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. ARUP GOSWAMI, P.ENG.

APEGA
Investigative Committee
Recommended Order

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of Mr. ARUP GOSWAMI, P.Eng. ("Goswami") regarding the contents of a sealed letter (the "Letter") of compliance given to the [redacted] (the "Builder"). The Letter was in reference to an as-built strip footing for a residential home located in [redacted], Alberta. The Letter stated, "The on-site measurements of the footings indicate that the contractor has oversized the footings…" and that, "The plans and details have been reviewed and the foundations are approved as completed for support of the gravitational design loads in accordance with the Alberta Building Code 2006." The letter was then forwarded to the City of [redacted] and concerns were raised.

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) of the *Engineering and Geoscience Professions Act* ("Act") and Rule of Conduct #1 of the *APEGA Code of Ethics* ("Code"). The Letter of compliance did not hold paramount the best interests of the public.

2. The Member has engaged in unskilled practice that displayed a lack of judgement in the carrying out of the duty or obligation contrary to Section 44(1)(e) of the Act and Rule of Conduct #2 of the Code. Specifically, the Member did not perform sufficient testing to be able to demonstrate and ensure the strip footing built was in compliance with the Alberta Building Code (2006).

3. The Member has engaged in unprofessional conduct that displayed a lack of judgement in the work undertaken contrary to Section 44(1)(b) of the Act and Rule of Conduct #3 of the Code. The Member did not conduct himself with honesty, integrity and fairness when issuing the Letter.

4. The Member has engaged in unprofessional conduct that displayed a lack of judgement in the carrying out of a duty contrary to Section 44(1)(b) of the Act and Rule of Conduct #5 of the Code. The actions of the Member did not uphold or enhance the reputation of the profession.

B. Agreed Statement of Facts

1. Background

a. Mr. ARUP GOSWAMI, P.Eng. was a professional member of APEGA, and was thus bound by the APEGA Code of Ethics, at all relevant times;

b. The Member holds a Bachelor of Engineering Degree in Civil Engineering from Gauhati University (1979). The Member is currently employed by his own engineering firm, Argos Engineering Ltd., located in Calgary, Alberta.

c. On February 24, 2015 the APEGA Investigative Committee received a letter of complaint from [redacted] ("Complainant") regarding the conduct of Goswami and Argos Engineering Ltd. ("Complaint"). The Complainant is the [redacted], a company that provides geotechnical and structural services to the residential construction industry.

d. The Complaint arose from the Complainant's concerns regarding the width of an as-built strip footing located at [redacted], Alberta ("Home") and the Letter of compliance issued by Goswami to the Builder.

e. The Complainant determined that, based on his company's soil bearing test completed on November 7, 2014, the land upon which the Home was being built was deemed a high water table area. As such, the strip footing size for the frost walls was to be 28" wide to be in compliance with the Alberta Building Code 2006 (ABC).

f. Following receipt of the Complaint, the Investigative Committee, pursuant to section 47 of the Act, appointed an Investigative Panel ("Panel") to investigate the Complaint.

g. A copy of the Complaint and a Notice of Investigation were provided to Goswami on April 28, 2015.

h. On or about May 13, 2015 Goswami responded to the Complaint by providing a written response to the Notice of Investigation. Goswami failed to include his company's (Argos Engineering Ltd.) Professional Practice Management Plan (PPMP) as was requested.

i. After receiving Goswami's response the Panel commenced its investigation. On August 20, 2015 the Panel and APEGA staff interviewed Goswami at the APEGA Calgary office.

j. On November 26, 2015 the Panel completed its Investigation Report and submitted the Report to the Investigative Committee with its recommendation. The recommendation brought forward was to refer the matter to APEGA's Discipline Committee for a formal hearing, pursuant to section 52(4) of the Act.

