APEGA RECOMMENDED ORDER TO THE DISCIPLINE COMMITTEE

IN THE MATTER OF THE *ENGINEERING, AND GEOSCIENCE PROFESSIONS ACT*

AND

IN THE MATTER OF THE CONDUCT OF

Mr. Scott Gullacher, P.Eng.

Registrant No. 73239
IC File: 23-09

APEGA RECOMMENDED ORDER TO THE DISCIPLINE COMMITTEE

In the Matter of the *Engineering and Geoscience Professions Act*

and

In the Matter of the Conduct of Mr. Scott Gullacher, P.Eng.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of Scott Gullacher, P.Eng. (the Registrant) with respect to a complaint initiated by the APEGA Deputy Registrar & Chief Regulatory Officer (the Complainant) dated March 24, 2023 (the Complaint).

A. Complaint

The Complainant filed a complaint alleging the Registrant engaged in unprofessional conduct and/or unskilled practice, as defined in section 44(1) of the *Engineering and Geoscience Professions Act,* RSA 2000, c E-11 (*EGP Act*) with respect to the Registrant's disciplinary matters in Saskatchewan.

The Investigative Committee's investigation focused on the following **allegation:**

> Whether the Registrant, by virtue of being a professional member of APEGA, engaged in unprofessional conduct as a result of being disciplined by the Association of Professional Engineers & Geoscientists of Saskatchewan on January 24, 2023.

B. Agreed Statement of Facts

(i) Background:

1. At all relevant times the Registrant was an APEGA Professional Member and was thus bound by the EGP Act and the APEGA Code of Ethics.

2. The Registrant has been registered with APEGA since 2015 but was cancelled on October 11, 2022, as his annual declaration was not completed and dues were not paid.

3. The Registrant cooperated with the APEGA investigation.

(ii) Facts Relating to the Allegation:

4. The Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS) issued a Decision and Interim Order on January 24, 2023, as a result of three proven allegations of professional misconduct

(see *Appendix A - APEGS Decision and Interim Order*). The first two allegations (per matter 33-18-05) and the third (per matter 33-19-04) were as follows:

- "Scott O. Gullacher, P.Eng. did not practice in a careful and diligent manner contrary to subsection 20(2)(b) of The Engineering and Geoscience Professions Regulatory Bylaws, 1997 in determining the factored resistance required of the Dyck Memorial Bridge helical pile foundations."
    - "On September 14, 2018, the Dyck Memorial Bridge in the RM of Clayton No 333 collapsed as a result of settlement of the pier system. Scott O. Gullacher, P.Eng. did not employ a site-specific geotechnical analysis at the Dyck Memorial Bridge site, resulting in the use of installation torque converted to axial capacity to determine the factored resistance of the foundations resulting in an overestimation of the helical pile capacity."
- "Scott O. Gullacher, P.Eng. did not practice in a careful and diligent manner contrary to subsection 20(2)(b) of The Engineering and Geoscience Professions Regulatory Bylaws, 1997 in designing the helical screw piles used in the Dyck Memorial Bridge foundations."
    - "On September 14, 2018, the Dyck Memorial Bridge in the RM of Clayton No 333 collapsed as a result of settlement of the pier system. Scott O. Gullacher, P.Eng. did not provide adequate engineering designs for the helical screw piles used in the foundation system for the Dyck Memorial Bridge. Screw pile designs did not provide design axial and bending capacity specifications required, clear descriptions of the pile geometry suitable to fabricate the pile, and target torque requirements necessary to achieve the design axial capacity."
- "Scott O. Gullacher, P.Eng. did not practice in a careful and diligent manner contrary to subsection 20(2)(b) of The Engineering and Geoscience Professions Regulatory Bylaws, 1997 in the overall design of five municipal bridges, identified as follows:
    - RM of Scott No. 98 – Lewvan Bridge Replacement;
    - RM of Caledonia No. 99 – Beck Bridge Replacement
    - RM of Purdue No. 346 – Crooked Bridge (Single Span)
    - RM of Purdue No. 346 – North Kinley #1 Bridge Replacement (Three Span)
    - RM of Mervin No. 499 – Twp Road 502 Bridge Replacement"
        - "The designs prepared by Scott O. Gullacher, P.Eng. for the five municipal bridges lacked relevant design information, including:
            - Inaccurate representation of bridge designs in documents submitted;
            - Numerous Code deficiencies identified through all five sets of plans and designs;
            - Lack of critical detail on plans for welding details;

- Bridge rails provided are inadequate for a TL-2 rating;
- Gravel wearing surface on concrete decks will result in damage to the bridge deck and abutment once material is removed from the deck."

- Specific to the designs, there are issues with assumptions made regarding lateral load distribution, distribution of load across spans, member resistance. This results in five superstructure designs which are inadequate to carry the minimum loads required by the Canadian Highway Bridge Design Code (CHBDC) S6."

