSKI, P.E. SELECTED AS DEPUTY DIRECTOR

James L. Szatkowski, P.E. was selected as the Deputy Director of the Board and began in that capacity in early August. Jim has a diverse background with a bachelors degree in electrical engineering, a masters degree in mechanical engineering, a twenty year stint in the United States Navy (retiring in 1990 as an Engineering Duty Officer), several years in the consulting engineering business, six years as a member and emeritus member of the Utah Board of Professional Engineers and Land Surveyors, and most recently, six years as a Project Manager in the State Division of Public Works. Jim's responsibilities for the Board will include being the lead investigator on complaints, information technology, and "other duties as assigned." The Deputy Director position is the first new position with the Board in approximately 35 years.

LOBBYING OF EXECUTIVE OFFICIALS

The 2006 session of the Idaho Legislature passed House Bill No. 707 which added executive branch lobbyists and lobbying activities to Idaho's "sunshine laws." The law, which went into effect on July 1, 2006, requires anyone who attempts to influence executive or administrative actions at the state level for compensation to register with the Secretary of State and file semiannual reports. Executive Officials, contact with whom to influence executive or administrative actions would require registration, include the Board Members, the Executive Director and the Deputy Director.

BOARD OPINION ON STAMPING OF 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 and 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 code modifications would be sufficient to provide cover for the stamping engineer?

Answer: The Board will be proposing changes to numerous sections of Title 54 Chapter 12 of Idaho Code, including this section, for consideration by the 2008 session of the Legislature. The Board will be circulating its proposed changes to stakeholders in the coming months and we look forward to your review comments.

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.

DEWITT T. "TAL" NEILL, P.E. PASSES AWAY

Former Board Member Dewitt T. "Tal" Neill, P.E., Ph.D. died on May 12, 2007 in Pocatello, Idaho. He served on the Board for ten years from 1988 to 1998. During his tenure the Board initiated such matters as recognition of the Structural Engineering examinations, the requirement of a degree, if not in engineering then in a related science, for licensure as a professional engineer, and the waiver of the requirement of passage of the Fundamentals of Engineering exam for exceptional individuals. As well as being a faculty member of the Idaho State University College of Engineering, Tal participated in zone and national activities of the National Council of Examiners for Engineering and Surveying and served as the NCEES representative to the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology. His friendship, enthusiasm, and dedication to the profession will be greatly missed.

BOARD TO AUDIT CONTINUING PROFESSIONAL DEVELOPMENT

Beginning in 1999, Professional Land Surveyors in Idaho have been required to comply with continuing professional development rules as a condition of license renewal. Due to a shortage of personnel and other resources, the Board was not able to perform random audits of compliance with that requirement. With the addition of the Deputy Director position the Board chose to begin auditing compliance. In September of this year, the Board began auditing a randomly selected five percent of those licensed to practice professional land surveying. The Board has discovered what it considers to be serious deficiencies in the record keeping and compliance with requirements of the Administrative Rules by a significant number of professional land surveyor license holders. The Board will take action against those found to be out of compliance with the requirements and all professional land surveyor license holders should be aware that this will continue to be monitored by the Board.

IN MEMORY OF THOSE RECENTLY DECEASED

John A. Dearien, Jr., CE/LS 3122, Mountain View, Arkansas

Mark B. Hendrickson, ME 6031, Idaho Falls, Idaho

R. Keith Higginson, CE 1721, St. George, Utah

Iver Brian Iverson, CE/LS 3258, Boise, Idaho

J. William Jewell, CE/LS, Montpelier, Idaho

William E. Jordan, ME 5109, Brentwood, Tennessee

Melvin D. Lauteren, LS 951, Toppenish, Washington

Keith E. Longenecker, CE/LS 2049, Boise, Idaho

William F. Lytle, ME/LS 2145, Coeur d'Alene, Idaho

Dewitt T. "Tal" Neill, ChE 1624, Pocatello, Idaho

Robert W. Retherford, EE 643, Anchorage, Alaska

Richard Glenn Shelton, LS 1019, Riverton, Wyoming

Elmer I. Soniville, CE/LS 733, Boise, Idaho

Charles W. Sweetwood, MinE 1118, Boise, Idaho

DISCIPLINARY ACTIONS

The following final formal actions on complaints have been taken by the Board since publication of NEWS BULLETIN No. 38 in June of 2006.

