

HalfMoon Seminar

December 19, 2018

Presented By

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eTHiks

noun

1. moral principles that govern a person's behavior or the conducting of an activity.
“medical ethics also enter into the question”
synonyms: moral code, morals, morality, values, rights and wrongs, principles, ideals, standards (of behavior), value system, virtues, dictates of conscience
“your so-called newspaper is clearly not burdened by a sense of ethics”
2. the branch of knowledge that deals with moral principles.

ETHICAL SCENARIOS

1. Motivation for becoming a professional engineer
 - Independence while performing services
 - Client loyalty
2. Client Obligations
3. Construction Oversight
4. Inducements from suppliers
5. Design Credit and Responsibility
6. Pay to Play

THE STATE OF TEXAS
**TEXAS ENGINEERING PRACTICE ACT
AND RULES CONCERNING
THE PRACTICE OF ENGINEERING
AND
PROFESSIONAL ENGINEERING LICENSURE**



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Lines to the left of the text indicate rules which have changed since the last publication was released on September 5, 2017. Changes to tables are indicated with a gray background.

Rules effective March 15, 2018

§ 1001.004. Legislative Purpose and Intent; Liberal Construction of Chapter

- (a) The legislature recognizes the vital impact that the rapid advance of knowledge of the mathematical, physical, and engineering sciences as applied in the practice of engineering has on the lives, property, economy, and security of state residents and the national defense.
- (b) The purpose of this chapter is to:
- (1) protect the public health, safety, and welfare;
 - (2) enable the state and the public to identify persons authorized to practice engineering in this state; and
 - (3) fix responsibility for work done or services or acts performed in the practice of engineering.
- (c) The legislature intends that:
- (1) the privilege of practicing engineering be entrusted only to a person licensed and practicing under this chapter;
 - (2) only a person licensed under this chapter may:
 - (A) engage in the practice of engineering;
 - (B) be represented in any way as any kind of “engineer”; or
 - (C) make any professional use of the term “engineer”; and
 - (3) this chapter will be strictly complied with and enforced.

§ 1001.003. Practice of Engineering

(a) In this section:

(1) “Design coordination” includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with professional regard for the ability of each professional involved in a multidisciplinary effort.

(2) “Engineering survey” includes any survey activity required to support the sound conception, planning, design, construction, maintenance, or operation of an engineered project. The term does not include the surveying of real property or other activity regulated under Chapter 1071.

(b) In this chapter, “practice of engineering” means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.

(c) The practice of engineering includes:

- (1) consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;
- (2) design, conceptual design, or conceptual design coordination of engineering works or systems;
- (3) development or optimization of plans and specifications for engineering works or systems;
- (4) planning the use or alteration of land or water or the design or analysis of works or systems for the use or alteration of land or water;
- (5) responsible charge of engineering teaching or the teaching of engineering;
- (6) performing an engineering survey or study;
- (7) engineering for construction, alteration, or repair of real property;
- (8) engineering for preparation of an operating or maintenance manual;
- (9) engineering for review of the construction or installation of engineered works to monitor compliance with drawings or specifications;
- (10) a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature; or
- (11) providing an engineering opinion or analysis related to a certificate of merit under Chapter 150, Civil Practice and Remedies Code; or
- (12) any other professional service necessary for the planning, progress, or completion of an engineering service.

- (d) The preparation of engineering plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:
- (1) site plans depicting the location and orientation of a building on the site based on:
 - (A) a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and
 - (B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;
 - (2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in:
 - (A) plan views;
 - (B) cross-sections depicting building components from a hypothetical cut line through a building; and
 - (C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or tire-spread considerations;
 - (3) life safety plans and sheets, including accessibility ramps and related code analyses; and
 - (4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

- (e) The following activities may be performed by either an engineer or an architect:
 - (1) programming for construction projects, including:
 - (A) identification of economic, legal, and natural constraints; and
 - (B) determination of the scope of functional elements;
 - (2) recommending and overseeing appropriate construction project delivery systems;
 - (3) consulting with regard to, investigating, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and
 - (4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

§ 1001.302. License Eligibility Requirements

(d) A person is not eligible to be licensed as an engineer unless the person is of good character and reputation.

§ 1001.252. General Rules Regarding Complaint Investigation and Disposition

- (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.
- (b) The board by rule shall specify:
 - (1) the manner by which a person may contact the board for assistance in filing a complaint;
 - (2) the place at which a complaint must be filed;
 - (3) the proper form of a complaint; and
 - (4) the information that must be included in a complaint.
- (c) The board's procedures must permit a member of the public who desires to file a complaint to:
 - (1) speak to an investigator on the staff of the board if the person desires to do so; or
 - (2) easily and conveniently access the board's complaint process without being required to speak to an investigator on the staff of the board if the person does not desire to speak to an investigator.
- (d) The board shall consider any written grievance against a license holder or other person filed with the board as a complaint.

