



Professional Engineers  
Ontario

## PROCEDURE FOR PROJECTS **WITHOUT** BUILDING PERMITS



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THIS PRACTICE BULLETIN APPLIES ONLY TO THE FIELD REVIEW BY PROFESSIONAL ENGINEERS OF CONSTRUCTION OR DEMOLITION PROJECT SITE WORKS FOR WHICH THE ISSUANCE OF A BUILDING PERMIT UNDER THE *BUILDING CODE ACT* AND REGULATIONS IS REQUIRED.

This practice bulletin applies only to the field review by professional engineers of construction or demolition project site works for which the issuance of a building permit under the *Building Code Act* and regulations is required. For the purposes of this practice bulletin, the term “construction” also includes demolition. The *Building Code Act* states under “Construction and Demolition”:

**Building permits**

- 8 (1) No person shall construct or demolish a building or cause a building to be constructed or demolished unless a permit has been issued therefor by the chief building official. 1992, c. 23, s. 8 (1); 1997, c. 30, Sched. B, s. 7 (1).

...

**Issuance of permits**

- (2) The chief building official shall issue a permit referred to in subsection (1) unless,
- (a) «the proposed building, construction or demolition will contravene this Act, the building code or any other applicable law;

...

Based on the above, it is reasonable to conclude that the construction of a building without a permit could create an illegal situation. Yet, despite the risks of penalties and fines, there have been cases where contractors have begun construction without a permit or, having started construction under a partial permit, have continued construction past the point that the partial permit allowed.

The *Professional Engineers Act* also imposes on practitioners a professional duty to comply with this statutory requirement. Section 72(2)d of Regulation 941 defines “failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner” as professional misconduct. In other words, by failing to comply with any law affecting the work, a practitioner could face discipline by Professional Engineers Ontario, in addition to the *Building Code Act* penalties. Therefore, for their own protection, practitioners shall not: “...*cause a building to be constructed...unless a permit has been issued.*” In other words, professional engineers must refrain from performing site reviews on projects where construction is occurring without an appropriate building permit since a site reviewer could be seen as a participant under the “cause a building to be constructed” prohibition in the *Building Code Act*.

Often, there is preliminary or preparatory site work that can be undertaken at the start of a project for which neither a building permit nor field review is required. Some temporary works may also fall outside of the scope of the *Building Code Act*. Practitioners should be careful if they are advising owners on what site activities may be carried out before a building permit is issued. The field review conflict for the practitioner occurs when the work onsite reaches a stage where field review services are required and a building permit has not yet been obtained.

It should be rare that a practitioner finds themselves in this situation since, unless the practitioner has just been retained to replace another, the practitioner would most likely have been involved in the design and bidding of the works and in the application for a building permit. The practitioner who has been involved with the project for some time before field review services are required would have ample time to discuss building permit options, such as requesting a partial permit for foundations only if it is a fast-tracked project, and to explain that no field review can be done by the practitioner before a building permit is issued for the work requiring a field review.

In situations where there are time constraints on construction, such as projects with public funding that would be lost if the project is unduly delayed, the appropriate timeframe for the building permit application process needs to be considered and discussed with the building department well before the permit application is made. Based on the circumstances of the project, staging of partial permits could be discussed as well as the documentation required in each partial building permit application to allow for a proper review of the application to meet the required schedule. Open, early and ongoing communication between the project manager and the building department, including the Chief Building Official (CBO), will improve the likelihood that schedules will be met.

Practitioners need to be mindful that their design documents submitted with the permit application need to be complete for the portions of the work for which a permit is being requested, and their seal should be qualified to limit its scope as appropriate (refer to the *Use of the Professional Engineer’s Seal* practice guideline for more information). Responsibility for a delay in the building permit being issued due to incomplete documentation usually rests with the design professional. Where the delay in issuing a building permit is not due



to an incomplete application, and the delay could cause significant financial harm to a project, particularly if the delay seems unwarranted, there may be cause for a discussion with the CBO.

## Procedure

Recognizing the concerns of professional engineers perceiving a potential conflict between their professional obligations to protect the public and faithfully serve clients, and their legal obligations to comply with all applicable laws, PEO's Professional Standards Committee has developed a procedure that strikes a reasonable balance between these various duties. Should a professional engineer discover on arrival at a construction site that no building permit has been issued for the work they have been engaged to review, the engineer should, before conducting any field review services:

1. Discuss the situation with the owner to ascertain whether a building permit application has been made at all, and if so, whether the owner knows the status of the application approval process.
2. Inform the owner that professional engineers have an obligation to report to the municipality's CBO if work on a construction site that requires issuance of a building permit is proceeding prior to a permit for that work being issued.
3. If no building permit application has been made, the engineer should inform the owner:
  - a. that the engineer is not able to provide field review services;
  - b. that the owner should stop work on any aspects of the project for which a building permit is required until a permit is issued; and
  - c. that the owner should apply for the required building permit with the municipality.

The engineer may offer their services to assist with the building permit application process or advise whether applying for a partial permit (such as for foundations only) while the full permit application is being processed is a practical option for the particular situation.

The engineer should also inform the owner that if construction activities requiring a building permit continue, the engineer will have to inform the CBO of the situation, and then do so.

4. If a building permit application has been made but no building permit has been issued, the engineer should inform the owner that:
  - a. the engineer is not yet able to provide field review services;
  - b. the owner should suspend work on any aspects of the project for which a building permit is required;
  - c. the owner should not cover any work already done that will need to be inspected once a building permit is issued;
  - d. the owner should consider discussing with the municipality whether a partial permit could be issued for the current area of work; and
  - e. if work continues on aspects of the project for which a building permit is required, the engineer will have to inform the CBO of the construction activity.

If the owner is unable to remedy the situation within a reasonable time or if work continues contrary to the engineer's recommenda-

tions, then the engineer should inform the CBO of the situation. Noting that practitioners have a duty to report and a duty to warn, the above procedure may need to be altered based on the particulars of a situation. For more information on these obligations involving safety refer to the *Professional Engineering Practice* guideline.

## Agreements

To prevent a situation where an owner demands that the professional engineer visit a construction site despite there being no permit, engineering firms should work with their legal counsel and professional liability insurance providers to ensure that agreements contain wording that assures that professional engineers can only perform site review on construction sites once there is a permit. For example, an agreement could state that the owner needs to provide the building permit information to the professional engineer before the engineer goes onsite.

## Exceptions

This practice bulletin is meant to cover situations where construction began and a building permit was required. It does not cover the numerous situations where a professional engineer goes to site and there was no need for a building permit.

Furthermore, there are situations where a municipality is aware that construction occurred without a permit and, to normalize the situation, orders the owner to engage a professional engineer to make an assessment of the work to date and provide an engineering report. In these situations, the municipality clearly has requested a professional engineer go to the site. However, a reasonably prudent practitioner would contact the municipality to discuss the objective of the municipal order.

Finally, there are emergency situations where professional engineering services are required on a site with no permit. For example, a municipality requires a forensic engineering report on a fire in a construction site that had no permit. And, consequently, a professional engineer must visit the site as part of their forensic engineering study. In that case, the professional engineer is not providing general review of the construction, rather the engineer is assessing the damage due to fire, which is an activity that does not require a building permit.