Docket Nos. 03.19 and 05.18 – IN THE MATTER OF DARREN R LEAVITT, P.L.S. Leavitt signed a Stipulation and Consent Order in which he agreed that there was evidence by which the Board could find that he had committed one or more violations of IDAPA 10.01.02.005.02 (Standard of Care) and/or Idaho Code and that those violations could be found as sufficient grounds for the remedial measures agreed to in the document. Leavitt paid an administrative penalty of \$2,000 to the General Fund of the State of Idaho, made specific modifications and changes to his practices, instituted a quality assurance/quality control program on all records of survey, and is required to complete "Ethics for Surveyors" and "Qualify Assurance" continuing education courses. His license was revoked, but the revocation was stayed subject to having his work in connection with his next ten (10) records of survey reviewed by a professional land surveyor approved by the Board. He is precluded from recording or submitting for review to any government agency any record of survey prior to receipt of the reviewing surveyor's written findings that the record of survey is materially and substantially free of errors of the nature contained in the complaint. He is required to notify, in writing, each of the clients relating to his next ten (10) records of survey that his work is being reviewed by another surveyor. If his next ten (10) records of survey are satisfactory, his license shall be reinstated without restrictions. Leavitt was reprimanded by the Board and he agreed not to record or submit for review to any government agency any subdivision plat for three (3) years from the date of the execution of the Consent Order (August 14, 2007).

engineering in Kentucky was revoked for reasons or causes that would constitute a violation of the Idaho laws or rules regulating the practice of engineering. Following a hearing the Board voted to revoke McKinney's license to practice engineering in Idaho.

Docket No. 06.16 – IN THE MATTER OF LOUIS F. VERMEER, P.E. Following a hearing the Board concluded that Vermeer acted incompetently on portions of five projects in Bonner County and was not complete, objective and truthful on another. The Board voted to allow Vermeer to surrender his license to practice engineering in Idaho effective January 1, 2008. Between the dates of September 15, 2007 and December 31, 2007 Mr. Vermeer's work on private work must be reviewed by a professional engineer employed by a County or City having jurisdiction or at Vermeer's expense by an outside professional engineer acceptable to the Board. Between the dates of September 15, 2007 and December 31, 2007 Vermeer's work for the City of Ponderay must be reviewed by another professional engineer approved by the Board. Mr. Vermeer may apply for reinstatement of his license after January 1, 2008 only by completing a course on ethics approved by the Board, successfully completing at least 90 contact hours of coursework on hydraulics and hydrology relating to stormwater management, and taking and passing the Principles and Practice of Engineering examination accepted by Idaho.

Docket No. 07.04 – IN THE MATTER OF DARREN TRUCHOT, P.E. Truchot signed a Stipulation and Consent Order in which he agreed there was sufficient evidence to support a finding that he failed to notify another registrant of his discovery of a material discrepancy, error, or omission in his or their work in violation of IDAPA 10.01.02.005.04; and that due to a lack of experience in the specific technical field, indiscriminately criticized another registrants work in public in violation of IDAPA 10.01.02.007.04. Truchot was admonished for his conduct, paid an administrative penalty of \$1,000 to the General Fund of the State of Idaho and is required to complete a course in Engineering Ethics.

Docket No. 07.09 – IN THE MATTER OF ROBERT P. DREYER, P.L.S. Dreyer signed a Stipulation and Consent Order in which he agreed there was sufficient evidence to support a finding that he violated Idaho Code Section 55-1906 by failing to show instrument numbers of any corner records which had been recorded previously and corner records of any corners which were set in conjunction with a survey he performed in Custer and Lemhi Counties Idaho. Dreyer was admonished for his conduct, paid an administrative penalty of \$1,000 to the General Fund of the State of Idaho, was required to monument any corners not previously monumented, was required to prepare corner records on all corners requiring same, and was required to prepare an amended Record of Survey to correct the deficiencies noted.

