



# APEGA Recommended Discipline Order

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](http://www.apega.ca/enforcement/discipline-decisions).

**Date:** Feb. 24, 2022

**Discipline Case Number:** 21-006

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT  
AND  
[AN APEGA REGISTRANT]**

Pursuant to the *Engineering and Geoscience Professions Act*,  
being Chapter E-11 of the Revised Statutes of Alberta 2000  
Regarding the Conduct of [AN APEGA REGISTRANT]

The Investigative Committee (IC) of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of [Name Withheld] (Registrant) with respect to allegations of unprofessional conduct and / or unskilled practice pursuant to Section 44(1) of the *Engineering and Geoscience Professions Act*.

## **A. THE COMPLAINT**

This investigation related to an allegation that the Registrant, a Production Engineer and Operations Manager for a heavy-oil operator in Western Canada (Operator) engaged in unprofessional conduct by failing to disclose the existence of Organic Chlorides (TOX) in the Operator's heavy oil to customers' pipeline companies.

The Investigative Committee (IC) investigated the following allegation outlined in the Complaint:

### **Allegation 1:**

**After the Registrant became aware of the existence of organic chlorides in heavy oil from the Operator in August 2016, the Registrant allowed the Operator to continue selling oil to a pipeline company without disclosing the existence of the contamination.**

The IC investigated one additional allegation outlined in the Complaint. The IC determined that there was insufficient evidence of unskilled practice and / or unprofessional conduct in relation to the additional allegation.



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### B. AGREED STATEMENT OF FACTS

#### (i) Background:

1. The Registrant holds a degree in chemical engineering and became a member of APEGA in 2012. The Registrant has maintained their membership in APEGA since then, except for a short period of time when their membership lapsed.
2. The Registrant was the Production Engineer and Operations Manager for the Operator responsible for the heavy oil operation in Western Canada involving an innovative enhanced oil recovery project (Project) between February 1, 2016, and February 2, 2017.
3. The Complainant was the Production Engineer and Operations Manager for the Project from 2010 until June 2016 and issued the Complaint shortly after the Complainant unsuccessfully competed with the Registrant for a promotion and after the Complainant's contract was ended with the Operator shortly thereafter.
4. The Operator does not hold a permit with APEGA.

#### (ii) Facts Relating to the Allegation:

5. In 2016, the Operator commenced restructuring proceedings under the Bankruptcy & Insolvency Act (BIA). The proceedings were subsequently transferred to proceedings under the Companies' Creditors Arrangement Act (CCAA).
6. In September 2016, the Operator received notice from a buyer of oil that 3 ppm of TOX were detected in a randomly tested shipment of oil from the Project while the usual limit was 1 ppm of TOX.
7. Neither the Registrant nor the Operator were previously aware of a TOX issue in crude from the Project.
8. The Operator immediately halted sales and the Registrant immediately launched an investigation with the assistance of a third-party subject-matter expert and the Technical Director of the Canadian Crude Quality Technical Association (CCQTA). The Technical Director of the CCQTA (P. Eng.) is a TOX expert (TOX Expert).
9. In October 2016, the TOX Expert issues an expert report (2016 TOX Report) which concluded that the TOX did not result from contamination due to cleaning operations, but rather were formed as a byproduct of the innovative heavy oil extraction



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methods. The 2016 TOX Report noted significant discrepancies in one of the two samples tested by two different labs.

10. The TOX Expert notified the Registrant and superiors of the legal hazards risks associated with producing TOX containing crudes.
11. The TOX Expert and the Registrant agree that TOX are environmentally benign and pose no risk to public health, and no risk of damage to pipelines or tanks. The TOX Expert and the Registrant agree that TOX at high total concentrations at a refinery can cause reduced lifespan of high-temperature refinery process vessels.
12. The TOX Expert and Registrant agree that standard industry practice for dealing with high TOX oil is dilution.
13. After the Operator was shut-in for a month to complete its investigation with the assistance of the TOX Expert and confirmed the presence of TOX at 3 ppm, the Operator restarted and continued its sales of crude from the Project through one of the other pipeline companies. Neither that pipeline company nor the intermediary marketer were alerted by the Registrant or the Operator that the oil they were purchasing continued to be above their preferred range of 1 ppm.
14. The contract between that pipeline company and its intermediary specified that *“any organic halides, including but not limited to organic chlorides, or any other objectionable substances which may be injurious to carrier, objectionable to downstream carriers...”* are not permitted. The pipeline company’s specs with relation to TOX were publicly available and published on its website. The intermediary’s contract with the Operator as it pertains to TOX stipulated that the Operator must meet the specifications of the pipeline company.
15. Given that 3 ppm of TOX at approximately 100 bbl/day added to approximately 50,000 bbl/day blends down to meet the requirements of the pipeline company, superiors of the Registrant told the Registrant that there was no need to advise the customers.
16. While dilution may be a solution, contractual terms may not expressly require disclosure of TOX, and marketing teams may manage the sales contracts as the Production Engineer and Operations Manager for the Project, the Registrant had an ethical duty to ensure buyers of crude from the Project were notified by the Operator of the TOX resulting from the oil extraction process.
17. The Receiver subsequently appointed a Contract Operator to manage the assets and undertakings of the Operator. A short time later, in February 2017, the Registrant’s employment with the Operator ended.



