Deferred Submittals

Part 3: When is Final…Final?

By Dean D. Brown, S.E.

On the subject of deferred submittals, let us touch on an issue relating to when an engineered design (containing a deferred submittal) is considered final. Virtually every building department requires an engineered set of plans to be stamped by the EOR as a condition of granting a building permit. This is often before any deferred submittal documents have been finalized and reviewed by the EOR and submitted to the building official for approval.

So when is final…Final? At time of building permit…or when the EOR receives all complete deferred documents…or has participated in construction observation of the project?

Using the Survey State (mentioned in Part 2 of this series) as an example, the Rules of Professional Practice (for professional engineers) stipulate that (regarding the use of a seal), "The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or government agency. Any such document presented to a client or public or government agency that is not final and does not contain a seal, signature and date shall be clearly marked as 'draft', 'not for construction' or with similar words to distinguish the document from a final document." (*emphasis added*)

One could ask the State Board of Professional Engineers (The Board), how final does FINAL need to be before an engineered plan (containing a deferred submittal) is sealed? If there is no guarantee that a building official is going to properly enforce the routing of a deferred document, how final does an engineered plan need to be before a seal is used? It could be argued that upon initial application for building permit, the engineered plans are only a work-in-progress and need further information (from the deferred submittals) to complete. The statute establishes the condition that a 'draft' document cannot be final AND cannot contain a seal. There is no interim classification. If he/she chooses not to stamp, no building permit will be issued. If he/she stamps, then technically it could be argued that the engineer is violating the Rules of Professional Practice (at least in this state). There is no middle ground allowed. This concern was flagged to the State Board's attention and they responded that it was a mute issue (i.e., it was not an issue other engineers in that state were voicing).

Compare, then, which states other than the Survey State are indicating regarding the use of a seal (*emphasis added*):

- **Utah** – "Any final plan, specification, and report of a building or structure erected in this state shall bear the seal of a professional engineer or a professional structural engineer…".
- **Missouri** – "Plans, specifications, estimates, plats, reports, surveys, and other documents…shall be sealed and dated unless clearly designated preliminary or incomplete. If the plan is not completed, the phrase, 'Preliminary, not for construction, recording purposes or implementation' or similar language or phrase…" "It shall be a disclaimer and notice to others that the plans are not complete."
- **Nevada** – "…all engineering plans, specifications, reports or other documents that are submitted to obtain permits, are released for construction or are issued as formal or final documents to clients, public authorities or third party must bear…'the seal and signature of the engineer.'"
- **Illinois** – "The use of a professional engineer's seal on technical submissions constitutes a representation by the professional engineer that the work has been prepared by or under the personal supervision of the professional engineer or developed in conjunction with the use of accepted engineering standards. The use of the seal further represents that the work has been prepared and administered in accordance with the standard of reasonable professional skill and diligence."
- **California** – "All civil (including structural and geotechnical) engineering plans, calculations, specifications (hereinafter referred to as 'documents')…shall be prepared by, under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as 'preliminary,' 'not for construction,' 'for plan check only,' or 'for review only.' All civil engineering plans and specifications that are permitted or are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal stamp of the license, and the date of signing and sealing or stamping."

Notice that Illinois does not use the word 'Final', and California uses the term 'Interim', inferring that the document is a work-in-progress. So, is there something unique about the practice of engineering in these two states? In regards to what is being discussed, the answer is no.

Back to the Survey State, the author initially proposed revised language (on the use of a seal) to a state senator, suggesting the following, "Plans, specifications, estimates, plats, reports, surveys, and other documents or instruments shall be signed, sealed and dated unless clearly designated preliminary or incomplete. If the plan is not completed, the phrase, 'Preliminary, not for construction, recording purposes or implementation' or similar language or phrase shall be placed in an obvious location so that it is readily

found, easily read and not obscured by other markings. It shall be a disclaimer and notice to others that the plans are not complete." The state senator indicated that the suggested change had to be turned over to the Board for involvement.

When proposed to the engineering board, they in turn responded with the following, "It was not the Board's function to shepherd your bill through the legislature, or educate you on the legislative process." They then continued, "The Board …has not heard any concern from others on this matter and does not share your concern. The Board does not have the inclination to adopt your proposal, nor does it see the need to change (state) law as currently written… (and) does not agree with your proposed change." Furthermore, they indicated that they would oppose such change to legislation if proposed, but gave no reason as to why.

It's interesting to note that this same state board issued an earlier newsletter to the engineering community at large, soliciting recommendations on what could be done to better the practice of structural engineering.

This state's responsible charge statute includes language that says, "…'Responsible Charge' means the control and direction of engineering work…" The author asks, other than the use of his or her seal, what influence of control does an EOR have regarding their responsible charge? *Is not the 'control and direction' of an engineer's work directly impacted by a Building Official in this regard?*

So when is final…Final? At time of building permit…or when the EOR receives all complete deferred documents…or has participated in construction observation of the project? When should an EOR's role on a project be deemed complete? To what degree does document finality correlate to an engineer's "completeness" of responsible charge? That is a matter for further debate.

In conclusion, in this age of integration, engineers need to be better at protecting their interests. They do this by controlling when and how their seal is used. There also should be better consensus among all states regarding the use of the stamp, especially considering the complexities of deferred design and submittals.▪

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