



Louisiana Professional Engineering and Land Surveying Board

Order/Ruling Number:
2023-2

Subject Reference:

Petition for Declaratory Order and Ruling

1. Name of Petitioner: ReCon Management Services, Inc.
Address: 1907 Ruth Street, Sulphur, LA 70663
Telephone No.: 337-583-1254
Email: WSchippers@recon-group.com
2. List all statutes, rules or orders of the Board to which this petition relates:
Ruling No. 2023-2
3. Clearly and concisely state all the facts necessary to show the manner in which the petitioner is aggrieved by the statute, rule or order or by its potential application, or in which the petitioner is uncertain of its effects: _____
Reviewing Petition for Declaratory Order and Ruling 2023-2, we mistakenly concluded that LAPELS was amending industrial exemption (La R.S. 37:701(C)) and is now requiring all pressure vessel manufactures to seal & stamp drawings & calculations under the responsible charge of a LA PE. After further discussions with the board we now understand that the declaration was only reiterating current laws in place and no changes are at hand.
4. Clearly and concisely state the declaratory order or ruling requested by the petitioner:
To aide in proper interpretation and execution of LAC Title 46:LXI Parag. 105(A), Sub Parag. c. "the work performed in accordance with a system of engineering practices approved by a professional engineer duly licensed under the provisions of the licensure law" we are kindly requesting clarification of above paragraph and examples illustrating practical ways in which sub paragraph c can be executed.
5. State whether the petitioner has an application or is involved in a disciplinary or enforcement investigation or proceeding, or in any other matter which is presently pending before or under consideration by the Board. If so, explain in detail: _____
N/A
6. State whether the declaratory order or ruling requested by the petitioner relates to, is similar to or is connected with any pending litigation or with any disciplinary or enforcement investigation or proceeding presently pending before or under consideration by the Board. If so, explain in detail: N/A

Signature of Petitioner: _____

Date: _____

9/6/2023

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD
9643 Brookline Avenue, Suite 123
Baton Rouge, Louisiana 70809**

RULING ON PETITION FOR DECLARATORY ORDER

RULING NO. 2023-3

1.

On or about September 6, 2023, ReCon Management Services, Inc. ("Petitioner") filed with the Louisiana Professional Engineering and Land Surveying Board (the "Board") a petition for declaratory order and ruling pursuant to LAC Title 46:LXI§727.

2.

Petitioner seeks a declaratory order as to the meaning of the following clause contained in the definition of the phrase "Under the Responsible Charge of a Professional Engineer" in LAC Title 46:LXI§105(A):

c. the work performed in accordance with a system of engineering practices approved by a professional engineer duly licensed under the provisions of the licensure law.

3.

La. R.S. 37:682(13) defines the "practice of engineering" as follows:

(a) "Practice of engineering" shall mean responsible professional service which may include consultation, investigation, evaluation, planning, designing, or inspection of construction in connection with any public or private utilities, structures, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(b) A person shall be construed to practice or offer to practice engineering: who practices in any discipline of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer; or who represents himself as able to perform; or who does perform any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering. The practice of engineering shall not include the work ordinarily performed by a person who himself operates or maintains machinery or equipment.

4.

La. R.S. 37:682(16) defines "responsible professional services" as follows:

"Responsible professional services" shall mean the technical responsibility, control, and direction of the investigation, design, or construction of engineering

service or work requiring initiative, engineering ability, and its use of independent judgment.

5.

La. R.S. 37:701(C) states as follows:

This Chapter shall not apply to, affect, interfere with, or in any way regulate employees of firms engaged in industrial operations, including but not limited to producing, processing, manufacturing, transmitting, distributing, or transporting, when performing services within the state of Louisiana in the course and scope of the business of said firms or affiliates thereof. In the event any of the activities set forth in this Subsection shall fall within the definition of practice of engineering as defined in R.S. 37:682, such activities shall be under the responsible charge of a professional engineer. However, this Subsection shall not apply to persons practicing civil engineering or land surveying, who must at all times comply with the provisions of this Chapter.

6.

LAC Title 46:LXI§105(A) states as follows:

Under the Responsible Charge of a Professional Engineer—as it applies in R.S. 37:701(C) only, shall mean:

- a. the work performed by a professional engineer duly licensed under the provisions of the licensure law; or
- b. the work reviewed and approved by a professional engineer duly licensed under the provisions of the licensure law, who is authorized to direct changes to the engineering work; or
- c. the work performed in accordance with a system of engineering practices approved by a professional engineer duly licensed under the provisions of the licensure law.

7.

