

WSR 23-14-088
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed June 30, 2023, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-049.

Title of Rule and Other Identifying Information: Chapter 196-33 WAC, Rules of professional practice for licensees designing on-site wastewater treatment systems.

Hearing Location(s): On August 23, 2023, at 1:30 p.m., at Board of Registration for Professional Engineers and Land Surveyors Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or WebEx meeting <https://brpels.my.webex.com/brpels.my/j.php?MTID=mc78c5c6baf60baadb0f370ce52a9ecc9>. The board of registration for professional engineers and land surveyors (board) is holding this hearing in person at the board's offices in Olympia. The public may also virtually participate in the hearing by accessing the hearing link on the board's rule-making [web] page <https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: October 19, 2023.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov, by August 23, 2023.

Assistance for Persons with Disabilities: Contact Mackenzie Wherrett, phone 360-968-4813, TTY 711 or 1-800-835-5388, email Mackenzie.Wherrett@brpels.wa.gov, by August 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend language for the everyday usage of the stamp/seal by on-site designers, and to make the direct supervision language current so that it mirrors the direct supervision language for professional engineers and land surveyors. These amendments should make it easier for the licensees to understand their responsibilities.

Reasons Supporting Proposal: Changes provide clarification of requirements when stamping a document, as well as provide the types of documents that need to be stamped by the licensee.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, 18.21.060.

Statute Being Implemented: Chapter 18.210 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The board is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The following rules are exempt per RCW 34.05.310 (4)(d) because the amendments clarify language without changing its effect: WAC 196-33-100 Purpose and definitions, 196-33-200 Fundamental cannons and guidelines for professional practice and conduct, 196-33-300 Providing direct supervision, and 196-33-500 Seal and stamp usage.

Scope of exemption for rule proposal:

Is fully exempt.

June 30, 2023

Ken Fuller

Director

OTS-4681.1

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

WAC 196-33-100 Purpose and definitions. (1) The purpose of chapter 196-33 WAC is to provide further guidance to licensees with respect to the accepted professional conduct and standard of practice, as indicated in chapter 18.210 RCW, and generally expected of those practicing professional on-site wastewater treatment system designing. These standards shall apply to all persons authorized to practice on-site wastewater treatment system design services, whether licensed professional designers under chapter 18.210 RCW, or licensed professional engineers under chapter 18.43 RCW. The board recognizes the need to establish standards with which to measure the performance of practitioners. The board further recognizes, as a minimum standard, those standards for the design of on-site wastewater treatment systems required by chapter ((246-272)) 246-272A WAC, promulgated by the state board of health in accordance with their authority granted in RCW 43.20.050. It is the intent of the board to introduce guidance and direction through these rules, together with recommended standards and guidance documents.

(2) The word "licensee" in these rules of professional practice shall mean any person holding a license issued in accordance with chapter 18.210 RCW, or chapter 18.43 RCW, issued by this board.

(3) All licensees are charged with having knowledge of and practicing in accordance with the provisions of these rules of professional practice.

(4) Should there be any conflict in the guidance provided in this chapter and the intent of the language of chapter 18.210 RCW, the intent of the language in chapter 18.210 RCW prevails.

(5) Terms used in this chapter shall have the same definition as provided in chapter 18.210 RCW.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 01-11-102, § 196-33-100, filed 5/21/01, effective 6/21/01.]

AMENDATORY SECTION (Amending WSR 07-10-127, filed 5/2/07, effective 6/2/07)

WAC 196-33-200 ((Fundamental[s])) Fundamental canons and guidelines for professional practice and conduct. The specialized and complex knowledge required for on-site wastewater treatment system design makes it imperative that licensees exercise a standard of care that holds paramount the protection of the health, safety, environment, property, and welfare of the public.

(1) Licensees are expected to apply the skill, diligence and judgment required by the professional standard of care, to achieve the goals and objectives agreed with the client or employer, and are expected to promptly inform the client or employer of progress and changes in conditions that may affect the appropriateness or achievability of some or all of the goals and objectives of the client or employer. Licensees are obliged to:

(a) Be honest and fair in their dealings, and to conform to the relevant laws and codes of the jurisdiction in which they practice.

(b) Be able to demonstrate that their final products and work plans adequately consider the primary importance of protecting the safety, health, property, and welfare of the general public.

(c) Approve or seal only documents prepared by them or under their direct supervision.

