

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

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JUL 30 2 00 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Board of Registration  
for Professional Engineers TITLE NUMBER: 7

CITE AUTHORITY 30-13

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: Title 7 - Legislative Rules - State Board  
of Registration for Professional Engineers, Series 1, Section 1 through 19  
inclusive.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Ann Hicks

Authorized Signature

\$13.40

State Board of Registration for Professional Engineers

608 Union Building

Charleston, West Virginia 25301

Brief Summary of the Proposed Changes to the Rules

The State Board of Registration for Professional Engineers would like to request the review of the Legislative Rule-Making Committee as to the proposed changes to the Rules and Regulations governing the practice of engineering in the State of West Virginia.

The Board requests consideration and approval for the following: (1) deletion of §7-1-8.2(f), §7-1-8.2(g) and §7-1-8.2(h) rules which have expired since the last update, (2) to include the requirement for a minimum of three (3) PDH units to be courses in engineering ethics as a provision for annual license renewal, (3) addition of procedures for Professional Limited Liability Partnerships and Companies in accordance with passage of SB 338, and (4) to clarify language in providing a better interpretation and understanding of the existing Rules and Regulations.

State Board of Registration for Professional Engineers

608 Union Building

Charleston, West Virginia 25301

Circumstances Which Require the Changes of the Rules

The State Board of Registration for Professional Engineers would like to request the review of the Legislative Rule-Making Committee as to the circumstances which require the changes in the existing Rules and Regulations governing the practice of engineering in the State of West Virginia.

These changes are to eliminate existing sections of the Rules and Regulations which have expired since the last update, to include a ruling for the requirement of courses in engineering ethics as a provision for annual license renewal, to implement procedures for professional limited liability partnerships and to provide a clarification of various existing rules.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES (NOT APPLICABLE)**

Rule Title: Rules of the West Virginia State Board of Registration for Professional Engineers  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: State Board of Registration for Professional Engineers  
 Address: 608 Union Building  
Charleston, WV 25301-2703

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

3. Objectives of these rules:

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Board of Registration for Professional Engineers  
608 Union Building  
Charleston, West Virginia 25301

Telephone No. (304) 558-3554

LEGISLATIVE RULE TITLE: Title 7 Legislative Rules State Board of Registration  
for Professional Engineers Series 1

1. Authorizing statute(s) citation Chapter 30, Article 13  
Sections 1 - 24 inclusive

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 12, 1998

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

July 13, 1998



hearing for the taking of evidence and a general description of the issues to be decided.

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Date of hearing or comment period:

N/A  
\_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A  
\_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached N/A  
\_\_\_\_\_

Strike-outs indicate deletion of section, line or word

Underlines indicate additions to section, line or word

FILED

TITLE 7  
LEGISLATIVE RULES  
WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

JUL 30 2 00 PM '98

SERIES 1

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

REGULATIONS GOVERNING THE WEST VIRGINIA BOARD  
OF REGISTRATION FOR PROFESSIONAL ENGINEERS

7-1-1. GENERAL

1.1 Purpose. The purpose of adopting rules of procedure is to ensure the proper performance of the duties of the Board of Registration for the regulation and conduct of member and personnel procedures, meetings, records, examinations.

1.2 Authority. West Virginia Code 30-13-9(a), 14, 18, 19, 21.

1.3 Scope. This rule is binding upon persons registered under West Virginia Code 30-13-1 et seq and is applicable to individuals or organizations providing engineering services and holding a certificate of authorization.

~~1.4 February 23, 1993~~

~~1.5 June 16, 1993~~

1.4 ~~1.6~~ Repeal of former rules.

This legislative rule repeals and replaces West Virginia 7CSR1 "Regulations governing The West Virginia Board of Registration for Professional Engineers" filed and effective ~~May 9, 1991~~ June 16, 1993.

7-1-2.     **DEFINITIONS**

2.1     "Code" means West Virginia Code 30-13-1 et seq.

2.2     "NCEES" means the National Council of Examiners for Engineering and Surveying.

2.3     "ABET" means the Accreditation Board for Engineering and Technology.

2.4     "TAC/ABET" means the Technology Accreditation Commission.

2.5     "T.O.E.F.L." means the Test of English as a Foreign Language provided by the Educational Testing Service, Post Office Box 6151, Princeton, New Jersey, 08541-6151.

2.6     "FE" means the Fundamentals of Engineering Examination.

2.7     "EI" means an Engineer Intern (a person who has passed the "FE" examination).

2.8     "PE" means the Principles and Practice of Engineering Examination.

2.9     "PDH" means Professional Development Hour - A contact hour of instruction or presentation. The common denominator for other units of credit.

2.10    "CEU" means Continuing Education Unit - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved

continuing education course.

2.11 "College/Unit Semester/Quarter Hour" - Credit for ABET approved courses or other related college courses approved in accordance with Subsection 14.4 of this Rule.

2.12 "Certificate of Authorization" - A firm, corporation, co-partnership, joint stock association or private practitioner employing others, referred to in this rule as a "firm", which practices or offers to practice engineering by engineers registered by the Board must apply to the Board for a certificate of authorization.

### 7-1-3. APPLICATIONS

#### 3.1 Types of Applications.

(a) A person applying to the Board for registration as a Professional Engineer shall submit to the Board a completed application on forms prescribed by the Board.

(b) A person applying to the Board for certification as an Engineer Intern shall submit to the Board a completed application on forms prescribed by the Board.

(c) A person or firm applying to the Board for a Certificate of Authorization of a firm shall submit to the Board a completed application on forms prescribed by the Board.

#### 3.2 Criteria for Applications

(a) The Board will only accept applications from

persons who meet the education and experience requirements under the Code.

(b) The Board will accept applications for certification as an Engineer Intern from persons who meet all of the requirements of the Code. Senior students in a four-year program leading to a baccalaureate degree from a Board approved curriculum may apply for certification as an Engineer Intern and may take the Fundamentals of Engineering examinations during their senior year.

(c) The Board will accept an application for registration which includes the documented record properly executed and issued with verification by the National Council of Examiners for Engineering and Surveying (NCEES) in lieu of an application on forms prescribed by the Board.

### 3.3 Completing Applications.

(a) An applicant shall provide a detailed description of the nature of the work and duties he or she has performed in the Professional Experience section of the application form. When space provided on forms is inadequate, supplementary sheets provided by this Board (or if not provided, sheets of a good grade of white paper 8.5 x 11 are to be used).

(b) All applications made to this Board must be subscribed and sworn to before a Notary Public or other persons qualified to administer oaths on the forms used by the applicant.

(c) In order to allow sufficient time for

processing and for securing examinations, all applicants which may require an examination must file their application with this Board at times specified by the Board.

(d) The Board may refuse to register an applicant who has withheld information or provided statements which are untrue or misrepresented the facts.

(e) It is the responsibility of the applicant to supply correct addresses of all references and to be sure that the references are provided as requested. Failure of a reference to respond could delay the processing of an application either until a reply is obtained or another reference is given.

(f) In relating experience, the applicant must account for all employment or work experience for the period of time which has elapsed since graduation from a Board approved curriculum. If the applicant was not employed or was employed in other kinds of work he or she should indicate this in the experience record.

(g) The applicant shall have transcripts of all college grades mailed directly from the school or college to the Board with the signature of the proper school officer and the embossed seal of the school.

#### 3.4 Applications from Non-Residents.

(a) A person who is a resident of West Virginia, for purposes of registration is defined as a person who lives and is employed within the geographical boundaries of the state.

(b) Applicants who do not reside in West Virginia must be registered or certified in the state in which they reside before they can apply for registration or certification in this state.

© A person who is a graduate of a Board approved curriculum in West Virginia may apply for original registration or certification.

(d) All applicants for registration with the Board by comity must have passed an eight hour written examination in the Fundamentals of Engineering and an eight hour written examination in the Principles and Practice of Engineering that are acceptable to this Board, and must have met all of the other requirements of the West Virginia Code 30-13-1 et seq.

