



APEGA Recommended Discipline Order

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date: May 18, 2023

Discipline Case Number: 23-009

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT
AND
IN THE MATTER OF THE CONDUCT OF [A PERMIT HOLDER]**

Pursuant to the Engineering and Geoscience Professions Act,
being Chapter E-11 of the Revised Statutes of Alberta 2000
Regarding the Conduct of [a Permit Holder]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Name Withheld] (the “Permit Holder”) with respect to a complaint initiated by [Name Withheld] (the “Complainant”) dated September 13, 2020.

A. THE COMPLAINT

The Alberta government ensures that emissions from human activity are monitored to protect the environment and human health to an extent that is technically and economically feasible. They do so by using air quality objectives that have been set and implemented under the Alberta Ambient Air Quality Objectives (the “Objectives”).

The complaint was about an environmental assessment report that was completed by the Permit Holder for their client [Name Withheld] (the “Client”). The Client wanted to develop an abandoned mine site, located 7 km north of Blairmore, into an open pit coal mine. It was called the [Name Withheld] (the “Project”).

The Permit Holder, retained by the Client, had prepared an environmental assessment report that the Complainant alleges contained inaccurate information.



APEGA Recommended Discipline Order

The Complainant, who lives in Blairmore, alleged that the Permit Holder engaged in unprofessional conduct and/or unskilled practice by utilizing air quality measurements that were inappropriately acquired and utilized. Further, that the measurements could not be relied upon to design a facility that would ensure safe air quality levels that would meet the Objectives.

The Complainant contends that the Permit Holder did not have actual baseline data specific to the local area and that the data used to model air quality levels could not be safely relied upon.

B. ALLEGATIONS INVESTIGATED

The Investigative Committee conducted an investigation with respect to the following allegations outlined in the Complaint:

Allegation #1

Whether the Permit Holder engaged in unprofessional conduct by inappropriately comparing the measurements from the Client's air quality monitoring station adjacent to Hwy 3 to the provincial Alberta Ambient Air Quality Objectives (AAAQOs). These measurements are being presented as evidence of the air quality in the Crowsnest Pass despite their admission that with only two months of data available, and no measurements at the averaging time of most AAAQOs, it can't be determined to what extent local measurements are comparable to the background values collected from other communities in Alberta.

Allegation #2

Whether the Permit Holder created air dispersion models to measure dust particles in the Crowsnest Pass based on air quality data gathered from Lethbridge, Castlegar, BC Zinio Place, and Nelson-Kutenai, B.C., which does not accurately represent Crowsnest Pass air quality.

Termination:

The Investigative Committee investigated allegations #1 & #2 and determined there was insufficient evidence of unprofessional conduct and/or unskilled practice to warrant referring the allegations to the Discipline Committee for a formal hearing.

Investigation Panel expands the investigation:

As per s. 49(2) of the *Engineering and Geoscience Professions Act* ("the Act") the Investigation Panel expanded its investigation its investigation with respect to the following concern:



APEGA Recommended Discipline Order

Allegation #3

Whether the Permit Holder's 2016 Project Environmental Impact Assessment (Air Quality Assessment portion) was a Professional Work Product (PWP) that should have been authenticated per the APEGA Authenticating Professional Work Products Practice Standard.

C. AGREED STATEMENT OF FACTS

As a result of the investigation, it is agreed by and between the Investigative Committee and the Permit Holder that:

(i) Background:

1. The Permit Holder has been an APEGA permit holder since 1999.
2. The Permit Holder is a multi-disciplinary environmental consulting company that provides a variety of services for new projects going through the regulatory approval process.
3. In addition to professional engineers and geoscientists, the Permit Holder employs professional agronomists, biologists, chemists, among others.
4. The Permit Holder started doing Environmental Impact Assessments ("EIA") work around 1999-2000 and expanded their services to include air quality modelling work in 2008.
5. Over the last 20 years, the Permit Holder has completed EIAs for industrial applications.

(ii) Facts Relating to Allegation #3:

6. The Investigative Committee reviewed the Permit Holder's Air Quality Assessment ("AQA") that was included in the Project EIA. The AQA referenced noise levels, particulate, and emission concentrations from the mine which fit into the definition of the practice of engineering. Despite this, the AQA was not authenticated. Where the practice of engineering is defined in the Act as:
 - (i) reporting on, advising on, evaluating, designing, preparing plans and specifications for or directing the construction, technical inspection, maintenance or operation of any structure, work or process;
 - (a) that is aimed at the discovery, development or utilization of matter, materials or energy or in any other way designed for the use and convenience of humans, and



