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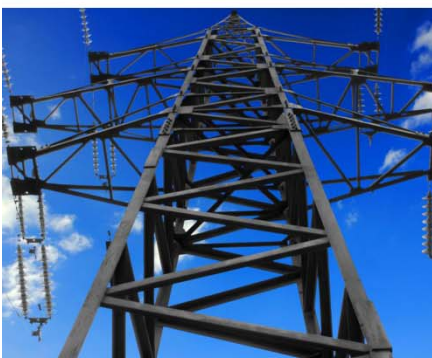
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Chapter 137: Compliance and Professionalism

SUBCHAPTER A: INDIVIDUAL AND ENGINEER COMPLIANCE

§137.1 License Holder Designations

- (a) Pursuant to §1001.301 of the Act, a license holder may use the following terms when representing himself or herself to the public:
- (1) "engineer",
 - (2) "professional engineer",
 - (3) "licensed engineer",
 - (4) "registered engineer",
 - (5) "licensed professional engineer",
 - (6) "registered professional engineer", or
 - (7) any combination of words with or variation of the terms listed in paragraphs (1) - (6) of this subsection.
- (b) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.
- (c) License holders who have placed their license in an inactive status pursuant to §137.13 of this chapter (relating to Inactive Status) may use the terms in §137.1(a) of this section but must include the term "inactive" or "retired" in conjunction with the designation.

Source Note: The provisions of this §137.1 amended to be effective December 21, 2008.

§137.3 Other Use of Term "Engineer"

A person may not use the name, title, or words that convey to the public that a person is offering to perform engineering services to the public unless licensed under the requirements of the Act. The Act allows for the use or variation of the term "engineer" in a limited manner as summarized in this section.

- (1) Pursuant to §1001.004(e)(1) of the Act, a person may use the term "engineer" or variation of the term to identify the name and trade in affiliation with an engineers' labor organization.
- (2) Pursuant to §1001.055(b)(2) of the Act, a person who installs, operates, repairs or services any equipment or apparatus as listed in the statute may not use the term "engineer" unless authorized by another provision in the Act.
- (3) Pursuant to §1001.061(b)(2) of the Act, a person employed by an operating telephone company or an affiliate of an operating telephone company engaged strictly in the art and science of telephony may use the term "engineer" in the person's job title or personnel classification if the person does not offer engineering services to the public and if the designation does not imply that the person is licensed under the Act.
- (4) Pursuant to §1001.062(b) of the Act, a person who is a regular full-time employee of a private business entity that implements the design or specification sealed by an engineer licensed under the Act may use the term "engineer" in the person's job title or personnel classification if the person does not use the designation in conjunction with an offer to perform engineering services for the public.
- (5) Pursuant to §1001.066(2) of the Act, a person employed by a business entity whose products or services consist of space vehicles, services or technology required by the National Aeronautical and Space Administration (NASA) may use the terms "engineer" or "engineering" in the person's job title or personnel classification if the person only uses the designation in association with the products and services related to NASA.
- (6) Pursuant to §1001.301(f) of the Act, a person who is a regular employee of a business entity that is engaged in engineering activities but exempt from the licensure requirements under §1001.057 or §1001.058 of the Act may use the term "engineer" on business cards and forms of correspondence made available to the public providing the person does not:
 - (A) offer to perform engineering services to the public;
 - (B) use the designation outside the scope of §1001.057 or §1001.058 to convey the ability or willingness to perform engineering services or make an engineering judgment requiring a licensed professional engineer.
- (7) Pursuant to §1001.406(a)(2) of the Act, a person who has an undergraduate or graduate degree from an engineering program accredited by ABET may use the term "graduate engineer" on the person's business cards and in any forms of correspondence or personal communication.
- (8) Pursuant to §1001.406(b) of the Act, a person who has an undergraduate or graduate degree from an engineering program accredited by ABET and who is employed by a firm registered pursuant to Chapter 135 of this title and under the direct supervision of a licensed professional engineer may use the term "engineer" on the person's business cards and in any forms of correspondence or personal communication.

Source Note: The provisions of this §137.3 amended to be effective December 21, 2008.

§137.5 Notification of Address Change, Employer Change, and Criminal Convictions

- (a) Each license holder shall notify the board in writing not later than 30 days after of a change in the person's personal mailing address or employment status.
- (b) A notice informing the board of a change in employment status shall include, as applicable, the:
- (1) full legal trade or business name of the association or employment;
 - (2) physical location and mailing address of the business;
 - (3) telephone number of the business office;
 - (4) type of business (corporation, assumed name, partnership, or self-employment through use of own name);
 - (5) legal relationship and position of responsibility within the business;
 - (6) effective date of this change; and
 - (7) reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).
- (c) Each license holder shall notify the board in writing not later than 30 days after a misdemeanor or felony criminal conviction.

§137.7 License Expiration and Renewal

- (a) Pursuant to §1001.352 of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.
- (b) Pursuant to §1001.352 of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable increase in fees or late fees at the time of payment.
- (c) A license holder may renew a license by submitting the required annual renewal fee, including applicable increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check), or by electronic means, payable in United States currency.
- (d) Pursuant to authority in §1001.205(b) and §1001.206(c) of the Act, the board has established the renewal fee for the following categories of licenses that do not require the increase in professional fees:
- (1) a license holder who is 65 years of age or older,
 - (2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;
 - (3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act but does not claim that exemption;
 - (4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).
- (e) Licenses will expire according to the following schedule:
- (1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.
 - (2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.
 - (3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.
 - (4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.
- (f) A temporary license may only be renewed twice for a total duration of three years, after which the former license holder may apply for a new temporary or a standard license as provided in the current Act and applicable board rules.

Source Note: The provisions of this §137.7 amended to be effective December 21, 2008.