LAC Title 46:LXI§105(A) also states as follows:

Employees—for purposes of R.S. 37:701(C) only, shall mean:

- a. any and all individuals to or for whom a firm engaged in industrial operations pays salary or other compensation, withholds taxes, provides benefits or pays workers' compensation and/or liability insurance, including without limitation all individuals covered by the definition of *bona fide employee* as set forth in the rules of the board; or
- b. any and all individuals whose conduct a firm engaged in industrial operations has the right to control, including the right to hire, fire or directly supervise, the right to set the individual's work schedule and job duties, or the right to set the terms and conditions of employment, including without limitation individuals supplied through an employment agency or consultant firm.

8.

Additionally, LAC Title 46:LXI§105(A) states as follows:

Bona Fide Employee—an individual in the service of an employer under a contract of hire, expressed or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed and the employer pays wages or a salary directly to the employee, pays a share of social security and federal unemployment tax, withholds federal income tax and the employee's share of Social Security

payments, provides training, furnishes tools and materials, and sets hours of work. Generally such employees work full-time for the employer, perform work at a location assigned by the employer and do not offer their services to the general public.

9.

LAC Title 46:LXI§2503(A) and (B) state, in part, as follows:

A. Licensees shall hold paramount the life, health, property and welfare of the public in the performance of their professional duties.

B. Licensees shall at all times recognize that their primary obligation is to protect the life, health, property, and welfare of the public. . . .

ORDER

After due consideration of the petition for declaratory order and ruling filed by Petitioner and after discussion by the Board during its meeting on October 30, 2023:

IT IS THE RULING of the Board that:

10.

In the definition of the phrase, “Under the Responsible Charge of a Professional Engineer” contained in LAC Title 46:LXI§105(A), the clause which states, “the work performed in accordance with a system of engineering practices approved by a professional engineer duly licensed under the provisions of the licensure law”, does not describe (a) what is a “system of engineering practices” and (b) how a Louisiana-licensed professional engineer is to “approve” such a system.

11.

The determination of what is a “system of engineering practices” and how to “approve” such a system is left up to the professional judgment of the Louisiana-licensed professional engineer on a case-by-case basis, keeping in mind that licensees must at all times “hold paramount the life, health, property and welfare of the public in the performance of their professional duties” and “recognize that their primary obligation is to protect the life, health, property, and welfare of the public”.

12.

By way of example only, the Board offers the following illustration of what might be a “system of engineering practices” and how a Louisiana-licensed professional engineer might “approve” such a system:

XYZ Company, a Louisiana-based manufacturer, produces and sells ASME Boiler and Pressure Vessel Code (BPVC) Section VIII air receivers of various types and sizes to customers who fabricate skid-mounted, turn-key air compressor packages.

As part of their operations, XYZ Company's in-house engineering department designs their own air receiver products including the preparation of design drawings and calculations.

Since XYZ Company does not have a Louisiana-licensed professional engineer on staff, the company contracts with an outside Louisiana-licensed professional engineer knowledgeable in the applicable field of pressure vessel design to review and approve XYZ Company's "system of engineering practices" related to such design.

To accomplish this, XYZ Company compiles a set of documentation consisting of those sections of the company's quality program manual, internal procedures, and engineering work instructions defining the scope of supply and governing the preparation and control of design drawings and calculations including the use of engineering design software. Within these documents, XYZ Company specifies that compliance with BPVC Section VIII, Division 1 is mandatory for all air receiver products produced. These documents are presented to the Louisiana-licensed professional engineer for review and approval.

The Louisiana-licensed professional engineer reviews the documentation provided by XYZ Company and is satisfied that the company's internal processes and engineering instructions are sufficient to ensure proper application of the pertinent rules of BPVC Section VIII, Division 1 for the design of its air receivers. As such, the Louisiana-licensed professional engineer issues a letter of approval to XYZ Company permitting the "practice of engineering" as described within the provided documents. The letter of approval includes the Louisiana-licensed professional engineer's name, license number, and date of approval.

The approved "system of engineering practices" that defines and governs XYZ Company's internal engineering activities related to the design of its air receiver products consists of XYZ Company's policy, procedures, and work instructions reviewed and approved by the Louisiana-licensed professional engineer in combination with the applicable portions of BPVC Section VIII, Division 1, including its referenced standards (*e.g.*, ASME B1.1, B16.5, B16.9, B1.20.1), as appropriate for the defined scope of supply.

THUS DONE at Baton Rouge, Louisiana, on the 30 day of October, 2023.

**LOUISIANA PROFESSIONAL ENGINEERING
AND LAND SURVEYING BOARD**

By: 
EDGAR P. BENOIT, P.E., Chairman