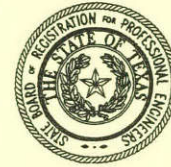


TEXAS BOARD OF PROFESSIONAL ENGINEERS No. 27, Spring 1998

PE NEWSLETTER



Board Issues Administrative Penalties

PEs Pay Fines as Part of Disciplinary Action Cases

The board issued monetary penalties of up to \$1,000 to 22 engineers since the fall of 1997 when more extensive regulations were implemented. The board's effort to prevent future engineering violations has also increased with a higher number of alleged violators completing engineering ethics training. Under the new en-

forcement penalty system, a non-practice violation such as an engineer's failure to provide the board with a copy of the imprint of his Texas engineer seal resulted in a \$150 fine, while a practice violation such as an apparent failure to evaluate the safe use of a structure received a \$1,000 fine. The maximum penalty per offense that may

be issued is \$3,000.

Implementation of the law is starting to gain momentum with over 100 disciplinary cases at the board under investigation. The law was passed during the 75th Legislative Session as part of the provisions of Senate Bill 623.

"Penalties" continued on page 5

Governor Selects New Board Members



New board members Joe Paul Jones, P.E., Brenda A. Bradley, P.E., and Kathleen Campbell Walker review the board rules adopted at the February 1998 board meeting. New rules tighten practice definitions such as the nature of direct supervision and further define business requirements for consultant and contract engineers. Details on page 2.

At the close of 1997, Gov. George W. Bush selected Brenda A. Bradley, P.E., Joe Paul Jones, P.E., and Kathleen Campbell Walker to serve six-year terms as board members on the Texas Board of Professional Engineers. The three new board members replaced departing members Derrell E. Johnson, P.E., Roxanne L. Pillar, P.E., and Linda Yee Chew, Esq. The six remaining

members that were appointed prior to December of 1997 will continue to serve on the board in their respective roles.

Brenda A. Bradley, P.E., is the president of Alexander Engineering, Inc. in Houston, Texas. She has been a member of the Industry Advisory Committee at the board. Currently, she serves as the chair

of Professional Engineers in Private Practice of the Texas Society of Professional Engineers. Gov. George W. Bush previously selected Bradley in 1996 to serve as the vice-chair of the Texas On-Site Wastewater Research Council. Bradley was named Young Engineer of the Year in 1988

"Board Members" continued on page 5

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Board Members

Edmundo R. Gonzalez, Jr., P.E.
Board Chair - Brownsville

Brenda A. Bradley, P.E.
Member - Houston

Joe Paul Jones, P.E.
Member - Ft. Worth

C. H. (Herb) Treat, Ph.D., P.E.
Board Vice-Chair - Austin

E. D. (Dave) Dorchester, P.E.
Member - Midland

Hubert Oxford III
Member - Beaumont

Danny R. Perkins
Board Secretary - Houston

Jose I. Guerra, P.E.
Member - Austin

Kathleen Campbell Walker
Member - El Paso

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John R. Speed, P.E.
Executive Director

Paul D. Cook
Director of Enforcement

Randi Warrington
Deputy Executive Director

Hali Ummel
Editor

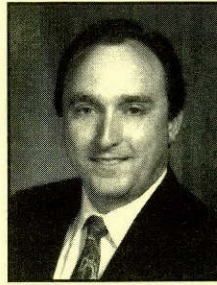
C. Walter May, Jr., P.E.
Director of Licensing

Contact the board at:

P. O. Drawer 18329, Austin, TX, 78760-8329 or 1917 IH 35 South, Austin, TX 78741 phone: (512) 440-7723
fax: (512) 442-1414 home page: <http://www.main.org/peboard> e-mail: peboard@mail.capnet.state.tx.us

NEWS from Executive Director

John R. Speed, P.E.



131.18 (9) Direct Supervision - critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Texas Engineering Practice Act, (18(b), shall be personally present during such work.

"News from Executive Director"
continued on page 5

The board has implemented the majority of the rule revisions that resulted from Senate Bill 623, leaving only a few minor regulations for review at the June and August board meetings. Since the changes are so extensive, it will not be possible to print the full revisions in a newsletter format. I hope that all Texas professional engineers will take this opportunity to down-

load the latest copy of the law and rules from our home page and evaluate how these changes will impact our professional practice. An abbreviated summary of the more significant revisions follows below.

