



APEGA Discipline Committee Decision

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 of Complaint: November 6, 2017

Date of Decision: April 17, 2020

APEGA Discipline Case Number: <>

IN THE MATTER OF A HEARING OF THE DISCIPLINE COMMITTEE 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
In the Matter of the Conduct of [Professional Member], P.Eng.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Professional Member], P. Eng. (the "Member") with respect to a complaint initiated by an individual, (the "Complainant") dated November 6, 2017 (the "Complaint").

A. THE COMPLAINT

The Complainant resides at [Property A], a 17-acre acreage located in Rocky View County (the "County"). He has lived on his property for the past 20 years.

In 2015 the owners of the neighboring acreage, [Property B], sold their property. Property B is located adjacent to and west of the Complainant's property.

The home located at Property B was known to have had flooding issues created by negative surface water drainage conditions. When the new owners moved in and experienced the flooding, they began to remedy the situation by regrading, adding fill and re-landscaping their lot.

The extensive changes to Property B land occurred at the northeast section of the acreage. This is where the driveway, parking area and home are located. The re-grading and landscaping of the driveway included the installation of a geomembrane, a product used to help shed water. On top of the geomembrane, a significant amount of fill was placed to elevate the gravel driveway.



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Further south on Property B's lot, the new owners had also re-landscaped an area adjacent to the Complainant's land. They added fill to level the land and built a new hay shed made of metal and fabric. In total the Complainant estimated 285 m³ of fill were installed over a 60 day period.

The Complainant alleges the major landscaping changes materially changed the land and redirected the drainage patterns of Property B's surface water onto his property.

When the Complainant learned that the landscape work had been completed without a development permit, he complained to the County, who later notified the owners of Property B that a permit was required.

When the development permit was issued it contained conditions which the Complainant alleged were not met. He appealed the permit to the County's Subdivision and Development Appeal Board (SDAB) who issued an Order.

The Complainant claims the development permit had been mishandled as a result of the Member's involvement. Specifically, he believed the County relied on the Member's Site-Specific Stormwater Implementation Plan (SSIP) which was completed only for the hay shed location.

The Complainant alleged the SSIP, prepared by the [Member's Company], was too narrow in scope and did not adequately account for all the changes made to Property B's land. To support his position, he had retained another engineer, [Professional Member A, P.Eng.] who attempted to approach the Member with those concerns however, to no avail.

The Member is the Senior Water Resources Engineer and founder of Member's Company. He was retained by the Complainant's neighbor (the new owners of Property B) after the landscaping work had already been completed. The Member claims he completed the SSIP in accordance with what the owners of Property B required and after checking with the County. Further, he claims that the SSIP was reviewed and accepted by the Engineering department of the County.

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

1. Whether the Member failed to act in the best interests of the public and with regard for the environment? Specifically:
 - a. Was there a responsibility for the Member to address all of the excavation and fill areas that were completed on Property B in his Report?
2. Whether the Member acted unprofessionally by not formally responding to Professional Member A when he expressed concerns with the Report?

B. AGREED STATEMENT OF FACTS



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1. At all relevant times the Member was an APEGA Professional Member and was thus bound by the Engineering and Geoscience Professions Act and the APEGA Code of Ethics.
2. At all relevant times, the Member's Company held a valid APEGA Permit to Practice and was thus bound by the Engineering and Geoscience Professions Act and the APEGA Code of Ethics.
3. The Member had been practicing engineering for over 40 years and the Member's Company had been in operation for over 23 years, specializing in drainage matters.
4. The Member was contacted by the owner of Property B (a cold call) who indicated they needed a report regarding drainage at the hay shed site to satisfy a condition outlined in the development permit.
5. The Member checked with the County to ensure that the scope of work, as requested by the owner of Property B, would satisfy what the County wanted. The County confirmed the scope.
6. The scope was to complete an SSIP specifically to demonstrate the incremental impact of drainage as a result of the construction of a hay shed (apx. 10 x 15m) on Property B.
7. The effects of any other works completed on Property B were not asked for by either the owner of Property B nor the County and therefore were not assessed.
8. The Member had no knowledge of and was not informed of the SDAB Order, dated October 5, 2016.
9. Based on the evidence gathered during the investigation and after no contradictory evidence was obtained, it is accepted that a drainage issue was created as a result of landscaping work that had been completed on Property B, that directly affected the Complainant's land.

Facts Relating to Allegation #1:

Whether the Member failed to act in the best interests of the public and with regard for the environment? Specifically:

- a. *Was there a responsibility for the Member to address all of the excavation and fill areas that were completed on Property B in his Report?*
10. During the months of June and July 2016, the owners of Property B began regrading and re-landscaping their land to construct a driveway and to construct a hay shed.
11. On September 6, 2016, after the work had been completed, the development permit for Property B was approved by the County.