3.5 Applications from Applicants With Degrees from Foreign Schools.

(a) All foreign language documentation submitted with the completed application must be accompanied by translations certified to be accurate by competent authority recognized by the Board.

(b) All applicants must be able to speak and write the English language fluently. A score of over five hundred fifty (550) on the "Test of English as a Foreign Language" as administered by the Educational Testing Service, Post Office Box 6151, Princeton, New Jersey, 08541-6151, fulfills this requirement. Other testing services may be approved by the Board.

3.6 Disposal of Applications. The Board may approve an application; defer it until the applicant provides further information, gains more experience, additional references, or for other reasons; or deny an application.

(a) When an application is approved by the Board it indicates that the applicant has met all the requirements for registration or certification required by the statutes of this state, and the Board shall grant the applicant a registration or certification. The Board shall notify the applicant of the approval.

(b) The Board will retain all applications which are deferred for any reason until the applicant submits the additional information required by the Board.

(c) When the Board denies an application it will be kept on file for one year and then destroyed.

3.7 Reconsideration of Applications. An applicant may request that the Board reconsider an application which has been denied when the request is based on additional information and/or evidence which could affect the original decision. An applicant must make the request for reconsideration within one year after the decision was made to deny the original application.

3.8 Retention of Records of Applications. The Board copies all approved applications which show the name, date of birth, the date of application, education, experience and other qualifications of the applicant, the examination required of the

applicant, and the Board granted registration or certification notice. The copies are stored by the Board in fire-proof and secure facilities. The Board will keep a duplicate copy of the records.

3.9 For the Purposes of § 30-30-17, a professional limited liability partnership or professional limited liability company shall apply for a certificate of authorization.

3.10 Every professional limited liability partnership and professional limited liability company shall, prior to applying for registration with the Secretary of State, obtain a letter indicating its eligibility to receive a certificate of authorization pursuant to Code § 30-13-17. Such a letter shall be filed with the application for registration with the Secretary of State.

#### 7-1-5. CURRICULA APPROVED BY THE BOARD

The term "a graduate of a curriculum of four years or more approved by the Board as being of satisfactory standing" used in West Virginia Code 30-13-13(a)(2) is interpreted by this Board to mean a person who has:

(a) a Baccalaureate Degree from a school whose curricula is accredited by the Accreditation Board for Engineering and Technology, Engineering Accreditation Commission at the time of the awarding of the degree.

(b) a Baccalaureate Degree in Engineering Technology

from a school whose curricula is accredited by The Accreditation Board for Engineering and Technology, Technology Accreditation Commission at the time of the awarding of the degree.

© a Baccalaureate Degree from a school whose curricula is not accredited by the Accreditation Board for Engineering and Technology, Engineering Accreditation Commission such as those curricula recently developed or curricula offered by foreign schools evaluated by the Board as being of high quality essentially equal to those curricula which are accredited.

**7-1-6. EXPERIENCE**

An applicant for registration as a Professional Engineer must demonstrate that he or she has obtained a minimum of four (4) years of experience satisfactory to the Board.

6.1 The applicant's experience on engineering projects shall be progressive, in that it was of increasing quality and required greater responsibility.

6.2 The Board shall consider only the experience an applicant obtains after he or she graduates from a Board approved curriculum.

6.3 An applicant shall not obtain experience in violation of West Virginia Code 30-13-1 et seq.

6.4 Experience gained in the Armed Services shall be of a character equivalent to that which would have been gained in the

civilian sector doing similar work. A good indicator is that the applicant while in the Armed Services served in an engineering or engineering related group.

6.5 The experience gained shall be under the supervision of a registered Professional Engineer. If not, the applicant should explain why the Board should consider the experience acceptable.

6.6 For sales experience to be creditable, the applicant must prove that engineering principles were required and used while gaining this experience.

6.7 The Board may classify the teaching of design courses in curriculums approved by the Board as professional engineering experience if the employment was at a teaching grade of at least assistant professor.

6.8 Experience gained in the design of engineering research and projects as a member of an engineering faculty at the rank of assistant professor or higher and where the curriculum is approved by the Board may be creditable.

6.9 The board may credit an applicant who has followed a Board approved Baccalaureate Degree in engineering with a Master's degree in engineering with one year's experience if the applicant successfully completes graduate study leading to the Master's degree in engineering. If the applicant completed a Doctor of Philosophy Degree in engineering under the same conditions, the Board may credit the applicant with two years total experience. The two years credit includes the one year for the

Master's degree. If the Doctor of Philosophy Degree is obtained without the Master's degree, the credit for experience is two years.

6.10 The applicant must have obtained the experience at the time of filing the application.

6.11 The Board will not give the applicant credit for experience obtained as a contractor in the execution of design by a Professional Engineer or in employment considered as that of supervising construction of such work.

#### 7-1-7. REFERENCES

7.1 The applicant shall use individuals as references who have personal knowledge of the applicant and who are able to issue judgments concerning the applicant's experience, ability, character or reputation.

7.2 For registration as a professional engineer, an applicant must submit the names of five individuals as references, three of whom shall be professional engineers having personal knowledge of the applicant's engineering experience. Also, the applicant should include in the references individuals familiar with the applicant's experience noted in the employment section of the application.

7.3 For certification as Engineer Intern, an applicant must give at least three character references.

7.4 The applicant must give the present address of each reference. Verification will be made by reviewing each and every reference's response.

7.5 An applicant may not use a relative as a reference.

7.6 An applicant may not use a current Board member as a reference.

7.7 Each applicant should inform the persons concerned that they are being used as references.

7.8 It is the responsibility of the applicant to assure the return of a completed reference form to the Board from each person listed as a reference. This responsibility includes assuring the return of educational transcripts and verification of registration in other states. All reference materials must be complete before the Board acts on the application.

7.9 Confidentiality of Reference Replies. The Board will place replies received from references regarding the qualifications of an applicant in files which are considered non-public records. The Board will not divulge the source and character of the information except in special cases when required by law.

#### **7-1-8. EXAMINATIONS**

8.1 Classification of Examinations. The Board will administer the following written examinations, prepared and

furnished by the National Council of Examiners for Engineering and Surveying:

(a) The "FE" examination.

(b) The "PE" examination.

The Board will offer examinations only in those branches of engineering in which examinations are prepared by the National Council of Examiners for Engineering and Surveying. Examinations in engineering branches may not be available at both the spring and fall examinations. The Board will announce the schedule of available examinations.

⊙ The Board will register successful applicants as professional engineers without reference to engineering branch in either their certificate or seal.

#### 8.2 Eligibility of Applicant for an Examination.

(a) An applicant for registration as a professional engineer may not sit for the "PE" examination until the "FE" examination has been passed.

(b) No applicant may sit for the eight (8) hour "FE" or the eight (8) hour "PE" examination until the Board has established that the applicant is eligible for the examinations.

⊙ Applicants for certification as an Engineer Intern are eligible to sit for the "FE" during the senior year in college before obtaining a baccalaureate degree in a program which has been approved by the Board.

(d) Graduates of a four year engineering technology

program accredited by TAC/ABET may sit for the "FE" examination during the senior year. The Board will certify the applicant as an Engineer Intern after the applicant has presented evidence of two (2) years of engineering experience following graduation, under the direct supervision of professional engineers and successful completion of the examination and all other requirements specified by West Virginia Code 30-13-1 et seq and this rule.

(e) The Board will accept applications for registration from any person who has previously been certified by the Board as an Engineer Intern and will grant the applicant registration after he or she has satisfactorily completed the "PE" examination, regardless of his or her place of domicile; provided, that not more than twelve years (12) have lapsed since the date of the original issuance of the Engineer Intern certificate.

