Recommended Orders

Date: February 15, 2017 Case No.: 17-002-RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT AND IN THE MATTER OF THE CONDUCT OF [PROFESSIONAL MEMBER A], P.ENG., AND [PERMIT HOLDER B]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) investigated the conduct of [Professional Member A], P.Eng., and his company [Permit Holder B] with respect to a letter of complaint received from [Complainant C] on January 9, 2015, alleging unskilled practice in the engineering approval of pilings for a ready-to-move home.

A. COMPLAINTS

1. The Member has engaged in unprofessional conduct that was detrimental to the best interests of the public contrary to Section 44(1) (a) (b) of the *Engineering and Geoscience Professions Act* ("Act") and Rule of Conduct #1 of the A*PEGA Code of Ethics* ("Code"). The Member failed to investigate soil reports and neglected to visit the site for first-hand information on soil conditions and did not hold paramount the best interests of the public.
2. The Member has engaged in unskilled practice that displayed a lack of judgment in the work undertaken contrary to Section 44(1) of the Act and Rule of Conduct #2 of the Code. The Member misinterpreted the pile-driving record and improperly approved the adequacy of the piles with no engineering basis.
3. The Member has engaged in unprofessional conduct that was detrimental to the best interests of the public contrary to Section 44(1) (b) of the Act and Rule of Conduct #3 of the Code. The Member misled the Panel by misinforming the Panel on [Company D's] reading and interpretation of the pile driving records.

B. AGREED STATEMENT OF FACTS

1. [Professional Member A], P.Eng., was a professional Member of APEGA and was thus bound by the APEGA Code of Ethics at all relevant times.
2. [Permit Holder B] held a valid Permit to Practice and was bound by the Act and the Code at all relevant times.
3. The Member was engaged by [Company E] to prepare an Engineering Report for the piling foundation of a ready-to-move home to be placed on the lot of [Complainant C] near [Rural Community F], Alberta.
4. The pilings were installed on the [Complainant C] property by [Company D] on November 6, 2014. At the time the Member was retained by [Company E], the pilings were already installed.
5. The November 6, 2014, pile report prepared by [Company D] indicated that 9 of 31 installed piles were "soft." At the request of [Complainant C], [Company E] instructed [Company D] to return to the site on December 2, 2014, and add more length to the "soft" piles.
6. The Member prepared and authenticated a drawing on December 6, 2014, indicating his approval of the pile installation.

***Case No. 17-002-RDO** continued*

7. The Member did not attend the site. His approval of the pile installation relied on the pile-driving records and a verbal confirmation from [Company E] that the piles were installed satisfactorily.
8. On December 16, 2014, [Inspector G] with [Company H] attended the site. He noted the connections on the lengthened piles were not welded. He discussed this with [Professional Member A], who advised him that although the connections should have been welded, they were pressed tightly together and would not come apart. [Inspector G] accepted [Professional Member A's] authenticated drawing and verbal advice, and subsequently advised the homeowner the piles met the requirements of the Alberta Building Code.
9. [Complainant C] disagreed with the Member's assessment of the piles and lodged a complaint with APEGA.
10. On November 6, 2015, the Member was interviewed by the Panel. The Panel determined that the Member's interpretation of the pile-driving record was flawed and that the document was approved with no engineering basis.
11. On November 15, 2015, the Member advised the panel that he was provided with information that his interpretation of the pile-driving record was in fact correct.
12. On November 20, 2015, [Company D] confirmed for the Panel that the Member's interpretation of the pile-driving record was incorrect.
13. The Member advised the Panel of his intention to retire from the practice of engineering effective October 1, 2017.
14. The Member advised the Panel that he will not practice in pile design and installation leading up to the anticipated October 1, 2017, retirement date.
15. The Member cooperated with the APEGA investigation and accepted full responsibility for the situation.

C. CONDUCT

The Member freely and voluntarily admits that he engaged in unprofessional conduct and unskilled practice that contravened Section 44(1)(b) of the Act and Rules of Conduct #1, #2, and #3.

D. SECTION 44(1) OF THE ACT AND THE CODE OF ETHICS

1. Section 44(1) of the Act states:

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,

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.

2. Applicable Rules of the APEGA Code of Ethics state:

1 *Professional engineers, geologists and geophysicists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.*

2 *Professional engineers, geologists and geophysicists shall undertake only work that they are competent to perform by virtue of their training and experience.*

3 *Professional engineers, geologists and geophysicists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*

***Case No. 17-002-RDO** continued*

E. ORDERS

On the recommendations of the Investigative Committee and by agreement of [Professional Member A], P.Eng., with those recommendations, following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

1. [Professional Member A], P.Eng., shall receive a Letter of Reprimand, a copy of which will be maintained permanently in his registration file and be considered at any future date by APEGA.
2. The circumstances of the case, not including your name, be published in *The PEG* magazine or its most current format, in the e-PEG electronic newsletter, and on the APEGA website.
3. [Professional Member A], P.Eng., take the necessary steps to cancel his registration with APEGA no later than October 1, 2017. Should [Professional Member A] fail to take the necessary steps, APEGA will cancel his registration effective October 1, 2017.
4. [Professional Member A], P.Eng., take the necessary steps to cancel the Permit to Practice with APEGA for [Permit Holder B] no later than October 1, 2017. Should [Professional Member A] fail to take the necessary steps, APEGA will cancel the Permit to Practice effective October 1, 2017.
5. Neither [Professional Member A]. P.Eng., nor [Permit Holder B] shall practise engineering in pile design and installation from the date of this Order through the cancellation dates outlined in (3) and (4) above.
6. If at any time prior to October 1, 2017, APEGA has reasonable grounds to believe [Professional Member A] and/or [Permit Holder B] engaged in the practice of pile design and installation, APEGA will cancel the respective registration and Permit to Practice, impose a $2,000 fine to [Professional Member A], and may pursue additional disciplinary action.

I, [Professional Member A], 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 and admissions as set out above in this Recommended Order, and that I agree with the Orders that are jointly proposed.

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

[PROFESSIONAL MEMBER A], *P.ENG.*

SIDDHARTA DASGUPTA, *P.ENG.*
Panel Chair, APEGA Investigative Committee

APEGA Discipline Committee
Approved this 15th day of February 2017
By Case Manager Marc Sabourin, P.Eng.

Decision Archive