5. APEGS issued a final Decision and Order on July 12, 2023, as a result of three proven allegations (noted above in par. 4) of professional misconduct (see *Appendix B - APEGS Final Order*) which outlined numerous Orders by the APEGS Discipline Committee:

    1. *That Scott O. Gullacher is hereby reprimanded for professional misconduct.*

    2. *That the Order shall be published on the APEGS website, in the Edge Monthly and in The Professional Edge, with names.*

    3. *That Scott O. Gullacher be suspended from the Association for a 558-day period commencing June 8, 2022.*

    4. *That Scott O. Gullacher not practise professional engineering with respect to bridges and bridge projects for a period of no less than five years starting from the date upon which the suspension is lifted. Once the five-year period has elapsed, removal of this restriction may be sought through an application and evaluation at the discretion of the Registrar.*

    5. *That any and all engineering work and the management of engineering work performed by Scott O. Gullacher be supervised by a professional engineer that has a minimum of ten years of relevant engineering experience ("Supervisor"), for a period of no less than three years from the date upon which the suspension is lifted. The Supervisor shall be acceptable to the Registrar.*

    6. *That Scott O. Gullacher be mentored by a professional engineer that has a minimum of ten years of experience as an Authorized Representative under a Certificate of Authorization, or that has a minimum of ten years of experience as a principal of a partnership, association of persons or corporation that engages in the practice of professional engineering ("Mentor"), for a period of no less than three years from the date upon which the suspension is lifted. The Mentor shall be acceptable to the Registrar.*

7. *That any and all engineering work and the management of engineering work respecting or involving foundation elements or systems performed by Scott O. Gullacher be undertaken under the documented guidance of a licensed geotechnical engineer, for a period of no less than three years from the date upon which the suspension is lifted. Once the three-year period has elapsed, removal of this restriction may be sought through and upon recommendation by Scott O. Gullacher's Supervisor and by Scott O. Gullacher's Mentor.*

8. *That Scott O. Gullacher not be entitled to be an Official Representative under a Certificate of Authorization, for a period of no less than three years from the date upon which the suspension is lifted.*

9. *That Scott O. Gullacher not be entitled to be in charge of the practice of professional engineering under a Certificate of Authorization for a period of no less than three years from the date upon which the suspension is lifted.*

10. *That Scott O. Gullacher not be entitled to supervise a sole proprietorship, partnership, association of persons or corporation that engages in the practise of professional engineering, for a period of no less than three years from the date upon which the suspension is lifted.*

11. *That Scott O. Gullacher is not eligible to supervise an engineer-in-training for a period of no less than three years from the date upon which the suspension is lifted.*

12. *That Scott O. Gullacher, as a condition of annual membership and licensure as a professional engineer, undertake and report no less than five hours of verifiable ethics training each year, for a period of no less than three years from the date upon which the suspension is lifted.*

13. *That Scott O. Gullacher pay a fine of $15,000, payable in three installments of $5,000. These payments are to be submitted in conjunction with the Professional Engineer Membership Fee and the Professional Engineer License Fee, starting with the 2024 Annual Fees. Receipt of each installment by APEGS is due by the annual fees due date.*

14. *That Scott O. Gullacher pay costs of the investigation and hearing in the amount of $32,000, to be received by APEGS on or before December 29, 2028. Receipt of full payment by APEGS by the due date is a condition of ongoing membership and licensure as a professional engineer.*

15. *That failure to comply with any of the foregoing orders of the Hearing Panel shall result in Scott O. Gullacher being suspended from the Association and remaining suspended until there has been compliance with the orders.*

6. The Registrant admits to the facts detailed in the APEGS January 24, 2023 Decision and Interim Order and July 12, 2023 Order of the APEGS Discipline Committee.

7. The Registrant further admits that the conduct described in the allegation constitutes unprofessional conduct in Alberta.

C. Conduct by the Registrant

8. The Registrant acknowledges and admits that the conduct described in the allegation amounts to unprofessional conduct as defined in section 44(1) of the *EGP 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 judgement in the practice of the profession, or*
>
> *e) displays a lack of knowledge of or lack of skill or judgement 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.*

9. The Registrant acknowledges that the conduct described above is conduct that is detrimental to the best interests of the public, contravenes the code of ethics of the profession, and harms or tends to harm the standing of the professional generally.