~~(f) Until June 30, 1995 a graduate of a board approved curriculum, with a specific record of twenty (20) years or more of progressive experience on engineering projects and of a grade and character which indicates to the board that the applicant is competent to practice engineering, shall be admitted to the "PE" examination without being required to take the "FE" examination. Registration under this provision may not be recognized by other states.~~

~~(g) Until June 30, 1995 applicants over fifty (50) years~~

~~of age with twenty five (25) years of engineering experience and fifteen (15) years in responsible charge may be registered with the approval of the Board, after passing an oral and/or short written examination and having a personal interview with the Board. Registration by this procedure may not be recognized by other states.~~

~~(h) Until June 30, 1996, a graduate of Board approved allied science curricula may be admitted to the "FE" examination after presenting evidence of two (2) years of engineering experience under the direct supervision of professional engineers and may be certified as an Engineer Intern upon successful completion of the examination. The required experience must be certified to the Board by the supervising professional engineers giving the character and nature of the work performed in detail.~~

### 8.3 Examination Dates and Locations.

(a) Written examinations are offered on dates set by the NCEES. Normally this is in the spring and the fall of the year. The examination dates are available from the Board.

(b) Locations at which the examinations are given are designated by the Board and are available from the Board Office.

8.4 Language of the Examination. The language used in the examination is English.

### 8.5 Study Information.

(a) The Board will not distribute copies of

questions used on prior examinations.

(b) The Board has published specifications for all written examinations, which may be obtained upon request to the Board Office.

8.6 Instruction for Examinees. Instructions provided prior to each examination will declare an examination to be open or closed book. Materials permitted in the examination room will be listed in the instruction information provided to each applicant by the Board.

8.7 Failure to Attend an Examination.

(a) An applicant who fails to attend an examination for which they have been scheduled and the Board has ordered the examination will forfeit the fees paid for the examination.

(b) Failure of an applicant to attend an examination for which he or ~~her~~ she has been scheduled to attend does not count as a failure of the examination.

8.8 Examination Offerings.

(a) An applicant who fails to pass ~~the~~ an "PE" examination the first time will be granted a request to sit for another offering of the examination upon payment of the appropriate fee. In the event the applicant fails to pass the second examination and wishes to take a further examination, the applicant will be requested to provide the Board with evidence to show that additional knowledge has been acquired by the applicant since he or she failed the examination.

(b) An applicant for an ~~the~~ "PE" examination will be notified by the Board before the examination date of approval to take the examination. The applicant must notify the Board whether he or she plans to sit for the examination within ten (10) days of being notified of approval to take the examination.

8.9 Examination Results. The Board will provide written notification to all applicants of their examination results indicating pass or failure.

8.10 Review of Failed Examinations. An applicant who fails to make a passing score on an examination may review the examination paper within 30 days after receiving the result. The applicant must review the examination in the office of the Board and under its supervision.

8.11 Examinations in Additional Branches of the Principles and Practice of Engineering Examination.

(a) Upon payment of the prescribed examination fee listed in Subsection 19.6 of this rule, a currently registered engineer by this Board may sit for examinations in additional branches of the "PE" examination offered by NCEES. The Board shall record the passing of such examination.

(b) Should an applicant fail to pass the examination in additional branches he or she shall retain his or her current registration status.

7-1-9. CLASSIFICATIONS OF ENGINEERING

9.1 Classification of Registration. The Board shall register a qualified applicant under one of the following classifications.

- (a) Professional Engineer;
- (b) Engineer Intern;
- © Professional Engineer-Retired;

7-1-10 REGISTRATIONS

10.1 Provided the applicant has met all the requirements of the West Virginia Code and Regulations as it pertains to education and experience and upon passing required examinations, the applicant shall be granted a certificate of registration to practice engineering in West Virginia.

~~10.1~~ 10.2 Registration Number as a Professional Engineer.

The Board shall assign each registrant a registration number at the time registration is granted by the Board. Numbers are issued consecutively in the order in which an applicant is granted registration. The Board will advise the registrant of his or her number.

~~10.2~~ 10.3 Certificates of Registration. The Board shall issue a certificate of registration to an applicant who has met the requirements of this state and who has paid the registration fee. The certificate signed by the Board members will show the registrant's registration number and seal of the Board.

~~10.3~~ 10.4 Reissuance of Certificate. The registrant shall notify the Board when a certificate of registration or certificate of authorization is lost, destroyed or mutilated, and, if the registrant is in good standing, the Board will replace it, upon presentation of a notarized statement of the loss and the prescribed fee.

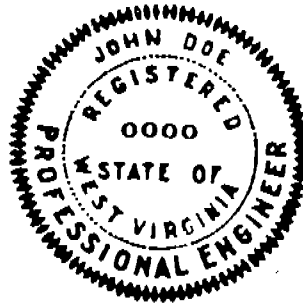
**7-1-11. SEALS**

11.1 Seal of the Board. The seal of the Board shall be affixed to each certificate of registration.

11.2 Seal of Registrant. When an applicant is granted registration, he or she must obtain an official seal of the size and design prescribed by the Board. The seal shall contain the following information:

- (a) The words "State of West Virginia"
- (b) The registrant's name
- (c) The registrant's registration number
- (d) The words "Registered Professional Engineer".

The following is a sample of the suggested format:



The seal may be a rubber stamp, or one that embosses.

11.3 Seal on Documents.

(a) The registrant shall place his or her seal and signature on all specifications, reports, drawings, plans, design information and calculations which he or she presents to a client or any public or government agency to certify that the work was done by the registrant or under the control of the registrant. Revisions to any documents must be numbered, dated, and initialed by the registrant whose seal appears on the original document.

(b) When copies are to be made, the registrant's seal and signature on all originals, tracings or other documents shall be reproducible.

© When the document contains more than one sheet, all registrants involved in preparation of the document or who controlled the work shall seal and sign the first or title page and are responsible for it. In addition, each sheet shall be sealed and signed by the registrant or registrants responsible for each sheet. When a firm, partnership or corporation performs the work, each sheet shall be sealed and signed by the registrant or registrants who performed the work. For bound documents, the registrant's seal who performed the work may be affixed to the first sheet of the bound document if that sheet bears a statement as to the number of bound sheets.

(d) Each registrant is solely responsible for the use of his or her seal. Only a registrant shall affix his or her seal

to work that is prepared by the registrant or work that is prepared under his or her direct supervision.

(e) When a registrant of another state has a temporary permit to practice in this state, the registrant shall use his or her state's registration seal and affix his or her signature and a copy of the temporary permit to work done in this state.

(f) When a registrant of this state examines and verifies the work of an out-of-state registrant, the registrant of this state has complete dominion and control of the design which includes possession of the sealed and signed reproducible construction drawings with complete signed and sealed design calculations indicating all changes in design.

(g) The Board authorizes the electronic reproduction of a seal when the resulting facsimile meets the specifications of this rule. The registrant is responsible for the improper use of the seal on work not prepared either by the registrant or under his or her direct supervision.

(h) It is the responsibility of each registrant to report the loss or theft of his or her seal to the Board as soon as practical after the loss or theft.

**7-1-12      TEMPORARY PERMITS**  
12.1      Requirements.

(a) This Board may grant a temporary permit to a

person who desires to practice or offer to practice engineering in this state who is not a resident of this state or who has no established place of business in this state, provided that person is legally qualified by registration in his or her home state or any foreign country and that his or her qualifications for obtaining the permit meet those required for registration under West Virginia Code 30-13-1 et seq.

(b) To obtain a temporary permit, an applicant must make application to the Board on forms provided by it and pay a fee prescribed in Subsection 19.6 of this rule.

12.2 Length and Scope of Permit. The Board shall grant the permit for a definite length of time not to exceed one year to allow the permittee to do a specific job. Under the permit the permittee may not practice engineering with respect to any other work not set forth in the permit.

#### **7-1-13. EXPIRATIONS AND RENEWALS**

##### 13.1 Renewals.

(a) The Secretary of the Board will annually during the month of May mail a renewal notice to the last known address of every person currently registered or certified by the Board under provisions of the West Virginia Code 30-13-1 et seq and to every firm holding a certificate of authorization. The notice shall indicate the expiration date and the amount of the renewal fee established by the Board.

(b) The responsibility for the timely payment of a registrant's fees rests solely with the individual registrant.