§137.9 Renewal for Expired License

- (a) A license holder may renew a license that has expired for 90 days or less by submitting to the board the required annual renewal fee, a late renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter.
- (b) A license holder may renew a license that has expired for more than 90 days but less than one year by submitting to the board the required annual renewal fee, a late renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program).
- (c) A license holder may renew a license that has expired for more than one year but less than two years by submitting to the board the required annual renewal fee, a late renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter for each delinquent year or part of a year.
- (d) A license which has been expired for two years may not be renewed, but the former license holder may apply for a new license as provided in the current Act and applicable board rules.
- (e) In strict accordance with the provisions of the Texas Education Code §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGS LC), if a license holder's name has been provided by the TGS LC as being in default of a loan, the board shall not renew the license of the license holder on the second renewal date following such notification, unless the TGS LC certifies that the individual has entered into a repayment agreement with TGS LC, or is not in default on a loan. Such license holder shall be provided an opportunity for an informal hearing, similar to that provided by §139.33 of this title (relating to Informal Proceedings), before any action concerning the denial of a renewal of a license is taken under this paragraph. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure; however, the board shall not renew said license unless the TGS LC certifies the individual has satisfied the requirements of the Texas Education Code §57.491.
- (f) Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in a timely manner because the license holder was serving on active duty in the United States armed forces outside Texas.

Source Note: The provisions of this §137.9 amended to be effective December 21, 2008.

§137.11 Expiration and Licensed in Another Jurisdiction

- (a) A person who was licensed in Texas and moved to another state and, for the two years preceding the date of application for an out-of-state renewal, who is currently licensed and has been practicing engineering in the other state may apply for a new license pursuant to this section.
- (b) A person meeting the criteria in §137.11(a) of this section is exempt from examination requirements.
- (c) To apply for renewal, the former license holder meeting the criteria in §137.11(a) of this section, must fill out an out-of-state renewal application form, submit documentation demonstrating licensure in the other state, pay a renewal fee that is equal to two times the normally required renewal fee for the license, pay any increase in fees as required by §1001.206 of the Act as applicable, and submit documentation demonstrating compliance with the continuing education program requirements for an expired license as prescribed in §137.17 of this chapter (relating to Continuing Education Program).

(d) Any license issued to a former Texas license holder under this section shall be assigned a new serial number.

Source Note: The provisions of this §137.11 amended to be effective May 20, 2004.

§137.13 Inactive Status

(a) A license holder may request in writing to change the status of the license to "inactive" at any time. A license holder whose license is inactive may not practice engineering. A license holder who has requested inactive status shall not be required to pay the fee increase per §1001.206 of the Act and shall not receive any refunds for licensing fees previously paid to the board.

(b) A license holder whose license is inactive must pay an annual fee as established by the board at the time of the license renewal. If the inactive fee is not paid by the date a person's license is to expire, the inactive renewal fee for the expired license shall be increased in the same manner as for an active license renewal fee.

(c) A license holder whose license is inactive is not required to:

- (1) comply with the continuing education requirements adopted by the board; or
- (2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder whose license is inactive must:

- (1) submit a request in writing for reinstatement to active status,
- (2) pay the fee for annual renewal and the fee increase required by §1001.206 of the Act, as applicable, and
- (3) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o).

(e) A license holder may claim inactive status and return to active only once during the year period determined by the renewal schedule of the license. If a license holder claims inactive status and returns to active status during the same annual renewal period, the license holder shall comply with the full continuing education program requirements for that year.

(f) A license holder claiming inactive status may use any term allowed for an active license holder followed by the term "Inactive" or "Retired" on business cards, stationery and other forms of correspondence. Failure to note inactive status in this manner is a violation of the Act and board rules and is subject to disciplinary action by the board.

(g) A license holder on inactive status may provide a reference statement for an applicant for licensure.

(h) Offering or performing engineering services to the public while the license is inactive is a violation of the inactive status and is subject to disciplinary action by the board.

Source Note: The provisions of this §137.13 amended to be effective December 21, 2008.

§137.14. Voluntary Surrender of License.

(a) A license holder who does not wish to maintain a license, the legal guardian of the license holder, or other legal representative of the license holder may voluntarily surrender the license by submitting a request in writing provided that the license holder:

- (1) is in good standing, and
- (2) does not have an enforcement case pending before the board.

(b) A license that has been voluntarily surrendered may not be renewed. A license holder who has voluntarily surrendered a license may apply for a new license.

Source Note: The provisions of this §137.14 amended to be effective December 21, 2008.

§137.15 Replacement or New Design Certificates

(a) Each license holder will be issued only one license certificate. A license holder may obtain a new license certificate to replace any license certificate lost, destroyed, or mutilated on payment of the established fee and verification of the status of the original license. A license holder requesting a replacement license under this section will, if possible, surrender any remaining portions of the original license to the board and shall file a written statement with original signature explaining the reasons for the request for a new certificate so that the board records will document the reason for issuance of a new license. Replacement licenses will reflect the original serial number of the license holder.

(b) In the event the license design for professional engineers is changed by the board, a license holder may obtain a license of the new design upon payment of a fee to be established by the board and surrender of the original license certificate.

Source Note: The provisions of this §137.15 amended to be effective May 20, 2004.

§137.17 Continuing Education Program

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

- (1) Professional Development Hour (PDH) - A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.
- (2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.
- (3) College/Unit Semester/Quarter Hour - Credit for course in ABET-approved program or other related college course.
- (4) Course/Activity - Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(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. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 14 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

- (1) Successful completion or auditing of college credit courses.
 - (2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.
 - (3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.
 - (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.
 - (5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection.
 - (6) Authoring published papers, articles, books, or accepted licensing examination items.
 - (7) Active participation in professional or technical societies, associations, agencies, or organizations, including:
 - (A) Serving as an elected or appointed official;
 - (B) Serving on a committee of the organization;
 - (C) Serving in other official positions.
 - (8) Patents issued.
 - (9) Engaging in self-directed study.
 - (10) Active participation in educational outreach activities involving K-12 or higher education students.
- (g) All activities described in §137.17(f) of this title shall be relevant to the practice of a technical profession and may include educational, technical, ethical, or managerial content.
- (h) The conversion of other units of credit to PDH units is as follows:
- (1) 1 College or unit semester hour--15 PDH
 - (2) 1 College or unit quarter hour--10 PDH
 - (3) 1 Continuing Education Unit--10 PDH
 - (4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH
 - (5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 5 PDH)
 - (6) Each published paper, article, or book--10 PDH
 - (7) Active participation in professional or technical society, association, agency, or organization--1 PDH (Not to exceed 5 PDH per organization)
 - (8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH)
 - (9) Each patent issued--15 PDH
 - (10) Other activities shall be credited at 1 PDH for each hour of participation in the activity.
- (i) Determination of Credit
- (1) The board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.
 - (2) The board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.
 - (3) Credit for college or community college approved courses will be based upon course credit established by the college.
 - (4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.
 - (5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license holder and subject to review as required by the board.
 - (6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license holder and subject to review as required by the board.
 - (7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end of each year of service is completed.
 - (8) Teaching credit is valid for teaching a course or seminar for the first time only.
- (j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:
- (1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and
 - (2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.
- (k) The license holder must submit certification that CEP requirements have been satisfied for that renewal year with the renewal application and fee.
- (l) CEP records for each license holder must be maintained for a period of three years by the license holder.
- (m) CEP records for each license holder are subject to audit by the board or its authorized representative.
- (1) Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.
 - (2) If upon auditing a license holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.
- (n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1)-(4) of this subsection:
- (1) New license holders by way of examination shall be exempt for their first renewal period.
 - (2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.
 - (3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

