

# Troubleshooting for Y2K

by Derek Holloway

**I**t is hard to imagine someone who hasn't heard of the potential problems that systems or equipment—which incorporate some form of computer technology—may have interpreting January 1, 2000, when their internal clocks tick over at midnight on December 31, 1999.

It is far more likely that readers have heard more than they care to about the Y2K problem, or millennium bug, or whatever other term may be popular to describe the failure of some computer-driven systems to identify “00” as “2000” and not “1900.”

There are, however, a number of businesses, large and small, which *won't* or *can't* address the potential implications of the Y2K problem on their ability to deliver goods and services on time or to serve their clients appropriately.

There is no doubt that plaintiffs using the zealous legal community will force many ill-prepared firms out of business, many of which did not foresee the magnitude of their exposure to claims. It is estimated that lawsuits in the United States alone will amount to more than \$1 trillion.

Recently, Encon Insurance Managers Inc. conducted an informal survey of Canadian consulting engineers on their preparedness to deal with the Y2K issue. It found that many had already completed the necessary work, others had developed plans to resolve any problems in 1999. Some survey respondents said they had done nothing because they lacked the time and resources, or did not believe that a problem existed. It is imperative that all firms appreciate the liability exposures and insurance issues relating to the Y2K problem.

## Avoiding costly claims

What will happen if an engineering firm's internal systems fail on January 1, 2000? Such a failure will

Consulting engineers need to make certain that systems and equipment they've designed or specified are Y2K bug-proof. This step could be a lifesaver in avoiding costly liability claims expected to flood the courts next year.

obviously prevent the firm from producing designs and other project-related documents, which may lead to project delays. Clients may then make a claim against the design professional involved for lost income or any cost overruns on the project. Even with the most exhaustive testing program, a consulting firm cannot be absolutely certain that its systems won't fail.

The primary defence to a delay claim will be that the firm took reasonable steps to test internal systems and correct problems. The courts will determine whether a firm is liable for damages claimed based upon what other, similar firms were doing to evaluate their systems. Firms that can demonstrate that they have met a reasonable standard of care may be exonerated. But firms will need to produce written documentation of testing plans, procedures and results to argue their cases effectively.

If the court determines that a firm did not meet a reasonable standard of care, the firm will attract liability. Provided the systems failure is attributable to an error, omission or negligent act in testing the system, the firm's professional liability insurance policy should cover the loss. If the firm had chosen not to undertake any testing of its systems, however, its insurer may well decline to provide coverage under the policy.

## Alerting clients—your duties

What duties do consulting firms have to warn clients

about potential Y2K problems in systems or equipment specified by their design professionals? As professionals responsible for the design of many facilities that use or rely on computer systems, what responsibility and liability will fall on engineers if the systems they have specified fail?

Most companies and owners should now be aware of the potential problem and take the necessary precautions. But if they do not take action to ensure their systems will operate next year, design professionals cannot be isolated from allegations by clients who believe that the engineer or architect had a duty to warn

that systems could fail. In fact, some firms are using the Y2K issue as a source of business, by offering past clients services involving the testing and correction of systems for Y2K readiness.

### Your liability for specified equipment

A more serious issue centres around equipment and systems specified by design professionals after practitioners knew—or ought to have known—about the Y2K problem. There will be questions raised as to whether design professionals took appropriate measures to ensure that equipment and systems specified for a

project were Y2K compatible. It is inevitable that problems will arise, and the potential for large business interruption losses is high. It is questionable whether the insurance policies carried by your clients will cover such losses, but it is safe to say that clients, and their insurers, will attempt to recover losses from design professionals.

In order to avoid such claims, design professionals must evaluate recent projects to determine the degree of exposure that exists. Firms should advise their clients of the potential for problems and, if the design professional lacks the expertise to evaluate and correct problems, outside assistance should be recommended to clients.

The question of how far back a firm must go to bring the Y2K issue to the attention of former clients often arises. This question will ultimately be answered by the courts, which will likely determine the time period in accordance with current practices.

In discussions with firms across Canada, Encon has found that most are contacting former clients on projects completed three to five years ago. For past projects involving more complex process plants, this term is generally longer.

Some firms are also asking suppliers from previous projects to identify any Y2K problems and then passing this information on to clients. For current projects, it is imperative that suppliers of equipment and systems be asked to confirm in writing that their products have been tested and are Y2K compliant. Firms are also encouraged to include clauses in tender and other construction documents requiring warranties and guarantees relating to Y2K compliance of products and systems.

Today, we have all come to rely on computers for a wide variety of basic needs. It is truly amazing how quickly we have forgotten to do a wide range of tasks manually. And the interdependence among computers performing separate tasks is such that one weak link can cause an entire system or process to fail. Experience has taught us that evaluating and testing systems are not simple tasks that can be accomplished in a short time. Those who delay taking action to deal with the Y2K issue may face dire consequences. ♦

**Derek Holloway is vice-president of the construction department at Encon Insurance Managers Inc. in Ottawa.**

## Sample letter to former clients

Dear \_\_\_\_\_:

You have undoubtedly become aware of the potential problems with systems, products and equipment operating with embedded computer technology that may fail on 12:01 a.m. on January 1, 2000 (Y2K). As a result of a review of files on completed projects, it has come to our attention that there are systems/equipment in your \_\_\_\_\_ project that may have embedded computer technology susceptible to the Y2K problem. If you have not done so already, we recommend that you take steps either to test your systems or to contact service agencies or suppliers to determine Y2K compliance. If you choose not to undertake this evaluation, there is a risk of system failure that may disrupt your operations.

If you require any assistance to establish a program for testing and evaluating your systems, we would be pleased to offer our services.

Yours truly,

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