

REGULATION ALLOWS FOR STRUCTURED COMPLIANCE IN WAKE OF INDUSTRIAL EXCEPTION REPEAL

By Marisa Sterling, P.Eng.

ONTARIO REGULATION 941/90 was recently revised to add a new section 88 that provides for a structured one-year transition for companies and their employees to come into compliance following proclamation of the repeal of the province's industrial exception.

With the repeal of the industrial exception, section 12(3)(a) of the *Professional Engineers Act* (PEA), scheduled for September 1, 2013, those responsible for professional engineering work in relation to production machinery or equipment used in their employer's facilities to produce products will need to be licensed by PEO.

The regulation change to enable the transition came into effect January 25, 2013.

In early February, PEO began the process of inviting employers en masse to file a request for exemption form with the necessary licence applications by February 28, 2013 to qualify for the one-year transition period. This deadline date was based on a March 1, 2013 effective date for the repeal, as approved by the Ontario government. The government recently changed this date to September 1, 2013, meaning compliance plans must be filed by August 31, 2013. The transition period is now scheduled to end on September 1, 2014. Those who file a compliance plan will receive a licence application and licence reinstatement fee waiver for the licence applications accompanying their request for exemption form, representing a 45 per cent saving of the cost of obtaining a licence. (In fact, this fee waiver has been offered since September 21, 2012—the day PEO council approved the transition regulation.)

TRANSITION PLANNING IN THE WORKS OVER TWO YEARS

Planning for industry's transition to the new requirements, enabled by the regulation amendment, represented more than two years of work by PEO's Repeal of the Industrial Exception Task Force (RIETF).

After the Ontario government's *Open for Business Act* received royal assent on October 25, 2010, the attorney general's (AG's) office asked PEO to reach out to industry to explain the narrow scope of the change and to learn how best to assist affected organizations with their implementation of the new requirement for licence holders to supervise any professional engineering work associated with their production machinery or equipment.

Throughout this period, PEO's goal was to work with industry to determine what would be needed to successfully implement the change.

Accordingly, over the last two years, PEO has held meetings with over 80 per cent of the province's manufacturing sector. These meetings have included one-on-one discussions with employers concerning the specific scope of the change. In total, the task force consulted with more than 109 industry associations, held 28 community meetings, organized one-on-one discussions

with 54 companies and appeared at numerous tradeshow. During this communication process, PEO heard that industry wanted a structured compliance program, accompanied by a one-year transition period.

In response, the RIETF worked with the AG's staff to draft the new regulation, section 88 of Regulation 941 (see p. 23), approved by PEO council in September 2012. After a review by the AG's office, the AG took the new regulation to the government's Legislation and Regulation Committee on January 21, 2013. The committee approved the regulation, along with a proclamation date of March 1 for the repeal, which the government has since changed to September 1, 2013 to allow additional time for those affected to become compliant. The regulation was subsequently signed by the lieutenant governor of Ontario and filed to become effective on January 25.

The repeal requires that PEO licence holders oversee professional engineering work on machinery and equipment used in their employer's facility to make a product for their employer. Highly qualified maintenance and operations practitioners, skilled trades, technicians and occupational scientists should not be affected by this change.

TRAINED AMBASSADORS TO HELP INDUSTRY COMPLY

To help companies and individuals get ready for proclamation of the effective date, PEO is offering additional resources to organizations and supervisors. These include a compliance tool kit to guide them through a self-audit to determine if they are affected by the new requirement, personal consultations with one of 21 PEO ambassadors with extensive industry experience trained to help them assess the

impact of the repeal, and webinars on licence applications and preparing for exams.

PEO received a strong response to its late January call for ambassadors. The 21 engineer-ambassadors underwent a PEO training session and have been responding to industry inquiries and helping to clarify the repeal throughout the month of February. PEO is working with these ambassadors to give one-on-one help to companies to work through what the repeal means for them.

The compliance tool kit developed by the RIETF has become a useful self-audit tool for industry to check their compliance with the new requirement for licence holders to supervise professional engineering in their facilities and with the provisions of the PEA generally. In the process, companies and their employees have uncovered and addressed their misunderstandings around the use of job titles that include the restricted term “engineer” and that a Certificate of Authorization (C of A) is required if they design one-off, client-specific products. In fact, any offering of professional engineering services for anything other than your employer’s needs requires a C of A.

Over the coming almost 18 months, PEO will offer increased professional practice exam (PPE) sittings and webinars for the PPE and experience preparation in concert with its current Engineering Intern (EIT) program, to enable those requiring licences as a result of the repeal to be licensed as quickly as possible. PEO is also considering a joint project with the Ontario Society of Professional Engineers to run support programs for applicants over the transition period.

EARLY APPLIERS LEADERS IN THEIR INDUSTRIES

Early appliers for the one-year exemption are leading the way for their industries. These are companies that have already filed a compliance plan with PEO and are working to direct affected employees toward obtaining the required P.Eng. or limited licences.