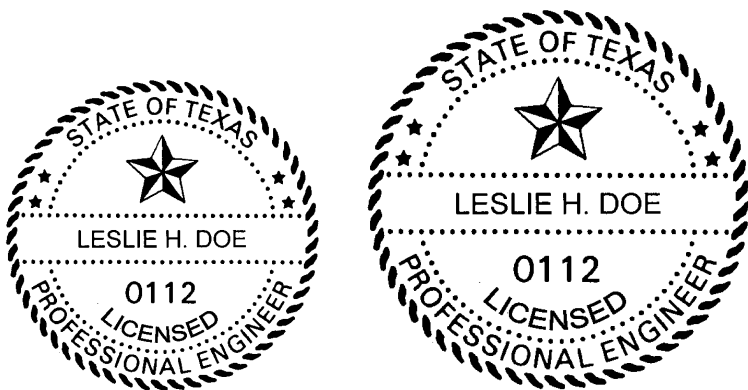
- (4) License holders who list their status as "Inactive" and who further certify that they are no longer receiving any remuneration from providing professional engineering services shall be exempt from the professional development hours required.
- (o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.
- (p) Noncompliance:
- (1) If an license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.
 - (2) Failure to comply with CEP reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.
 - (3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

Source Note: The provisions of this §137.17 amended to be effective December 21, 2008.

SUBCHAPTER B: SEALING REQUIREMENTS

§137.31 Seal Specifications

- (a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records.
- (b) All physical seals obtained and used by license holders shall be capable of leaving a permanent ink image or permanent impression of the seal attached to the engineering work. The physical and electronic seals shall be of the design illustrated in this paragraph. The physical seals may be one of two different sizes:
- (1) a pocket seal (the size commercially designated as 1-5/8-inch seal), or
 - (2) a desk seal (commercially designated as a two-inch seal).



- (c) Electronic seals may be of a reduced size provided that the engineer's name and number are clearly legible.
- (d) All seals obtained and used by license holders shall contain any given name or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination.
- (e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.
- (f) When signing an engineering work, the engineer may utilize the designation "P.E" or other terms as described in §137.1 of this chapter (relating to License Holder Designations).
- (g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

Source Note: The provisions of this §137.31 amended to be effective December 21, 2008.

§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 for 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.
- (j) A local authority may require an original seal and/or signature on reproduced documents.
- (k) 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 if the project is to be constructed or used in another state or country.
- (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).
- (m) A license holder is not required to use a seal for a project for which the license holder is not required to hold a license under an exemption set forth under the Act, Texas Occupation Code §§1001.051 - 1001.066.
- (n) All engineering documents released, issued, or submitted by a licensee, including preliminary documents, shall clearly indicate the firm name and registration number of the engineering firm by which the engineer is employed.
- (1) If the engineer is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.
 - (2) If the engineer is exempt from sealing a document under subsection (m) of this section, but elects to seal a document, then only the name of the employer shall be required.

Source Note: The provisions of this §137.33 amended to be effective December 21, 2008.

§137.35 Electronic Seals and Electronic Signatures

- (a) Licensed professional engineers shall maintain the security of their electronic seals and electronic signatures. The following methods are allowed:
- (1) Licensed professional engineers may electronically copy their original hard copy work that bears their seal, original signature, and date and transmit this work in a secure electronic format.
 - (2) An engineer may create an electronic seal and electronic signature for use in transmitting electronically formatted engineering work, regardless of whether the work was originally in hard copy or electronic format.
- (b) As an alternative to electronic sealing and electronic signatures, engineers shall affix their original seals and signatures and date to their engineering work as specified in §137.33(f) of this chapter (relating to Sealing Procedures).

Source Note: The provisions of this §137.35 amended to be effective April 27, 2008.

§137.37 Sealing Misconduct

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.

Source Note: The provisions of this §137.37 amended to be effective April 27, 2008.

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 promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under §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 with §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).

Source Note: The provisions of this §137.51 amended to be effective December 21, 2008.

§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 information 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.

Source Note: The provisions of this §137.53 amended to be effective June 4, 2007.

§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.

Source Note: The provisions of this §137.55 amended to be effective May 20, 2004.

§137.57 Engineers Shall be Objective and Truthful

- (a) Engineers shall issue statements only in an objective and truthful manner. 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.
- (b) 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.
- (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.

Source Note: The provisions of this §137.57 amended to be effective December 21, 2008.

§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.

Source Note: The provisions of this §137.59 amended to be effective September 4, 2006.

§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.

Source Note: The provisions of this §137.61 amended to be effective May 20, 2004.

§137.63 Engineers' Responsibility to the Profession

- (a) Engineers shall engage in professional and business activities in an honest and ethical manner. 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.
- (b) The engineer shall:
- (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.

Source Note: The provisions of this §137.63 amended to be effective December 21, 2008.

§137.65 Action in Another Jurisdiction

- (a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.
- (b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Texas Engineering Practice Act or board rules shall be sufficient cause for disciplinary action by this board. A certified copy of the board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

Source Note: The provisions of this §137.65 amended to be effective May 20, 2004.

