

Professional Practice & Ethics

October 9, 2024

Allyson Bennett, Public Information Officer



**STATE OF NEBRASKA BOARD OF
ENGINEERS AND ARCHITECTS**

Roadmap

- Enforcement
- Complaint Process and Investigations
- Penalties
- Case Studies and Sources
- Coordinating Professionals
- Technical Submissions



Enforcement



The Nebraska E&A Regulation Act Handbook

- This handbook contains the Nebraska Engineers and Architects Regulation Act and the rules and regulations of the Nebraska Board of Engineers and Architects.
- These statutes and rules govern the practice of engineering and architecture in the state of Nebraska in order to safeguard life, health, property, and promote the public welfare.

The screenshot shows the website's navigation menu with 'Resources' highlighted. The 'Publications' section is active, displaying a list of documents. The 'The Nebraska Engineers and Architects Regulation Act Handbook' is highlighted with a red box. Below the list are five brochure thumbnails: 'Before You Build', 'Before You Build (Español)', 'Becoming an Architect', 'Becoming a Professional Engineer', and 'A Guide to Remediation'. At the bottom, there is a call to action: 'Check out the latest NBEA news from our blog!' followed by 'Need brochures? Handbooks? Hit the button below to request more!' and a large blue button labeled 'ORDER MATERIALS' with a red border.

81-3442. Prohibited acts; penalties.

1. It is unlawful for any person to:
 - a. Practice or offer to practice architecture or engineering in this state without being licensed in accordance with the Engineers and Architects Regulation Act unless such practice or offer to practice is otherwise exempt under the act;
 - b. Knowingly and intentionally employ or retain a person to practice architecture or engineering in this state who is not licensed in accordance with the act, except as provided in sections 81- 3414 and 81-3415, and who is not exempted by section 81-3449 or 81-3453;



81-3442. Prohibited acts; penalties

- c. Use the words architect, engineer, or any modification or derivative of such words in its name or form of business activity except as authorized in the act or in the Professional Landscape Architects Act.
- d. Advertise any title or description tending to convey the impression that he or she is a licensed architect or professional engineer unless the person is duly licensed under the Engineers and Architects Regulation Act;
- e. Present or attempt to use the certificate of licensure or the seal of another person;
- f. Give any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate;

81-3442. Prohibited acts; penalties

- g. Falsely impersonate any other licensee of like or different name;
 - h. Attempt to use an expired, suspended, revoked, or nonexistent certificate of licensure or practice or offer to practice when not qualified;
 - i. Falsely claim that he or she is licensed or authorized under the act; or
 - j. Violate the act.
2. Any person who performs any of the actions described in subsection (1) of this section is guilty of a Class I misdemeanor for the first offense and a Class IV felony for the second or any subsequent offense.

81-3444. Disciplinary actions authorized; civil penalties.

- The board, after hearing and upon proof satisfactory to the board, may determine by a two-thirds majority vote that any person or organization has violated the Engineers and Architects Regulation Act or any rules or regulations.
- Upon a finding that a person or organization has committed a violation, one or more of the following actions may be taken against such person or organization upon a two-thirds majority vote of the board:



81-3444. Disciplinary actions authorized; civil penalties

1. Issuance of censure or reprimand;
2. Suspension of judgment;
3. Placement of the offender on probation;
4. Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;
5. Imposition of a civil penalty not to exceed ten thousand dollars for each offense. The amount of the penalty shall be based on the severity of the violation;



81-3444. Disciplinary actions authorized; civil penalties

6. Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;
7. Issuance of a cease and desist order;
8. Imposition of costs as in an ordinary civil action in the district court, which may include reasonable attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or
9. Dismissal of the action