- (e) A complaint must include information sufficient for the board to determine whether it has the authority to resolve the complaint. A complaint that contains sufficient information for the board to commence an investigation is not required to include all of the information necessary for the board to determine the validity of the complaint.
- (f) On receipt of a complaint, the board shall determine whether the board has the authority to resolve the complaint. If the board does not have the authority to resolve the complaint, the board shall dismiss the complaint. If the board has the authority to resolve the complaint, the board shall initiate a disciplinary proceeding against the person who is the subject of the complaint.
- (g) The board by rule shall prescribe a method for prioritizing complaints for purposes of complaint investigation. In establishing priorities:
 - (1) a complaint that alleges an action that could potentially harm the public takes precedence over a complaint that does not allege an action that could potentially harm the public; and
 - (2) with regard to complaints that do not allege an action that could potentially harm the public, a complaint filed by a member of the public takes precedence over a complaint filed by the staff of the board.
- (h) The board's staff is responsible for conducting all phases of complaint investigation, including gathering evidence necessary to determine the validity of the complaint.

SUBCHAPTER I. PRACTICE OF ENGINEERING

§ 1001.401. Use of Seal

- (a) On receiving a license, a license holder shall obtain a seal in a design authorized by the board, showing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer."
- (b) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document, A license holder is not required to use a seal required by this section if the project is to be constructed or used in another state or country.
- (c) A person may not place a seal on a document if the license of the license holder named on the seal has expired or has been suspended or revoked.
- (d) A license holder is not required to use a seal under this section for a project for which the license holder is not required to hold a license under an exemption provided by Subchapter B.
- (e) A license holder shall not be required to provide or hold any additional certification, other than a license issued under this chapter, to seal an engineering plan, specification, plat, or report.

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES**§ 1001.451. Disciplinary Powers of Board**

On a determination that a ground for disciplinary action exists under Section 1001.452, the board may:

- (1) deny an application for a license;
- (2) revoke, suspend, or refuse to renew a license;
- (3) probate the suspension of a license; or
- (4) formally or informally reprimand a license holder.

§ 1001.452. Grounds for Disciplinary Action

A person is subject to disciplinary action under Section 1001.451 for:

- (1) a violation of this chapter or a board rule;
- (2) fraud or deceit in obtaining a license;
- (3) a documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant;
- (4) gross negligence, incompetency, or misconduct in the practice of engineering; or
- (5) a failure to timely provide plans or specifications to the Texas Department of Licensing and Regulation as required by Article 9102, Revised Statutes.

§ 1001.4525. Probation

- (a) If a person's license suspension is probated, the board may require the person to:
- (1) report regularly to the board on matters that are the basis of the probation;
 - (2) limit practice to the areas prescribed by the board; or
 - (3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.
- (b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

§ 1001.4526. Restitution

- (a) Subject to Subsection (b), the Board may order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.
- (b) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The Board may not require payment of other damages or estimate harm in a restitution order.

§ 1001.453. Review of License Holder's Status

- (a) The board by rule may review the status of a license holder the board believes:
 - (1) may have been issued a license through fraud or error; or
 - (2) may constitute a threat to the public health, safety, or welfare.
- (b) The board may suspend or revoke a license held by a person whose status is reviewed under this section.

§ 1001.454. Right to Hearing

- (a) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing.
- (b) Proceedings for the suspension or revocation of a license are governed by Chapter 2001, Government Code.

§ 1001.455. Appeal of License Revocation

A person whose license has been revoked may file suit to annul or vacate the board's order revoking the license. The person may file the suit in the district court of the county in which:

- (1) the person resides; or
- (2) the alleged conduct that is the ground for revocation occurred.

§ 1001.456. Reissuance of Revoked License

The board may reissue a license to a person whose license has been revoked if the board has sufficient reason to reissue the license. At least six board members must vote for reissuance of the license. A new license may be issued in accordance with board rules.

SUBCHAPTER K. ADMINISTRATIVE PENALTY

§ 1001.501. Imposition of Administrative Penalty

The board may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

§ 1001.502. Amount of Administrative Penalty

- (a) The amount of an administrative penalty may not exceed 55,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (b) The amount of the penalty shall be based on:
 - (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of the prohibited act; and
 - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
 - (2) the economic harm to property or the environment caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter a future violation;
 - (5) efforts or resistance to efforts to correct the violation; and
 - (6) any other matter that justice may require.
- (c) The board may include in the amount of the penalty the actual costs of investigating and prosecuting the violation.