SUBCHAPTER D: FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

§137.71 Firm Names

Pursuant to §1001.405(e), a business entity that is not registered with the board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of engineering by using the terms:

- (1) "engineer,"
- (2) "engineering,"
- (3) "engineering services,"
- (4) "engineering company,"
- (5) "engineering, inc.,"
- (6) "professional engineers,"
- (7) "licensed engineer,"
- (8) "registered engineer,"
- (9) "licensed professional engineer,"
- (10) "registered professional engineer,"
- (11) "engineered," or
- (12) any abbreviation or variation of those terms listed in (1)-(11) above, or directly or indirectly use or cause to be used any of those terms in combination with other words.

Source Note: The provisions of this §137.71 amended to be effective December 21, 2008.

§137.73 Firm Record Modifications

- (a) Each registered firm shall notify the board in writing not later than 30 days after a change in the business entity's:
 - (1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;
 - (2) officers or directors;
 - (3) employment status of the professional engineers of the firm;
 - (4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing engineering services to the public in Texas; or
 - (5) operation including addition or dissolution of branch and/or subsidiary offices.
- (b) Notice shall include, as applicable, the:
 - (1) full legal trade or business name entity,
 - (2) the firm registration number,
 - (3) telephone number of the business office,
 - (4) name and license number of the license holder employed or leaving the entity,
 - (5) description of the change, and
 - (6) effective date of this change.

Source Note: The provisions of this §137.73 amended to be effective December 21, 2008.

§137.75 Registration Renewal and Expiration

- (a) The certificate of registration shall be valid until the last day of the twelfth month following the date of issuance of the certificate of registration. At least one month in advance of the date of the expiration, the board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.
- (b) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the board and payment of two (2) times the normal renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether engineering services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.
- (c) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.
- (d) The renewal fee will not be refunded.

Source Note: The provisions of this §137.75 amended to be effective May 20, 2004.

§137.77 Firm Registration Compliance

- (a) Any firm or other business entity shall not offer or perform engineering services to the public unless registered with the board pursuant to the requirements of Chapter 135 of this title (relating to Firm Registration).
- (b) A firm shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all engineering work and activities that require a license that is performed in the primary, branch, remote, or project office(s).
- (c) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.
- (d) No engineering services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.
- (e) A business entity that offers or is engaged in the practice of engineering in Texas and is not registered with the board or has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §§1001.501-508 of the Act and §139.35 of this title (relating to Penalties and Sanctions).

(f) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional engineer for the firm.

(g) If a firm has notified the board that it is no longer offering or performing engineer services to the public, including the absence of a regular, full-time employee who is an active professional engineer licensed in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and services. If firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsections (e) of this section unless renewed.

(h) All engineering documents released, issued, or submitted by or for a registered engineering firm, including preliminary documents, must clearly indicate the firm name and registration number.

Source Note: The provisions of this §137.77 amended to be effective December 21, 2008.

§137.79 Standards for Compliance with Professional Services Procurement Act

When procuring professional engineering services, a governmental entity and/or its representative(s) shall comply with the requirements of Subchapter A, Chapter 2254, Texas Government Code and shall select and award on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price and shall not select services or award contracts on the basis of competitive bidding.

Source Note: The provisions of this §137.79 amended to be effective December 21, 2008.

Chapter 139: Enforcement

SUBCHAPTER A: ENFORCEMENT AUTHORITY

§139.1 General

The board will conduct inquiries into situations which allegedly violate the requirements of the Texas Engineering Practice Act (Act) and board rules concerning the practice of engineering, representations which imply the legal capacity to offer or perform engineering services for the public, and situations which are considered by the board to pose or have caused harm to the public. Situations that represent a repeat offense, a danger or nuisance to the public or cannot be reasonably resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

Source Note: The provisions of this §139.1 amended to be effective May 20, 2004.

SUBCHAPTER B: COMPLAINT PROCESS AND PROCEDURES

§139.11 Complaints - General

(a) The board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the Act or board rules.

(b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed with the State Office of Administrative Hearings or after the investigative file is closed. The following documents in an investigative file are releasable to a respondent or an attorney representing the respondent before the board during the informal resolution process of a complaint: copies of the original complaint documentation; copies of communications to or from the board and the complainant, the respondent, witnesses, technical experts used by the board to advise on the complaint issues, and private or public entities regarding requests for records, documents, or information regarding the complaint; and witness interview reports.

(c) The provisions of the Act and the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code, shall apply to the conduct of all investigations and administrative actions in the board's processing of a complaint. In addition, the board may promulgate other procedural rules consistent with the Act or Chapter 2001, Texas Government Code.

Source Note: The provisions of this §139.11 amended to be effective December 21, 2008.

§139.13 Filing a Complaint

(a) A person who wishes to make a complaint with the board may obtain assistance, filing information, or contact the board by:

- (1) visiting the board website at www.tbpe.state.tx.us;
- (2) sending electronic mail to peboard@tbpe.state.tx.us;
- (3) sending written correspondence to: 1917 IH 35 South, Austin, Texas 78741;
- (4) sending fax to (512) 440-5715;
- (5) telephoning the board office at (512) 440-7723; or
- (6) visiting the board office located at 1917 IH 35 South, Austin, Texas.

(b) A person may submit the complaint in writing through mail, electronic mail or facsimile.

(c) A complainant may contact the board in person or by telephone to file a complaint. However, the complaint shall be submitted in writing containing sufficient information to determine jurisdiction. Upon receipt of the written complaint and supporting evidence, it will be logged and assigned a case number.

(d) A complaint shall be on the forms provided by the board or in written format and contain the following information as applicable:

- (1) complainant's name and contact information;
- (2) description of the alleged violation;
- (3) name and contact information of the subject or parties of the complaint, if known;
- (4) sections of the Act and board rules alleged violated, if known;
- (5) name and contact information of witnesses, if known; and
- (6) sources of other pertinent information, if known.

- (e) Contact information may include, but is not limited to, name, address, telephone number, email address, business name, business address, business telephone number, and websites.
- (f) A complaint shall contain sufficient information for the board to determine whether it has authority to resolve the complaint.
- (g) Anonymous complaints will be received but will not be investigated unless sufficient information and evidence exists to demonstrate harm or potential harm to the public or violation of Act or board rules. Anonymous complaints that do not contain sufficient evidence and information to initiate an investigation will be logged and filed for information purposes only.