Complaint Process and Investigations

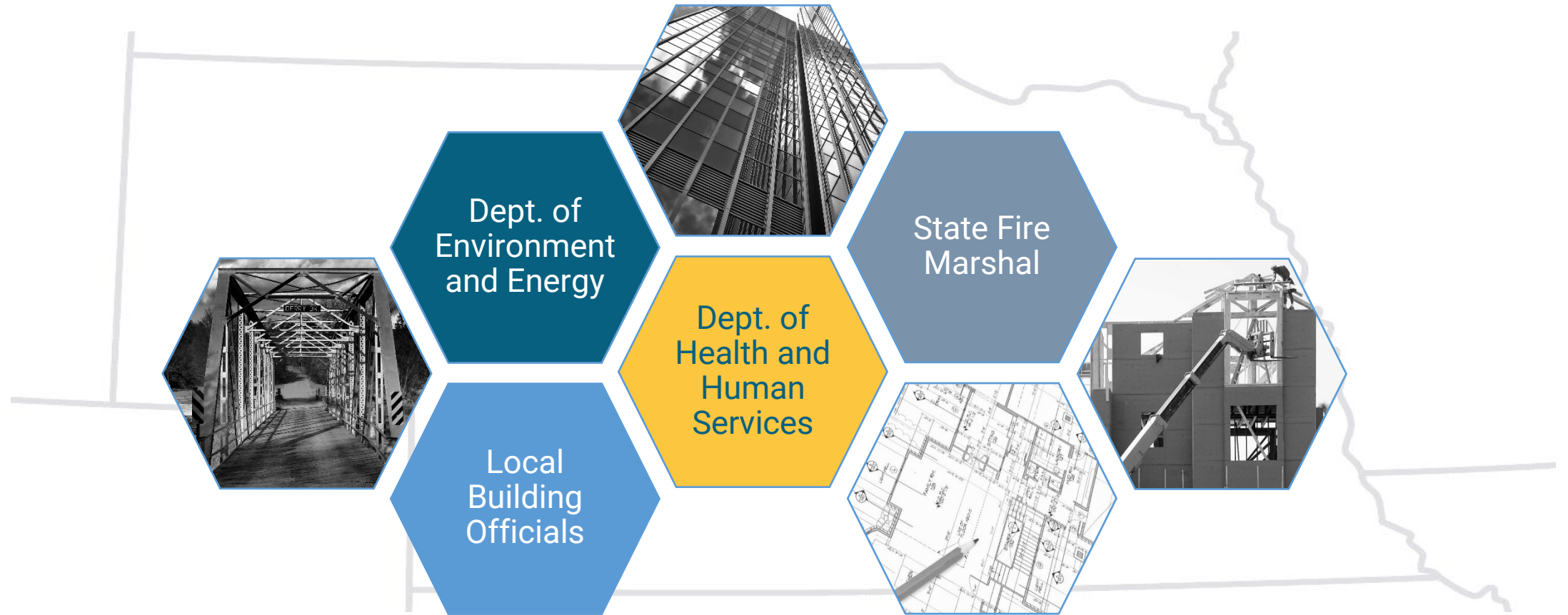


How to File a Complaint

- Anyone can file a complaint with the Board for any potential violation of the E&A Act and/or Board Rules.
- The Board has received complaints from:
 - Members of the public
 - Professionals in the building industry
 - Other state agencies
 - Professional societies
 - Firms



Board Partner Agencies



How to File a Complaint

- Complaints can be filed with the Board after completing our *Complaint Form*.
- The Board does not investigate anonymous complaints unless they disclose evidence of an immediate threat to health, safety, and welfare.
- The Complainant cannot take over the project they are making the complaint against.

 **STATE OF NEBRASKA BOARD OF ENGINEERS AND ARCHITECTS**

Mail to: PO Box 95165
Phone: 402-471-2021 Lincoln, NE 68509
Fax: 402-471-0787

Delivery: 215 Centennial Mall S, Suite 400
Lincoln, NE 68508

Questions? Contact us at nbea.office@nebraska.gov or ea.nebraska.gov

COMPLAINT FORM

1. RESPONDENT (The person against whom the complaint is being made):

Name _____ License Number (if known) _____

Company _____

Address _____

Phone _____ Fax _____

Email _____ Other Information _____

2. COMPLAINANT (The person making the complaint):

Name _____

Address _____

Phone _____ Fax _____

Email _____ Best time to contact you _____

3. Project Address (if applicable):

Street _____

City _____ Parcel No. (if known) _____

4. Do you have design plans prepared by the Respondent? Yes No

5. Did you and the Respondent sign a written contract or letter of agreement? Yes No

Investigations

- The Board contacts the Complainant
- The Board contacts the Respondent
- Gathers more information about the complaint
- Board staff may visit project sites, if necessary
- Board staff present investigative findings to the Board
 - Close the complaint
 - Initiate a case



Remediation

- Remediation is an informal process used by the Board to involve licensed professionals on building projects in Nebraska subject to the E&A Act. Typically, the project will require an architect if the project involves the practice of architecture, and a professional engineer if the project involves the practice of engineering. This ensures that the health, safety and welfare of the public is protected.
- If deficiencies are identified, the remediation professional must recommend design solutions to remedy the issue(s).
- Involved parties cannot have *ex parte* communication with individual Board members.