© After reaching the age of 65, a Registered Professional Engineer who has retired from practicing professional engineering may apply for the status of Professional Engineer-Retired, and upon payment of a fee as prescribed in Subsection 19.6 of this rule, he or she shall be registered as a Professional Engineer-Retired.

#### 7-1-14 CONTINUING PROFESSIONAL COMPETENCY

14.1 ~~Beginning the first day of July, 1994 the Board shall require every registrant to meet the continuing professional competency requirements of this rule for professional development as a condition for registration renewal. Beginning with the licensing year July 1999 through June 2000, as a condition of registration renewal every registrant shall be required to show evidence of obtaining fifteen (15) professional development hours (PDHs) each year. A minimum of three (3) of these PDHs shall be in the field of engineering ethics.~~

14.2 Requirements. ~~The Board requires every registrant to show evidence of obtaining sufficient PDH units in order to meet the requirements of the Board for renewal. The Board shall require five (5) PDH units as a requirement of renewal of his or her registration for the fiscal year beginning July 1, 1994, ten~~

~~(10) PDH units for the fiscal year 1995, and fifteen (15) PDH units for the fiscal year 1996 and thereafter. If a registrant exceeds the annual requirement in any year, a maximum of 8 PDH's may be carried forward into the subsequent year.~~ A registrant may earn PDH's as follows:

(a) Successful completion of college courses.

(b) Successful completion of continuing education courses.

(c) Successful completion of correspondence, televised, videotaped, and other short courses/tutorials.

(d) Active participation in seminars, in-house courses, workshops, and professional conventions.

(e) Teaching or instructing in subdivision (a) through (d) of this subsection.

(f) Authoring published papers, articles, or books.

If a registrant exceeds the annual requirement in any year, a maximum of eight (8) PDHs may be carried forward into the subsequent year.

14.3 Units. The conversion of other units of credit to PDH units is as follows:

1 College or unit semester hour	45 PDHs
1 College or unit quarter hour	30 PDHs
1 Continuing Education Unit	10 PDHs
1 Hour of professional development in course work, seminars, professional	1 PDH

conventions, workshops.

1 Hour of teaching professional development in course work, seminars, professional conventions, workshops. 2 PDHs

Each published paper or article on engineering subjects 10 PDHs

14.4 Determination of Credit. The Board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.

(a) The Board will base credit for college or community college approved courses upon course credit established by the college. Course approval will be recommended by the Board.

(b) Credit determination for seminars, workshops, and professional conventions will be determined by the Board.

© Obtaining credit for authoring published papers, articles or books, and in-house courses is the responsibility of the registrant and is subject to review by the board.

14.5 Recordkeeping. Each registrant is charged with the responsibility of his or her own professional development activities. The maintenance of records to be used to support credits claimed is the responsibility of the registrant. 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; 2) attendance verification records in the form of completion

certificates, paid receipts or other documents supporting evidence of attendance. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

14.6 Exemptions. A registrant may be exempt from the professional development educational requirements for one of the following reasons:

(a) New registrants by way of examination or reciprocity are exempt for their first renewal period.

(b) A registrant serving on active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year is exempt from obtaining the professional development hours required during that year.

(c) Registrants experiencing physical disability, illness, or other extenuating circumstances may be exempt subject to review and approval by the Board. Supporting documentation must be furnished to the board.

(d) Registrants who list their occupation as "Retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services are exempt from the required professional development hours. In the event a retired engineer elects to return to the active practice as a professional engineer, he or she must earn professional

development hours before returning to active practice for each year exempted not to exceed the annual requirement for two years.

14.7 Inactive Status. A registrant may bring an inactive license to active status by obtaining all delinquent PDHs. The number of PDHs required shall be no more than the two year minimum annual requirements for PDHs.

14.8 Forms. All renewal applications require the completion of a continuing education form specified by the board outlining PDH credit claimed. The registrant must supply sufficient detail on the form to permit audit verification, must certify and sign the continuing education form, and must submit the form with the renewal application and fee.

#### **7-1-15. AUTHORIZATION CERTIFICATES**

15.1 Application and Fees. A firm desiring to obtain authorization should contact the Board for an application form and fee schedule.

#### **7-1-16. PROFESSIONAL RESPONSIBILITY**

16.1 Knowledge of Rules. All persons registered under the provisions of the West Virginia Code 30-13-1 et seq are charged with having knowledge of the Rules of Professional Responsibility as well as amendments to the rules. The Board will notify every registrant and applicant for registration in writing

of amendments to the rules. The Rules and amendments as made are also published in the roster provided for in West Virginia Code 30-13-12.

16.2 Rules of Professional Responsibility. To comply with the purpose of the West Virginia State Board of Registration Law for professional engineers, West Virginia Code 30-13-1 et seq which is to safeguard life, health and property, to promote the public welfare, and to maintain a high standard of integrity and practice, the Board has developed the following Rules of Professional Responsibility. These rules supplement the provisions for professional responsibility prescribed in West Virginia Code 30-13-1 et seq and are binding on every person holding a certificate of registration to offer or perform engineering services in this state.

(a) All persons registered in West Virginia are required to be familiar with the Code, this rule, and all applicable laws relating to the practice of engineering. The Rules of Professional Responsibility delineate specific obligations the registrant must meet. In addition, each registrant is charged with the responsibility of adhering to standards of highest ethical and moral conduct in all aspects of the practice of engineering.

(b) The practice of engineering is a privilege, as opposed to a right. All registrants shall exercise their privilege of practicing by performing services only in the areas

of their competence according to current standards of technical competence.

© Registrants shall recognize their responsibility to the public and shall represent themselves before the public only in an objective and truthful manner.

(d) Registrants shall avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers within the limits defined by this rule. Their professional reputation shall be built on the merit of their services and they shall not compete unfairly with others.

### 16.3 Registrant's Obligation to Society.

(a) Registrants, in the performance of their services for clients, employers and customers, shall be cognizant that their first and foremost responsibility is to the public welfare.

(b) Registrants shall approve and seal only those design documents and surveys that conform to accepted engineering standards and safeguard the life, health, property and welfare of the public.

© Registrants shall notify their employer or client and such other authority as may be appropriate when their professional judgement is overruled under circumstances where the life, health, property, welfare of the public is endangered.

(d) Registrants shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in the reports, statements

or testimony.

(e) Registrants shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

(f) Registrants shall issue no statements, criticisms or arguments on technical matters which are inspired or paid for by interested parties, unless they explicitly identify the interested parties on whose behalf they are speaking, and reveal any interest they have in the matters.

(g) Registrants shall not permit the use of their name or firm name, nor associate in business ventures with, any person or firm which is engaging in fraudulent or dishonest business or professional practices.

(h) Registrants having knowledge of possible violations of any of the Rules of Professional Responsibility shall provide the board with information and assistance necessary to the final determination of the violation.

#### 16.4 Registrant's Obligation to Employer and Clients

(a) Registrants shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering involved.

(b) Registrants shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direct control and personal supervision.

(c) Registrants may accept assignments for coordination of an entire project, provided that each design segment is signed and sealed by the registrant responsible for preparation of that design segment.

(d) Registrants shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law.

(e) Registrants shall not solicit or accept financial or other valuable consideration, directly or indirectly, from contractors, their agents, suppliers, manufacturers, or other parties in connection with work for employers or clients.

(f) Registrants shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgement or the quality of their service.

(g) Registrants shall not accept compensation, financial or otherwise, from more than one party; for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

(h) Registrants shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member. Conversely, registrants serving as members, advisors, or employees of a governmental body or department, who are the principals or

employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by the private concern to the governmental body which they serve unless approved by the West Virginia Ethics Commission.

16.5 Registrant's Obligation to Other Registrants

(a) Registrants shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in prior assignments nor the complexity of the assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments.

(b) Registrants shall not offer, give, solicit or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the award of a contract by public authority.

© Registrants shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other registrants, nor indiscriminately criticize other registrants' work.