Two items are of critical importance to consultants and supervising engineers. First, the definition of "direct supervision" has been altered in an attempt to reduce the chances that plan stamping can occur.

| TOPIC | LAW SECTION | RULE SECTION | MAJOR CHANGES |
|---|---|---|--|
| Terminology | Entire law | All rules | The general terminology of "registered engineer" has been changed to "licensed engineer"; engineers may still use old terminology on seals, etc. |
| Definition of engineering | 2 (4) | 131.18 | The definition of the "practice of engineering" has been altered to include examples of tasks that engineers perform. |
| Practice definitions | N/A | 131.18 | The definition of "direct supervision" has been tightened to disallow practices leading to plan stamping. The definitions of "incompetence" and "gross negligence" have also been strengthened. |
| Exam waivers | 12 (e) | 131.101 (f), (g), 131.52 | Exam waivers are available for applicants with 12 or 16 years of experience, depending on their education; PhD's are eligible for waivers with 4 or 6 years of experience depending on the circumstances. |
| Previously licensed engineers | 12 (e) | 131.54 | Paperwork requirements have been minimized for previously licensed engineers provided that their materials are still on file. |
| Disabled engineers | 13 (e) | None | The \$200 portion of the renewal fee has been waived for disabled engineers who are not working due to their disability. |
| The offer of consulting engineering services by firms | 18 (a) | 131.162, 131.163, 131.18 (direct supervision) | Any business entity offering consulting engineering services (even as a minor part of a multidisciplinary contract) must employ a full-time P.E. on their staff to personally perform or directly supervise the firm's engineering work. |
| Part-time consulting work | 18(b) | 131.162, 131.163, 131.18 (direct supervision) | Part-time engineering consulting work can only be performed when the responsible engineer is personally present. |
| Exemption clarification | 20; 20 (k), (l) | N/A | Out-of-state engineers are now prohibited from offering or performing engineering in Texas while their P.E. application is pending; the board recognized allied design professions and in-house construction job titles. |
| License review | 22 (e) | Rules are not yet in place. | The Board may review the license of an engineer suspected of posing a threat to the public without immediately having to open an enforcement case. |
| Complaints confidential | 26 | N/A | The identity of complainants will remain confidential during the investigatory phase of enforcement actions. |
| Rules of professional conduct tightened | 8 (authority unchanged from previous Act) | 131.151, 131.152, 131.153, 131.154, 131.155 | These rules require engineers to protect clients, users and the public in a proactive manner. Under the new regulations, engineers: must report violations, must address environmental concerns, may enter conflicts of interest, but must fully disclose them, must support expert testimony with engineering evidence, and shall maintain client confidentiality and professional business demeanor. |
| Fines | 22C | 131.167, 131.168 | Administrative penalties of up to \$3,000 per offense can be assessed in a noncriminal, administrative setting; fines can be assessed in addition to other sanctions. |

Enforcement Matters

The enforcement department at the board receives complaints from the public and other state agencies concerning violations of the Texas Engineering Practice Act (Act) and the board rules. During the period from Aug. 1, 1997, to Jan. 31, 1998, the enforcement department conducted 494 inquiries; 232 of those were resolved by achieving voluntary compliance. In addition, 16 Cease and Desist Orders were signed by individuals that allegedly violated the Act. Persons who signed Consent Orders or Agreed Board Orders with the board neither admitted nor denied the charges brought against them.

As part of the board's disciplinary action, individuals may be required to successfully complete an engineering ethics and professionalism course offered through the Murdough Center for Engineering Professionalism at Texas Tech University in Lubbock. Since publication of the September 1997 *P.E. Newsletter*, the following actions have been taken on practice violations:

Charles E. Allison, P.E., of Houston, Texas, signed a Consent Order effective Nov. 19, 1997, for a Formal Reprimand. Allison allegedly affixed his Texas engineer seal to a report regarding an engineering inspection of the foundation of a structure in Corpus Christi, Texas, while his Texas P.E. license was expired. He also allegedly identified himself as a professional engineer on a supplemental report for inspection of a structure in Hurst, Texas, while his Texas P.E. license was expired.

Gregory B. Burns, P.E., of Dallas, Texas, signed a Consent Order for a Formal Reprimand effective Nov. 19, 1997. Burns allegedly affixed a sticky-backed decal replica of his Texas engineer seal to a reference statement submitted to the board. Burns agreed to successfully complete an engineering ethics course by May 19, 1998.

Eric J. Cleveland, P.E., of Rowlett, Texas, signed a Consent Order for a Formal Reprimand effective Nov. 19, 1997. Cleveland allegedly signed a proposal

submitted by his firm which included a competitive price quote for engineering services in connection with the construction of a new high school for the Wills Point Independent School District, a project which falls under the provisions of the Texas Professional Services Procurement Act. The firm who employs Cleveland provided a written company policy concerning the implementation of procedure to prevent similar infractions.