Failure to Comply and Penalties

- Issuance of censure or reprimand
- Suspension of judgment
- Placement of the offender on probation
- Civil penalties not to exceed ten thousand dollars for each offense
- Cease and desist order
- Imposition of costs as in an ordinary civil action in the district court



Failure to Comply and Penalties

- Reporting to **NCEES** and **NCARB**
 - Disciplinary actions will be reported to these organizations
 - All jurisdictions can access disciplinary information
 - Model Law Engineers (MLE) designated by NCEES **will** lose MLE status



Cost of Non-Compliance

- Following the E&A Act can help Nebraska citizens:
 - Comply with state law
 - Protect property
 - Protect persons on and using said property, and
 - Prevent damage or liability from improperly constructed buildings
- When the E&A Act is not followed, property owners and developers may be liable if a structure was built in violation of the Act and subject to fines and civil penalties authorized by state statute.



Case Studies



Case Study – Informal Process Investigation on Unlicensed Practice

- Construction of a 4,140-square-foot building classified as an A-Assembly occupancy and did not have the seal of a Nebraska-licensed architect or professional engineer.
- Board reviewed the project and determined it constituted the practice of architecture and engineering and was not exempt from the E&A Act. Architectural remediation was authorized.
- Project owner engaged a Nebraska-licensed architect to correct deficiencies.
- Remediation was completed and complaint was dismissed with no disciplinary action based upon the completion of successful architectural remediation.



Remediation Professional Responsibilities

- Reviewed the project and identified several deficiencies, including immediate concerns to public safety.
- Informed the project owner of the deficiencies and solutions to correct them.
- Once deficiencies were removed, new documents were sealed, signed, and dated by the remediation architect.
- Submitted a final letter confirming the project complies with the E&A Act, confirming all deficiencies have been removed, and took responsibility for the project.



Case Study – Formal Process Investigation on Continuing Education

- Licensee was alleged to have not met mandatory continuing education requirements.
- Investigation determined the licensee altered several CE completion certificates, and claimed twice the PDH's listed in the certificates.
- A previous settlement agreement restricting licensees practice was also considered when determining appropriate penalty.
- Licensees license was revoked, and they are ineligible to apply for licensure to practice architecture or professional engineering in Nebraska for five years.



Continuing Education (Rule 9.3.1)

- Web-based offerings provided by entities listed below may constitute **all** of the biennial education requirement:
 - International Association for Continuing Educational Training (IACET) approved providers,
 - institutions of higher education that have an accredited program in architecture or engineering,
 - professional engineering or architectural societies,
 - technical societies and associations recognized at a national level,
 - governmental agencies, or
 - NCARB and NCEES



Continuing Education (Rule 9.3.2)

- Web-based offerings from a provider not listed in Rule 9.3.1 may constitute no more than one-fourth of the biennial education requirement, which is
 - Six hours for architects
 - Seven and one-half hours for professional engineers
- Web-based offerings led by an instructor that enable both the instructor and attendees to give, receive, and discuss information *in real-time* are **not** restricted.



Professional Conduct – Continuing Education

- Rule 5.5.7
 - The licensee shall not deliberately make a materially false statement or fail deliberately to disclose accurately and completely a material fact requested by the Board in connection with the licensee's application for licensure or renewal or otherwise requested.
 - Continuing education examples of this include:
 - Reporting the mandatory continuing education requirements have been satisfied when they have not.
 - Attesting the information is correct to the best of your knowledge when it is not.

Case Study – No Violation

- Allegation of a project violating the E&A Act due to it not being prepared by, or bearing the seal of, a Nebraska-licensed architect or professional engineer.
- Project owner contacted the Compliance Officer within one week of the letter requesting clarification and provided the necessary information within two weeks.
- Determined there was no violation of the E&A Act and the complaint was closed.