Source Note: The provisions of this §139.13 amended to be effective December 21, 2008.

§139.15 Processing a Complaint

- (a) Upon receipt of a complaint, the board staff shall assign the complaint a case number.
- (b) The board staff shall review the complaint. If the complaint does not contain sufficient information to determine whether the board has jurisdiction or is determined to be outside the board's authority, the board staff may interview the complainant to develop additional information. If the board staff determines that a potential violation exists, the board staff will proceed with the investigation. If board staff concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the board staff will recommend to the executive director that the investigation be closed and that the complaint be dismissed. If the executive director concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The board staff shall write a dismissal explanation for the dismissed complaint and close the file.
- (c) If a potential violation exists and the board has jurisdiction over and authority to resolve the complaint, the board staff shall set a priority for the complaint and initiate disciplinary proceedings against the subject of the complaint. In setting the priority for complaints, a complaint from the public or initiated by the board or board staff that alleges action that could potentially harm the public shall be rated highest priority and investigation for this type complaint takes precedence over all other complaints. Complaints rating highest priority may include, but are not limited to, those complaints involving incompetence, gross negligence, plan stamping, or practicing without a license. The board staff shall report status of the investigation and preliminary determination to the executive director and complainant within 45 days of receiving complaint that rates as a high priority.

Source Note: The provisions of this §139.15 amended to be effective December 21, 2008.

§139.17 Investigating a Complaint

- (a) The board staff shall be responsible for investigating the complaint including determining the need for and obtaining any additional evidence that may be required to proceed with disciplinary action.
- (b) Board staff and persons acting in the official capacity of the board have authority to:
 - (1) informally or formally request information and documentation from the involved parties,
 - (2) perform site visits or inspections to investigate the complaint,
 - (3) contract technical consultants and other services to investigate and evaluate aspects of the complaint or evidence,
 - (4) subpoena information, as required,
 - (5) seek the assistance of local and state law enforcement authorities, and/or
 - (6) seek out any other investigative action needed to assist in the resolution of the complaint.
- (c) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act or board rules.
- (d) At any time before a complaint is resolved, board staff may conduct further investigation including, but not limited to, obtaining second or third opinions, obtaining supporting documents, or interviewing other witnesses depending on the case at hand.
- (e) If the board staff intends to dismiss the complaint because the investigation of the complaint does not produce sufficient evidence to substantiate a violation of the Act or board rules, the board staff will inform the complainant of the rationale for the determination prior to reporting the dismissal to the board.
- (f) Withdrawal of a complaint shall not be a reason to terminate or disrupt an ongoing investigation.
- (g) At least quarterly during the investigation of the complaint, the board shall notify the parties of the complaint of the complaint status unless the notice would jeopardize an undercover investigation and such notation shall be included in the complaint file.

Source Note: The provisions of this §139.17 amended to be effective December 21, 2008.

§139.19 Final Resolution of Complaint

- (a) Upon the completion of an investigation, the board staff shall present to the executive director a report of investigation and recommendation of final resolution of the complaint. If sufficient evidence and documentation exists to substantiate one or more violations of the Act or board rules has occurred, the board shall proceed as prescribed in §139.31 of this chapter (relating to Enforcement Actions for Violations of the Act). These actions may include, but are not limited to, one or more of the following:
 - (1) enter into an agreement of voluntary compliance;
 - (2) agree to informal Consent Order or Agreed Board Order that may include an administrative penalty and/or compliance requirements;
 - (3) referral of injunctive or criminal actions to the proper authorities;
 - (4) referral to the State Office of Administrative Hearings which will result in a Final Order for dismissal or issuance of a sanction; or
 - (5) other action as provided by law.
- (b) If sufficient evidence and documentation does not exist to substantiate that one or more violations of the Act or board rules has occurred and disciplinary action is not warranted, the board staff shall recommend to dismiss the complaint and report the dismissal to the board.

Source Note: The provisions of this §139.19 amended to be effective December 21, 2008.

§139.21 Reporting Complaint Status to the Board

- (a) The executive director shall provide a summary report on the status of all complaints at the regularly scheduled board meetings. The report shall include:

- (1) number of complaints filed;
 - (2) number of complaints received in each category;
 - (3) number of complaints initiated by the board;
 - (4) number of complaints filed by persons other than the board;
 - (5) the average length of time to resolve a complaint by totaling all the days accumulated for all resolved complaints and dividing by the total number of resolved complaints during the reporting period;
 - (6) number of complaints that are unresolved, including:
 - (A) by those filed by the board , or
 - (B) by those filed by persons other than the board, and
 - (C) including the average length of time the unresolved complaints have been on file obtained by summing the days accumulated for all unresolved complaints and dividing by the total number of unresolved complaints;
 - (7) number of dismissed cases; and
 - (8) number of complaints resulting in disciplinary action including the disciplinary action taken and whether the action was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing.
- (b) The executive director shall report dismissed complaints to the board and shall include in the report the following information:
- (1) name of the complainant,
 - (2) name of the person who is subject of the complaint,
 - (3) the basis of the complaint, and
 - (4) the reason for the dismissal of the complaint.
- (c) If the executive director determines that the complaint filed is frivolous or without merit, the case information will be classified as confidential and as such the information is not subject to discovery, subpoena, and or other disclosure. The board shall approve this action upon acceptance of the report and the case will then be closed. Closed cases will not be reconsidered for classification under this rule .
- (1) A "frivolous complaint" means a complaint that the executive director has determined:
 - (A) was made for the purpose of harassment; and
 - (B) does not demonstrate harm to any person.
 - (2) A complaint that is determined by the executive director to be "without merit" would include situations where a:
 - (A) professional engineer, individual, or firm has been determined to not be responsible or connected in any way with the alleged violative action in the complaint, as it relates to a violation of the Engineering Practice Act and or board rules; or,
 - (B) case has been determined to be outside the jurisdiction of the board; or,
 - (C) case has been determined to have been administratively opened in error.

Source Note: The provisions of this §139.21 amended to be effective December 21, 2008.