William F. Curra, P.E., of Austin, Texas, signed an Agreed Board Order for a Formal Reprimand effective Nov. 19, 1997, that included terms requiring Curra to pay an administrative penalty of \$1,000. Curra allegedly claimed in a report to the City of Llano that a structure was safe for use as a dance hall without listing the restrictions that must be followed for the dance hall's safe use; in addition, he allegedly did not disclose the basis for his conclusions given the poor condition of the existing structure of the dance hall. Curra must also successfully complete an engineering ethics course by May 19, 1998.

Kenneth N. Dinges, P.E., of Houston, Texas, signed a Consent Order for a Formal Reprimand effective Feb. 18, 1998. Dinges' order was a reciprocal action based on enforcement action taken against his Arizona P.E. license and his Colorado P.E. license. Dinges must also successfully complete an engineering ethics course by August 18, 1998.

Thomas H. Eikel of Houston, Texas, signed an Agreed Board Order effective Nov. 19, 1997, for a four-year suspension of his Texas P.E. license with the final three years to be conditionally probated. If he maintains a clean record with the board's enforcement department during the first year of his suspension, Eikel can return to practice as a Texas P.E. on Nov. 19, 1998. Eikel allegedly recommended use of a connection to support the roof of a restaurant in Webster, Texas, in a manner not in keeping with generally accepted engineering standards; he allegedly was not in responsible charge of the engineering for an architectural firm as he claimed; and he allegedly aided and abetted in the unlicensed practice of engineering.

Raul P. Flores of McAllen, Texas, signed an Agreed Board Order for a one-year conditionally probated suspension of his Texas P.E. license effective Nov. 19, 1997. Flores failed to meet the board's requirement that

he pay an administrative penalty of \$1,000 by Dec. 19, 1997; therefore as described in the terms of the initial Agreed Board Order, the board fully suspended his Texas P.E. license until Nov. 19, 1998. Flores allegedly submitted plans for a subdivision unit which incorrectly certified that the design conformed to ordinances for Starr County, instead of Rio Grande City. He also allegedly did not specify on the plans or in an attached report the intended method for providing water service as required.

Glenn Lindsey, P.E., of Oklahoma City, Oklahoma, signed an Agreed Board Order for a one-year conditionally probated suspension of his Texas P.E. license effective Nov. 19, 1997. Lindsey must successfully pass an engineering ethics and professionalism course offered through Texas Tech University by May 19, 1998 to meet the terms of his probation. Lindsey allegedly offered to perform engineering services in Oklahoma while he was not a licensed engineer in Oklahoma.

Bruce A. Meek, P.E., of Plano, Texas, signed an Agreed Board Order for a Formal Reprimand effective Nov. 19, 1997. Meek's firm allegedly submitted a proposal which included a competitive price quote for engineering services in connection with the construction of a new high school for the Wills Point Independent School District, a project which falls under the provisions of the Texas Professional Services Procurement Act. Although Meek did not sign the proposal, he allegedly failed to ensure that the proposal submitted by his firm conformed to the requirements set forth in the board rules. Meek agreed to successfully complete an engineering ethics course by May 19, 1998.

"Enforcement" continued on page 4

How to file a complaint:

- ◆ call the enforcement department to verify that the case is within the board's jurisdiction.
- ◆ send a letter describing the details of the situation to enforcement; please provide sufficient evidence such as names of witnesses, plans, specifications, or other sources of proof with the letter.
- ◆ return a completed complaint form to the board.

Licensing Notes:

What a P.E. License Does for You

A Texas P.E. license allows professional engineers to legally represent themselves to the general public as an engineer, offer consulting engineering services to private and public entities, and perform engineering design or construction on public works. Licensed engineers must also adhere to the code of ethics and professionalism established by the board.

P.E. License Renewal

Engineers must renew their license annually if they wish to continue to practice professional engineering. Renewal dates are staggered into quarters so that approximately one-fourth of the state's licensees will renew every three months. Regardless of whether a renewal notice is received, each licensee is still responsible for license renewal. Additional fees will be charged to engineers who renew late. Renewal notices are sent out 30-45 days prior to the license expiration dates listed below.