(d) Inform their clients or employers of the possible consequences, when an overruling or disregarding of the licensee's professional judgment may threaten the safety or health of the public. If in the judgment of the licensee an imminently dangerous situation persists, they shall promptly inform appropriate authorities.

(e) Inform the board in writing, citing specific facts to which the licensee has direct knowledge, if they have knowledge or reason to believe that another person or firm may be in violation of any of the provisions of chapter 18.210 RCW or these rules of professional conduct, and cooperate with the board in furnishing such further information or assistance as may be required.

(2) Licensees shall be competent in the technology, and knowledgeable of the codes, regulations, and guidelines applicable to the services they perform.

(3) Licensees shall be qualified by education and/or experience in the technical area of on-site wastewater treatment system design applicable to services performed and the technologies utilized.

(4) Licensees may accept primary contractual responsibility requiring education and/or experience outside their own area of competence, provided their services are restricted to those phases of the project in which they are qualified.

(5) Licensees shall not affix their signatures or seals to any plan or document dealing with subject matter in which they lack competence by virtue of education and/or experience.

(6) Licensees shall act in professional matters for each employer or client as faithful agents or trustees.

(7) Licensees shall be objective and truthful in professional documents, reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony. They shall not knowingly falsify, misrepresent or conceal a material fact in offering or providing services to a client or employer.

(8) Licensees shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their

employers or clients of any business association, interest, or circumstances, which could influence their judgment, or the quality of their services.

(9) Licensees shall only accept compensation from one party for services on a project, unless the circumstances are fully disclosed to and agreed to, by all interested parties.

(10) Licensees shall not solicit or, accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(11) Licensees shall advise their employers or clients when, as a result of their studies, they believe a project will not achieve the goals established with the client.

(12) Licensees shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers or the public.

(13) Licensees employed full-time shall not accept professional employment outside of their regular work or interest without the knowledge and consent of their employers.

(14) Licensees shall offer their professional services in a truthful, objective, and professional manner that results in public trust in the integrity of the on-site design profession.

(15) Licensees shall not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgments may be compromised.

(16) Licensees shall not offer or accept money, goods or other favors as inducement to receive favorable consideration for a professional assignment or as an inducement to approve, authorize or influence the granting of a professional assignment. This shall not preclude the securing of salaried positions through employment agencies.

(17) Licensees shall negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.

(18) Licensees shall not falsify or permit misrepresentation of their academic or professional qualifications or experience.

(19) Licensees shall not advertise professional services in a way that is false or misleading as to the qualification, experience, or capability of the licensee.

(20) Public statements by licensees regarding the practice of on-site wastewater treatment systems design shall be objective and truthful.

(21) Licensees should endeavor to extend the public knowledge of on-site wastewater treatment system design and shall not participate in the dissemination of untrue, unfair, or exaggerated statements regarding the profession.

(22) Professional reports, statements, or testimony made to the public or public entities shall include all relevant and pertinent information to support conclusions or opinions expressed.

(23) Licensees when serving as an expert witness shall express an on-site design opinion only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction.

(24) Licensees shall issue no statements, criticisms, or arguments regarding on-site design matters, which are inspired or paid for by interested parties, unless they indicate on whose behalf the statements, are made.

(25) Licensees shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those individuals under their supervision.

(26) Licensees shall respond to any legal request for information by the board and/or appear before the board in the time frame established by the board or their staff designee.

(27) In addition to the requirements of RCW 18.210.020 and this chapter, the following acts are contrary to the standard of practice for individuals authorized to practice under this chapter and constitute unprofessional conduct in the practice of on-site wastewater treatment system designing:

(a) Duplicating, copying, removing or attempting to remove materials from the custody and control of the board that are exempt from inspection or copying under chapter 42.17 RCW when such duplication, copying or removal was not expressly authorized by the board.

(b) Failure to notify a client or employer that a project could not be completed or was not completed.

(c) Failure to respond to client inquiries under conditions which endanger the health, safety, or welfare of the public or the client or the client's property.

(d) Failure to respond to inquiries from other on-site practitioners or governmental agencies regarding differences in your respective work products, under conditions which endanger the public health, safety, or welfare or the health, safety, or welfare of the client or the client's property.