Docket No. 07.12 – IN THE MATTER OF RODNEY D. SCOTT, P.E. Scott signed a Stipulation and Consent Order in which he agreed that there was sufficient evidence to support a finding that he (1) violated IDAPA Administrative Rule 10.01.02.006.01 by undertaking a design of retaining walls and foundations on a project in Kootenai County, the complexity and scope of which were beyond his qualifications, and (2) violated IDAPA Administrative Rule 10.01.02.005.04 for failing to substantiate his contention that the structures were adequately designed when requested to do so. Scott voluntarily surrendered his license to practice as a professional engineer in the State of Idaho and agreed not to renew or seek reinstatement of his license.

Docket No. 07.16 – IN THE MATTER OF SCOTT BYBEE, P.E. Bybee signed a Stipulation and Consent Order in which he agreed there was sufficient evidence to support a finding that he (1) violated Idaho Code Section 54-1215(c) and 54-1215(d) for signing and sealing a plat in Twin Falls County as a professional land surveyor, (2) violated Idaho Code Section 54-1220 for requesting that a plat be recorded without the seal and signature of a professional land surveyor, (3) violated Idaho Code Sections 54-1215(c) and 54-1215(d) and IDAPA 10.01.02.006.01 for placing his seal and signature on documents for which he was not in responsible charge, and (4) violated Idaho Code Section 54-1215(3)(b) for failing to place the words "preliminary," "draft," "not for construction" or similar words on an unsigned and unsealed document to distinguish that document from a final document. Bybee was reprimanded for his conduct, he paid an administrative penalty of \$2,000 to the General Fund of the State of Idaho, for the period of September 1, 2007 to December 31, 2007 his practice as a professional

engineer was limited to his work as the city engineer for the City of Jerome, he was precluded from accepting any new clients for which the practice of engineering is required between September 1, 2007 and December 31, 2007, he was required to complete a course in Engineering Ethics and he was required to contact anyone for whom he has performed a “Land Division Plat” or “Land Division Survey” or any other instrument the purpose of which was to create a new boundary or boundaries and notify such persons in writing that he was not qualified by law to perform such work..

Docket No. 07.19 – IN THE MATTER OF RICHARD H. CARLSON, P.L.S. Carlson signed a Stipulation and Consent Order in which he agreed there was sufficient evidence to support a finding that he (1) was negligent or incompetent by certifying that a plat in Twin Falls County complied with the State of Idaho Code relating to plats and surveys, when, in fact, the plat had been signed, sealed and dated by a person not licensed to practice as a professional land surveyor in Idaho, (2) was negligent or incompetent by certifying that a plat in Jerome County complied with the State of Idaho Code relating to plats and surveys, when, in fact, the plat had not been signed by any person licensed as a professional land surveyor in Idaho, and (3) placed his professional land surveyor seal and his signature on both the above plats in violation of Idaho Code Sections 54-1215I and (d). Carlson was admonished for his conduct and paid an administrative penalty of \$1,000 to the General Fund of the State of Idaho.

QUESTIONS ON CONDOMINIUMS

Gary Briant, P.L.S. asked the Board several questions regarding condominiums. Idaho Code Section 55-1504iii requires “diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions, showing elevations where multi-level or multi-story structures are diagrammed.” Idaho Code Section 55-1509(a) states, in pertinent part, “In interpreting the declaration, plat or plats, and deeds, the existing physical boundaries of the unit as originally constructed or as reconstructed in lieu thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, plat or plats, or deed, regardless of settling lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, plat or plats, or deed and the actual boundaries of units in the building.” Briant comments “My interpretation of diagrammatic floor plans . . . is that the plat simply needs to show a width, length and height of the interior perimeter walls of each unit. . . I’m just looking for a way to calculate what the air space would be that [the] public is buying. . . In other words the building itself is the monument” The Board agreed and told Briant that the relative location and approximate dimensions of interior perimeter walls of each condominium unit are sufficient. On another related matter Briant asked the Board for an interpretation of the requirement in Idaho Code Section 55-1504 which requires “showing elevations where multi-level or multi-story structures are diagrammed.” Briant said “My interpretation of “showing elevations” is to show by either a section view with dimensions showing the height from finish floor to finish ceiling and if multi-story showing a relationship to each story finish floor from the first floor finished elevation. This could be done also with elevations of each finished floor and ceiling elevation or elevations if ceiling heights vary. Where the confusion comes in is there are some that feel that this section is referring to actual elevations from a known datum like NGVD 29 or NAVD 88 for each of these. I feel it is just dimensions to be able to calculate volume of space that the person is buying and that a known datum is unnecessary.” Again, the Board agreed with Briant and told him that the elevations can be relative and need not be tied to a standard datum.