Examination Statistics

From Aug. 1, 1997, to Jan. 31, 1998, the board licensed 628 people. This number includes persons passing the October 1997 Principles and Practice of Engineering Examination (PE) and the Fundamentals of Engineering Examination (FE). The pass rate from the October 1997 and April 1997 exams are listed below.

| April '97 PE exam | Oct. '97 PE exam | April '97 FE exam | Oct. '97 FE exam |
|----------------------|---------------------|----------------------|---------------------|
| 64% | 57% | 77% | 71% |

Board Calendar:

Board Meeting Dates

June 17, 1998 - Fort Worth
Aug. 19, 1998 - Austin
Nov. 18, 1998 - Austin
Feb. 17, 1999 - Austin

Examination Schedule

| Principles & Practice Exam | Fundamentals Exam | Sign-up Deadline* |
|-------------------------------|----------------------|----------------------|
| April, 24 '98 | April, 25 '98 | Feb. 27, '98 |
| Oct. 30, '98 | Oct. 31, '98 | Sept. 11, '98 |
| April 23, '99 | April 24, '99 | Feb. 26, '99 |

*The Principles and Practice exam (PE) and the Fundamentals of Engineering exam (FE) share the same deadline for submission of the examinee scheduling form. All sign-up forms must be received by 5:00 p.m. on the due date.

License Expiration Dates

March 31, June 30, Sept. 30, Dec. 31

Enforcement

continued from page 3

Walter Michael Michelutti of San Juan, Puerto Rico, signed a Consent Order effective Feb. 18, 1998, in which he agreed to cease practice of engineering in Texas and that the board would refuse to renew his Texas P.E. license. Michelutti allegedly failed to provide a copy of his seal imprint after the board made repeated requests.

Phillip G. Miller, P.E., of Houston, Texas, signed an Agreed Board Order for a Formal Reprimand effective Nov. 19, 1997. Miller's firm allegedly issued a solicitation requesting and subsequently receiving competitive price quotes for geotechnical engineering services in connection with a construction project to replace a mechanical system at an elementary school in Houston, Texas; the project falls under the provisions of the Texas Professional Services Procurement Act. Miller also provided the board with a copy of an official policy statement instituted by his firm to prevent future actions of this nature which would violate the Texas engineering law and rules.

Thomas A. Rogers, P.E., of Lubbock, Texas, signed a Consent Order for a one-year conditionally probated suspension of his Texas P.E. license effective Feb. 18, 1998. Rogers allegedly failed to properly seal the individual drawings and calculations in a structural analysis report. Rogers may complete the entire one-year period while on probation unless he fails to successfully finish an engineering ethics course by Aug. 18, 1998. If Rogers fails to complete the course by the specified date, the board will suspend his Texas P.E. license for the remaining six months of the one-year disciplinary period. Rogers is also required by the board to submit a monthly summary of the engineering services he performs during his probation.

Robert K. Shupe, P.E., of Sunnyvale, Texas, signed a Consent Order for a one-year conditionally probated suspension of his Texas P.E. license effective Feb. 18, 1998. Shupe allegedly failed to sign, date and affix his Texas engineer seal to the design and installation plan sheets for the HVAC system. Shupe may complete the entire one-year period while on probation unless he fails to successfully

finish an engineering ethics course by Aug. 18, 1998. If Shupe fails to complete the course by the specified date, the board will suspend his Texas P.E. license for the remaining six months of the one-year disciplinary period. Shupe is also required by the board to submit a monthly summary of the engineering services he performs during his probation.

Hilton L. Stracener, P.E., of Lubbock, Texas, signed a Consent Order for a one-year conditionally probated suspension of his Texas P.E. license effective Nov. 19, 1997. Stracener allegedly failed to provide design plans for a funeral home in Andrews, Texas, to the Architectural Barriers Division of the Texas Department of Licensing and Regulation prior to the beginning of construction; Stracener may complete the entire one-year period while on probation unless he fails to successfully finish an engineering ethics course by May 19, 1998, or fails to provide monthly summaries of his engineering services during the probationary period.

Gopi K. Vungarala of Austin, Texas, signed a Consent Order for a six-month suspension of his Texas P.E. license effective Feb. 18, 1998, instead of paying an administrative penalty. Vungarala allegedly failed to respond to the board's repeated requests for a copy of his seal imprint within the six-months following the board's notification of his licensure as a Texas P.E.