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12. The development permit was for the regrading and placement of clean fill, for the construction of a driveway and the placement of an accessory building (the hay shed).
13. The development permit stipulated that an SSIP was to be completed. Only a professional member of APEGA may complete an SSIP.
14. The Complainant appealed the development permit on September 20, 2016.
15. The appeal was heard by the SDAB who issued an Order on October 5, 2016.
16. The Order provided further details with respect to the expectations of the SSIP that the Member was not aware of until after his SSIP Report.
17. The Member attended Property B in December 2016 and issued the SSIP Report dated December 27, 2016.

Facts related to the SSIP:

18. SSIP's are to be completed in compliance with the 2013 Rocky View County's Servicing Standards.
19. The Member did not check the details of the development permit conditions nor did he check if there were any Orders that may have been issued with respect to Property B.
20. The Member's SSIP was not completed in compliance with the 2013 Rocky View County's Servicing Standards.
21. The Member acknowledged that the situation was very unique in that he only relied on the owner's scope of work request and the check with Ms. H.
22. The Member acknowledged that the SSIP Report did not follow the standard process at his end nor at the County's.
23. The Member admitted he missed a step specifically related to the effect that this matter had on all the land.

Facts Relating to Allegation #2:

Whether the Member acted unprofessionally by not formally responding to a colleague when Professional Member A, formally expressed concerns with the Member's Report?

24. In March 2017, Professional Member A was retained, on a pro bona basis to avoid a conflict of interest. by the Complainant to review the Member's Report and to visually assess the site conditions.



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25. Based on his review, Professional Member A phoned the Member's Company on March 30, 2017 and spoke to a P.L. Eng., who prepared the analysis for the SSIP Report, regarding details of the SSIP.
26. On March 31, 2017 Professional Member A completed his report and addressed it to the Member, in an attempt to draw attention to concerns he had with the SSIP.
27. Professional Member A felt there was a requirement to complete a more in-depth analysis of the site and that the requirements, as set out in the County's Servicing Standards, had not been met in the SSIP.
28. The Member acknowledged he had received a copy of Professional Member A's report. He indicated he had followed up with P.L. Eng. and determined no further follow-up or discussion with Professional Member A was required as the County had accepted the SSIP.

C. CONDUCT

29. The Member freely and voluntarily admits that:
 - a. He failed to address all of the excavation and fill areas that were completed on Property B in his SSIP Report.
 - b. He failed to respond to a colleague's request to review matters related to the SSIP Report that materially affected the land.
30. The Member acknowledges that the conduct described above constitutes unprofessional conduct and that the conduct described above breaches Rules of Conduct #1 and #3.

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

#3. Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.

D. RECOMMENDED ORDERS

31. On the recommendation of the Investigative Committee, and by agreement of the Member with that recommendation and following a discussion and review with the Discipline Committee's Case Manager, the Discipline Committee hereby orders that:



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1. The Member will receive a Letter of Reprimand, a copy of which will be maintained permanently in the Member's registration file and be considered at any future date by APEGA.
2. The Member, on behalf of the Member's Company, is to provide an updated copy of their Professional Practice Management Plan (PPMP) that outlines a clear process with respect to:
 - i. How colleagues/clients are to be addressed when concerns, that could have a material effect on the environment or health, safety and welfare of the public, are brought to their attention.
 - ii. A process to ensure that all relevant information, such as Orders and Development Permits, are reviewed prior to issuing reports to ensure due diligence has been followed.
 - iii. Within three months of the Discipline Case Manager's approval of this order, the revised PPMP is to be electronically submitted for approval to:
 1. Mr. Pal Mann, Director, Professional Practice at [email address] and,
 2. Staff Investigator, Frank Boehres at [email address]
 - iv. Upon approval of PPMP by Professional Practice, the Member and the Director, Enforcement shall be notified the conditions of this Order have been completed and the matter closed.

In the event the PPMP is not provided to Mr. Mann and Mr. Boehres within three months of Discipline Committee's Case Manager approval, the Member's APEGA membership shall be suspended for a period of up to one year.

In the event the PPMP is not provided for approval during the period of suspension the Member's APEGA membership shall then be cancelled.

In the event the Member is cancelled, the Member will be bound by APEGA's reinstatement policy.

3. Although the Investigative Committee and the Member understand and acknowledge that APEGA's usual policy is to publish Recommended Discipline Orders in a manner that identifies the Member by name, the parties understand that the decision to publish with or without name is discretionary. The parties submit that publication without name is appropriate given the specific facts in this case, including the following:
 - i. The Member has been a member of APEGA for over 37 years and has had no prior findings of unprofessional conduct or unskilled practice.
 - ii. The Member cooperated with the investigation and in a remorseful manner, acknowledged the shortcoming of his actions.



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- iii. Publication of the Member's name is not required in this instance to protect the public interest.

Signed,

[PROFESSIONAL MEMBER], P. Eng.

TRACEY STOCK, P.Eng., J.D., Ph.D.
Panel Chair, APEGA Investigative Committee

JOHANNE POIRIER MOUALLEM, P.Eng.
Case Manager, APEGA Discipline Committee
Date: April 17, 2020