

## EAOR #34, Policy Advisory Request Regarding the Industry Exemption

**Question:** *“Issue a formal Policy Advisory Opinion regarding the ‘Industrial Exemption’ sections as they apply to consulting companies performing work from their own offices for ‘Industrial’ Clients. There is a prevalent interpretation in South Texas that engineering companies do not need to use PE’s nor seal work for ‘Industrial’ clients”.*

**Analysis:** The “Industrial Exemption” mentioned by the requestor specifically refers to the following section of the Texas Engineering Practice Act (TEPA):

### § 1001.057. Employee of Private Corporation or Business Entity

(a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity.

(d) For purposes of this section, “products manufactured by the entity” also includes computer software, firmware, hardware, semiconductor devices, and the production, exploration, and transportation of oil and gas and related products.

In short, this part of the Texas Engineering Practice Act allows employees of a company to work on the engineering of products or on the facilities of that company without obtaining a license from the Texas Board of Professional Engineers. In other words, the employees are exempt from licensure. It is important to note that this statute removes such companies from jurisdiction by this agency, however, does not remove the requirements of consulting engineering companies from adhering to the TEPA.

**Response:** This section of the TEPA allows full time employees and other personnel under the direct control of a private entity to perform engineering services exclusively for the private entity without the requirement to be licensed as professional engineers. For the context of the question above, a “consulting company” is required to be a Texas registered engineering firm and the “industrial client” is a client of that engineering firm. In answer to the requestor’s question, any engineering work provided by consulting companies for projects located in Texas and provided to an industrial client of the engineering firm must:

- 1) Be performed by a Texas licensed professional engineer (§ 1001.004) and;
- 2) The final version of that work must be sealed, signed and dated by a Texas licensed professional engineer (§137.33).

The phrase *“other personnel under the direct supervision and control of the business entity”* in §1001.057(a) is intended to allow the practice of private entities to hire workers ( i.e. contract employees typically on site) from professional staffing firms to perform work exclusively for the private entity. These contract employees, who are not required to hold a Texas P.E. license, are under the full supervisory control of the private entity, but their salaries and benefits are provided by the staffing firm. The professional staffing firms that provide the contract workers do not need to be registered as Texas engineering firms.

Questions:

- 1) May a Texas registered engineering firm provide non P.E. employees to a client to perform engineering services under this statute in lieu of providing supervised review and properly sealed engineering documents? In other words, can the Texas registered engineering firm provide contract employees to a client in an “exempt industry” in the same manner as a professional staffing firm?
- 2) I work for a consulting company and I want to do projects with oil and gas companies. My firm is not registered with the Board, but since I’m providing services to an “exempt” industry, do I need to be registered to provide engineering services as a contractor?
- 3) I am a licensed engineer and I want to do some projects with an oil and gas company. Do I need to be registered as a firm with the Board since I am providing services to an exempt industry?

DRAFT