QUALIFICATION BASED SELECTION

Idaho Code Section 67-2320 requires that all state agencies and political subdivisions of the state retain the services of engineers, land surveyors and several other professionals on the basis of qualifications followed by a negotiation of a scope of services and fee. This process is often call “Qualification Based Selection”, or “QBS.” Private sector consumers of professional services are not required to follow these guidelines. The Board’s Rules of Professional Responsibility state that “A Registrant or Certificate Holder should seek professional employment or professional service work on the basis of qualifications and competence for proper accomplishment of the work assignment.” The verb “should” is permissive, not mandatory, and is used in this Rule because QBS, while mandatory for state agencies and political subdivisions of the state is not required in the private sector. Because QBS is mandatory for state agencies and political subdivisions of the state, professional engineers and professional land surveyors should

not submit proposals which include fee information to those entities in violation of the QBS requirements. If a state agency or political subdivision of the state solicits proposals for engineering or land surveying work in a manner that is not in compliance with Idaho Code Section 67-2320, engineers or land surveyors should contact the QBS Facilitator’s Council at (208) 321-1736 and they will contact the entity to educate them about the statute and QBS process.

SEEKING OR ACCEPTING WORK WHICH IS UNDER CONTRACT TO ANOTHER

One of the most commonly asked questions about the Board’s Rules of Professional Responsibility relates to Rule IDAPA 10.01.02.009.03, “Assignment On Which Others Are Employed.” A review of that Rule and its application seems in order to clarify its intent and application. Rule 009.03 states “A Registrant or Certificate Holder shall not knowingly seek or accept employment for professional services for an assignment which another Registrant or Certificate Holder is employed, or contracted to perform without the currently employed or contracted entity being informed in writing.” Simply stated, the Rule says that you cannot pursue or accept work that another professional has a contract to perform unless you inform that other professional in writing. The issue of whether or not the currently contracted professional has been paid for their work is not within the jurisdiction of the Board to address.

DISCOVERY OF A PROBLEM WITH THE WORK OF ANOTHER PROFESSIONAL

Another question that is frequently addressed by the Board and staff deals with the discovery of a problem in the work of another professional. IDAPA 10.01.02.005.04 states “Obligation To Communicate Discovery Of Discrepancy. If a Registrant or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Registrant or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the Registrant or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Registrant or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within sixty (60) calendar days to any question about his work raised by another Registrant or Certificate Holder. Failure to respond on the part of the Registrant or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Registrant or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days.” Simply stated, if you discover a problem with the work of another professional, you must notify them in writing. They have sixty days in which to respond, and you do not receive a satisfactory response you have the further obligation to notify the Board.

IT Enhancements in the Board Office

The Board has a revamped website. All the features you expect are still there, but reorganized with a left-navigation buttons. The data on the “Search for Licensees” and on the “Roster Download” features are more current! The data is uploaded to the server virtually every morning from the Board office, so it contains all the information entered by Staff the previous day (and more often, if needed). You can also find the Board News Bulletins (which are no longer mailed out except by request), the updated Law Book for 2007 (a nice PDF compendium of all the Statutes and Administrative Rules that apply to engineers and surveyors) and more! We’ve also added links to NCEES and ELSEES for other licensing and exam administration questions. Staff points of contact for questions have been clarified on the home page – check it out at <http://www.ipels.idaho.gov>

CALENDAR OF UPCOMING EVENTS

February 26-28, 2008..... Board Meeting, Pocatello, Idaho
April 17-19, 2008..... Board Meeting in Boise, Idaho

May 15-17, 2008.....NCEES Western Zone Meeting in Bismarck, ND
June 19-21, 2008..... Board Meeting in Boise, Idaho
July 31-August 2, 2008..... Board Retreat in Riggins, Idaho
August 13-16, 2008..... NCEES Annual Meeting in Minneapolis, MN
September 4-6, 2008..... Board Meeting in Boise, Idaho
November 20-22, 2008 Board Meeting in Boise, Idaho