Case Study – Plan Stamping

- An unlicensed individual designed a project subject to the Act.
- Licensees were not directly involved throughout the preparation of the technical documents.
- Board reviewed the project and determined it constituted the practice of architecture and engineering and was not exempt from the E&A Act. Architectural and engineering remediation was authorized.
- Minimum construction phase services were not being provided on this project, allowing for design professionals to be engaged.
- Board found no formal administrative or legal action was warranted and issued a letter of caution to inform the unlicensed individual to use greater care when preparing technical documents related to projects that require the involvement of licensed architects and/or professional engineers.



Direct Supervision of Work (Rule 6.4)

- Per Board Rule 6.4, to exercise full professional knowledge of and control over work, a licensee in direct supervision of work must:
 - Have and exercise the authority to review and to change, reject, or approve **both the work in progress and the final work product**, through a continuous process of examination, evaluation, communication, and direction throughout the development of the work;
 - Be personally aware of the project's scope, needs, parameters, limitations, and special requirements;
 - Be capable of answering questions relevant to the architectural or engineering decisions made as part of the services provided, in sufficient detail to demonstrate a reasonable knowledge of and proficiency in the work; and
 - Be reasonably satisfied with the product of the services rendered and accept full responsibility for the work.



Direct Supervision of Work (Rule 6.4)

- Good practices to ensure responsible control:
 - Review the processes you use to implement design solutions and develop clear expectations for on-site personnel who collect data and observations for your projects.
 - Maintain a clear chain of custody with the information you receive (photos, measurements, etc.) when identifying thresholds that would necessitate follow-up or further investigation.



81-3446 Construction Phase Services

- Property owners allowing a project that is subject to the Act to be constructed on their property, without the involvement of architects or professional engineers, may be engaged in the unlawful practice of architecture or engineering.
- Property owners are no longer potentially practicing architecture or engineering if they
 - Employ or cause others to employ licensed architects or professional engineers or persons under the direct supervision of licensed architects or professional engineers to furnish at least minimum construction phase services with respect to the project, or
 - The project is exempt from the Act.



81-3446 Construction Phase Services

- Construction phase service includes at least the following services:
 - Visiting the project site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the project permit was issued; and
 - Processing technical submissions required of the contractor by the terms of contract documents. The term does not include supervision of construction, review of payment applications, resolution of disputes between the owner and contractor, and other such items which are considered additional construction administration services which the owner may or may not elect to include in the architect's or engineer's scope of work.



81-3446 Construction Phase Services

- Observing vs. Inspecting
 - Design professionals have an **ethical and legal obligation** to properly observe and inspect a project.
 - **Observing** helps design professionals estimate the amount of completed work and verify compliance of a project.
 - **Inspecting** is a higher level of observation that entails closely examining a project for judging qualities and conditions.



Case Study – Competence (Rule 5.1)

- Complaint was initiated against a licensee for incompetence due to practicing structural engineering without the proper knowledge and skills to do so. This resulted in the collapse of a building.
- Board requested information from the licensee, including education, training, and experience in the practice of structural engineering, which the licensee failed to produce.
- Expert witnesses found the licensee lacked the necessary understanding of structural engineering to practice structural engineering.
- Settlement agreement was proposed, to which the licensee agreed. Settlement agreement included the licensee to cease and desist from structural engineering in Nebraska and a \$2,500 civil penalty.



Competence (Rule 5.1)

- In practicing engineering or architecture, the licensee shall act with reasonable care and competence and shall apply the technical knowledge and skill ordinarily applied by licensees of good standing in the same locality.
- The licensee shall undertake to perform professional services only when they, together with those whom the licensee may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.
- The licensee shall not sign, seal, or attest to any work pertaining to any technical discipline or specialty that the licensee does not have professional training and experience.



Case Study – Organizations Practicing Without COA

- Allegation of an organization practicing without a Certificate of Authorization
- Letter sent to the organization notifying them of the violation
- Organization responded by the deadline and removed all references to providing engineering services from their website
- Organization submitted an *Application for a Certificate of Authorization* and paid all *in arrears* application and renewal fees
- Board dismissed the complaint with no disciplinary action



Organizational Practice (Board Rule Chapter 7)

- Your organization will need a Certificate of Authorization if it:
 - Practices or offers to practice architecture and/or engineering in Nebraska; or
 - Enters into an agreement to provide architectural and/or engineering services on a project in Nebraska; or
 - Engages in design-build in Nebraska; or
 - Bills for architectural or engineering services pertaining to projects in Nebraska;
 - **AND**
 - Is a business entity created by law, including, but not limited to, a partnership, limited liability company, corporation, or joint venture.