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

§ 1001.551. Injunction

- (a) In addition to any other action authorized by law, the board may bring an action in the board's name to enjoin a person from violating this chapter or a board rule,
- (b) An action under this section must be brought in a district court of Travis County.
- (c) To sustain an action under this section, the board is not required to allege or prove that:
 - (1) an adequate remedy at law does not exist; or
 - (2) substantial or irreparable damage would result from the continued violation.
- (d) In an action for an injunction under this section, the defendant may assert and prove as a complete defense to the action that the board deprived the defendant or a license by a board action or proceeding that was:
 - (1) arbitrary or capricious;
 - (2) contrary to law; or
 - (3) conducted without due process of law.
- (e) Either party to an action under this section may appeal to the appellate court with jurisdiction of the action.

§ 1001.552. Criminal Penalty

- (a) A person commits an offense if the person:
 - (1) engages in the practice of engineering without being licensed or exempted from the licensing requirement under this chapter;
 - (2) violates this chapter;
 - (3) presents or attempts to use as the person's own the license or seal of another; or
 - (4) gives false evidence of any kind to the board or a board member in obtaining a license.
- (b) An offense under this section is a Class A misdemeanor.

SUBCHAPTER M. ADVISORY OPINIONS**§ 1001.601. Board Advisory Opinions**

(a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about:

- (1) an interpretation of this chapter, or
- (2) the application of this chapter to a person in regard to a specified existing or hypothetical factual situation.

(b) The board shall respond to requests for opinions within 180 days unless the board affirmatively states the board's reason;

- (1) for not responding to the request within 180 days; or
- (2) for not responding to the request at all.

§ 1001.604. Reliance on Advisory Opinion

It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board

relating to:

- (1) the provision of the law the person is alleged to have violated; or
- (2) a fact situation that is substantially similar to the fact situation in which the person is involved.

§133.63 Texas Engineering Professional Conduct and Ethics Examination

- (a) The Texas Engineering Professional Conduct and Ethics Examination shall be self-administered by the applicant and shall be prepared and furnished by the board. Each applicant must submit this examination in a format prescribed by the board with the application and must pass with a score of at least 90 percent.
- (b) No fees or advanced scheduling forms are required for the Texas Engineering Professional Conduct and Ethics Examination.

§137.17 Continuing Education Program

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules. PDF1 units carried forward may not be counted to meet the professional ethics requirement.

§137.33 Sealing Procedures

- (a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.
- (b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.
- (c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:
- (1) individually sealed by the license holder; or
 - (2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.
- (d) License holders shall take reasonable steps to ensure the security of their physical or electronic seals and electronic signatures. For electronic seals and electronic signatures, the engineer must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the engineer will immediately give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding, instead of a seal; "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their engineering work before such work is released from their control.

(1) The signature and date shall not obscure the engineer's name or license number in the seal.

(2) Engineering work required to bear a seal and signature includes the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding.

(3) All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E," or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion.

(g) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders, When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or document with a notation describing the work done under each license holder's responsible charge.

(h) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation tier compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to the client by the first license holder;

(2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(l) An engineer may securely transmit his or her final version of engineering work electronically provided that work bears the engineer's seal and uses one of the techniques described in §137.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms described in §137.1 of this chapter (relating to License Holder Designations).

§137.37 Sealing Misconduct

(a) A license holder is guilty of misconduct and subject to disciplinary action if the license holder:

- (1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.
- (2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.
- (3) alters a sealed document without proper notification to the responsible license holder.
- (4) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular engineering work.

(b) A person not licensed by the board may not use, cause to be used, affix or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict an engineering seal or a representation of an engineering seal without the express permission by the licensee responsible for the project or the specific engineering work in question.

SUBCHAPTER C: PROFESSIONAL CONDUCT AND ETHICS**§137.51 General Practice**

- (a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license authorized to offer or perform engineering services in Texas.
- (b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.
- (c) A license holder shall respond to the board in writing to all written requests for information regarding all inquiries under the jurisdiction of the board within 21 days of receipt or by the date specified in board correspondence. A license holder shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct and will subject the license holder to any of the penalties provided under §1001.451(2), (3), or (4) and § 1001.502 of the Act.
- (d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance will, §137.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional engineering services.
- (e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm (including a sole practitioner) or other business entity if registered pursuant to the requirements of Chapter 135 of this title (Relating to Firm Registration).

