



Minutes

PROFESSIONAL STANDARDS COMMITTEE MEETING

Tuesday, December 11, 2018

PEO Offices

Members:

Fanny Wong, P. Eng. (Chair)
Neil Kennedy, P. Eng. (Vice-Chair)
Jamie Catania, P. Eng.
Roger Jones, P. Eng.
Dale Kerr, P. Eng.
James Lowe, P. Eng.
Nicholas Pfeiffer, P. Eng.
Brian Ross, P. Eng.

Council Liaison:

Lisa MacCumber, P. Eng.

Staff:

Sherin Khalil, P. Eng.
José Vera, P. Eng.

Regrets:

Denis Dixon, P. Eng.

1. OPENING OF MEETING

The Chair called the meeting to order at 5:10 p.m., with 8 members of the Committee in attendance. Consequently, quorum was attained.

1.1 Approval of Agenda

A motion was made to approve the agenda as written.

Moved by: J. Lowe

Seconded by: J. Catania

CARRIED

2. MINUTES OF PREVIOUS MEETING

2.1 Approval of Minutes of November 13, 2018 Meeting

A motion was made to approve the Minutes of the November 13, 2018 meeting as written.

Moved by: N. Pfeiffer

Seconded by: R. Jones

CARRIED

2.2 Action Items of November 13, 2018 Meeting

Staff reported on the status of the Action Items.

Staff reported that the Chair of the Experience Requirements Committee responded to the PSC Chair. The response from the Experience Requirements Committee will be added to the agenda of the January 2019 meeting for further discussion.

3. GUIDELINES

3.1 Guideline for Environmental Site Assessment, Remediation and Management

The subcommittee members completed the first draft of the guideline, which was sent by staff to the PSC members for review and comments.

The PSC members will send their comments prior to the deadline.

3.2 Guideline for Performance Audits and Reserve Fund Studies for Condominiums

The subcommittee Chair reported that the Ministry of Government and Consumer Services may take a long time to update their Regulation on Performance Audits and Reserve Fund Studies. Consequently, the subcommittee will continue working on the guideline, rather than waiting for the Ministry, since there is no indication when the Regulation will be updated. Furthermore, the subcommittee Chair reported that the industry had several concerns regarding the existing Regulation on Performance Audits and Reserve Fund Studies, and that the PEO guideline could help to influence the industry in a positive manner.

Staff reported that an information Briefing Note was sent to PEO Council to inform them that this guideline will be on hold until the Ministry updates their Regulation. Consequently, a motion may be required to continue working on the guideline.

A motion was made that the subcommittee continue to work on and finalize the guideline.

Moved by: N. Pfeiffer Seconded by: B. Ross CARRIED

3.3 Guideline for Structural Condition Assessments of Existing Buildings and Designated Structures

There was nothing new to report.

It was previously reported that the Ministry of Municipal Affairs developed a white paper on “Potential Changes to Ontario’s Building Code Parking Structures”. The subcommittee members will start working on the performance standard as soon as the Ministry of Municipal Affairs updates their Regulation.

Staff has contacted the Ministry of Municipal Affairs to follow up regarding the update of their Regulation; however, no response has been received as yet.

Staff reported that the observer from the Ministry of Municipal Affairs is no longer available and the Ministry will keep PEO apprised of the new observer.

3.4 Guideline for Design Evaluation of Demountable Event Structures

The subcommittee Chair reported that the subcommittee members are still working on addressing the public consultation comments. Many comments were received on specific sections, which the subcommittee members are working on addressing.

It was reported that the subcommittee will have a draft ready for PSC review within two months or so.

3.5 Use of Seal Guideline

The subcommittee received the legal review, and has a meeting scheduled on January 10, 2019 to discuss the results of the legal review.

3.6 Guideline for Professional Engineers Providing Reports on Mineral Projects

The subcommittee members have not met since the last PSC meeting and are planning to meet in February 2019 to address the PSC comments.

3.7 Guideline for Preparing As-Built and Record Documents

The subcommittee met with the lawyers on November 20, 2018 to discuss the scope of services and addressed all the lawyers' questions at this meeting. The lawyers will submit their legal review in early 2019.

3.8 MECP - Professional Engineers Providing Engineering Reports under O. Reg. 1/17 (ESDM and AAR Reports)

The subcommittee members will meet on January 16, 2019 to address the Ministry of the Environment, Conservation and Parks (MECP) staff comments and prepare a draft for legal review.

There was discussion regarding Section 12 of O. Reg. 1/17 and the liability that is held on engineers when signing off on Toxicologist Reports.

It was reported that the intent of Section 12 of O. Reg. 1/17 is for engineers to get the Toxicologist Report when submitting the EASR application, and not to sign off on the Toxicologist Report.

A PSC member questioned whether assessments should be done for contaminants coming in or out of a facility. Another PSC member answered that assessments should be done for contaminants that are coming out of a facility. Furthermore, a Toxicologist Report is required to show that the concentration of contaminants will not cause an adverse effect.