16.6 Convictions. A registrant of this Board who has been fined, received a reprimand, or had his or her registration

revoked, suspended or denied in another jurisdiction for reasons or causes which this Board finds would constitute a violation of the law governing the practice of engineering in this state or any rule or regulation promulgated by this Board is sufficient cause for the Board levying a fine, reprimanding the registrant, or denying, revoking or suspending a registration to practice engineering by the registrant in this state.

16.7 If a professional limited liability partnership or professional limited liability company has been issued a certificate of authorization, the person in direct control or having personal supervision of practice shall be responsible for compliance with Code § 30-13-1 et seq. and these regulations, notwithstanding any limitations of liability provided by Code §§ 47B-3-6 and 31B-13-1305.

**7-1-17. COMPLIANCE AND ENFORCEMENT**

17.1 Compliance. The statutes of this state provide that a person must be registered to practice or to offer to practice engineering in the state. Any person who violates any of the provisions of West Virginia Code 30-13-1 et seq or this rule is subject to the provisions of West Virginia Code 30-13-21 through 23.

**7-1-18. SEVERABILITY**

If this Rule, or any part of this rule is found by the

courts to be invalid for any reason, the remainder of the Rule continues in full force and effect and each and every part of the Rule is severable.

**7-1-19. - FEES**

19.1 The fees listed in Subsection 19.6 are payable to West Virginia State Board of Registration for Professional Engineers. Fees must be paid by check or money order. The Board will not accept cash in payment of fees. Applications received without the proper fee will be returned to the applicant.

19.2 Renewal Fee

(a) Each registrant will be notified by the Secretary of the Board by the thirty-first (31st) day of May of each year of the amount of the renewal fee.

(b) A registrant shall pay renewal fees before the thirtieth (30) day of June of each year.

© A registrant whose renewal fees are one month in arrears is subject to a penalty for late renewal.

19.3 A renewal fee received one month after the renewal date is late and the Board will assess the registrant a penalty in the amount of an additional ten percent (10%) of the fee. When the fee is received 90 days after the expiration date, the Board will assess the registrant a penalty in the amount of an additional 30 percent (30%) of the fee.

19.4 The Board shall void the Certificate of

Registration of any registrant whose renewal fee is not paid within 90 days after the certificate's expiration date. In order to continue to practice engineering the former registrant must submit a new application for registration to the Board.

~~19.5 A registrant who supplies the Board before the expiration date of his or her certificate with an affidavit stating that the registrant is no longer practicing and will not practice engineering in this state may retain his or her certificate for later use upon payment of delinquent fees.~~

19.6 19.5 The fees for various services provided by the Board are:

	<u>Engineer Intern</u>	<u>Professional Engineer</u>
<del>Application Fee:</del>	<del>\$25.00</del>	<del>\$40.00</del>
<del>Examination Fees:</del>		
<del>Board's Administration Charge:</del>	<del>\$20.00</del>	<del>\$20.00</del>
<del>NCEES' Examination Charge:</del>	<del>As charged by NCEES</del>	
<u>Examination Fees:</u>		
<u>Application Fee</u>	<u>\$45.00</u>	<u>\$60.00</u>
<u>NCEES' Examination Charge</u>	<u>As charged by NCEES</u>	
<u>Reapply Fee (Cost of exam)</u>	<u>As charged by NCEES</u>	
Registration Fee:		\$25.00

Annual Renewal Fee For:

a Professional Engineer: \$35.00  
a Professional Engineer-Retired: \$25.00

Certificate of Authorization:

Application Fee for Firms or  
Organizations with three  
Professional Engineers or Less: \$10.00

Renewal Fee for Firms or  
Organizations with three  
Professional Engineers or Less: \$ 5.00

Application Fee for Firms or  
Organizations with more than  
three Professional Engineers: \$60.00

Renewal Fee for Firms or  
Organizations with more than  
three Professional Engineers: \$30.00

Comity Application Fee: \$120.00

Temporary Permit: \$200.00

Roster Fee: ----- ~~\$10.00~~ \$12.00 -----

Replacement Certificates: ----- \$20.00 -----

Return Check Fee: ----- \$15.00 -----

# **COMMENTS RECEIVED TO PROPOSED RULE**

## **CHANGES DURING COMMENT PERIOD**

Ann Hicks  
Please Note  
Additional Name in  
Opposition to Proposed  
Rule:  
# B Ken Meane

STATE  
DIVISION

FILED 2/2  
JUN 12 2 14 PM '98  
OFFICE OF THE VIRGINIA  
SECRETARY OF STATE

COMMENT PERIOD ON A PROPOSED RULE  
Registration  
Professional Engineers TITLE NUMBER: 7  
; CITE AUTHORITY 30-13  
YES  NO  
BEING AMENDED: 1  
AMENDED. Rules of the WV State Board of  
Professional Engineers

Thanks *[Signature]*  
PE  
#2 Recd 7/10/98  
#1 Recd 7/7/98 2/2

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_  
TITLE OF RULE BEING PROPOSED. \_\_\_\_\_

RECEIVED  
JUN 12 1998

Legislative Rule Making  
Review Committee

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH  
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS  
COMMENT PERIOD WILL END ON July 13, 1998 AT 4:30 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING  
ADDRESS.

State Board of Registration for  
Professional Engineers  
608 Union Building  
Charleston, WV 25301  
Attn: Ann Hicks

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.

*[Signature]*  
Authorized Signature

*[Handwritten note]*

State Board of Registration for Professional Engineers

608 Union Building

Charleston, West Virginia 25305

Brief Summary of the Proposed Changes to the Rules

The State Board of Registration for Professional Engineers would like to request the review of the Legislative Rule-Making Committee as to the proposed changes to the Rules and Regulations governing the practice of engineering in the State of West Virginia.

The Board requests consideration and approval for the following:

- (1) elimination of the exemption procedures which are no longer in effect;
- (2) addition of provisions for registration by eminence;
- (3) addition of procedures for Professional Limited Liability Partnerships and Companies in accordance with passage of SB 338,
- (4) addition of Administrative Hearing Procedures;
- (5) requirement for a minimum of three (3) PDH units to be engineering ethics and
- (6) to clarify language in providing a better interpretation and understanding of the existing Rules and Regulations.

requirements specified by West Virginia Code 30-13-1 et seq and this rule.

(e) The Board will accept applications for registration from any person who has previously been certified by the Board as an Engineer Intern and will grant the applicant registration after he or she has satisfactorily completed the "PE" examination, regardless of his or her place of domicile: provided, that not more than twelve years (12) have lapsed since the date of the original issuance of the Engineer Intern certificate.

~~(f) Until June 30, 1995 a graduate of a board approved curriculum, with a specific record of twenty (20) years or more of progressive experience on engineering projects and of a grade and character which indicates to the board that the applicant is competent to practice engineering, shall be admitted to the "PE" examination without being required to take the "FE" examination. Registration under this provision may not be recognized by other states.~~

~~(f) (g) Until June 30, 1995 Applicants over fifty (50) years of age with twenty (20) years of acceptable ~~twenty five (25)~~ years of engineering experience and fifteen (15) years in responsible charge may be registered with the approval of the Board, after passing an oral and/or short written examination and having a personal interview with the Board. Registration by this procedure may not be recognized by other states.~~

~~(h) Until June 30, 1996, a graduate of Board approved allied science curricula may be admitted to the "FE" examination after presenting evidence of two (2) years of engineering experience under the direct supervision of professional engineers and may be certified as an Engineer Intern upon successful completion of the examination. The required experience must be certified to the Board by the supervising professional engineers giving the character and nature of the work performed in detail.~~

### 8.3 Examination Dates and Locations.

(a) Written examinations are offered on dates set by the NCEES. Normally this is in the spring and the fall of the year. The examination dates are available from the Board.

(b) Locations at which the examinations are given are designated by the Board and are available from the Board Office.

8.4 Language of the Examination. The language used in the examination is English.

### 8.5 Study Information.

(a) The Board will not distribute copies of questions used on prior examinations.