2. Facts relating to the allegations

a. The Alberta Building Code states the width for a strip footing located in a high water table is to be double the standard footing size (from 14-inches to 28-inches)

b. [redacted] conducted a soil bearing test at the Home's excavated level on November 7, 2014 and determined the footing size for the walkout frost wall would need to be 28-inches wide as a result of the high water table zone. The report was issued on November 11, 2014.

c. Upon completion of the soil testing, [redacted]'s policy is to leave the written instructions of the required strip footing size on site, and to also provide a copy to the Builder. Goswami claimed he did not see a pouch containing the soil bearing test results and the recommended footing sizes allegedly left behind at the site by [redacted].

d. Goswami also did not request the Builder for any soil testing information that may have been available.

e. Subsequent to the soil testing, and prior to the City's issuance of the required permit, the Builder had already completed the Home's strip footing and although the width of the footing was wider than the required 14-inches (up to 24-inches), it was not double.

f. To be able to continue with the Home's construction, the City of [redacted] requested the Builder to provide an engineer's letter stating the width of the footing (as-built) was acceptable and in accordance with the ABC.

g. The Builder contracted Goswami who then provided them with his Letter (dated December 4, 2014) stating that the footing as-built was in accordance with the ABC. The Letter was forwarded to the City of [redacted].

h. Upon receiving the letter, the City's Safety Codes Officer identified conflicting information to that of the soil bearing report completed by [redacted] and requested (on December 5, 2014) a new letter from Goswami to include his calculations factoring in the high water table identified at this location.

i. Goswami has cooperated with the APEGA Investigation and admitted:

    a. That the Builder did want to move quickly and continue with construction as the footing had already been poured, winter was coming and they wanted to close up the home.

    b. He did not conduct any soil testing on the Home's site. Although he has in the past used a pocket penetrometer in the nearby area to measure the bearing pressure of soil at excavated sites, for this Home he did not use one.

    c. During the interview, he was unable to demonstrate a clear understanding of the ABC requirements for strip footing widths.

    d. He was also unable to articulate how an area, designated as being a high water table area, could have any strip footing width that could be less than double in width and still be ABC compliant.

    e. The information presented in the Letter was not based on sound engineering principles or sufficient testing to ensure the strip footing built was undeniably, in compliance with the ABC.

j. Subsequent to the City of [redacted]s request, the City never pursued or contacted Goswami again. It was confirmed that new information brought forward and presented to the City (December 16, 2015) confirmed there were no high water table issues and the footings as-built were acceptable.

C. Conduct

The Member freely and voluntarily admits that his conduct constitutes unprofessional conduct and that the Complaints (#2 & #3) set out above are admitted and proven. The Member has therefore engaged in unprofessional conduct that contravenes a code of ethics of the profession as established under the regulations contrary to Section 44(1)(b) and (e) of the Act and Rules of Conduct #2 and #3 of the Code.

With regards to the Complaints (#1, & #4) set out above, there is no evidence that the Member has contravened Sections 44(1)(a)(b) of the Act or Rules of Conduct #1 or #5 of the Code.

D. Section 44(1) of the Act and the Code of Ethics:

1. 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*

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.

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

a. *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.*

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

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

d. *Professional engineers, geologists and geophysicists shall comply with*

applicable statutes, regulations and bylaws in their professional practices.

e. *Professional engineers, geologists and geophysicists shall uphold and enhance the honor, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*

E. Recommended Orders

On the recommendations of the Investigative Committee, and by agreement of Mr. ARUP GOSWAMI, P.Eng., with that recommendation, following a discussion and review with the Discipline Committee's Case Manager, the Discipline Committee hereby orders that:

1. The Member receives a letter of reprimand;
2. That the details of the case be published in the PEG magazine with names.
3. The Member is to submit the Professional Practice Management Plan for his company, Argos Engineering Ltd.
4. Develop and submit an industry acceptable procedure for the determination and acceptability of residential/commercial foundation designs that will be followed should the member continue with this line of business.

[redacted]

Panel Chair
APEGA Investigative Committee Don Kochan, M.Eng., P.Eng.

[redacted]

ARUP GOSWAMI, P.Eng.

APEGA Discipline Committee

Approved this 12 day of MAY, 2016

By: [redacted]
Case Manager Chris Goulard, P.Eng.