(e) Any act, statement or behavior that harasses, intimidates or retaliates against anyone who has provided information, assistance or testimony in connection with any board inquiry, investigation, hearing or other proceeding.

(f) Disorderly, discriminatory or abusive behavior or statements which are significantly disruptive to the normal activities of a place of business or public view, where such behavior would give anyone witnessing the act a reasonable belief to be concerned for their safety or well-being.

[Statutory Authority: RCW 18.43.035 and chapter 18.210 RCW. WSR 07-10-127, § 196-33-200, filed 5/2/07, effective 6/2/07. Statutory Authority: RCW 18.210.050, 18.210.060. WSR 01-11-102, § 196-33-200, filed 5/21/01, effective 6/21/01.]

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

WAC 196-33-300 Providing direct supervision. Direct supervision (~~(is a combination of activities by which)~~) by a licensee (~~(maintains)~~) is described as follows:

(1) Maintaining control over those decisions that are the basis for the findings, conclusions, (~~(analysis)~~) analyses, rationale, details, and judgments that are embodied in the development and preparation of on-site plans, specifications, reports, and related activities. (~~(Direct supervision explains the relationship between the licensee and those persons who are performing the work controlled by the licensee. Direct supervision)~~)

(2) Requires providing personal direction, oversight, inspection, observation, and supervision of the work being certified.

~~((Communications between the licensee and those persons who are performing the work)) (3) These actions may include, but are not limited to ((, use of any of the following ways)): Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or communication through other current technology (: Provided, that the licensee retains, maintains, and asserts continuing control and judgment.~~

~~Nothing in this section shall be construed to relieve the licensee from the responsibility of final decision making and plan stamping).~~

(4) Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision.

(5) Mentoring is not direct supervision. Reviewing documents as defined by WAC 196-33-500, after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 01-11-102, § 196-33-300, filed 5/21/01, effective 6/21/01.]

AMENDATORY SECTION (Amending WSR 01-11-102, filed 5/21/01, effective 6/21/01)

WAC 196-33-500 Seal and stamp usage. The use of the seal/stamp shall be in accordance with chapters 18.43 and 18.210 RCW, or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for use for construction, final agency approvals, use by clients, and record drawings or as-builts for filing with public officials where such record drawings or as-builts are required to be prepared by the licensee. Any final document must contain the seal/stamp, ~~((license expiration date and))~~ signature, and date of signature of the licensee who prepared or directly supervised the work. For the purpose of this section, "document" is defined as plans, designs, specifications ~~((and)),~~ reports, and as-built documents prepared by the licensee.

(2) Preliminary documents are those documents not considered final as defined herein ~~((,))~~ but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY" or contain such wording so it may be differentiated from a final document. Preliminary documents ~~((shall))~~ must be stamped ~~((and dated)),~~ but need not be signed or dated by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp and signature of the licensee(s) who prepared or who had direct supervision over the preparation of the work, and date of signature.

(a) Plans/designs containing work prepared by or under the direct supervision of more than one licensee shall be sealed/stamped, signed, and dated by each licensee and shall clearly note the extent of each licensee's responsibility.

(b) ~~((As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work and may contain the signature of the licensee depending on whether the plan set is final or preliminary.~~

~~(e))~~ Plan/design sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design ~~((on that plan sheet. Whenever possible))~~. The origin of the background information ~~((should))~~ shall be noted on the plan sheet.

~~((d))~~ (c) All design revisions to final plan/design sheets shall ~~((be performed by qualified licensees and shall be done in accordance with the provisions of RCW 18.210. The revised plan/design sheets shall))~~ clearly identify on each sheet ~~((+))~~ the revisions made and shall contain the name and seal of the licensee, and signature of licensee with the date the ~~((revision))~~ sheet was ~~((made))~~ sealed.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp ~~((and))~~, signature of the licensee, and date of the signature. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an on-site design nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of ~~((a))~~ an on-site design specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another licensed on-site designer, the reviewing licensee shall fully review those documents ~~((and))~~. If required, the licensee shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp ~~((and))~~, sign, and date the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

(6) Nothing in this section requires the stamping of plans/designs by employees of local health districts acting in ~~((their))~~ that capacity as on-site inspectors/reviewers, whether or not licensed under chapter 18.210 RCW.

[Statutory Authority: RCW 18.210.050, 18.210.060. WSR 01-11-102, § 196-33-500, filed 5/21/01, effective 6/21/01.]