§139.23 Technical Consultants

- (a) The executive director may employ or contract with or gain technical advice from technical consultants, including, but not limited to, advisors, consultants, engineers and other persons to provide technical assistance in investigations and disciplinary proceedings. In the course of performing the person's official duties for the board, technical consultants are immune from civil liability and may not be subject to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken, except for when an action involves fraud, conspiracy, or malice.
- (b) The executive director may select technical consultants on the basis of their qualifications and may maintain a list of experts as technical consultants. The selection process may require documentation of a technical consultants qualifications including transcripts; verifiable experience records; references statements; texts, articles, and other published works; and compliance history and records. The board may interview prospective technical consultants. The board shall review a potential technical consultant's documentation to determine if the person's records demonstrate expert status and competency in a technical area. A technical consultant must inform the board and decline an assignment if the resource has personal knowledge of the complaint, parties involved in the complaint, or other conflicts of interest.
- (c) During the course of an investigation, the executive director may dismiss a technical consultant that does not possess the technical knowledge to assist in the investigation or for any other reason relevant to the investigation.

Source Note: The provisions of this §139.23 amended to be effective December 21, 2008.

SUBCHAPTER C: ENFORCEMENT PROCEEDINGS

§139.31 Enforcement Actions for Violations of the Act

- (a) Under the authority and provisions of §1001.201, §1001.202, and Subchapters J, K, and L of the Texas Engineering Practice Act (Act), the board shall take action against a person or entity, upon determination that censure is warranted, for a violation of the Act and/or board rules. An action may be composed of one or more of the following:
 - (1) revocation of a license;
 - (2) suspension of a license;
 - (3) probation of a suspended license;
 - (4) refusal to renew a license;
 - (5) issuance of a formal or informal reprimand;
 - (6) notice to cease and desist;
 - (7) voluntary compliance agreement; or
 - (8) assessment of an administrative penalty under Subchapter K the Act.
- (b) All actions issued by the board will take the form of a Board Order and shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all enforcement actions shall be published in the board newsletter and on the board website, may be issued in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.

(c) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity, hereafter referred to in this section as “respondent,” by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.

Source Note: The provisions of this §139.31 amended to be effective December 21, 2008.

§139.33 Informal Proceedings

If, after evaluation of the respondent’s response a violation appears evident, the executive director shall initiate enforcement action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.

- (1) The executive director may also offer the respondent a Consent Order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (2) or (3) of this subsection will be followed.
- (2) The respondent may request an informal conference to present additional evidence and discuss details of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member or board representative, the executive director or executive director’s designee, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the details of the allegations and shall recommend:
 - (A) dismissal;
 - (B) a proposal for an Agreed Board Order for disciplinary actions that will be presented to the board for acceptance or rejection; or
 - (C) scheduling of a formal hearing.
- (3) Any board action under this subsection which is not informally disposed by Agreed or Consent Order, will be considered a contested case and will be handled in accordance with applicable law and board rules.

Source Note: The provisions of this §139.33 amended to be effective December 21, 2008.

§139.35 Sanctions and Penalties

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum administrative penalty shall be \$3000 per violation. Pursuant to § 1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of prior violations of the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to efforts to correct the violations;
- (5) the economic harm to property or the environment caused by the violation; and
- (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(b):

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§§133.97(e), (f); 137.31(a)	Reprimand/\$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§ 137.5	Reprimand/\$100.00
	Failure to respond to board communications	§ 137.51(c)	Reprimand/\$500.00
Engineering Misconduct	Failure to include “inactive” or “retired” representation with title while in inactive status	§137.13(f)	Reprimand/\$250.00
	Gross negligence	§ 137.55(a), (b)	Revocation/\$3,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b), §137.63(b)(6)	1 year probated suspension/\$1500.00
	Incompetence; includes performing work outside area of expertise	§ 137.59(a), (b)	3 year suspension/\$3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§ 139.43(b)	3 year suspension/\$3,000.00
	Felony Conviction with incarceration	§ 139.43(a)	Revocation/\$3,000.00
	Licensing	Fraud or deceit in obtaining a license	§§ 1001.452(2), 1001.453
	Retaliation against a reference	§ 137.63(c)(3)	1 year probated suspension/\$1,500.00

	Enter into a business relationship which is in violation of 137.77(Firm Compliance)	§ 137.51(d)	1 year probated suspension/\$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§ 137.63(a)	2 year probated suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful.	§137.57(a) and §137.57(b)(1) or (2)	2 year suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and §137.57(b)(3)	1 year probated suspension/\$1000.00
	Conflict of interest	§ 137.57(c), (d)	2 year suspension/\$2,500.00
	Inducement to secure specific engineering work or assignment	§ 137.63(c)(4)	2 year probated suspension/\$2,500.00
	Accept compensation from more than one party for services on the same project	§ 137.63(c)(5)	2 year probated suspension/\$2,500.00
	Solicit professional employment in any false or misleading advertising	§ 137.63(c)(6)	1 year probated suspension/\$2,500.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a), 137.13(g)	1 year probated suspension/\$500.00
	Failure to act as a faithful agent to their employers or clients	§ 137.63(b)(4)	1 year probated suspension/\$1,500.00
	Reveal confidences and private information	§ 137.61(a), (b), (c)	Reprimand/\$1,500.00
	Attempt to injure the reputation of another	§ 137.63(c)(2)	1 year probated suspension/\$1,500.00
	Retaliation against a complainant	§ 137.63(c)(3)	1 year probated suspension/\$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§§ 137.63(b)(3), 137.63(c)(1)	3 year probated suspension/\$3,000.00
	Failure to report violations of others	§ 137.55(c)	Reprimand/\$1,500.00
	Failure to consider societal and environmental impact of actions	§ 137.55(d)	Reprimand/\$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§ 137.63(b)(1), (2)	Reprimand/\$1,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§ 137.63(b)(5)	1 year probated suspension/\$1,500.00
	Competitive bidding with governmental entity	§ 137.53	Reprimand/\$1,500.00
	Expressing an opinion before a court 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.	§ 137.59(c)	2 year suspension/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§ 137.17(p)(2), (3)	2 year suspension/\$2,500.00
	Action in another jurisdiction	§ 137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§ 137.33(d)	Reprimand/\$1,000.00
	Failure to sign, seal, date, or include firm identification on work	§§ 137.33(e), (f), (h), (n), 137.35(a), (b)	Reprimand/\$500.00
	Alter work of another	§§ 137.33(i), 137.37(3)	1 year probated suspension/\$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§ 137.33(b)	Reprimand/\$1,000.00
	Practice or affix seal with expired or inactive license	§§ 137.13(h), 137.37(2)	1 year probated suspension/\$500.00
	Practice or affix seal with suspended license	§ 137.37(2)	Revocation/\$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§ 137.31(e)	1 year probated suspension/\$1,500.00
	Sealing work endangering the public	§ 137.37(1)	Revocation/\$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§ 137.33(g)	Reprimand/\$500.00
	Improper use of standards	§ 137.33(c)	Reprimand/\$500.00