Indeed, PEO and Ontario companies have been learning from other Canadian jurisdictions, particularly Alberta, which never had an industrial exception like Ontario’s. The Ontario oil and gas sector’s strong working relationship with its Alberta counterparts is paying off, with Alberta companies providing guidance on how to implement new procedures and policies to comply with the repeal, and improve business practices and engineering accountability.

PEO is also seeing an increase in the use of its limited licence as a tool to meet the new requirements for those who

are affected and have considerable on-the-job expertise, but would be unable to quickly obtain a P.Eng. licence because they do not hold engineering bachelor degrees. The limited licence is an ideal instrument to enable these experts with a three- or four-year diploma or degree in science and technology to continue in their existing roles and demonstrate professional accountability for the impact of their work.

Through its work with the Ontario Association of Certified Engineering Technicians and Technologists, PEO is hopeful that it will get approval in the near future for a regulation change allowing limited licence holders to supervise unlicensed employees.

Engineering is regulated to serve and protect the public interest, and all PEO licence holders are accountable to PEO for doing just that. Bringing this mindset into the design of the production process should be cost-effective for industry by lessening workplace illness or injury and associated workplace insurance claims, and minimizing retrofitting, downtime and equipment replacement.

WHERE TO FROM HERE?

Affected companies, organizations or individuals have until August 31, 2013 to file a request for exemption form and compliance plan. Those who miss this deadline still have options. PEO will work with them on a case-by-case basis to develop an agreeable compliance program with the goal of ensuring that all of industry is fully compliant by September 1, 2014.

Questions concerning compliance plans, fee reimbursements, the financial credit program as it applies to new applicants, or if certain employees now need to be licensed, should be directed to consultwithus@peo.on.ca. 

DATE FOR REPEAL OF SECTION 12(3)(A) OF ACT ANNOUNCED, REGULATION 941 AMENDED

ON FEBRUARY 27, 2013, the Ontario government approved a September 1, 2013 proclamation for the repeal of section 12(3)(a) of the *Professional Engineers Act*. This change to the act was one of several 2010 amendments awaiting a proclamation date by the lieutenant governor to come into effect.

On January 25, Regulation 941/90 was amended by adding a new section 88 to enable employers to transition to the repeal of section 12(3)(a). The text of section 88 of Regulation 941 appears below. To download Regulation 941 as amended by the addition of section 88, please visit www.peo.on.ca.

- 88.(1) In this section, “industrial exemption repeal date” means the day subsection 5(17) of Schedule 2 to the *Open for Business Act, 2010* comes into force. O. Reg. 26/13, s. 1.
- (2) The Act does not apply to any act done on or after the industrial exemption repeal date by a person who is not the holder of a licence, a temporary licence, a provisional licence or a limited licence that is within the practice of professional engineering in relation to machinery or equipment, other than equipment of a structural nature, for use in the facilities of the person’s employer in the production of products by the person’s employer, if, before the industrial exemption repeal date,
- (a) the person applies for a licence, temporary licence or limited licence;
- (b) the person’s employer files a document with the Registrar containing the information set out in subsection (3), in the form provided by the Association, and the document is approved in writing by the Registrar; and
- (c) the person is a person named in the document under clause (3)(b). O. Reg. 26/13, s. 1.
- (3) The document shall contain,
- (a) a statement by the person’s employer that the employer is employing or will employ persons who,
- (i) are not holders of a licence, a temporary licence, a provisional licence or a limited licence, and
- (ii) do acts described in subsection (2);
- (b) the names of the persons referred to in clause (a); and
- (c) a statement by the person’s employer that the employer and each of the persons referred to in clause (a) are taking and shall take all necessary measures to ensure that any act described in subsection (2) that is done by that person on or after the industrial exemption repeal date by virtue of the exemption in subsection (2) shall be done in a manner that safeguards

life, health, property, economic interests, the public welfare and the environment. O. Reg. 26/13, s. 1.

- (4) Subsection (2) does not apply to acts done by a person if the person’s employer knowingly makes a false statement in the document. O. Reg. 26/13, s. 1.
- (5) If the person’s application for a licence, temporary licence or limited licence is refused by the Registrar or withdrawn, subsection (2) ceases to apply to acts done by the person on and after the date of the refusal or withdrawal. O. Reg. 26/13, s. 1.
- (6) If the Registrar discovers that the person is failing or has failed to meet the obligation described in clause (3)(c), subsection (2) ceases to apply to acts done by the person on and after the first day on which the failure occurred. O. Reg. 26/13, s. 1.
- (7) If the Registrar discovers that an employer is failing or has failed to meet the obligation described in clause (3)(c), subsection (2) ceases to apply to acts done by any of the persons named by the employer under clause (3)(b) on and after the first day on which the failure occurred. O. Reg. 26/13, s. 1.
- (8) The Registrar shall give notice of a cessation under subsection (6) or (7) to each of the affected persons and to his or her employer, and the Registrar shall indicate in the notice the date of and reason for the cessation. O. Reg. 26/13, s. 1. Σ

Note: On the first anniversary of the day subsection 5(17) of Schedule 2 to the *Open for Business Act, 2010* comes into force, section 88 is revoked. (See: O. Reg. 26/13, ss. 2, 3(2))