Coordinating Professional



Coordinating Professional (Rule 6.3)

- A Coordinating Professional is a licensee who coordinates, as appropriate, the work of all licensees involved in a project.
- The E&A Act mandates that projects involving more than one design professional shall have a design professional designated as the Coordinating Professional for the entire project. The Coordinating Professional may be a licensed:
 - Architect
 - Professional landscape architect
 - Professional engineer
- The Coordinating Professional is responsible for reviewing and coordinating technical documents prepared by others for compatibility with the project's design.

Coordinating Professional (Rule 6.3)

- Must use the following language in conjunction with their individual seal for identification as the Coordinating Professional:

“I, (name of licensee), am the Coordinating Professional on the (name of project) project.”

- Seal does not indicate responsible charge or direct supervision of the work.
- Seal signifies the main point of contact for code officials or other professionals and should be on the cover sheet of all technical documents.
- Considered the liaison between the design team, the project owner and regulatory agencies.



I, Jane Doe, am the
Coordinating
Professional on the
(name of project)

Coordinating Professional (Rule 6.3)

- In summary, the Coordinating Professional's role is to:
 - Coordinate communication between the design professionals related to technical documents on a project;
 - Act as project liaison with the governing building official; and
 - Verify that all design disciplines involved in a project are working in coordination with one another and that the corresponding discipline approves any changes made to the design in which life, health, safety, and welfare are not compromised.



Technical Submissions



Technical Submissions (Rule 6.5.1)

- Technical submissions that constitute the practice of architecture or engineering shall include both the:
 - **Project name**, and
 - **Project address or location**
- Address/location:
 - Be as specific as possible
 - If a street address hasn't been determined, legal descriptions allowed
 - Provide enough information to give a reasonable person the ability to find the project

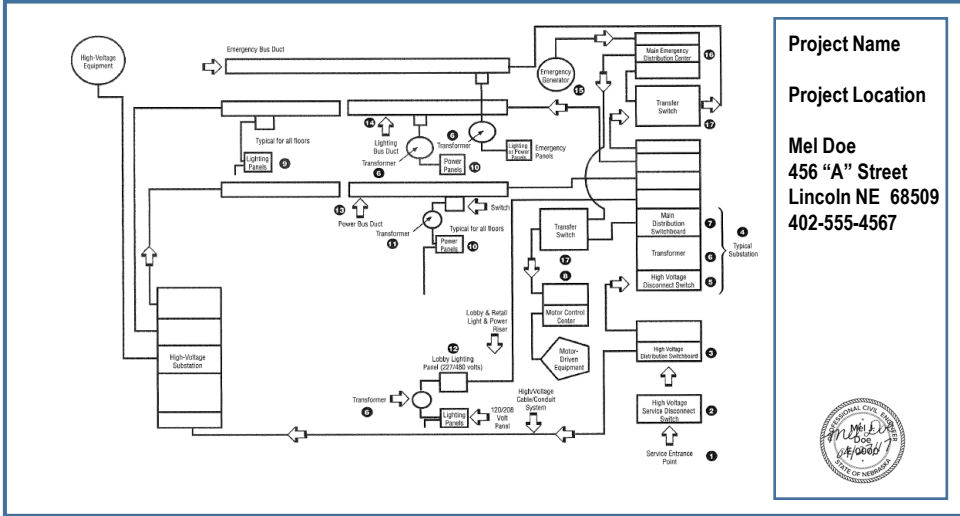


Technical Submissions (Rule 6.5.2)

- If the work **is not** being performed through an organization, technical submissions must include the:
 - **Licensee's name**, and
 - **Licensee's contact information**



Technical Submissions Example – Non-organization



Project Name
Project Location
Mel Doe
456 "A" Street
Lincoln NE 68509
402-555-4567



Project Name
Project Location
Mel Doe
456 "A" Street
Lincoln NE 68509
402-555-4567



Project Name
Project Location
Mel Doe
456 "A" Street
Lincoln NE 68509
402-555-4567



Engineering Report

Project Title
Project Address/Location

Mel Doe
456 "A" Street
Lincoln NE 68509
402-555-4567

1 of 4

2 of 4

3 of 4

4 of 4

include the scarification
crushed rock and gravel.
Nebraska Department of
by the City's Project

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T-96, Grade B, shall have a

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rock base, to the widths
object Manager.