APEGA Recommended Discipline Order

- (b) that requires in that reporting, advising, evaluating, designing, preparation or direction the professional application of the principles of mathematics, chemistry, physics or any related applied subject, or
 - (ii) teaching engineering at a university.
- 7. The Investigative Committee determined that the coal mine itself was designed for the use and convenience of humans, and that the AQA incorporated outputs from the practice of engineering; as such it met the definition of the Practice of Engineering as defined in the Act¹ and would require authentication per APEGA's Practice Standard for Authenticating Professional Documents (Ver 3.1, January 2013) in place at the time (2016).
- 8. The Investigative Committee sought an independent opinion from the APEGA Professional Practice Department (PPD) on whether the AQA was a PWP which would require authentication. PPD reviewed the AQA and issued an opinion that the AQA met the requirements of a PWP which required authentication.
- 9. Following discussions with the Investigative Committee, the Permit Holder conceded that the AQA in question did constitute the practice of engineering and therefore the PWP would require authentication.

D. CONDUCT

- 10. The Permit Holder freely and voluntarily admits that at all relevant times, it held a valid APEGA Permit to Practice and was thus bound by the Engineering and Geoscience Professions Act and the APEGA Code of Ethics.
- 11. The Permit Holder acknowledges that the conduct described above constitutes unprofessional conduct as defined in Section 44(1) (b) of the Act:

44(1) Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline Committee or the Appeal Board

- (a) is detrimental to the best interests of the public;*
- (b) contravenes a code of ethics of the profession as established under the regulations;*

¹Definitions: (1)(q)(i)(A) & (B)



APEGA Recommended Discipline Order

- (c) *harms or tends to harm the standing of the profession generally; displays a lack of knowledge of or a lack of skill or judgment in the practice of the profession or;*
- (d) *displays a lack of knowledge or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession;*
- (e) *Displays a lack of knowledge or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession.*

whether or not that conduct is disgraceful or dishonorable, constitutes either unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.

12. The Permit Holder further acknowledges that the conduct described above breaches Rule of Conduct 4 of the APEGA Code of Ethics which states:

- 4. *Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

E. RECOMMENDED ORDERS

13. On the recommendation of the Investigative Committee, and by agreement of the Permit Holder with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

- a) The Permit Holder shall be reprimanded for its conduct and this Order shall serve as the reprimand.
- b) The Permit Holder (through its RM or designate) shall provide written confirmation to the Director, Enforcement, within six (6) months of being notified that the Recommended Order has been approved by the Discipline Committee Case Manager, that they have reviewed the following APEGA publications and that the Permit Holder will comply with the requirements therein:
 - i. APEGA Professional Practice Standard for Authenticating Professional Work Products (Ver 8.5, January 2022).
- c) The Permit Holder shall pay a fine in the amount of \$1,000.00. The fine is a debt to owing to APEGA and shall be paid within six (6) months of the date this Order is approved by the Discipline Committee Case Manager.



APEGA Recommended Discipline Order

- d) The Permit Holder may apply in writing to the Director, Enforcement for an extension to the deadlines noted above in Paragraphs 13 (b) and (c) prior to the noted deadlines. If such an application is made, the Permit Holder shall provide the Director, Enforcement, the reason for the request, a proposal to vary the schedule, and any other documentation requested by the Director, Enforcement.
 - e) If the Permit Holder fails to provide the Director, Enforcement with proof that it has completed the requirements noted above in Paragraph 13 (b) and (c) within the timelines specified, the Permit Holder shall be suspended from the practice of the profession until the Permit Holder has provided the Director, Enforcement with proof of successful completion. If the requirements with respect to Paragraph 13 (b) are not completed within 6 months of the suspension date, the Permit Holder shall be cancelled. In the event the Permit Holder is cancelled it will be bound by APEGA's reinstatement policy.
 - f) This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not name the Permit Holder.
14. Although the Investigative Committee and Permit Holder understand and acknowledge that APEGA's usual policy is to publish Recommended Discipline Orders in a manner that identifies the Permit Holder by name, the parties understand that the decision to publish with or without name is discretionary. The parties submit that publication without naming the Permit Holder is appropriate given the specific facts in this case, including the following:
- a. The Permit Holder's activities did not pose a risk to public safety; since this complaint was lodged, the Project application was cancelled by the joint Federal-Provincial government review panel in August 2021. Further, an appeal of this decision was denied by the Alberta Court of Appeal in January 2022.
 - b. Publication of the Permit Holder's name is not required in this instance to protect the public interest.



APEGA Recommended Discipline Order

IN WITNESS WHEREOF the undersigned agrees with the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct in its entirety.

Signed,

[PERMIT HOLDER]

MR. GEORGE CARAGANIS, P.Eng.
Panel Chair, APEGA Investigative Committee

MS. DIANA PURDY, P.Geol.
Case Manager, APEGA Discipline Committee

Date: May 18, 2023