



August 12, 2024

Ms. Ann Colina, P.E., CFM  
Via e-mail

Re: Formal Response to Request for Policy Advisory Opinion Regarding The Ethical Expectation of Engineers to Share Concerns About A Project (Policy Advisory Opinion Request No. 67)

Dear Ms. Colina:

The Texas Board of Professional Engineers and Land Surveyors (Board) met in public session on August 8, 2024, and approved this response to your request, dated April 2, 2024.

**Request:**

You seek guidance on the following issues:

- Can a professional engineer working for a public entity be subject to disciplinary action by the Board if he or she has health, safety, or welfare concerns about the expansion or operation of the public water system under the jurisdiction of the public entity but does not have decision making authority and ultimately said concerns are not addressed and the expansion moves forward?

**Response:**

Per Board Rule 137.55(a), professional engineers are entrusted to protect the health, safety, property, and welfare of the public when engaged in the practice of engineering. Further, Board Rule 137.55(c) requires professional engineers to notify involved parties of any engineering decision or practices that might endanger the health, safety, property, or welfare of the public, and if in the engineer's judgement, any risk remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the Board or to proper civil or criminal authorities.

Also, of note, Board Rule 137.37(a) states a professional engineer is guilty of misconduct and subject to disciplinary action if the engineer knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property, or welfare of the public.

In the situation described in the request, it appears a professional engineer is not the signing and sealing engineer responsible for a design that may endanger the public. As such, he or she would not be in violation of Board Rule 137.37(a). If a professional engineer signed and sealed the expansion plans that may endanger the public, he or she could be subject to enforcement action for violating Board Rule 137.37(a).

If the engineer becomes aware of a design or plan that may endanger the public, the engineer should share those concerns with involved parties in writing. The Board recognizes that the engineer may not have ultimate decision-making authority but must endeavor to make the appropriate decision-making authorities aware of and understand the concerns. If the engineer has proof that he or she shared their concerns in writing, the engineer would not be in violation of Board Rule 137.55.

The Board does not have permitting or monitoring jurisdiction over water systems in Texas so has no authority to investigate or take action against the public entity that owns or operates the water system. Assuming the Texas Commission on Environmental Quality (TCEQ) is the permitting authority with jurisdiction over the system, the Board recommends you contact TCEQ for its guidance on reporting any concerns with the operation or expansion of a water system under its jurisdiction.

In your request, you also sought guidance on sizing or expansion of water systems to protect public health, safety, and welfare. As previously noted, the Board does not have jurisdiction over water systems specifications so cannot opine on this request. You may consider reaching out to TCEQ, who appears to be the jurisdictional authority, for guidance on this issue.

In closing, an engineer is obligated to share his or her concerns about any project that could endanger the health, safety, and welfare of the public with involved parties and/or appropriate authorities. These concerns should be shared in writing for documentation purposes. Recognizing the engineer may not have ultimate decision-making authority, if the concerns are shared and documentation can be provided upon request, the engineer would be acting in a manner consistent with expectations of the Texas Engineering Practice Act and Board rules.

**Conclusion:**

No new Policy Advisory Opinion will be developed for this request as the Board rules adequately address the questions posed.

If you have any further questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement at 512.440.7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is fluid and cursive, with a large initial "L" and "K".

Lance Kinney, Ph.D., P.E.  
Executive Director

LK:MZS