

Case No. 16-010-FH continued

professional organizations governing the conduct of Professional Geoscientists in Canada.

Signed,

KEVIN SARETSKY, P.ENG.

Panel Chair, APEGA Discipline Committee

GRANT HALLAM, P.ENG.

Panel Member, APEGA Discipline Committee

MARC SABOURIN, P.ENG.

Panel Member, APEGA Discipline Committee

NASER RABBANI, P.ENG.

Panel Member, APEGA Discipline Committee

MURIEL DUNNIGAN

Public Member, APEGA Discipline Committee

Decision Date: March 20, 2017

Sanction Decision Date: June 16, 2017

Date: April 24, 2017

Case No.: 12-010-FH and 13-008-FH

REGARDING THE CONDUCT OF A PROFESSIONAL MEMBER, P.ENG., AND HIS EMPLOYER, A PERMIT HOLDING COMPANY

Pursuant to the *Engineering and Geoscience Professions Act*, an APEGA Disciplinary Hearing was held on January 30, 2017. The hearing addressed a complaint against the conduct of a Professional Member, P.Eng., and his employer, a Permit Holding Company.

The Permit Holder was engaged to design and provide field inspection services at a home under construction in a residential subdivision (the "Project"). The Professional Member (the "Member") was employed by the Permit Holder as a Senior Structural Engineer. His responsibilities included preparing design drawings for the Project's structural insulated concrete wall panel system, consisting of an expanded polystyrene foam core and new form of fibre-reinforced shotcrete and conducting the related field reviews.

After an investigation into the conduct of the Member and the Permit Holder during the Project, the following charges were laid. The Member was charged with:

1. Having knowledge of and accepting a change in the formulation of the shotcrete used for the foundation of the Project, and for failure to document approval of the change and enclose that documentation with the Schedule C-2 for the Project.

2. Inappropriately issuing a Schedule C-2 for the Project, the particulars of which included:
 - a. Failure to conduct or ensure an adequate field review was conducted to ensure that the foundation was constructed in accordance with the design; and
 - b. Failure to ensure the shotcrete was applied to the foundation of the Project to the proper thickness.

The Permit Holder was charged with failure to follow its own policies for the Project, including:

1. Failure to prepare and maintain a Project Construction Checklist; and
2. Failure to generally follow the company's Professional Practice Management Plan.

The case proceeded by an Agreed Statement of Facts and an Acknowledgement of Unprofessional Conduct by both the Member and the Permit Holder. The Hearing Panel found the alleged charges against both the Member and the Permit Holder were supported and proven on the agreed facts. The conduct of both the Member and the Permit Holder constituted unskilled and unprofessional conduct within the meaning of Section 44 of the *Engineering and Geoscience Professions Act*.

The Hearing Panel highlighted the importance of ensuring that when professional documents are signed and stamped, the statements within the documents are absolutely accurate. It is vital for public safety and in the best interests of the public for the assurances in a Schedule C-2 to be complete and fully accurate. In this case, the Panel found that the Member failed to document the change in the formulation of the shotcrete and failed to conduct an adequate field

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review to ensure that the foundation was constructed in accordance with the design and that the shotcrete was applied to the foundation of the Project to the proper thickness. The Panel found that these failures, combined with the false assurances given in the Schedule C-2 that there were no changes and that the field review obligations had been fulfilled, constituted conduct that displayed a lack of knowledge or a lack of skill or judgment in the carrying out of the duty or obligation undertaken by the Member.

In reviewing the charges against the Permit Holder, the Hearing Panel found the Permit Holder's failure to prepare and maintain a Project Construction Checklist as required by the policy in its Professional Practice Management Plan (PPMP), and its consequent failure to assess the complexity of the Project and to provide adequate oversight for the work, constituted conduct that displayed a lack of knowledge of, or a lack of skill or judgment in, the carrying out of a duty or obligation undertaken by the Permit Holder.

The Panel considered that it is essential for a Permit Holder to not only have an adequate PPMP but to actually implement and follow it for all projects. PPMPs are intended to provide procedures and policies to assist in ensuring competent practice. They are an important part of the profession's duty to the public to practice in a safe and competent manner.

Based on a Joint Submission on Penalty presented to and accepted by the Hearing Panel the Panel made orders for Member to:

1. Pay a fine in the amount of \$1,000 within 1 month of the decision;
2. Complete the National Professional Practice Exam within 1 year of the decision;
3. Complete a Safety Codes Council course, *Introduction to Safety Codes System in Alberta*, within 1 year of the decision;
4. Receive formal reprimand for his conduct, which the Discipline Committee's written decision is to serve as; and
5. Pay hearing costs in the amount of \$4,000 within 2 months of the decision.

The Panel ordered the Permit Holder to:

1. Pay a fine in the amount of \$1,000 within 1 month of the decision;
2. Receive formal reprimand for its conduct, which the Discipline Committee's written decision is to serve as; and
3. Pay hearing costs in the amount of \$4,000 within 2 months of the decision.

The Hearing Panel also acknowledged the Permit Holder's undertaking to communicate to its staff what had happened in this case and how important it is to follow the company's PPMP in all circumstances.

In the opinion of the Panel, the above imposed orders and the undertaking of the Permit Holder will protect the public and the integrity of the profession. The Panel appreciated the cooperation and professional manner of the parties. The findings were of a serious nature that needed to be dealt with appropriately. Without the Member and Permit Holders' cooperation and acknowledgement of error, the Hearing Panel would have imposed more severe sanctions for the unprofessional conduct and unskilled practice that occurred in this case. The Panel also stated it would have considered larger fines and cost awards without a Joint Submission on Penalty.

Normally, the Panel would order publication of the decision on a named basis. In this case, it considered the parties' joint proposal to maintain the anonymity of the Member and Permit Holder to be reasonable. As the conduct had occurred in 2010, the Panel determined enough time had passed for justice to be served and the profession to be properly regulated without the publication of names.

Signed,

TIM CARTMELL, P.ENG.

Panel Chair, APEGA Discipline Committee

DIANA PURDY, P.GEOL.

Panel Member, APEGA Discipline Committee

KEN LIU, P.ENG.

Panel Member, APEGA Discipline Committee

MURIEL DUNNIGAN

Public Member, APEGA Discipline Committee

Date: April 24, 2017