§137.53 Engineer Standards of Compliance with Professional Services Procurement Act

- (a) A licensed engineer shall not submit or request, orally or in writing, a competitive bid to perform professional engineering services for a governmental entity unless specifically authorized by state law and shall report to the board any requests from governmental entities and/or their representatives that request a bid or cost and/or pricing information or any other information from which pricing or cost can be derived prior to selection based on demonstrated competence and qualifications to perform the services.
- (b) For the purposes of this section, competitive bidding to perform engineering services includes, but is not limited to, the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost intimation or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.
- (c) This section does not prohibit competitive bidding in the private sector.

§137.55 Engineers Shall Protect the Public

- (a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.
- (b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.
- (c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.
- (d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

§137.57 Engineers Shall be Objective and Truthful

(a) Engineers shall issue statements only in an objective and truthful manner. The issuance of oral or written assertions in the practice of engineering shall not be:

- (1) fraudulent,
- (2) deceitful, or
- (3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(b) Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

(c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

§137.59 Engineers' Actions Shall Be Competent

- (a) Engineers shall practice only in their areas of competence.
- (b) The engineer shall not perform any engineering assignment for which the engineer is not qualified by education or experience to perform adequately and competently. However, an engineer may accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by qualified licensed professionals, consultants, associates, or employees.
- (c) The engineer shall not express an engineering opinion in deposition or before a court, administrative agency, or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion. Engineering opinions which are rendered as expert testimony and contain quantitative values shall be supported by adequate modeling or analysis of the phenomena described.

§137.61 Engineers Shall Maintain Confidentiality of Clients

- (a) The engineer may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.
- (b) The engineer shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.
- (c) The engineer shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

§137.63 Engineers' Responsibility to the Profession

- (a) Engineers shall engage in professional and business activities in an honest and ethical manner.
- (b) The engineer must :
 - (1) [endeavor to] meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances or standards in the performance of engineering services;
 - (2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services;
 - (3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.
 - (4) act as faithful agent for their employers or clients;
 - (5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party; and
 - (6) practice engineering in a careful and diligent manner.

- (c) The engineer shall not:
- (1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;
 - (2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;
 - (3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;
 - (4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;
 - (5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment; or
 - (6) solicit professional employment in any false or misleading advertising.
- (d) Engineers should strive to promote responsibility, commitment, and ethics both in the education and practice phases of engineering. They should attempt to enhance society's awareness of engineers' responsibilities to the public and encourage the communication of these principles of ethical conduct among engineers.

1. An engineer has prepared an opinion that is client relied on, in making the financial decision to pursue a project.
2. Later, the engineer becomes aware of a minor possibility that its original opinion was wrong, which if true would jeopardize the project's viability.
3. The client has asked the engineer to perform additional services to update the opinion, due to the passage of time. In theory, the update services will confirm the original opinion, but could demonstrate that the original opinion was wrong, with disastrous results.
4. Question: Can the engineer accept the assignment? What obligations does the engineer owe the client?

HalfMoon Seminar

December 19, 2018

Presented By

Ben Wheatley

CLEAN WATER ACT

- Enabling Legislation
- U.S. Environmental Protection Agency ("EPA") responsible for oversight
- EPA delegated authority to Texas Department of Environmental Quality ("TCEQ")
- Must comply with all Federal and State requirements

- Federal law is source of legal obligations
- Legal obligations embodied in:
 - Federal Statutes (Clean Water Act)
 - Code of Federal Regulations ("CFR")
 - Federal Register
 - National Pollutant Discharge Elimination System (NPDES") General Permit
 - Texas Pollutant Discharge Elimination System ("TPDES") General Permit

TYPICAL CONTRACT REQUIREMENTS

- Require design to be in compliance with Federal and State Law
- Engineer required to comply with all TBPE Rules
 - Knowledge of laws and regulations
 - Competency
- Living Document?

CFR

- Sets forth standards for State oversight in lieu of Federal oversight.
- Definitions:
 - License or Permit.
 - BMP.
 - Discharge of Pollutants.
 - Waters of U.S.
- Knowledge of these definitions critical component of understanding obligations!

2017 NPDES

- Replaces 2012 NPDES.
- Sets forth specific requirements for "Operator" compliance.
- Operator relies on engineer for compliance via contract.

SW3P

- What must be in a SW3P at commencement of construction activities?
- How is the SW3P updated during construction?
 - Who can update SW3P?
 - How can SW3P be updated?
 - Signing and sealing.
 - Ethical dilemma if engineer knows SW3P will be modified?