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18. In May 2017, a pipeline company advised the Contract Operator that the pipeline company would no longer accept oil from the Project as random testing conducted by the pipeline company revealed the presence of TOX. The Contract Operator confirmed the presence of TOX through third-party laboratory testing.
19. The TOX Expert advised the IC (after the Registrant left the employ of the Operator) that the responsibility for delivering TOX free crude is on the producer, subject to the agreement with the buyer.
20. In June 2017, the Trustee shut-in the Project and informed all parties that were bidding to purchase the Project pursuant to a sale process in the receivership proceedings, which included the Complainant as bidder, of the presence of TOX in the crude.
21. The Complainant was a qualified bidder for the Project; his bid, however, was not successful. In December 2018, the Complainant was convicted of Criminal mischief under \$5,000 for a June 29, 2018, break-in at the Project and related nuisance activities.

### C. CONDUCT

22. The Registrant freely and voluntarily admits that as a Professional Member of APEGA, the Registrant was bound by the *Engineering and Geoscience Professions Act* and the APEGA Code of Ethics.
23. The Registrant freely and voluntarily admits that as the Production Engineer and Operations Manager for the Project, the Registrant had an ethical duty to ensure buyers of crude from the Project were notified of the TOX resulting from the oil extraction process.
24. The Registrant acknowledges that the conduct described above constitutes unprofessional conduct as defined in Section 44(1) of the *Act*:

*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;*



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*(c) harms or tends to harm the standing of the profession generally;*

*(d) displays a lack of knowledge of or a lack of skill or judgment in the practice of the profession or;*

*(e) displays a lack of knowledge 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.*

*The Rules of Conduct of the APEGA Code of Ethics state:*

- 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.*
  - 2. Professional engineers and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience.*
  - 3. Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*
  - 4. Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*
  - 5. Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*
25. The Registrant acknowledges the conduct described above breaches Rule of Conduct #3 of the APEGA Code of Ethics.

### **D. RECOMMENDED ORDERS**

26. On the recommendation of the Investigative Committee, and by agreement of the Registrant with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:



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- a) The Registrant shall receive a Letter of Reprimand, a copy of which will be maintained permanently in your APEGA registration file and be considered at any future date by APEGA.
- b) The Registrant, at the Registrant's expense, shall successfully complete (provide proof of passing grade to the Director, Enforcement) the following University-level course: University of Calgary Continuing Education ADL 213 – Ethics for Professional Practice (or similar course at the discretion of the Director, Enforcement), within one (1) year from the date this Recommended Order has been approved by the Discipline Committee Case Manager.
- c) The Registrant may apply to the Director of Enforcement for an extension prior to the one (1) year deadline. If the above noted course is not successfully completed within one (1) year or after the agreed upon extension, the Registrant shall be suspended from the practice of engineering until the above noted course is successfully completed.
- d) The Registrant shall pay a fine in the amount of \$2,000.00 pursuant to s.64(1) (b) of the *Act*. The fine shall be paid within 90 days of the date this Order is approved by the Discipline Committee Case Manager.
- e) The Registrant may apply to the Director of Enforcement for an extension prior to the 90-day deadline. If the fine is not paid within 90-days or after the agreed upon extension, the Registrant shall be suspended from the practice of engineering until the fine is paid in full.
- f) The Registrant shall disclose that they were the subject of APEGA disciplinary procedures to all other engineering regulatory bodies to which they hold memberships and provide each regulator with a copy of this Order.
- g) The Registrant will be considered a Registrant in good standing while completing the above noted sanctions.
- h) This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not identify the Registrant.



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

Signed,

**[REGISTERED MEMBER]**

**MR. G. ANDERSON**, P. Eng.  
APEGA Investigative Committee

**MR. T. GREENWOOD-MADSEN**, P. Eng.  
Case Manager, APEGA Discipline Committee

Date: February 24, 2022