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are shall be spread into a
is required. The gravel
isolated by compaction
City's Project Manager.

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be fraction of the aggregate

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cycles of freezing and thawing in conformance with AASHTO Method T-103.

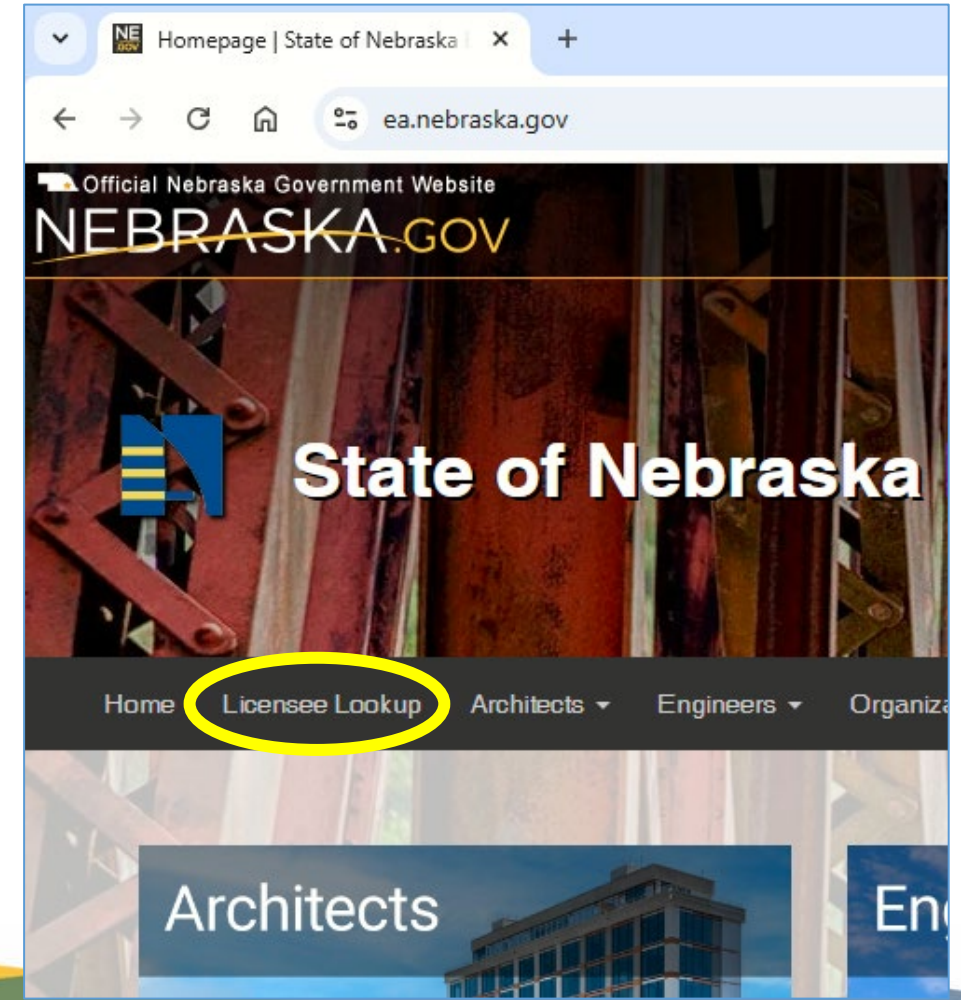
ASHTO Method T-2.

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y's Project Manager.

