

Date: April 4, 2017

Case No.: 17-003-RDO

**IN THE MATTER OF THE ENGINEERING,  
AND GEOSCIENCE PROFESSIONS ACT  
AND  
IN THE MATTER OF THE CONDUCT OF  
[PROFESSIONAL MEMBER A], 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 A], P.Eng., with respect to mismanagement of a project funded by [Company B]. In addition, there is an allegation of misappropriation of funds owed to [Company B] which were diverted to a company owned by [Professional Member A], [Company C].

**A. COMPLAINTS**

The Member has engaged in unprofessional conduct that contravened Section 44(1)(b) of the Act and Rules of Conduct #3 & #4 of the Code. The Member has engaged in unprofessional conduct by failing to maintain objectivity in the process of ensuring subcontractors were paid for work performed on behalf of [Company B], and the Member operated his company [Company C] without a Permit to Practice.

**B. AGREED STATEMENT OF FACTS**

1. [Professional Member A], P.Eng., (“the Member”) was a Professional Member of APEGA in good standing during the relevant time of the allegations, and was thus bound by the *APEGA Code of Ethics*.
2. The Member’s company [Company C] did not hold a valid Permit to Practice during the relevant time of the allegations. The permit application was withdrawn by the Member on March 6, 2014.
3. The Complainant, [Complainant D], is the Director of [Company B].
4. The Member operated [Company C], a firm active in providing drilling and completions services.
5. The complaint of unprofessional conduct against the Member arises from circumstances surrounding the failed business relationship of [Company B] and [Company C] between September 12, 2014, and February 2015.
6. In 2014 [Company B] sought to expand their business into drilling and completions, and accordingly they entered a business relationship with the Member. In August 2014, [Company B] created a new division called [Company B Drilling and Completions]. The Member was a director of [Company B Drilling and Completions] and his company [Company C] was a shareholder of [Company B Drilling and Completions] with a 25% stake in the company.
7. Pursuant to a letter of agreement dated September 12, 2014, the Member entered into a full-time contract position as the Drilling & Completions Manager for [Company B Drilling and Completions].
8. It was understood pursuant to a verbal agreement between the parties that [Company C’s] current clients would be billed going forward by [Company B Drilling and Completions].
9. The two clients related to the allegations are [Company E and Company F]. Both companies

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- were previous clients of [Company C]. [Company B Drilling and Completions] contractors were on-site performing work for both [Company E and Company F]. These contractors invoiced [Company B Drilling and Completions] and were eventually paid by [Company B Drilling and Completions].
10. The Member was terminated by [Company B Drilling and Completions] on December 9, 2014. At the time of his termination, he reverted to operating under [Company C]. At the time of his termination, the Member was engaged in a dispute with [Company B] over his wages. The amount of unpaid wages in dispute was \$42,782.40. The Member has since filed a claim against [Company B] with Alberta Employment Standards.
  11. In December 2014, [Company B] invoiced [Company E] (\$53,109.00) and [Company F] (\$4,393.20). When the invoices weren't paid, in January 2015 [Company B] followed-up with the clients who confirmed they paid [Company C] instead: [Company B] invoices were "voided" on instruction of the Member, and replaced with invoices from [Company C].
  12. Both [Company E and Company F] paid the [Company C] invoices on instruction of the Member.
  13. The Member instructed [Company E and Company F] to pay [Company C] rather than [Company B] as contractors raised concerns to the Member about non-payment by [Company B]. The Member contacted [Company B] by email on December 19, 2014 to inquire about payment status to the contractors; [Company B] did not respond.
  14. The Member did not provide [Company B] notice of his intent to invoice the clients directly.
  15. The Member did not seek advice from legal counsel, nor did he seek advice from another professional/mentor, before implementing this solution.
  16. In February 2015 [Company B] confirmed to the Member that [Company B] did indeed pay the [Company E and Company F] contractors. The Member advised [Company B] that he ([Company C]) invoiced [Company E and Company F] and received payment.
  17. The Member agrees that the money he collected from [Company E and Company F] rightfully belongs to [Company B]; he agreed to pay the

money back to [Company B] on February 13, 2015, however he missed the payment deadline, resulting in a civil claim by [Company B]. The civil claim has been settled.

18. The Member acknowledges that he should have been more objective under the circumstances, and sought outside assistance prior to redirecting payments from [Company B] to [Company C].
19. The Member acknowledges that he should have taken additional steps to notify [Company B] of his intentions.
20. The Member acknowledges that his company [Company C] was practising without a valid Permit to Practice from APEGA.
21. The Member expressed his desire to enter into a Recommended Order.
22. The Panel acknowledges that the Member cooperated fully with the APEGA investigation, and conducted himself professionally throughout the investigation process.

**C. CONDUCT**

The Member freely and voluntarily admits that he engaged in unprofessional conduct that contravened Section 44(1) (b) of the Act and Rule of Conduct #3 and #4.

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

**1. Section 44(1) of the Act states in part:**

*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...*

*b. contravenes a code of ethics of the profession as established under the regulations;*

*... 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:**

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

**4** *Professional engineers, geologists and geophysicists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

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## **E. RECOMMENDED ORDERS**

The following Orders have been agreed to by the Investigative Committee, [Professional Member A], P.Eng., and 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 should new cases of unprofessional conduct or unskilled practice be considered by APEGA.
2. The circumstances of the case, excluding names, be published in *The PEG* magazine, in the e-PEG electronic newsletter, and on the APEGA website.
3. [Professional Member A], P.Eng., shall do one of the following with relation to [Company C] within 30 days of the Discipline Committee approving this Order:
  - a) Apply to APEGA for a Permit to Practice.
  - b) Confirm to APEGA in writing [Company C] is not practising and change the corporate name (remove "engineering" from the title).

- c) Confirm to APEGA in writing [Company C] is not practising and dissolve the corporation at Alberta Corporate Registry.

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.**

**TRACEY STOCK, P.ENG.**

Panel Chair, APEGA Investigative Committee

***APEGA Discipline Committee***

*Approved this 4th day of April 2017*

*By Case Manager Tom Greenwood-Madsen, P.Eng.*