A PSC member commented that engineers should not assume responsibility for work that is not within the practice of professional engineering.

3.9 Coordinating Licensed Professional Joint Subcommittee

There was nothing new to report.

There was a discussion regarding the engineer members of the joint subcommittee who are not contributing to the draft guideline which was prepared by the architect members.

It was suggested creating a Review Network to review and help develop the guideline. Staff will verify the procedure to appoint new members to the Review Network.

3.10 Guideline for Pre-Start Health and Safety Reviews

Staff provided an article written by a lawyer regarding Pre-Start Health and Safety Reviews.

An evaluation will be done by staff to determine whether the existing version of the guideline should be updated or not.

4. OTHER BUSINESS

4.1 Council Update on PSC Related Issues

It was reported that an external regulatory review will be conducted by the Professional Standards Authority on PEO's regulatory functions.

Many recent reviews have been carried out by the Professional Standards Authority. This organization was established in the United Kingdom to "oversee the work of nine regulators who regulate health professionals in the U.K. and social workers in England".

Interviews will be held with PEO Committees and PEO staff.

The Professional Standards Authority will meet with the PSC at their February 2019 meeting.

4.2 Request from Chair of Experience Requirements Committee

The PSC Chair sent a memorandum to the Chair of the Experience Requirements Committee, requesting the following:

- Original documents which outline the purpose of the monitor process.
- Original legal review obtained by the Experience Requirements Committee regarding whether the current legislative framework permits PEO to explore such policy.

Staff reported that a response from the Chair of the Experience Requirements Committee was received before this PSC meeting. A copy of this response will be sent to all PSC members sometime this week. Further, this item will be added to the agenda of the January 2019 PSC meeting for discussion.

A PSC member commented that the Experience Requirements Committee may need to consider consulting the Fairness Commissioner, whose office triggered the legal review.

4.3 Proposal to Develop Practice Bulletin for OSHA Section 54(1)(k)

PEO staff met with Ministry of Labour staff. Ministry of Labour staff provided a relevant court case, *Hardwall Construction Ltd. v Carpenters' United Brotherhood of Carpenters and Joiners of America*, 2011 CanLII 34961 (ON LRB).

PEO staff provided a presentation to the PSC members, indicating the following:

- The purpose of Section 54(1)(k) of the *Occupational Health and Safety Act* (OHSA), "As can be ascertained from the words of Section 54(1)(k) of the Act, an Inspector may demand an employer, at the employer's expense, provide a signed and sealed report of a professional engineer as it concerns affected equipment, machinery or devices. The authority to require such a report is an important tool an Inspector has at his or her disposal to assist the Inspector in determining the safety of a workplace."
- The phrase "not likely to endanger" and such other similar phrases as, "likely to endanger", "may endanger", are used elsewhere in the Act and its Regulations. For example, Section 54(1)(n) requires an owner of a mine to provide a report of a professional engineer stating that "the ground stability of the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered".
- Similarly, in the context of a worker's right to refuse unsafe work, Section 43(3)(a) of the Act states that a worker may refuse to work, or do particular work, where he or she has reason to believe that "(a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself or another worker".
- The word "likely", in the context of Section 54(1)(k) of the OHSA, suggests that there is some probability that a danger will arise. This obviously requires something more than a mere possibility, the word "endanger" in Section 54(1)(k), requires there to be a substantial risk to a worker's health and safety.
- In the context of Section 54(1)(k), the envisioned assessment or evaluation by the professional engineer of the equipment, machine or device, does not purport to be an absolute. It is only an evaluation or assessment that the equipment machine or device is not "likely" to endanger the worker. As such, it implies judgement, and that judgement must be understood to be based on the testing done and best knowledge available to the professional engineer at that particular point in time.
- There is no evidence that the use of the precise words "not likely to endanger" has had any negative impact on an engineer's insurance coverage.

- Only two practitioners have raised concerns with Section 54(1)k, and they both work for Burrell & Associates.
- Practice Advisory Group receives less than one call each year regarding Section 54(1)k.
- A more critical issue is that practitioners need to comply with many different regulations, i.e. not just the *Professional Engineers Act*, but also the *Occupational Health and Safety Act*.

There is no evidence for the need to develop a Practice Bulletin; however, but a good practice article could be written.

4.4 Election of Chair and Vice-Chair

A motion was made to appoint F. Wong to continue as Chair and N. Kennedy to continue as Vice-Chair of the PSC for 2019.

CARRIED

4.5 Online Training for Chairing Effective Meetings

Staff advised that there is online training on how to chair effective meetings.

Question: Should all PSC members take this training?

Answer: It is recommended for all members chairing subcommittees.

4.6 Proposed 2019 PSC Meeting Schedule

The proposed 2019 PSC meeting schedule was approved by the PSC members.

5. ADJOURNMENT AND NEXT MEETING

The next meeting is scheduled for January 8, 2019. *[Editorial: Subsequently rescheduled to January 15, 2019.]*

The meeting adjourned at 6:30 p.m.