EAOR #34, Policy Advisory Request Regarding the Industry Exemption
May 21, 2014

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.

[Sections (b) and (c) omitted for clarity]

(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 <u>exclusively</u> 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 external sources to perform work <u>exclusively</u> 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 external source. Professional staffing companies that provide contract workers do not need to be registered as Texas engineering firms since they are only providing contract workers and not offering engineering services.

Questions:

1) May a Texas registered engineering firm provide non-P.E. employees to a client to perform engineering activities under this statute? Can the Texas registered engineering firm provide contract employees to a client in an "exempt industry" in the same manner as a professional staffing company?

   Yes to both questions. Employees provided must be under the exclusive control and direct supervision of the client business entity.

2) I work for a consulting company and I want to do projects with business entities as described by section 1001.057 of the TEPA. 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?

   Yes. Even though your client falls under the exemption and does not need to license their employees providing engineering exclusively for the company, your consulting firm is providing engineering services to a client and must be registered as an engineering firm. The engineering work needs to be done by or under the direct supervision of a Texas licensed professional engineer and the final version of those documents must be sealed.

3) I am a licensed professional engineer and I want to do some projects with a business entity as described by section 1001.057 of the TEPA. Do I need to be registered as a firm with the Board since I am providing services to an exempt industry?

   Yes, an individual licensed professional engineer must be registered as a sole practitioner firm to provide engineering services in Texas.

DRAFT