(b) The Board has published specifications for all written examinations, which may be obtained upon request to the Board Office.

8.6 Instruction for Examinees. Instructions provided prior to each examination will declare an examination to be open

WE, THE UNDERSIGNED PROFESSIONAL ENGINEERS, DISAGREE WITH THE CHANGE TO SECTION 8.2F OF THE RULES OF THE WV STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS.

~~(f) Until June 30, 1995 a procedure of a board approved examination with a specification of twenty (20) years or more of progressive experience on engineering projects and of a grade and character which indicated to the board that the applicant is competent to practice engineering, shall be selected to the "CE" examination without being required to take the "PE" examination. Registration under this procedure may not be recognized by other states.~~

~~(g) Until June 30, 1995 Applicants over forty (40) years of age with twenty (20) years of acceptable twenty (20) years of engineering experience and fifteen (15) years in responsible charge may be registered with the approval of the Board, after passing an oral and/or short written examination and having a personal interview with the Board. Registration by this procedure may not be recognized by other states.~~

1. Gregory L. Schumacher PE #5680 110 Vector Ave. Elkins, WV.
  2. Steven A. Schumacher PE #13453 209 Ferndale Dr. ELKINS WV
  3. Willie D. Swick PE #5953 398 Wilson St. Elkins, W.Va. 26241
  4. Robert B. Scott PE #8586 200 White Oak Ln. ELKINS WV, 26241
  5. John A. Hicks PE #30158 (M.A.) 3 Forest Brook Drive, ELKINS, WV 26241
  6. Anthony N. Horn PE #7233 Box 2058 Elkins, WV 26241 304-636-7777
  7. Clay Carter PE #9943 PO Box 169 Elkins, WV 26241 304 636 1917 CLAYTON CARTER
  8. Ken Means PE 5926 Rt 5 Box 517 Mungertown WV 26040 304 293-3111 ext 308
- 138

13 Add Additional Notice to opposition.

WE, THE UNDERSIGNED PROFESSIONAL ENGINEERS, DISAGREE WITH THE CHANGE TO SECTION 8.2f OF THE RULES OF THE WV STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS.

1374  
1/2

~~(f) Except June 30, 1988 a graduate of a board approved curriculum with a specific record of twenty (20) years or more of progressive experience in engineering projects and of a grade and character which insures to the Board that the applicant is competent to practice engineering shall be admitted to the "PE" examination without being required to take the "PE" examination. Registration under this provision may not be recognized by other states.~~

~~(f) Except June 30, 1988 Applicants over fifty (50) years of age with twenty (20) years of acceptable twenty (20) years of engineering experience and fifteen (15) years in responsible charge may be registered with the approval of the Board, after passing an oral and/or short written examination and having a personal interview with the Board. Registration by this procedure may not be recognized by other states.~~

14

1. Guyon L. Schumacher PE #5680 110 Vector Ave. Elkins, WV
2. Steven D. Schumacher PE #13453 209 Ferndale Dr. Elkins WV
3. William D. Swick PE #5953 398 Wilson St Elkins, W Va. 26241
4. Robert B. Scott PE #8586 200 White Oak Ln. Elkins WV 26241
5. J. A. Hinkle PE #3055 (Min) 3 Firkin Ln. Beckley WV 26011
6. Duwayne N. Kimmel PE #7233 Box 2058 Elkins, WV 26241  
304-636-7777
7. Clayton L. Carter PE #9943 PO Box 1694 Elkins WV 26241  
304 636 1917

F I

# WEST VIRGINIA SOCIETY OF PROFESSIONAL ENGINEERS

1018 Kanawha Boulevard, East • Suite 100  
Charleston, West Virginia 25301-2827  
Phone (304) 346-2100 Fax (304) 345-3214



July 13, 1998

Ms. Ann Hicks  
State Board of Registration for  
Professional Engineers  
608 Union Building  
Charleston, WV 23501

Dear Ms. Hicks;

The West Virginia Society of Professional Engineers and The West Virginia Association of Consulting Engineers respectfully submit the following attached 8 pages of comments from our membership concerning the proposed legislative rule amendments to title 7.

If you have any questions or require additional information feel free to phone our office.

Sincerely,

West Virginia Society of Professional Engineers  
West Virginia Association of Consulting Engineers

Julia Morton  
Executive Director

cc: Secretary of State

*Rec'd 7/13/98*

COMMENTS CONCERNING PROPOSED CHANGES TO  
RULES OF THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR  
PROFESSIONAL ENGINEERS

- 8.2.f. This article would allow registration essentially at the discretion of the Board. There are no formal education requirements and applicants under this clause would not be required to pass either the fundamentals test or the principles and practice test. There seems to be a great opportunity for abuse in this section. If in fact the goal of this section is to allow international experts to practice in West Virginia on a project specific basis, then it may be more appropriate to develop some temporary licensing provision rather than granting registration. This section seems to be contrary to past efforts to make the education requirements more stringent to protect both the profession and the public. We should oppose this provision.
- 14.1. The wording of this sentence is poor. It is difficult to determine the meaning of this sentence. The requirement for three PDHs each year in engineering ethics seems extreme. If an individual has practiced successfully and ethically, there seems no reason to coerce the registrant to expend his or her continuing education efforts on ethics. It would seem that the Board should be much more concerned about the ethics training of an individual prior to granting registration. This provision appears to be a reaction to the recent highly publicized case.
- 14.2.f. This section allows PDH credits to be carried over to the following year. Can ethics PDHs in excess of the required three from one year be carried over to the following year and count toward the minimum requirement of three for the following year?
- 7-1-19 Rule 1.0 requires recusal where a judge would be required to be recused. What does this mean? Is a Board member against whom a complaint is filed required to be recused? Does this mean that the Board member cannot sit on the hearing panel? Can the recused Board member attend deliberations by the hearing panel without participating? As WVACE, we better understand what "recused" means. There may still be participation opportunities for a recused Board member that we would believe to be inappropriate. It should be our position that a Board member against whom a complaint is filed should have no involvement in the hearing or deliberations, including opportunities for attendance, that would not be available to other respondents.
- 7-1-19 In the third line of Rule 1.3, the word "event" is misspelled.
- 7-1-19 Rule 1.4 as proposed seems overly broad. I can understand protecting Board members from suits when they discharge their dues as judicial officers appropriately. However, this rule would seem to protect them even if they performed with intent. Further, Board members serve many functions that are not of a judicial nature. Therefore, it would not seem reasonable to apply judicial type immunity to their actions except when they are performing in this capacity. Criminal activity or willful misconduct should never be protected. The rule also deals with the privileged status of documents, testimony, etc. We should be careful about what this means. Would WVACE, for instance, be able to obtain copies of the proceedings in complaints heard by the Board. If no one except the parties involved can get access to the documents in a complaint case, then all complaints will essentially be decided secretly. We should strongly oppose this proposed rule as written.

(1) WVSPF

- 7-1-19 Rule 2.0 allows the Board to bring charges based on information received solely through investigative activities undertaken by the Board. Does this extend to testimony in a complaint heard by the Board? If so, engineers may be reluctant to file complaints. The Board could decide that it does not agree with portions of the complainant's activities and bring charges.
- 7-1-19 Rule 3.0 requires notice of a hearing date to be delivered only by first class mail. This seems unreasonable given that failure to appear at a hearing can result in a decision by default. There are numerous other ways to notify parties of a proposed hearing date.
- 7-1-19 Rule 3.2.b state that any party may obtain a transcript. Are these the parties to the case or does it include other public or private parties? How does this fit with the privileged status of testimony, documents, etc. described above?
- 7-1-19 Rule 3.2.f allows deliberations by telephone conference. How can the panel meet in open session if it meets by telephone? Who will be provided access to the telephone conference? There seems to be a great opportunity for improper discussions under this format.
- 7-1-19 Rule 3.2.g allows the Board to hold hearings in executive session by majority vote. If the complaint is against a Board member, does that Board member vote on whether or not to hold hearings in executive session? It would seem that he or she should not be entitled to vote in this case. Also, the respondent may request an open meeting. Why should the complainant not be afforded the same right?
- 7-1-19 As a general observation, there is much discussion concerning the respondent's rights under this section. However, there seems to be little or no discussion concerning the complainant. For instance, at no point do these rules discuss the complainant's right to testify at the hearing? If these rights are all one-sided, most engineers would be discouraged from bringing complaints to the Board. This would be especially true if the complaint happened to be against a Board member.

