



# 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](http://www.apega.ca/enforcement/discipline-decisions).

**Date:** July 5, 2019

**Discipline Case Number:** 19-012

**IN THE MATTER OF A RECOMMENDED DISCIPLINE ORDER OF THE ASSOCIATION OF  
PROFESSIONAL ENGINEERS AND GEOSCIENTISTS  
OF ALBERTA**

Pursuant to the Engineering and Geoscience Professions Act,  
being Chapter E-11 of the Revised Statutes of Alberta 2000  
Regarding the Conduct of [A PROFESSIONAL MEMBER A] P.ENG.,  
AND [PERMIT HOLDER B]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Professional Member A], P. Eng., (“the Member”) and [Permit Holder B] (“the Permit Holder”) with respect to a complaint initiated by an individual (“the Complainant”), dated October 22, 2017 (the “Complaint”).

## **A. COMPLAINT**

The investigation related to an allegation that the Member, as the Responsible Member for the Permit Holder, engaged in unprofessional conduct and/or unskilled practice of the profession with respect to his handling of the Complainant’s safety concerns.

The Investigative Committee investigated the allegation that the Member failed to act on safety concerns brought forward by the Complainant.

The Investigative Committee separately investigated the actions of a former employee of the Permit Holder, also a Professional Member, brought forward by the Complainant.

## **B. AGREED STATEMENT OF FACTS**

### **(i) Background**

1. The Member graduated in 1982 with a Bachelor of Engineering degree in mechanical engineering from the University of Saskatchewan.



## APEGA Recommended Discipline Order

2. The Member is the President and Responsible Member for the Permit Holder.
3. On March 3, 2017, a former employee of the Permit Holder, a professional member, was testing equipment in the Permit Holder's workshop.
4. The former employee failed to detect the hazard of a live lead wire containing full bus voltage of 700 volts, while handling an electrical cable, which then contacted a metal door frame, causing an arc flash.
5. No injuries resulted. However, if the former employee or other company employees in the workshop had touched the live lead wire, serious injury or death may have occurred.
6. The incident in question was immediately discussed amongst all employees present, including the Complainant, and with the Member by teleconference. The former employee generated an incident report and drafted an isolation procedure, and two days later, a company meeting occurred with all employees to discuss the incident and safety procedures.

**(ii) Facts relating to the allegation: whether the Member failed to act on safety concerns brought forward by the Complainant.**

7. The Complainant became concerned prior to the incident in question with the former employee's competency as it related to his testing of electrical equipment in the Permit Holder's workshop.
8. The Complainant raised her concerns with the Member and requested he hire another professional member with more experience.
9. The Member refused the Complainant's request and stated that he had full confidence in the former employee.
10. The Member stated that the former employee had made a mistake and it was an isolated incident.
11. Another former employee reported that a general untidiness of the workshop, which was shared with another company, may have contributed to the incident in question.
12. No former employees interviewed reported any safety concerns while working at the Permit Holder.



## APEGA Recommended Discipline Order

13. The Permit Holder's Professional Practice Management Plan (PPMP) did not contain any reference to safety procedures.
14. Only after the incident in question did the Member consider the formal implementation of a hazardous energy isolation procedure, commonly referred to as a lockout/tagout procedure, as referenced in the *Alberta Occupational Health and Safety Code*, 2009.
15. The Member, as the Responsible Member for the Permit Holder, failed to comply with the *Alberta Occupational Health and Safety Code*, 2009, which states:

### Part 15 Managing the Control of Hazardous Energy:

#### Isolation

*212(1) If machinery, equipment or powered mobile equipment is to be serviced, repaired, tested, adjusted or inspected, an employer must ensure that no worker performs such work on the machinery, equipment or powered mobile equipment until it has come to a complete stop and*

*(a) all hazardous energy at the location at which the work is to be carried out is isolated by activation of an energy-isolating device and the energy-isolating device is secured in accordance with section 214, 215, or 215.1 as designated by the employer, or*

*(b) the machinery, equipment or powered mobile equipment is otherwise rendered inoperative in a manner that prevents its accidental activation and provides equal or greater protection than the protection afforded under (a).*

*212(2) An employer must develop and implement procedures and controls that ensure the machinery, equipment or powered mobile equipment is serviced, repaired, tested, adjusted or inspected safely if*

*(a) the manufacturer's specifications require the machinery, equipment or powered mobile equipment to remain operative while it is being serviced, repaired, tested, adjusted, or inspected, or*

