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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 15, 2010

Robert C. Grubic, P.E., PLS, Chair  
State Registration Board for Professional Engineers, Land Surveyors and Geologists  
2601 North Third Street  
Harrisburg, PA 17110

Re: Regulation #16A-4710 (IRRC #2762)  
State Registration Board for Professional Engineers, Land Surveyors and Geologists  
Continuing Education

Dear Mr. Grubic:

The Independent Regulatory Review Commission disapproved your regulation on October 7, 2010. Our order is enclosed and will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact Kim Kaufman, our Executive Director, at 783-5506.

Sincerely,

George D. Bedwick  
Acting Chairman  
wbg  
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee  
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee  
Honorable Basil L. Merenda, Acting Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 7, 2010

George D. Bedwick, Acting Chairman  
S. David Fineman, Esq., by Phone  
Silvan B. Lutkewitte, III  
John F. Mizner, Esq., by Phone

Regulation No. 16A-4710 (#2762)  
State Registration Board for Professional  
Engineers, Land Surveyors and Geologists  
Continuing Education

On April 22, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board). This rulemaking amends 49 Pa. Code Chapter 37. The proposed regulation was published in the May 2, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on September 3, 2010.

This regulation establishes continuing education requirements for licensees of the Board as set forth by Engineer, Land Surveyor and Geologist Registration Law (Law), as amended by Act 25 of 2010. The rulemaking provides licensees of the Board that have not met the continuing education requirements of the law six months to correct that deficiency while continuing to practice. We find that the Board does not have the statutory authority to provide licensees with an additional six months to meet continuing education requirements. As explained below, this regulation does not meet the Regulatory Review Act criteria of statutory authority to promulgate the regulation and protection of the public health safety and welfare. 71 P.S. § 745.5b(a) and (b)(2).

Continuing professional competency requirements are addressed in the Law at 63 P.S. § 151.5. Subsections (a), (b) and (c) of that section, in relevant part, read as follows:

- a) In order to help safeguard life, health and property and to promote the public welfare, the practice of professional engineering, professional land surveying and professional geology in this Commonwealth requires continuing professional competency.
- b) Each licensee shall be required to meet the continuing professional competency requirements of this section as a condition for licensure renewal.
- c) Each licensee shall be required to obtain twenty-four PDH units during the biennial renewal period.

Based on the statutory language above, it is clear that the General Assembly found that professional competency of professional engineers, land surveyors and geologists, is needed to help safeguard life, health and property and to promote the public welfare. It is equally clear that the General Assembly's intended method for ensuring competency is by requiring licensees to obtain twenty-four Professional Development Hours (PDH) units *during* the biennial period.

Sections 37.111(c) and (d) of the regulation contain provisions that allow licensees to continue to practice if they did not obtain the required PDH units during the biennial period by providing an additional six months to obtain the units. These provisions are not consistent with the intent of §151.5(a) and the statutory requirements of § 151.5(b) and (c). Therefore, they violate the Regulatory Review Act criteria cited above.

In addition, other sections of the rulemaking violate the Regulatory Review Act criteria of clarity. See 71 P.S. 745.5b(b)(3). First, § 37.18(1) includes a reference to 63 P.S. § 151.5(c) of the Law. Act 25 of 2010 amended the Law and the correct reference is 63 P.S. § 151.5(g).

Second, § 37.111(a) includes the new term “continuing education activity.” This term is unclear and should be defined.

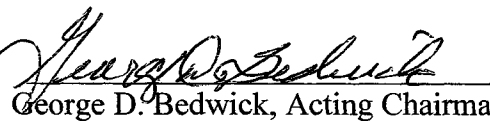
Third, § 37.111(g) is a new subsection that requires licensees to maintain “records” verifying completion of continuing education for five years. Act 25 of 2010 amendments to the Law allow PDH units to be earned for activities such as “completion of correspondence, televised, videotaped and other short courses or tutorials relevant to professional practice.” See 63 P.S. § 151.5(c)(3). Given the various methods for earning PDH units, we believe the regulated community would benefit if a definition of “records” was added to the rulemaking.

We have determined this regulation is not consistent with the statutory authority of the Board (63 P.S. §§ 151.5 (a), (b) and (c)) and the intention of the General Assembly. Additionally after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



  
George D. Bedwick, Acting Chairman