I expect that these proposed rule changes will be met with skepticism on the part of the engineering community. They seem to be in response to the highly publicized recent case involving a Board member. These changes may well be viewed as an effort to further protect the Board, not necessarily the engineering profession.

(2) WVS:RF

My comments on the proposed rules are as follows:

1. I am opposed to the proposed "registration by eminence", new paragraph (f) on page 14. Passing the "FE" exam and "PE" exam was established as a registration requirement to help assure public health and safety. While waiver of the requirement for passing the exams was reasonable in the early years of the licensure law, I see no compelling reason to continue the waiver procedure now. I believe individuals offering engineering services to the public in West Virginia should be required to demonstrate their competence through passing these standard national tests.
2. I am opposed to the proposed requirement that "a minimum of three (3) of the PDHs shall be in the field of engineering ethics", page 23. If I continue practicing engineering to the normal retirement age of 65, this would require that I receive 54 hours of training in the field of engineering ethics. I feel that this is unnecessary, not only for me but for the vast majority of registered professional engineers. The current Board guidelines as expressed in their newsletter relies largely on the good faith and common sense of registrants in selecting what types of training will add to their professional development. This mandatory requirement appears to contradict that overall guidance. I believe a better approach would be to make training on the subject readily available to registrants. WVSPE could be of assistance in this regard.
3. The new section regarding administrative hearing procedures has a few typographical errors. Among them are:
  - a) Page 34, third line of Rule 1.3; "even" should be "event".
  - b) Page 35, first line of Rule 2.1; "not" should be "not be".
  - c) Page 37, second line of Rule 3.2; "on for hearing" should be "for hearing on".
  - d) Page 40, third line on page; "Any" should be "any".
  - e) Page 43, sixth line on page; "deposition" should be "disposition".

Please call if you have any questions regarding this matter.

WVSPE

Page 14

The proposed change allows someone with 20 years of "acceptable" engineering experience..... to become registered in West Virginia. This provision deletes the requirements for a four-year degree, FE exam, 5 references, and PE exam. There is no definition of "acceptable" engineering experience and no criteria for the oral and/or short written exam. This proposed change invites the potential for abuse and the very real possibility that unqualified persons will be licensed. I strongly oppose this proposed change.

Page 23

The proposed change requires a minimum three (3) of the PDHs shall be in the field of engineering ethics. Does this mean 3 PDHs every year or just once? If every year, there may not be an ethics course available every year. I would recommend that an ethics course be required only once every 5 years.

Page 34 Rule 1.4

I do not feel that Privilege and Immunity are justified. All actions and documents of the Board should be available for public review. The shield of immunity from civil suit can lead to abuse of power.

Page 36 Rule 2.4

I do not feel that the failure to file a response to a compliant should be automatically deemed an admission of the factual allegations. This sentence should be removed.

*ED WINSPE*

Upon review of the transmitted proposed changes to the laws, rules and regulations for the State Board of Registration for Professional Engineers of West Virginia, I offer the following comments:

- All of the items (c) are automatically corrected to © by your word processor. This should be bypassed.
- Section 2.12: clarify this requirement to indicate that the named firms shall apply and receive a certificate of authorization. This list of types of firms should have the limited liability partnership/corporation included herein? Some states require ownership and participation in the board of directors of corporations in order to qualify for a certificate of authorization (ie Ohio) which I think is a good idea.
- Section 3.4 seems to deal with applications from residents and non-residents of WV.
- Section 7-1-5 item (c) needs to be redone to add clarity to the intent of the paragraph.
- Section 7-1-6 first paragraph: add "after receipt of the EI". This would work with the technology degree intent of requiring 6 years beyond graduation, and the engineering degree 4 years. Without this verbiage the issue is clouded.
- Section 8.2 new item (f): All persons desiring to practice engineering without the appropriate degrees and relying on practical experience should not have been in responsible charge of engineering, especially with the removal of the exemptions currently existing. If the board will consider allowing non-degreed persons to apply for this it needs to be specific about how much experience will be required, and should set up some internal standards by which persons will be judged when applying for this exemption.
- Section 8.2 old item (h): If the above grandfather clause is still considered to allow for others entering the field in non-traditional manners, what about the people from the chemistry, physics and other scientific fields which enter engineering through the back door. Certainly they would have more consideration than those persons which are non-degreed and have engineering related experience.
- Section 14.1: This section needs to be edited for clarity of intent. (15 pdh units per year, with 3 being in the field of engineering ethics.) This is also a lot of ethics every year, and I am not familiar with the diversity of information and classwork which would make this interesting very long.
- New Section 19: The detail provided in this hearing procedure seems a bit cumbersome and detailed, but it definitely adds some teeth to the registration board's directives. I did not have the opportunity to consider in depth the ramifications for each of the rules listed, but the extent of the new sections may be an overreaction to recent events.

10/25/05

## Rules and Regulations:

**General:** It is evident that these changes are a result of the beating the Board received concerning the misconduct of its President. It appears that the Board wishes to grant itself autonomy and to become answerable to no one but itself.

**Page 13; 8.2f** is ludicrous. The Board has completely lost sight of the reason for Registration - we license for only one reason; to protect the health and safety of the public. For the past 25 years we have been in the process of retiring the old "Grandfather Engineers" from the system. Now the Board wants to return to the old ways of registering. No one should be registered unless they exhibit the education, experience and ability to pass the examinations. This must apply to everyone, including college professors and international experts. I oppose this change totally, and will through the courts if necessary.

**Page 23; 7-1-14.1** - This requirement resulted from one thing and one thing only. The requirement for three hours of ethics training is to counteract the actions of Pentree/Boso. The Board fouled this case up so badly that they are trying to cover it up with this requirement. It is evident that the Engineers in some firms need this training, but by and large most Engineers in the State would be wasting very valuable time. All Engineers should not be required to pay for the practices of a few rotten apples. The time spent, three hours a year, could be better spent on a hydraulics, geotechnical or highway design course.

Ethics can best be learned in Church on Sunday, not in a paid course. If you don't have integrity, no three hour course is going to give it to you.

**Page 32; 7-1-16.7** - Insert the words "a Professional Engineer and" between be and responsible in line four.

**Page 33; 7-1-19** - General: Although we all know what recuse means, apparently Merriam-Webster didn't know when they published Webster's New Collegiate Dictionary, because they didn't include it. I think only words that are included in the commonly used Dictionary of the English language should be used in writing documents such as this. In case a person didn't know what it means they should be able to look it up in a dictionary, without going to a major library.

What is a natural person (Rule 2.0)? Is that someone that grows on a tree, or is that the opposite of an artificial person?

**Rule 1.0; Page 33** - Change may to shall or must in line 7. Any member of the Board that is involved in anyway with a complaint must be totally removed from the Hearing Process to avoid conflict.

**Rule 1.4; Page 35** - To grant absolute immunity, prevents absolute neutrality. This is a good sounding concept for the Board, but it won't fly in court. No one is entitled to this much power. This would allow the Board to act subjectively without recourse by the parties involved.

**Rule 2.0; Page 35** - Again, what is a natural person? The last sentence does not make sense, how can a "natural person" file a complaint if charges may be based upon information received solely through investigative activities undertaken by the Board? This needs to be revised in a major way.

**Rule 3.2; Pages 37-39** - These rules violate the Sunshine Law, they also violate the privacy of the parties involved. These rules are in favor of the respondent in jeopardy of the complainant.