10. The Registrant admits that his conduct was also contrary to Rules of Conduct 4 and 5 of the *APEGA Code of Ethics*, which state:

> *4. Professional engineers and geoscientists shall comply with applicable statutes, regulations, and bylaws in their professional practices.*
>
> *5. Professional engineers and geoscientists shall uphold and enhance the honour, dignity, and reputation of their professions and, thus, the ability of the professions to serve the public interest.*

D. Recommended Orders

11. On the recommendation of the Investigative Committee, and by agreement of the Registrant, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders:

    a. That the Registrant shall be reprimanded for his conduct and this Order shall serve as the reprimand;

    b. That the Registrant's APEGA registration shall be suspended for a 558-day period commencing June 8, 2022 (until suspension ends on December 17, 2023).

    c. That the Registrant not practise professional engineering with respect to bridges and bridge projects for a period of no less than five years starting from the date upon which the suspension is lifted. Once the five-year period is complete, removal of this restriction may be sought through an application and evaluation at the discretion of the APEGA Director, Enforcement.

    d. The Registrant shall only practise engineering under the direct supervision and control of an APEGA registered Professional Engineer who has a minimum of ten years of relevant engineering experience for a period no less than three years from the date upon the suspension is lifted. This further includes:

        i. The registered Professional Engineer providing the direct supervision and control shall be known as the Supervisor.

        ii. The Registrant shall not practice engineering, as defined in the Engineering and Geoscience Professions Act Section 1(q), independently while under direct supervision and control.

        iii. The Registrant's restricted status shall be reflected in APEGA's Member Directory.

        iv. The requirements of direct supervision and control are defined in 3.1 of the Relying on the Work of Others and Outsourcing practice standard.

        v. Any Professional Work Products (PWPs) completed by the Registrant must be reviewed and authenticated by the Supervisor as outlined in the APEGA practice standard, Authenticating Professional Work Products.

        vi. Meetings and correspondence where the Registrant provides recommendations or advice must be directly supervised by the Supervisor.

        vii. The Registrant shall not manage or supervise other professional registrants or Members-In-Training.

        viii. All costs related to the supervision and required reporting shall be at the expense of the Registrant.

        ix. The registered Professional Engineer as specified in clause (i) must be deemed acceptable to act as the Supervisor by the Director, Enforcement.

x. The Registrant shall submit in writing to the Director, Enforcement the names, qualifications, position titles, and contact information of up to three Professional Engineers registered with APEGA who are willing to provide the required direct supervision and control as defined in clause (i). The Director, Enforcement, will decide on the final selection of the Supervisors.

xi. The Supervisor shall enter an undertaking with APEGA to provide the required direct supervision, control, and reporting. This undertaking will comprise a form provided by APEGA.

xii. The Supervisor shall provide a report each quarter respecting all projects undertaken by the Registrant in that quarter, for a period of three years, to the Director, Enforcement.

xiii. Reports shall include for each project a summary or the project, a description of the Registrant's role and responsibilities on the project, a list of all PWPs related to the project where the Registrant was the primary contributor, and the supervisor's assessment of the Registrant's work on the project.

xiv. Reports shall be deemed to be a Professional Work Product, requiring authentication.

xv. At the conclusion of the three years of supervised practice, the supervisor shall provide a summary assessment in a format provided by APEGA and attest to the Registrant's competency in engineering in writing to the Director, Enforcement. If, on review of the supervisor's written assessment, the Practice Review Board deems that the Registrant's competency remains unsatisfactory, the Registrant shall be indefinitely restricted from practising engineering until they can demonstrate competency to APEGA. This indefinite restricted status shall be reflected in APEGA's Member Directory.

e. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will name the Registrant.

I, Mr. Scott Gullacher, P.Eng., acknowledge that before signing this Recommended Order, I consulted with legal counsel regarding my rights or that I am aware of my right to consult legal counsel and that I hereby expressly waive my right to do so. I confirm that I agree to the facts as set out above in this Recommended Order and the admissions set out in Section B, and that I agree with the Orders in Section D that are jointly proposed.

Further to the above, I acknowledge that I have reviewed APEGA's '*Good Standing Policy*.' I understand that I will not be considered to be a member 'in good standing' until I have fully complied with the Orders set out above and I understand that good standing status may affect membership rights or benefits, the ability to become a Responsible Member, or the ability to volunteer with APEGA in any capacity.

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

Mr. Scott Gullacher, P.Eng.
Signed with ConsignO Cloud (2023/09/14)
Verify with verifio.com or Adobe Reader.

notarius

Mr. Scott Gullacher, P.Eng.

Kevin Willis, P.Eng.
Signed with ConsignO Cloud (2023/09/15)
Verify with verifio.com or Adobe Reader.

notarius

Mr. Kevin Willis, P.Eng. (Panel Chair)
APEGA Investigative Committee

APEGA Discipline Committee

John Van der Put
Signed with ConsignO Cloud (2023/10/11)
Verify with verifio.com or Adobe Reader.

notarius

October 12, 2023

Case Manager Name

List of Appendices:

1. Appendix A - APEGS Decision and Interim Order
2. Appendix B - APEGS Final Order