

# CLARIFYING SEALING REQUIREMENTS

The updated *Use of the Professional Engineer's Seal* guideline reflects new amendments to Regulation 941 that clarify how practitioners use their seal.

By José Vera, P.Eng., MEPP

The upcoming amendments to Regulation 941, which come into effect on July 1, help clarify how professional engineers use their seal. Although the amendments do not represent a significant change, they further spell out existing sealing requirements that were previously found in the *Use of the Professional Engineer's Seal* guideline or already existed in case law. In other words, these existing requirements will now be codified in section 53 of Regulation 941, bringing greater clarity to when practitioners should affix their seals on engineering documents and what procedures must be followed when sealing. Below is a summary of the key amendments.

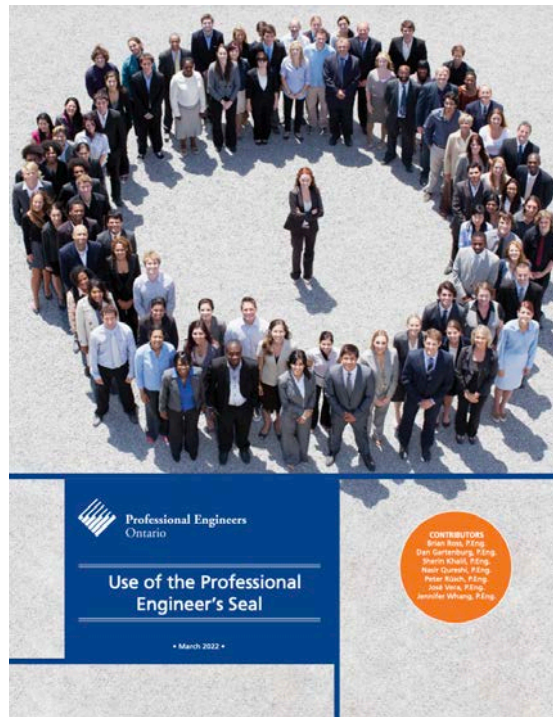
## 1. Practitioners must clearly indicate the purpose of the document they are sealing.

Previous versions of the *Use of the Professional Engineer's Seal* guideline recommended that practitioners indicate the purpose of the document they are sealing as a best practice. This best practice could be achieved by writing down a description in the sealed document such as, for example, "For Permit," "For Construction" or "For Connections Only." Section 53 of Regulation 941 has now been amended to make it a mandatory requirement to indicate the purpose of the sealed document, since a sealed document without a clearly indicated purpose can be potentially misused for another purpose.

Using sealed documents for a purpose other than its intended purpose is a potentially dangerous practice. For example, PEO has received reports from municipalities of "For Permit" drawings being used "For Construction." This practice can have grave ramifications, since permit drawings do not have the required information needed for construction. Consequently, sealed engineering documents can only be used for their intended purpose. Clearly indicating the intended purpose of a sealed document helps prevent its misuse.

## 2. Practitioners should not seal draft or incomplete documents.

PEO has received reports of sealed drafts or incomplete documents being issued to clients. This is a dangerous practice because placing reliance on a draft or incomplete document can result in serious consequences and present a risk to the public



due to missing or insufficient critical information. Previous versions of the *Use of the Professional Engineer's Seal* guideline noted that draft documents should not be sealed. However, a guideline is considered soft law; Regulation 941 is hard law. Consequently, section 53 of Regulation 941 has now been amended to clearly indicate that practitioners should not seal draft or incomplete documents. The purpose of this new hard requirement is to protect the public.

## 3. Sealing an engineering document is akin to assuming professional responsibility.

In Canadian case law, the use of an engineer's seal is a matter of professionalism and not an independent source of civil liability. In *Edgeworth Construction Ltd. v. N. D. Lea & Associates Ltd.*, the Supreme Court of Canada noted: "The seal attests that a qualified engineer prepared the drawing. It is not a guarantee of accuracy. The affixation of a seal, without more, is insufficient to found liability for negligent misrepresentation."

Therefore, it was beneficial to codify this principle into section 53 of Regulation 941 to ensure the purpose of the professional engineer's seal is crystal clear, since PEO's practice advisory team frequently receives questions from practitioners who mistakenly associate the use of the seal with civil liability. Consequently, section 53 has been amended to note that the practitioner's seal on a document is an indication that the practitioner has assumed professional responsibility for the engineering content of the sealed document.

#### **4. Practitioners can seal engineering documents that are solely internal, but they don't have to.**

Previously, section 53 stated that the use of seal only applied to engineering documents provided as a service to the public. This wording caused considerable confusion because it was often being misinterpreted that sealing only applied to entities with a certificate of authorization. This was never the case, since the obligation to seal was always conferred on the practitioner. Furthermore, in *Hilton Canada Inc. v. Magil Construction Ltd* it was determined that authorities can develop a policy of reasonable reliance on sealed engineering documents.

By signing and sealing a document, a practitioner attests that others may place reasonable reliance on its engineering content for its specified purpose. This means that if an authority, such as a municipality or a ministry, places reasonable reliance on an engineering document, the practitioner assuming responsibility for the work must seal the document, even if that practitioner is an in-house engineer. Only engineering documents that are used solely for internal purposes do not have to be sealed. However, in-house engineers can still choose to seal internal documents for accountability and traceability purposes.

## **IN CANADIAN CASE LAW, THE USE OF AN ENGINEER'S SEAL IS A MATTER OF PROFESSIONALISM AND NOT AN INDEPENDENT SOURCE OF CIVIL LIABILITY.**

### **5. Practitioners must take reasonable measures to ensure their seals are not misused.**

Previous versions of the *Use of the Professional Engineer's Seal* guideline recommended appropriate security measures to minimize the risk of practitioners' seals used without their consent. Both PEO and other authorities have reported cases of fraudulent seals being used. Consequently, practitioners now have an explicit obligation in section 53 of Regulation 941 to take reasonable steps to prevent their seal from being affixed to a document without their consent.

The five key amendments on the use of seal requirements found in section 53 are consistent with previous guidelines on the use of seal, Canadian case law and the sealing requirements from the other provincial engineering regulators in Canada. These amendments do not represent a major change; rather, they add clarity to already existing requirements. Detailed information on these amendments can be found in section 53 of Regulation 941. Practitioners who have questions on these new amendments can contact PEO's practice advisory team at [practice-standards@peo.on.ca](mailto:practice-standards@peo.on.ca). [e](#)

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