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules:

VIOLATION	CITATION	SUGGESTED SANCTION
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		First Occurrence	Subsequent Occurrences
Use of "Engineer" title	§§ 1001.004(c)(2)(B)(C); 1001.301(b)(1)	Voluntary compliance Notice to Cease and Desist	Injunctive / Criminal and \$1,000.00
Use of "P.E." designation, or claim to be a "Professional Engineer"	§ 1001.301(b)(2)-(6), (c), and (e)	Notice to Cease and Desist and \$1,500.00	Injunctive / Criminal and \$3,000.00
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.)	§§ 1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405	Notice to Cease and Desist and \$1,500.00	Injunctive / Criminal and \$3,000.00
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	§ 1001.405(e)	Voluntary compliance	Notice to Cease and Desist and \$500.00
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	§ 1001.405(e)	Voluntary compliance	Injunctive / Criminal and \$3,000.00
Unlicensed practice of engineering	§§ 1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.51(e), 137.77(a)	Notice to Cease and Desist and \$2,000.00	Injunctive / Criminal and \$3,000.00

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm registration:

SUGGESTED SANCTION				
VIOLATION	CITATION	FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§ 1001.405; §137.77(a), (e)	Voluntary Compliance/\$250.00	\$500.00	\$750.00
Offer and perform consulting engineering services while registration was expired	§ 1001.405; §137.77(d), (e)	\$500.00	\$750.00	\$1,200.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§ 1001.405; §137.77(a), (e)	\$100.00	\$500.00	\$1,000.00
Failure to include firm name and registration number on engineering work	§137.77(h)	Voluntary Compliance	\$500.00	\$1000.00
Failure to notify board of firm registration record modification	§137.73	Voluntary Compliance	\$250.00	\$500.00

(e) The following is a table of suggested sanctions that may be imposed against a governmental entity and/or its representative for violations of the Act or board rules:

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Failure to engage a professional engineer in the construction of any public work involving professional engineering	§ 1001.407(1)	\$1,000.00	\$2,500.00
Accepting engineering plans, specifications and estimates that were not prepared by a professional engineer	§ 1001.402	\$500.00	\$2,500.00
Failure to ensure that the engineering construction is performed under the direct supervision of a professional engineer	§ 1001.407(2)	\$500.00	\$2,500.00

Source Note: The provisions of this §139.35 amended to be effective December 21, 2008.

SUBCHAPTER D: SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

§139.41 License Holder with Renewable, Expired License

A license holder whose license has expired for nonpayment of renewal fees continues to be subject to all provisions of the Act and board rules governing license holders until the license is revoked by the board or becomes non-renewable under §1001.353(d) of the Act.

Source Note: The provisions of this §139.41 amended to be effective May 20, 2004.

§139.43 License Holder with Criminal Convictions

(a) The board shall follow the requirements of Chapter 53, Texas Occupations Code, and shall revoke the license of any license holder incarcerated after licensure as a professional engineer as a result of:

- (1) a felony conviction,
- (2) violation of felony probation or parole, or
- (3) revocation of mandatory supervision.

(b) The board, after it considers the factors provided in Texas Occupations Code §53.022 and §53.023, may take any of the actions set out in §139.31 of this chapter when a license holder is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the license holder's duties and responsibilities as a professional engineer.

(c) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Chapter 53, Texas Occupations Code.

Source Note: The provisions of this §139.43 amended to be effective December 21, 2008.

§139.45 Restitution

In addition to or in lieu of an administrative penalty, the board may order a license holder to pay restitution to a consumer as a result of an agreement resulting from an informal settlement conference. The amount of the restitution may not exceed the amount paid by the consumer to the person for a service regulated by the Act.

Source Note: The provisions of this §139.45 amended to be effective May 20, 2004.

§139.47 Probation

As part of a disciplinary action for violating the Act and board rules including, but not limited to, negligence, incompetence, or endangerment to the public, the board may prescribe conditions of probation for each probated suspension on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, and/or continuing education requirements as applicable as described in this subsection.

- (1) The board will determine the reporting requirements for each probated suspension and will include a list of board probation requirements and schedule for completion of those requirements in which the board may require the license holder to submit documentation including, but not limited to, client lists, job assignments, designs, proof of continuing education participation, restricted practice reports, and other documents concerning the practice of engineering to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final and no extensions or revision shall be granted.
- (2) Board will receive and date stamp documentation on the day received and track compliance with probation requirements for each probated suspension. The board shall honor postmarks for date of submittal; however, if not received by the required deadline, the license holder shall have the burden of proof to demonstrate documentation was submitted by the schedule deadline.
- (3) As a condition of probation, the board may restrict the area of practice of the license holder. The board may require the license holder to practice under the supervision and mentorship of another professional engineer when performing engineering in prescribed areas.
- (4) As a condition of probation, the board may require the license holder to obtain additional continuing education in addition to the minimum requirements of §137.17 and may prescribe formal classroom study, workshops, seminars, and other specific forms of continuing education.
- (5) Failure to comply with probation requirements shall result in lifting of probation and suspending of the engineering license for the remainder of the suspension period.

Source Note: The provisions of this §139.47 amended to be effective May 20, 2004.

§139.49. License Suspension/Revocation Based on License Holder's Status Review.

(a) The board 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, as set out in §139.31, of this chapter (relating to Enforcement Actions for Violations of the Act) suspend or revoke a license held by a person whose status is reviewed under this section.

