Comments of the Independent Regulatory Review Commission

State Registration Board for Professional Engineers, Land Surveyors and Geologists Regulation #16A-4711 (IRRC #2926)

Qualifications For Licensure

February 29, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the December 31, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) to respond to all comments received from us or any other source.

1. Consistency with caselaw. – Clarity.

This proposed regulation establishes professional licensure standards for engineers, land surveyors and geologists. The standards include the education requirements for these professions. The Regulatory Analysis Form (RAF #9) cites the *Whymeyer* case to explain that this regulation is intended to clarify that the Accreditation Board for Engineering and Technology, Inc. (ABET) is the only acceptable accreditor to the Board for engineering or land surveying educational programs. *Whymeyer v. State Reg. Bd. For Professional Engineers, Land Surveyors and Geologists*, 997 A.2d 1254 (Pa. Cmwlth. 2010). One issue raised but not decided in that case was that the Board "abdicated its statutory responsibility" to approve engineering programs by delegating that authority to ABET. Despite the fact that this regulation provides for ABET to be the exclusive accreditor, would the Board independently approve these programs pursuant to 63 P.S. § 151.2(d)(1), which provides for Board approval?

2. Terminology. – Clarity.

Throughout the regulation, the Board references both "candidates" and "applicants" for certification and licensure. The House Professional Licensure Committee (HPLC) noted the use of both terms and asked the Board to review the regulation to correct any inconsistencies created by the use of both terms. We agree and recommend the Board use one term consistently or explain the need for both terms.

3. Citations to statutory authority. – Clarity.

RAF #8 cites the following from the Engineer, Land Surveyor and Geologist Registration Law (Law) as the statutory authority for this regulation: 63 P.S §§ 151.4(b), 151.4(I), 151.2, 151.3 and 151.4. However, the Preamble cites only 63 P.S. §151(1) as the statutory authority. The statutory citations should be consistent in the RAF and the Preamble.

4. Section 37.31. Requirements for certification as an engineer-in-training and for licensure as a professional engineer. – Implementation procedures; Clarity.

This section explains the requirements necessary to obtain certification as an engineer-in-training (EIT) and licensure as a professional engineer. We raise six issues.

First, Subsections (1) and (2) require candidates for both EIT certification and professional licensure to "satisfactorily" complete certain National Council of Examiners for Engineering and Surveying (NCEES) exams. The final-form regulation should specify what constitutes "satisfactory" completion of these exams. Similar concerns apply to Subsections 37.33(b) and (c), 37.36(b) and (c), 37.47(1) and (2), and 37.49(b).

Second, in Subsection (1)(i), the Board should clarify the type of documentation required to demonstrate "proof" of graduation. Similar concerns apply to Subsections 37.36(b)(1)(i), 37.36(b)(1)(ii), and 37.47(1)(i).

Third, Subsection (1)(iii) requires that the progressive experience needed to sit for the NCEES fundamentals of engineering exam must be of a certain "grade and character." This term is vague and the final-form regulation should clarify the intent of this language. Similar concerns apply to Subsections 37.31(2)(i), 37.47(1)(iii), 37.47(2)(i), and 37.49(c).

Fourth, Subsection (1)(iii) also states that "academic training" in engineering subjects may be counted toward the experience requirement necessary to achieve EIT certification. We recommend that the Board define this term and specify how this training will be counted toward the experience requirement.

Fifth, Subsection (2) references the "branches" of engineering. To improve clarity, we recommend that the final-form regulation include a cross-reference to existing Section 37.34, which provides a complete list of these "branches" of engineering.

Finally, Subsection (2)(ii) references the "breadth and depth" of the engineering curriculum covered as part of the teaching experience acquired by licensure candidates. The term is vague and the final-form regulation should specify what the Board intended to cover through the use of this phrase. Similar concerns apply to Subsection 37.47(2)(ii).

5. Section 37.33. Grandfather requirements for certification as an engineer-in-training and for licensure as a professional engineer. – Implementation procedures; Clarity.

This section contains the requirements to "grandfather" certification and licensure status for EITs and professional engineers. We raise three issues.

First, under Subsection (b) candidates for EIT certification who received a degree prior to January 1, 1968 are not required to complete the NCEES fundamentals of engineering exam. The Preamble to the final-form regulation should explain the significance of the January 1, 1968 date.

Second, what is the difference between "satisfactory" completion of the NCEES fundamentals of engineering exam for EITs in Subsection (b) and "successful" completion of same exam by licensure candidates in Subsection (c)(ii)? The final-form regulation should clarify this issue.

Finally, Subsection (c)(1) lists the qualifications for a licensure candidate to sit for the NCEES engineering principles and practice examination. Subsection (c)(1)(i) includes four years of progressive engineering or teaching experience for graduates of an approved engineering curriculum, and (c)(ii) includes eight years of progressive engineering or teaching experience for non-graduates. The Preamble to the final-form regulation should describe how the Board determined these timeframes were appropriate.

6. Section 37.36. Requirements for certification as a geologist-in-training and for licensure as a professional geologist. – Clarity.

Subsection (b)(1)(iii) lists as one of the possible qualifications for a geologist-in-training candidate to sit for the National Association of State Boards of Geology (ASBOG) fundamentals of geology exam: "Graduation from a foreign college or university that World Evaluation Services or other Board-approved professional evaluation service deems equivalent . . ." First, the HPLC commented that the name of the organization should be corrected to read "World Education Services." We agree. Second, what are the other "Board- approved professional evaluation services?" To improve clarity, we recommend that the final-form regulation identify the "Board-approved professional evaluation services." Alternatively, we recommend that the Board maintain the list on its website and cross-reference the website in the regulation.

In Subsection (c)(2), the term "technical completeness review" is vague and the final-form regulation should include a definition for this term.

7. Section 37.37. References for licensure as a professional geologist. – Clarity.

Subsection (a) describes the types of references needed for licensure as a professional geologist. Subsections 37.32(a) and 37.48(a) require references for licensure as a professional engineer and as land surveyors to be "unrelated" to the candidate. However, the regulation does not include a similar requirement for professional geologists. Why doesn't the proposed regulation require references for professional geologist candidates to be unrelated to the candidate?

8. Section 37.47. Requirements for certification as a surveyor-in-training and for licensure as a professional land surveyor. – Implementation procedures; Clarity.

Subsection (1)(iii) states that in order to demonstrate the "progressive experience" needed to sit for the requisite NCEES surveying exam, surveyors-in-training (SIT) candidates must complete 25% field or office work experience. How did the Board determine this was an appropriate amount of experience in these areas? Similar concerns apply to Subsection 37.49(c).

9. Section 37.49. Grandfather requirements for licensure as a professional land surveyor. – Need; Implementation procedures; Clarity.

This section details the requirements necessary to grandfather licensure as a professional land surveyor. The Preamble states the following:

> The grandfather requirements for licensure principally differ from the current requirements in that a candidate may take the [fundamentals of surveying] (FS) and license examinations at the same time; there is not a provision for being certified as a SIT; there is not an education option that permits a surveying student to take the FS examination in advance of graduation; and there is not an experience option regarding teaching experience in an approved surveying curriculum.

In the Preamble to the final-form regulation, the Board should further explain the basis and need for these changes to the grandfathering requirements for land surveyors.

Subsections (b)(1)-(3), list certain years of experience in order to qualify for NCEES land surveyor licensing exams, including 4 years of progressive experience in land surveyor work, and 10 years of progressive experience in land surveying work, which includes 5 years in responsible charge of primary land surveying functions. How did the Board determine these terms of years to be appropriate?