Cease and Desist Orders

from June 2, 1997 through Feb. 18, 1998

George W. Abrahamson - Amarillo, TX
Eddie Anderson - McKinney, TX
Terry K. Baumeister - Oklahoma City, OK
Glenn L. Brown - El Paso, TX
M.R.E. Builders - Houston, TX
Daniel R. Dolan - El Paso, TX
Darrell C. Hefley - Grand Prairie, TX
Integrated Test Engineering ITE, L.L.C. -
Dallas, TX

Roy D. Jones - Shreveport, LA
A.J. (Art) Hunkele - Alamo, TX
Robert Klob - Fort Worth, TX
Smitty Marshall - Houston, TX
Danny D. McLarty, AIA - Lubbock, TX
Geoffrey A. Sams - Arlington, TX
Brian S. Smith - Plano, TX
Jayantkumar C. Soni - Houston, TX

"Enforcement" continued on the back page

News from Executive Director

continued from page 2

The second item is the rewrite of Board Rules 131.162 and 131.163 concerning the structure of a consulting operation and the engineer's professional responsibility.

131.162 Firm Compliance. *The board shall not consider any firm, partnership, association, corporation, or other business entity as being in compliance with the Texas Engineering Practice Act (Act), section 17 and section 18, unless a licensed professional engineer is a regular full-time employee of the firm, partnership, association, corporation or other business entity. The engineer shall provide to the board evidence of such employment upon its request. This section does not prohibit a licensed professional engineer from performing consulting engineering services on a part-time basis as an individual. An engineering firm shall provide that at least one full-time engineer employee directly supervises all engineering work performed in branch, remote, or project offices.*

131.163 Engineer Compliance. *Any engineer 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 Board Rule 131.162 of this title (relating to Firm Compliance) shall be subject to legal and disciplinary actions available to the board. Engineers shall perform or directly supervise the engineering work of any subordinates as provided by Board Rule 131.18 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 Board Rule 131.162 of this title (relating to Firm Compliance) in a manner that could enable such firm to offer or perform professional engineering services.*

Board initiatives on topics such as software engineering and residential foundations are summarized in the "News in Brief" section on page 6. The input of all Texas engineers and other interested parties on these issues is welcome.

Penalties *continued from page 1*

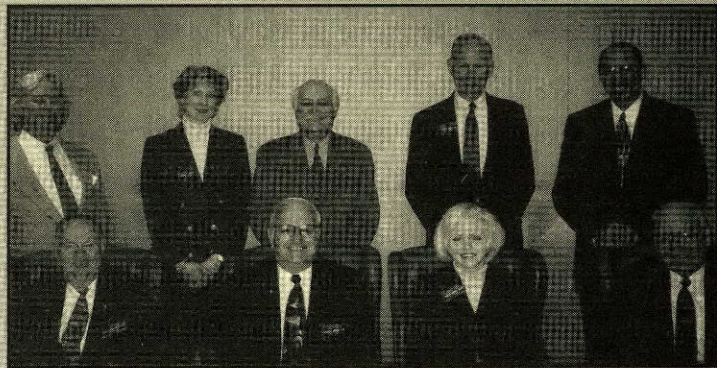
"The reasoning behind the penalties is that the Texas Legislature recognized the need to increase the board's flexibility in the enforcement of laws passed to protect public safety," said John R. Speed, P.E.,

Board Members *continued from page 1*

by the Travis Chapter of the Texas Society of Professional Engineers. Bradley received a Bachelor of Arts in Environmental Studies from Trinity University and a Master of Science in Civil Engineering from Texas Tech University.

Joe Paul Jones, P.E., is a vice-president in the Fort Worth firm, Freese and Nichols, Inc. He served as president of the National Society of Professional Engineers from 1992 to 1993 and as president of the Texas Society of Professional Engineers in 1981. He served the Consulting Engineers Council of Texas as a director in 1973 and 1974. Jones received the Service to the People Award in 1987 from the Texas Section of the American Society of Civil Engineers. He holds a Bachelor of Science in Architectural Engineering from the University of Texas.

Six PEs and three public members serve on the board for six-year terms. The board members for 1998 are: (bottom row, left to right) E. D. (Dave) Dorchester,



P.E., Edmundo R. Gonzalez, Jr., P.E., board chair, Kathleen Campbell Walker, and Joe Paul Jones, P.E. (top row, left to right) Hubert Oxford III, Brenda A. Bradley, P.E., Jose I. Guerra, P.E., C. H. (Herb) Treat, Ph.D., P.E., board vice-chair, and Danny R. Perkins, board secretary. Biographies of the board can be accessed at <http://www.main.org/peboard>

executive director of the Texas Board of Professional Engineers.