*(b) there are no manufacturer's specifications and it is not reasonably practicable to stop or render the machinery, equipment or powered mobile equipment inoperative.*



## APEGA Recommended Discipline Order

### Verifying isolation

*213 A worker must not perform work on machinery, equipment or powered mobile equipment to be serviced, repaired, tested, adjusted or inspected until*

- (a) the actions required by subsection 212(1) are completed,*
- (b) the machinery, equipment, or powered mobile equipment is tested to verify that it is inoperative, and*
- (c) the worker is satisfied that it is inoperative.*

### Securing isolation

#### Securing by individual workers

*214(1) Once all energy-isolating devices have been activated to control hazardous energy in accordance with section 212(1), an employer must ensure that a worker involved in work at each location requiring control of hazardous energy secures each energyisolating device with a personal lock.*

*214(2) Once each energy-isolating device is secured as required by subsection (1), the worker must verify that the hazardous energy source has been effectively isolated.*

*214(3) If more than one worker is working at each location requiring hazardous energy to be controlled,*

- (a) each worker must attach a personal lock to each energy-isolating device, and*
- (b) the first worker applying a lock must verify that the hazardous energy source has been effectively isolated.*

*214(4) If a worker who has placed a personal lock is reassigned before the work is completed, or the work is extended from one shift to another, an employer must ensure that*

- (a) another worker, authorized by the employer to do so, attaches a personal lock to the energy-isolating device prior to removal of the reassigned or departing worker's lock, or*



## APEGA Recommended Discipline Order

- (b) *there is an effective and orderly transfer of control of the reassigned or departing worker's lock.*

*214(5) An employer must ensure that each personal lock used has a unique mark or identification tag on it to identify it as belonging to the worker to whom it is assigned.*

*214(6) An employer must ensure that the name of the worker to whom a personal lock or identification tag is assigned is readily available during the time a hazardous energy source is isolated.*

*214(7) Upon completing the work requiring isolation of hazardous energy, an employer must ensure that the machinery, equipment or powered mobile equipment is returned to operation in accordance with section 215.3.*

### C. CONDUCT

16. The Member freely and voluntarily admits that:
- a. At all relevant times he was a professional member of APEGA and was thus bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.
  - b. The Member acknowledges that as the Responsible Member for the Permit Holder, he breached the *Alberta Occupational Health and Safety Code, 2009*, by failing to have in place a lockout/tagout procedure.
17. The Member acknowledges that the conduct described above constitutes unprofessional conduct and/or unskilled practice as defined in Section 44(1) of the Act:
- Section 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,*
  - c) *harms or tends to harm the standing of the profession generally,*
  - d) *displays a lack of knowledge of or lack of skill or judgment in the practice of the profession, or*
  - e) *displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession,*



## APEGA Recommended Discipline Order

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

18. The Member acknowledges that the conduct described above breached the *Code of Ethics #4*, which states:
  4. *Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

### **D. RECOMMENDED ORDERS**

19. On the recommendation of the Investigative Committee, and by agreement of the Member and Permit Holder with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
  1. The Member shall ensure that a lockout/tagout procedure is formalized within the PPMP within 30 days from the date that this order is approved by the Discipline Committee Case Manager. If the above noted is not successfully completed within 30 days, the Member and Permit Holder shall be suspended from the practice of engineering until the above procedure is formalized within the permit Holder's PPMP.
  2. The Member shall provide a copy of the Permit Holder's updated PPMP for review by APEGA within 30 days from the date that this Order is approved by the Discipline Committee Case Manager. If the above noted is not successfully completed within 30 days, the Member and the Permit Holder shall be suspended from the practice of engineering until the PPMP has been submitted to APEGA for review.
  3. The Member and Permit Holder will receive a Letter of Reprimand, a copy of which will be maintained permanently in the Member and Permit Holder's registration file and be considered at any future date by APEGA.
  4. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not name the Member and the Permit Holder.

Although there is a presumption that Recommended Orders should be published in a manner that identifies the name of the Permit Holder or Member who is subject of the Recommended Order, publication without name is being recommended in this case. The publication of the Member's name is not required in this instance to protect the public interest.



## APEGA Recommended Discipline Order

Signed,

**[PROFESSIONAL MEMBER A]**, P.ENG.  
Responsible Member for Permit Holder

**IAN BUTTERWORTH**, P.ENG.  
Panel Chair, APEGA Investigative Committee

**CHRIS GOULARD**, P.ENG., FEC, FGC (Hon.)  
Case Manager, APEGA Discipline Committee

*Date: July 5, 2019*