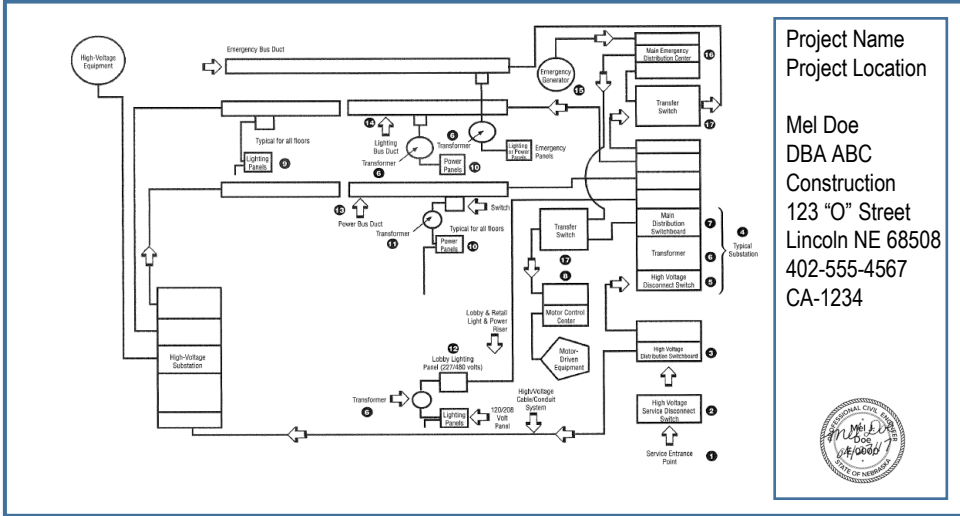
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ject Manager shall be
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all compensation for all
of water, and materials,
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Technical Submissions (Rule 6.5.3)

- If the work **is** being performed through an organization(s), technical submissions must include the:
 - **Organization’s legal name or DBA**
 - **Organization’s contact information and**
 - **Organization’s Certificate of Authorization number(s)**
- If you need help finding your organization’s Certificate of Authorization (CA) number, use the “Licensee Lookup” tool at *ea.nebraska.gov*.



Technical Submissions Example – Organization



Project Name
Project Location

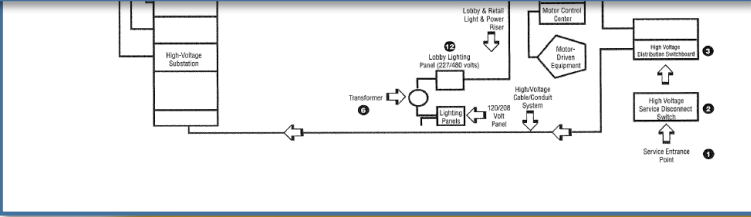
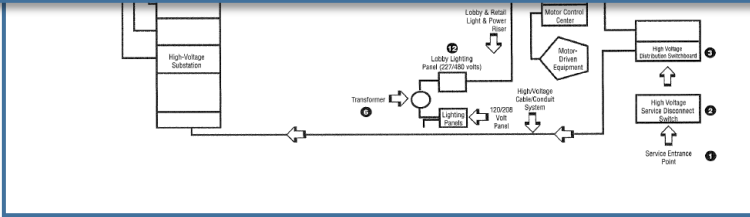
Mel Doe
DBA ABC
Construction
123 "O" Street
Lincoln NE 68508
402-555-4567
CA-1234

Professional Engineer Seal: Mel Doe, No. 12345, State of Nebraska

Project Name
Project Location

Mel Doe
DBA ABC
Construction
123 "O" Street
Lincoln NE 68508
402-555-4567
CA-1234

Professional Engineer Seal: Mel Doe, No. 12345, State of Nebraska



Engineering Report

Project Title
Project Address/Location

Mel Doe
ABC Engineering Inc.
123 "O" Street
Lincoln NE 68508
402-555-4567
CA-1234

1 of 4

Professional Engineer Seal: Mel Doe, No. 12345, State of Nebraska

2 of 4

3 of 4

4 of 4

Professional Engineer Seal: Mel Doe, No. 12345, State of Nebraska

Technical Submissions (Rule 6.5.4)

- If sealed standards such as drawings, details, and specifications prepared by a jurisdiction are used in a project, the name of the jurisdiction which prepared the standards shall be noted on the technical submissions.



Technical Submissions

- Licensee and/or organization information for Board Rule 6.5 is required on
 - Each drawing, and
 - The cover page and/or first page of specifications, reports, studies, and other documents.



Questions?

- Allyson Bennett, Public Information Officer
- nbea.marketing@nebraska.gov
- 402-471-3044
- Reminders
 - It is anticipated the Board will give continuing education and ethics credit for the webinar, but as a reminder, the Board **DOES NOT** pre-approve continuing education offerings.
 - Certificates **WILL NOT** be issued as attendance verification. If you participate in the entire presentation, you will receive an email within the next week confirming your attendance.