NPDES

- Operator:
 - Party in control of plans.
 - Day to day control necessary to "ensure" compliance
 - Contract Trap?
- Notice of Intent ("NOI")
 - 14 days in advance of construction activities.
 - SW3P must include all required information at time of NOI.
- Modifications: When and Who?

TPDES GENERAL PERMIT

- Very detailed requirements.
- Engineering seal means requirements met?
- Part III and Standard of Care:
 - Operator must "ensure" compliance.
 - Contractual delegation.
 - "Confirm" SW3P developed in accordance with General Permit.
 - SW3P "must describe" implementation of practices used to minimize discharges.
 - "must identify" sources of pollution.

NPDES PERMIT

- SWPPP Contents.
- Sequence and Estimated Dates of Construction Activities.
- Site Map.
- BMP Description.

NPDES PERMIT

- Description of Stormwater Control Measures.
 - ***Stormwater Control Measures to be Used During Construction Activity.*** The SWPPP must describe all stormwater control measures that are or will be installed and maintained at your site to meet the requirements of Part 2. For each stormwater control measure, you must document:
 - Information on the type of stormwater control measure to be installed and maintained, including design information;
 - What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of your site;
 - For exit points on your site, document stabilization techniques you will use and any additional controls that are planned to remove sediment prior to vehicle exit; and
 - For linear projects, where you have determined that the use of perimeter controls in portions of the site is impracticable, document why you believe this to be the case.
- Permanent Storm Water Control Description.

TPDES PERMIT (2003)

The Permit requires that the Storm Water Pollution Prevention Plan:

"must describe and **ensure** the implementation of practices that will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and **assure** compliance with the terms and conditions of this permit." (emphasis added).

TPDES PERMIT (2018)

An SW3P must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges described in Part II.A.3, in compliance with the terms and conditions of this permit.

But:

Part III, Section B(1)

All secondary operators and primary operators with control over construction plans and specifications shall:

- (a) ensure the project specifications allow or provide that adequate BMPs are developed to meet the requirements of Part III of this general permit
- (b) Ensure that the SW3P indicates the areas of the project where they have control over project specifications, including the ability to make modifications in specifications;
- (c) Ensure that all other operators affected by modifications in project specifications are notified in a timely manner so that those operators may modify their BMPs as necessary to remain compliant with the conditions of this general permit; and
- (d) Ensure that the SW3P for portions of the project where they are operators indicates the name and site-specific TPDES authorization number(s) for operators with the day-to-day operational control over those activities necessary to ensure compliance with the SW3P and other permit conditions. If a primary operator has not been authorized or has abandoned the site, the secondary operator is considered to be the responsible party and must obtain authorization.

Part III, Section B(2)

Primary Operators with Day-to-Day Operational Control

Primary operators with day-to-day operational control of those activities at a project that are necessary to ensure compliance with a SW3P and other permit conditions must ensure that the SW3P accomplishes the following requirements:

- (a) Meets the requirements of this general permit for those portions of the project where they are operators;
- (b) Identifies the parties responsible for implementation of BMPs described in the SW3P;
- (c) Indicates areas of the project where they have operations control over day-to-day activities; and
- (d) The name and site-specific TPDES authorization number of the parties with control over project specifications, including the ability to make modifications in specifications for areas where they have operational control over day-to-day activities.

TPDES PERMIT

Section F. Contents of SWP3

The SWP3 must include, at a minimum, the information described in this section and must comply with the construction and development effluent guidelines in Part HI, Section G of the general permit.

2. A description of the BMPs that will be used to minimize pollution in runoff.

(b) Erosion Control and Stabilization Practices

The SWP3 must include a description of temporary and permanent erosion control and stabilization practices for the site, compliant with the requirements of Part III.G.1 and G.2 of this general permit, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.

TPDES PERMIT

INDUSTRY STANDARD – LIVING DOCUMENT

Section E. Revisions and Updates to SWP3s

The permittee must revise or update the SWP3 whenever the following occurs:

1. a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3;
2. changing site conditions based on updated plans and specifications, new operators, new areas of responsibility, and changes in BMPs; or
3. results of inspections or investigations by site operators, operators of a municipal separate storm sewer system receiving the discharge, authorized TCEQ personnel, or a federal, state or local agency approving sediment and erosion plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under this general permit.

Final Takeaway

- Read the NPDES and TPDES Permits
- Specifically address all "ensure" or "confirm" requirements in the Contract
 - No guarantees or warranties
 - No representation of a specific outcome