Source Note: The provisions of this §139.49 amended to be effective January 1, 2006.

SUBCHAPTER E: HEARINGS

§139.61 Contested Case Hearings

The State Office of Administrative Hearings shall conduct all formal hearings and contested cases in accordance with the Administrative Procedures Act, Chapter 2001, Texas Government Code and Title 1, Chapter 155, Texas Administrative Code.

Source Note: The provisions of this §139.61 amended to be effective May 20, 2004.

-----End of excerpt from Texas Board Rules (Rev. 12/31/2008) Pages 49-65 -----

-----Excerpt from Texas Board Disciplinary Actions (02/26/2009) <http://www.tbpe.state.tx.us/da/da022609.htm> -----

**TEXAS BOARD OF PROFESSIONAL ENGINEERS
February 26, 2009, Board Meeting Disciplinary Actions**

Case Number: D-30265; Mr. David W. Huddelston, P.E.; Corpus Christi, Texas.

Violation: It was alleged that Mr. Huddelston signed and affixed his Texas engineer seal to a WPI-2 Form for windstorm inspection that was submitted to the Texas Department of Insurance (TDI) certifying that a residence met windstorm codes that referenced dates the building was inspected which preceded Mr. Huddelston's employment with the firm that provided the inspections. It was further alleged that when TDI requested information to substantiate his certification, Mr. Huddelston failed to provide the requested information. Therefore, it appeared that Mr. Huddelston sealed work that was not performed, nor directly supervised, by him nor did he substantiate his certification; thus, the WPI-2 Form created a misleading impression and indicated he was not careful or diligent.

Resolution: Two year probated suspension, a \$3,500.00 administrative penalty and completion of an engineering ethics course.

Case Number: D-30856; Mr. Robert P. Chi, P.E. (Inactive); Olympia Fields, Illinois.

Violation: The Wisconsin Department of Regulation & Licensing (Wisconsin Board) revoked Mr. Chi's Wisconsin engineer license as a result of an investigation and civil litigation regarding the collapse of a building in Lomira, Wisconsin, which led to the death of an employee in the building and in excess of \$100,000,000.00 in damages. The investigation and litigation determined that Mr. Chi's calculations and design of a system building support system was deficient. Based upon the actions taken against Mr. Chi by the Wisconsin Board, Mr. Chi's Texas engineer license was also subject to censure.

Resolution: The Texas Board refuses to renew Mr. Chi's Texas engineer license.

Case Number: D-30973; Mr. Allen R. Moore; Cameron, Missouri.

Violation: Mr. Moore was incarcerated as a result of a felony conviction.

Resolution: Revocation of his Texas engineer license as required by Texas Occupations Code, Section 53.021(b) and Board Rule 139.43(a).

Case Number: B-30544: Airsafe Consulting & Engineering; Frisco, Texas.

Violation: It was alleged that this firm prepared and issued engineering plans and a geotechnical engineering report, both displaying the word "Engineering" in the firm's name, during a period when it

did not have a Texas licensed professional engineer as a full-time employee and was not registered with the Board. During the course of the investigation, the firm did hire a Texas licensed professional engineer and did become registered with the Board as ACE Environmental and Engineering.

Resolution: A \$1,280.00 administrative penalty.

Case Number: B-30546; GMA International, Inc.; Plano, Texas.

Violation: It was alleged that this firm was identified as the “Civil Engineer” on engineering design plans that bore the architect seal of Mr. Ghader Afshari-Mirak. Board records show that this firm is not registered with the Board nor that Mr. Afshari-Mirak has ever been licensed in Texas as a professional engineer; therefore, the preparation of engineering plans bearing Mr. Afshari-Mirak’s architect seal represents the unlawful performance of engineering services.

Resolution: Cease and desist from offering to perform or the actual performance of engineering services and from the representation that it can offer/provide engineering services to the public of Texas until such time as the firm hires a full-time employee who is a Texas licensed professional engineer and the firm becomes registered with the Board; and a \$1,520.00 administrative penalty.

Case Number: B-30659; Mr. Thomas R. Turner; Pinehurst, Texas.

Violation: It was alleged that Mr. Turner prepared engineering plans that he submitted to a city to obtain building permits on which he placed engineer seals and the signed names of two Texas licensed professional engineers which had no involvement in the projects. Board records show that Mr. Turner has never been licensed in Texas as a professional engineer nor that he is registered with the Board as an engineering business; therefore, his preparation of the engineering plans represents the unlawful practice of engineering.

Resolution: Cease and desist from offering to perform or the actual performance of engineering services and from the representation that he can offer/provide engineering services to the public of Texas until such time as he becomes licensed in Texas as a professional engineer and becomes registered with the Board; and a \$2,000.00 administrative penalty.

Case Number: G-30797; Bonham Independent School District (BISD); Bonham, Texas.

Violation: It was alleged that BISD completed six parking lot construction projects for school facilities; however, it did not engage Texas licensed professional engineers to complete the geotechnical testing, engineering design plans or supervise the engineering construction of the projects.

Resolution: BISD must provide “after-the- fact” engineering inspection reports of the projects; and a \$1,000.00 administrative penalty.

Case Number: B-30776; SGB Engineering, Inc.; El Paso, Texas.

Violation: It was alleged that this business entity continued to represent the ability to offer and provide consulting engineering services to the public of Texas and actually provided engineering services during a period when it did not have a current firm registration.

Resolution: A \$500.00 administrative penalty.

Case Number: B-30778; Kistenmacher Engineering Company, Inc.; El Paso, Texas.

Violation: It was alleged that this business entity continued to represent the ability to offer and provide consulting engineering services to the public of Texas and actually provided engineering services during a period when it did not have a current firm registration.

Resolution: A \$500.00 administrative penalty.

Case Number: B-30787; Wells Doak Engineers, Inc.; Fort Worth, Texas.

Violation: It was alleged that this business entity continued to represent the ability to offer and provide consulting engineering services to the public of Texas and actually provided engineering services during a period when it did not have a current firm registration and after its firm registration became non-renewable.

Resolution: A \$750.00 administrative penalty.

----- *End of February 26, 2009 Board Meeting Disciplinary Actions* -----