

BY-LAW No. 2

made under

The Engineers and Geoscientists Act, 2008

As Amended by the Board of Directors January 22, 2010

Pursuant to the powers vested in it by virtue of the *Engineers and Geoscientists Act, 2008* (the “Act”) and all other powers enabling it, the board of the Association of Professional Engineers and Geoscientists Newfoundland and Labrador (PEGNL) hereby makes, effective October 23, 2009, the following as its By-Law No. 2, to be known as the “**Professional Liability Insurance By-Law**”, as the means of prescribing and publishing the form and amount of such coverage satisfactory to the board pursuant to subsection 12(3) of the Act:

1. Definitions

In this By-Law No. 2,

“Act” means the Engineers and Geoscientists Act, 2008;

“permit holder” is as defined by the Act;

“professional member” is as defined in the Act;

“professional services” means services which constitute or include the practice of engineering or the practice of geoscience;

Except as otherwise specified in this By-Law, terms shall have the same meaning as they have in the *Engineers and Geoscientists Act, 2008*, or in the Regulations made under the Act.

2. Mandatory Professional Liability Insurance

2.1 Every permit holder shall maintain in full force and effect at all times a policy of insurance to protect against claims resulting from errors or omissions of the permit holder and of professional members providing professional services to the public as an employee of or otherwise in association with the permit holder. Such insurance shall be in an amount appropriate to the risk of the practice, and not less than \$250,000 per claim and \$500,000 aggregate. The board may amend the minimum amounts above at a regular meeting of the board held prior to June 30 of any year, with the amendment to take effect on January 1 in the following year.

2.2 A permit applicant must submit with its application, and a permit holder must submit upon expiration of its insurance policy, a certificate of insurance issued by the insurer stating the amount of coverage provided and the term of the policy. The Registrar may require that the insurance certificate state that the registrar shall be notified should the insurance policy be cancelled.

2.3 Notwithstanding section 2.1, professional liability insurance coverage is not required to be maintained by a permit holder if all of the following circumstances exist:

(a) the permit holder provides professional services exclusively to one or more firms, partnerships, corporations, or other entities which are identified by the permit holder to the registrar, hereinafter referred to as the “identified client or clients”;

(b) the professional services provided to the identified client or clients are covered by a policy of insurance maintained by the identified client or clients; and

(c) the permit holder provides evidence satisfactory to the registrar that the coverage provided pursuant to subsection 2.3 (b) is equivalent to the coverage contemplated by section 2.1.

2.4 Notwithstanding section 2.1, professional liability insurance coverage is not required to be maintained by a permit holder if all of the following circumstances exist:

(a) if an ancillary, but not primary, function of the permit holder is to provide professional services directly to the public;

(b) the professional services provided to the public are covered by a policy of insurance maintained by the permit holder; and

(c) the permit holder provides evidence satisfactory to the registrar that the coverage provided pursuant to subsection 2.4 (b) is equivalent to the coverage contemplated by section 2.1.

2.5 A permit holder who is unable to obtain professional liability (errors or omissions) insurance **because of the nature of the professional services provided**, where the board is satisfied that such inability is of general application to those professional services and is not due to the past claims record or any other issue particular to the permit holder, may be exempted in whole or in part from the requirements of section 2.1. A permit holder

who is exempted by the board under this section shall notify all clients or customers in writing of the particulars of the exemption and shall maintain a record that the clients or customers have acknowledged such notice in writing, which record is to be made available to the registrar upon request. The board may also, as a condition for such exemption, require that particulars of the exemption be published in such manner as the board deems fit, including by posting on the PEGNL website.

2.6 A permit holder claiming to be covered under a policy of insurance as contemplated by section 2.3 or 2.4, or who has been partially or wholly exempted from the requirements of section 2.1 as contemplated by section 2.5, may be required to provide such evidence of such coverage or to support the exemption as may be required by the registrar or the board from time to time. Without limiting the foregoing, a permit holder who is granted an exemption under section 2.5 may be required to apply annually for renewal of that exemption, and provide on such application for renewal such further or updated evidence and declarations to support the exemption as may be required by the registrar or the board.

2.7 The failure to comply with provisions of this by-law may be the subject of an allegation of professional misconduct and the subject of the disciplinary procedures of the Act.