

Section II.4.a. - Code of Ethics  
Section II.4.d. - Code of Ethics  
Section II.4.e. - Code of Ethics

**CONFLICT-OF-INTEREST -- DISCLOSURE TO A CLIENT**  
**A RELATIONSHIP WITH ANOTHER CLIENT**

**FACTS:**

In 1988, Engineering A was engaged by ACME Waste Co. to prepare an application for the Clover City Department of Consumer Services for a permit for ACME's waste transfer station located within Clover City. In 1989, the application was submitted to the Department and was approved. Since 1988, Engineering A has been retained by ACME to perform a variety of services related to ACME's solid waste business. None of these subsequent engagements, however involved ACME's Clover City facilities. These additional assignments included preparation of grant applications and due diligence on potential landfill applications. The relationship between Engineer A and ACME is strong and ACME relies on Engineer A as its consultant on state and local permitting matters. Engineer A holds no ownership interest in ACME.

In 1993, Clover City Department of Environment (DOE, and successor to the Clover City Department of Consumer Services) engages Engineer A to assist in the administration of its permit program. Chief among these services is the review and analysis of permit applications for landfills and transfer stations regulated by DOE. On behalf of DOE, Engineer A reviews the applications for completeness, identifies deficiencies in the application, and makes recommendations to the Commissioner of DOE on whether an application should be granted, denied or conditionally approved. DOE has retained Engineer A to provide these services. During the course of this engagement, Engineer A has become intimately familiar with DOE's internal policies and practices regarding the permitting process. All decision-making authority on permits rests, however, with the Commissioner of the DOE. The engagement also includes the drafting of rules and regulations which will govern the

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permitting and operation of transfer stations, including ACME's facility. The drafting assignment has commenced.

DOE selected Engineer A as its consultant in large part because of the quality of the application submitted by Engineer A on behalf of ACME in 1989 and Engineer A's lack of conflicts of interest within Clover City. At the time DOE engaged Engineer A, DOE knew that Engineer A was ACME's engineering consultant and had prepared ACME's transfer station application. ACME has been aware for several years that Engineer A has been a consultant to DOE.

In early 1995, ACME engaged Engineer A to perform site surveys and engineering design services in connection with ACME's planned expansion of its Clover City Waste transfer station. ACME also engaged Engineer A to prepare the application to DOE for a modification to its existing permit which is needed due to the expansion. Engineer A has informed the Commissioner of DOE of this engagement.

**QUESTION:**

Is it ethical for Engineer A to accept the 1995 ACME engagement if (1) the Applicant (ACME) is disclosed to the municipality (Clover City), (2) the engagement with the municipality is disclosed to the applicant; and (3) the municipality and Engineer A agree that Engineer A shall continue its engagement with the municipality, but will have no role in the review or processing of the application in question?

**DISCUSSION:**

As noted in Case 94-1, the issue of conflict of interest is a prevalent and continuing subject of concern for the engineer. Over the recent three decades or more the Code of Ethics and the views of the Board have evolved from rigid prohibition of such conflicts to recognition that some types of conflict of interest are difficult or impossible to avoid and must be dealt with accordingly to the circumstances. They must be fully disclosed. They must be openly evaluated and prudently dealt with by the parties. In some cases, the conflicts

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can be so isolated as to ensure that faithful performance, fairness and equity shall not be interfered with.

The history of the relationships that is presented may be indicative that Engineer A has served both parties faithfully and well; that this requirement seems to have been well served. That each party employing Engineer A is fully aware of his employment by the other party and is believed to well satisfy disclosure required under II.4.a.

The requirement under II.4.d. is that engineers in service as advisors to public bodies shall not participate in decisions with respect to professional services provided by them is often more difficult to deal with. However, under the given facts we note that all decision-making authority on permits rests with the Commission of DOE. In the instant arrangement, Engineer A will not perform his usual review of the application for completeness, identify deficiencies in the application, nor make recommendations to the Commissioner on whether an application should be granted, denied or conditionally approved.

Section II.4.e. provides "Engineers shall not...accept a professional contract from a governmental body on which" (he) "serves as a member." That principle might also be considered here as it appears that A, in effect, serves in that role. This then raises the question whether this would be satisfied with the agreement that A shall continue its engagement with the municipality, but will have no role in the review or processing of the application?

The Board is also concerned that there is no indication that the Commissioner has engineering training or experience to evaluate these applications independently of Engineer A's advice, nor has it been stated that the Commissioner has obtained other expert engineering advice in the matters. The Commissioner's performance is not the issue before the Board.

The Board believes that the apparent conflict of interest has been evaluated by the parties and resolved by the removal of Engineer A from the process.

**CONCLUSION:**

It is ethical for Engineer A to accept the 1995 ACME engagement under the conditions stated.

**BOARD OF ETHICAL REVIEW**

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