

# Incorporating performance standards into regulations

*By Michael Mastromatteo*

Engineering practice and performance standards are important planks in an overall defence of the *Professional Engineers Act*.

One constant through the standards and tribunals (S&T) department's recent restructuring remains preparing guidelines, and performance and practice standards.

Says Bernard Ennis, P.Eng., manager, practice and standards: "My areas of responsibilities are unchanged by the switch from standards and regulations to standards and tribunals. I still deal primarily with providing practice advice to members; that is, helping them understand how to carry out their work in accordance with the *Professional Engineers Act* and its regulations. I provide information to the public regarding the proper roles and obligations of professional engineers, and I'm also staff advisor to the Professional Standards Committee (PSC) that develops standards and guidelines."

Occasionally, Ennis takes a "mail-bag" approach to information delivery by distilling common questions received from engineering practitioners into professional practice columns in *Engineering Dimensions*. In some cases, the advice also supports PEO's enforcement efforts by telling practitioners what to watch for, and helping them understand some of the subtleties between engineering and non-engineering work—and by extension, who is permitted to perform engineering work.

The S&T team is involved in preparing practice guidelines dedicated to specific areas of engineering. Although not enforceable like practice standards, the guidelines serve as advice for practitioners, especially in emerging or non-traditional practice areas.

At present, the PSC and S&T team are working on guidelines on the use of computer software, peer and technical reviews, serving as an expert witness, and preparing water works reports under the province's *Water Resources Act*.

The PSC is also working to overcome a dearth of standards development activity. As Ennis explained in a 2007 *Engineering*

*Dimensions* column, "in the 23 years since the current [Professional Engineers] act came into force, PEO has not created a single professional standard... The public expects PEO to follow through on its obligation as a self-regulator to impose on its licence holders standards of mandatory conduct that would establish firm rules describing what must be done by practitioners, rather than simply governing its licence holders."

In 2006, PEO issued a white paper, *Implementation of Regulated Professional Standards*, which held that regulators should keep service and professionalism issues in mind when developing and issuing new performance and practice standards.

"Professional regulatory bodies are, or should be, concerned with the form of the relationship between practitioners and clients/employers, in order to ensure practitioners provide services in a manner that is consistent with the tenets of professionalism," the paper reads. "Codified standards play a role by defining the meaning of professionalism in various professional activities. To do this, professional standards set out expectations for the quality of a service provided by practitioners. The public interest is served not just by providing technically competent services, but also by ensuring that services are performed in a manner that minimizes confusion, delay, legal entanglements and financial difficulties, and that meet the needs of all parties."

The paper recommends that PEO council approve performance and practice standards and codify these in regulations, and that the S&T team develop a protocol for the implementation of these standards.

Accordingly, at its January 2007 meeting, PEO council approved definitions for practice and performance standards that are to be used as the basis for future development of professional standards. Council also approved a professional standards policy to cover the development, implementation and monitoring of

practice and performance standards. The policy requires that PEO performance and practice standards be incorporated in regulations.

The first performance standards to emerge are those that are part of Ontario Regulation 260/08, which covers building construction and demolition. In keeping with the aim of emphasizing performance and service considerations over technical matters, the standards outline certain tasks licence holders must complete when involved in construction or demolition projects.

### INTERPRETER OF THE ACT

As the interpreter of the sparse definition of professional engineering contained in the *Professional Engineers Act*, S&T is also the authoritative advisor to licence and Certificate of Authorization holders seeking answers to questions regarding how the act and its regulations affect their day-to-day activities as professional engineers.

Says Sal Guerriero, PEO manager, legal/regulatory affairs: "S&T continues to guide people who call us for interpretation of the act, which is based on the decisions of PEO's two tribunals [Discipline Committee and the Registration Committee] and how these tribunals applied and interpreted the provisions of the act in particular cases. That has not changed. Now that we have the administrative support role for the tribunals, independent legal counsel to the tribunals provides expertise to the panels, which are free to accept or reject any interpretation of the act in a particular case, and hear submissions of parties on the points of law."

Although S&T had earned something of a reputation as a fierce protector of PEO's regulatory jurisdiction as granted by the act, its team members tend to downplay any perceived aggressiveness. "We are not in the business of war," says Guerriero. "Our role is to support the core regulatory activities of PEO." Σ