**General 7-1-19** - I would like to see the procedure that the Board copied this from. It may apply in the state for which it was written, but I don't believe West Virginia Engineers will ever buy into it. There is very little room to believe anything other than this procedure resulted from the Pentree/Boso case. It appears that the Board is making an effort to protect the Board from the Profession and the public.

I feel that the Board has done a disservice to the Registered Engineers by filing for these rule changes without informing the Registered Engineers in the State. I also feel that these rule changes should be opposed vigorously in general. However, some of the changes are acceptable, if presented

*Robert R. Rife*

Comments regarding proposed changes to the laws, rules and regulation for the State Board of Registration for Professional Engineers of West Virginia.

Para. 8.2.f: Further clarification is requested regarding "fifteen (15) years in responsible charge." How can a non-registered individual have fifteen (15) years in responsible charge without a license?

Para. 11.3:

Language needs to be added to provide requirements regarding modification of drawings that are sealed by another engineer, i.e. Pentree case. All changes to drawings should be clearly identified and sealed by the engineer that makes the modifications of another engineers documents.

Para 11.3a.:

Clarify what documents must be sealed and when documents must be sealed. This paragraph states "all" documents presented to a client or public agency must be sealed. Does this mean schematic drawings and specifications, design development drawings and specifications, etc?

Para. 11.3.g.:

Clarify misuse of electronic reproduction of a seal. Suggest that language be added to not allow any electronic reproduction of an engineer's seal.

Clarify the second sentence in this paragraph. This sentence is under the paragraph of electronic seals but further makes the engineer responsible for the improper use of his/her seal. Does this sentence imply that the engineer is responsible for fraudulent use of his/her seal by another individual?

Rule 3.2 para. e.:

Object to allowing the presiding officer to modify hearing transcripts. The transcripts of hearings should be a record of fact as to the testimony of all parties involved in the hearing and should be given a written transcript of their respective testimony to allow correction of their transcript.

Rule 3.2 para. g.:

Object to executive session. All hearings should be in open meetings.

*(Handwritten signature)*

Comments Regarding Proposed Changes To  
WV Board of Registration for PE's

1. Section 8.2 (f). This section should be deleted entirely as currently written and as proposed! All registrants should be subjected to the same minimum education, experience, and competency testing requirements.
2. Section 12.1 (b). The referenced section should be 19.5
3. Section 14.1. This paragraph is poorly written. The word "at" after "(PDH units)" should be changed to "and" if the section remains as written. Requiring 3 PDH units per year in ethics is excessive and unnecessary. Suggest the paragraph be re-written as follows:  
  
14.1 The Board shall require every registrant to meet the continuing professional competency requirements of this rule as a condition for registration renewal. Renewal registrants must show evidence of obtaining fifteen (15) Professional Development Hours (PDH units) annually in order to satisfy the continuing professional competency requirements of this rule.
4. Rule 1.4. This section as written would provide immunity to the Board, its counsel, and their employees from civil suit even in the event of willful misconduct, which cannot be permitted. In order to attract competent and qualified persons to serve on or for the Board, immunity must be established; however, it should apply only if their duties are properly exercised. The "privileged" information clause also causes great concern.
5. Rule 3.0. Notice of Hearings must be served by certified mail, at a minimum.
6. Rule 3.2 (f). The Hearing Panel possibly should have the ability to deliberate by telephone; however, all decisions should be a matter of written record.
7. Rule 3.3. The findings of the Hearing Panel must be proved by clear and convincing evidence and its decision, which should be a matter of written record, should clearly state the basis for its decision (justification).
8. Rule 4.0. First sentence appears to give the Presiding Officer absolute power, which defeats the purpose of a Hearing Panel and the intent of a Board. The Presiding Officer's duties are detailed in Rule 1.3, and should not permit unilateral disposition.
9. Rule 4.0. Third paragraph. The word "may" should be "shall". The Hearing Panel shall make findings .....
10. Rule 4.0. Sixth paragraph. The word "Board" should be "Panel" to be consistent.
11. Rule 4.1. First sentence. The word "of" after injunction should be "to".

(8) WWSPE

1265 Fairlawns Avenue  
Morgantown, WV 26505

July 13, 1998

Ms. Ann Hicks  
Administrator  
West Virginia State Board of Registration for Professional Engineers  
608 Union Building  
Charleston, WV 25301

Re: Proposed Legislative Rule Amendment

Dear Ms. Hicks:

The proposed amendment to the Legislative Rule 7-1-8.2 (f) is opposed. The proposed change for the addition of a provision for registration by eminence is contrary to the standards used by other professions and jurisdictions administering registration of engineers.

Engineering is considered a learned profession. As such, licensing is granted. Standards currently in place in West Virginia came about with code changes implemented in 1993. At that time and since then, West Virginia has been applauded for its efforts to be consistent with the model law supported by the National Council of Examiners for Engineering and Surveying.

Now to reverse ourselves and go back to the days of granting licenses by eminence will throw us back into the past. Such an action would also reduce the standing of those already licensed. Other states will not recognize a license granted by eminence. The licensing by eminence provision proposed would take then practice of engineering from a learned profession to a lower level. Engineers have always received the respect of the public because of the impact we have on society. This respect would be adversely affected.

The proposed amendment to license by eminence today is a return the past. It is irresponsible for licensing broads to consider this change.

I oppose the proposed amendment and would be glad to discuss this topic in greater depth with anyone so interested.

Sincerely,

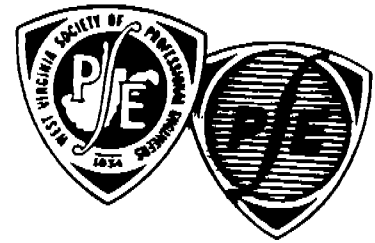


Patrick R. Esposito, Ph.D., P.E.

R 7/17/98

# WEST VIRGINIA SOCIETY OF PROFESSIONAL ENGINEERS

1018 Kanawha Boulevard, East • Suite 100  
Charleston, West Virginia 25301-2827  
Phone (304) 346-2100 Fax (304) 345-3214



July 13, 1998

State Board of Registration for Professional Engineers  
608 Union Building  
Charleston, WV 25301

Attention: Ms. Ann Hicks

Re: Proposed Legislative Rule Amendments

Gentlemen:

I have reviewed the proposed rule changes to "TITLE 7, LEGISLATIVE RULES, WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS", and my comments are incorporated along with those of other members of the West Virginia Society of Professional Engineers under cover letter from our Executive Director. I will not reiterate those comments here. I understand the Registration Board's desire and need to modify rules to conform to new laws and clarify administrative hearing procedures. However, I wish to express my concern that WVSPE was not offered the opportunity of working with the Board of Registration in developing the proposed rule amendments which will impact all registered engineers in the state.

As president of WVSPE, I have had the opportunity to review many of the review comments submitted from our members. While it is unrealistic to assume there will be a unanimous opinion among our membership, many of the comments received express similar concerns. I believe some coordination between the Registration Board and staff, and the WVSPE Board and staff in formulating the proposed rule amendments could have alleviated many of the concerns expressed. I hope the Registration Board will carefully consider the comments received and work with the WVSPE Board to revise the proposed rules prior to their consideration by the legislature.

Your careful consideration of this matter will be appreciated.

Sincerely,

C. Dean Upton, P.E.  
President

Rec'd 7/14/98

# **BOARD'S RESPONSE TO WRITTEN**

## **COMMENTS**

State Board of Registration for Professional Engineers

608 Union Building

Charleston, West Virginia 25301

Written Response to Comments Received During Comment Period

1. Response to the provision for registration by eminence:

The Board withdraws the proposed rule §7-1-8.2(f) filed with the Secretary of State and the Legislative Rule-Making Committee on June 12, 1998

2. Response to the Administrative Hearing Procedures:

The Board withdraws the proposed section §7-1-19 Administrative Hearing Procedures filed with the Secretary of State and the Legislative Rule-Making Committee on June 12, 1998.

3. Response to the comments on PDHs and engineering ethics:

The Board has revised §7-1-14.1 filed with the Secretary of State and the Legislative Rule-Making Committee on June 12, 1998.