The largest administrative penalties to date have been for \$1,000. In one case, Raul P. Flores of McAllen failed to pay his penalty and his Texas P.E. license was suspended until Nov. 19, 1998. Details of the board cases can be found in the Enforcement Matters section of this newsletter.

Engineers that fail to report violations of others can have a one-year suspension imposed on them by the board along with a recommended \$1,500 fine. To open an enforcement case, the board's investigators need a description of the alleged violation, supporting evidence such as names and addresses of witnesses and the section of law and rules thought to be in violation by the alleged act.

In the past, violations of engineering law have received coverage in the board's

Kathleen Campbell Walker is the chairperson of the International Department of the El Paso law firm Kemp, Smith, Duncan & Hammond. Walker is also the president of the El Paso Foreign Trade Association. She serves as a member of the National Liaison Committee with the Department of State for the American Immigration Lawyers Association and as an Advisory Board Member to the Center for Western Hemisphere Trade of the University of Texas at El Paso. Every year since the recognition of the area of immigration law, she has been listed in the publication, *Best Lawyers in America*. Walker received a Bachelor of Arts from Texas Tech University and her law degree from the University of Texas.

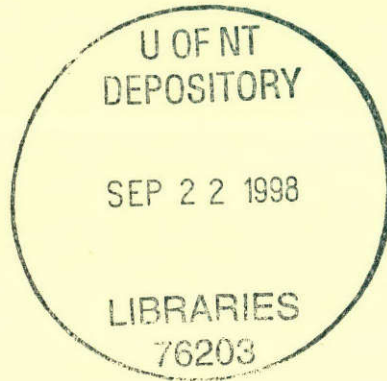
newsletter for actions ranging from a formal reprimand to a suspension or full revocation of the Texas P.E. license. Fines may now be utilized in addition to those types of enforcement disciplinary actions. For example, engineers found guilty of the most grievous misconduct can have their Texas P.E. license revoked and be fined \$3,000. Board Rule 131.167 outlines the disciplinary actions available to the board for enforcement purposes.

The board's investigators review the following factors in a case before taking disciplinary action: the seriousness of the acts or the omissions, the number of prior disciplinary actions taken against the respondent, any damage caused by the violations and the possible economic benefit gained through the violations. The law and rules governing engineering are posted at <http://www.main.org/peboard>

P.E. NEWSLETTER

TEXAS BOARD OF PROFESSIONAL ENGINEERS

P. O. Drawer 18329
Austin, TX 78760-8329



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Enforcement

continued from page 4

Administrative Penalties for Non-Practice Violations

from Nov. 19, 1997 through Feb. 18, 1998
Non-practice violations are those in which the engineer failed to properly maintain records or communication with the board.

Total Administrative Penalties: 22

The board issued:
\$150 - 19 penalties
\$1,000 - 3 penalties

Injunction/Default Judgments:

from April 17, 1997 through Feb. 18, 1998

Offshore Engineering Services -
Houston, TX

Suspended Licenses:

As of April 1, 1998

Thomas H. Eikel - Houston, TX
Raul P. Flores - McAllen, TX
Gopi K. Vungarala - Austin, TX

Refusal to Renew License:

Walter M. Michelutti - San Juan, PR

News in Brief

Board Staff Update

Jana D. Bowen and Chris S. Kimbrell joined the board's enforcement staff as investigators in March of this year. They both have previous experience as investigators with other state agencies.

Do I Have to Change My P.E. Seal?

Texas engineering regulations do not require PEs to alter their seal from "registered" to "licensed" professional engineers. Anyone licensed after Sept. 1, 1997, should obtain a seal that reads "licensed" across it instead of "registered". PEs licensed before Sept. 1, 1997, have the option of retaining the "registered" seal or acquiring a new seal with "licensed". PEs that change their seal to "licensed", must send a copy of their new seal imprint to the board.

Software Engineering

The board has proposed rule alterations that will recognize software engineering as

a distinct engineering discipline. The rule will be published in early April in the *Texas Register*; it will be discussed and possibly adopted at the June 17, 1998 board meeting. Until an exam is developed, the board will license software engineers only by granting exam waivers for engineers with significant experience.

The Residential Foundation Committee (RFC)

The RFC at the board has established guidelines concerning the design of residential foundations that are available for review from the board. Official action is anticipated in June.

*For more information,
contact the board at:*

P.O. Drawer 18329, Austin, TX
78760-8329,

(phone) (512) 440-7723,

(fax) (512) 442-1414,

(e-mail)

peboard@mail.capnet.state.tx.us

(home page)

<http://www.main.org/peboard>