



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.

Date: February 27, 2023

Discipline Case Number: 22-015

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

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 Member]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Name Withheld] (the “Registrant”) with respect to a complaint initiated by [Name Withheld] (the “Complainant”) dated August 13, 2019.

A. THE COMPLAINT

The Complainant alleges that the Registrant engaged in unprofessional conduct and/or unskilled practice, as defined at s. 44(1) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (*EGP Act*) with respect to their role at the March 1, 2018, City of Calgary meeting, with the primary focus of the making a false statements that [Name Withheld] (“City Councilor”) relied upon.

The Investigative Committee’s investigation focused on the following allegations which can be summarized as follows:

Whether the Registrant displayed a lack of professional judgment as specified by s. 44 (1) (d) Engineering and Geoscience Professions Act, RSA 2000, c E-1 in their dealings with the Complainant. Specifically, the “Registrant”:

- a) By providing a false statement that wetland water balance calculations cannot be performed (and did not have to be), that another relied upon. -”City Councilor”. (March 1st, 2018, meeting), and also failed to correct or clarify their remarks for the final meeting minutes.



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The Investigative Committee investigated 6 additional allegations outlined in the Complaint. The Investigative Committee determined that there was insufficient evidence of unskilled practice/unprofessional conduct in relation to those allegations.

B. AGREED STATEMENT OF FACTS

As a result of the investigation, it is agreed by and between the Investigative Committee and the Registrant that:

(i) Background:

1. The Registrant has been an APEGA Member in good standing since 2009.
2. The Registrant is a Professional Engineer registered in Alberta.
3. The Registrant is the Acting Manager of the Infrastructure Planning department, City of Calgary.
4. The Registrant holds a Bachelor of Environmental Engineering (2006) from Carleton University.
5. The Registrant has fully cooperated with the APEGA investigation.

(ii) Facts Relating to Allegation #1:

Whether the Registrant displayed a lack of professional judgment as specified by s. 44 (1) (d) Engineering and Geoscience Professions Act, RSA 2000, c E-1 in their dealings with the Complainant. Specifically, the "Registrant":

- a) by providing a false statement that wetland water balance calculations cannot be performed (and did not have to be), that another relied upon. - "City Councilor". (March 1st, 2018, meeting), and also failed to correct or clarify their remarks for the final meeting minutes.
6. The community of Copperfield is located in SE Calgary and is bordered by 52nd St. to the west and Stoney Trail to the south. Construction of the Copperfield development site is believed to have started in the early or mid- 2000's. The Copperfield development was a 6-phased residential project and was completed in 2019. Throughout the 6 phases of the residential project, several professional engineering companies, professional engineers, City of Calgary employees (who were also professional engineers and members of APEGA), and land developers contributed to the project.



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7. In 2012, the Complainant purchased his residential lot and home from a developer, then soon after, he and his family took residency. The Complainant's backyard property line directly abuts the north shore of a wetland. This particular wetland (WL04) is the main subject of the Complainant's concerns.
8. The Complainant understood that he and his neighbour's residential lots were priced higher than lots that did not back onto WL04.
9. Between 2012 and 2015 the Complainant asserts the Panel that WL04 was functioning as expected and appeared to be biologically healthy.
10. [Name Withheld] (Company A) is a residential home development company that has projects in both British Columbia and Alberta.
11. On February 2, 2016, [Name Withheld] ("APEGA Member, Development Engineer") City of Calgary Development Approvals approved the final [Name Withheld] (Company A) project submissions, for a proposed new residential development immediately south of WL04, known to the Panel as [Name Withheld] (Company A). Part of the new development would include a stormwater retention pond near WL04.
12. On April 10, 2017, Calgary City Council approved a Land-Use Amendment application to accommodate changes to the location of the stormwater retention pond and land use boundaries adjacent to Environmental Reserve in the southeastern most corner of Copperfield, next to WL04. The Motion was Moved by "City Councilor" (Ward 12) and carried 8-0
13. In the Spring of 2017, the Complainant believed WL04 was continuing to dry up. The Complainant learned that [Name Withheld] ("Company A") had recommended that a new stormwater pond be excavated immediately next to WL04.
14. The Complainant is a civil engineer and a professional member of APEGA. He calculated that the stormwater pond would "steel surface runoff water" that had previously drained into WL04 and would therefore continue to dry WL04.
15. On March 1, 2018, the Complainant attended a meeting with City of Calgary "City Councilor", and members of city staff in hope of seeking a remedy to the reduction of water into WL04.
16. The Registrant and [Name Withheld] ("APEGA Member"), both from Water Resources department, were asked to attend the March 1, 2018, meeting and provide the "City Councilor" with engineering opinions, should the Councilor require further understanding of the Complainant's engineering concerns.



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17. Minutes of the March 1, 2018, meeting were taken by the Complainant, then later circulated, and approved by all those in attendance.
18. The meeting minutes indicated the following:
 - The Complaint requested to see the wetland water balance calculations, as they had their own calculations that he believed clearly demonstrated that the stormwater pond would steal WL04 water drainage thus making the wetland dry.
 - The Complainant stated the project had an obligation to perform wetland water quantity calculations/water balance calculations to ensure that any impact to WL04 would be identified. They believed this was a requirement under the *Alberta Water Act*.
 - The Complainant contended that pre- and post-development calculations are a requirement of any project and a key part of the job description of a hydrologist.
 - The Registrant was noted as confirming that no calculations regarding wetland average annual water levels have been completed, and that runoff volume and discharge rate calculations were focused on the new stormwater pond and the overall storm management system for the new development.
 - The complainant replied that calculations on wetland water levels need to be performed early on, much prior to construction, as part of engineering and design.
 - The “City Councilor” was noted as asking if it was possible to perform the calculations the complainant was asking for?
 - The Registrant advised that it is not possible to perform such calculations because there are too many unknowns and variables, and that groundwater contribution is complex and difficult to determine with accuracy.
 - [Name Withheld] (“APEGA Member”) agreed that calculations cannot be completed and was noted to say that monitoring the wetland after construction is the only reasonable and viable option.
 - The Registrant confirmed that in new developments, wetland monitoring for at least one year is required prior to any disturbance. Without this critical information regarding the natural hydroperiod, it will be difficult to predict water levels.



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- The Complainant was noted as saying that they and residents expect both the production of the calculations, that in their opinion, should have been performed as well as continued monitoring.
 - The “City Councilor” sought further clarification and was noted as asking what the purpose of producing the calculations would be, now that the development as predominantly being constructed, and there is little that can be done to change it.
 - The Complainant explained that calculations and monitoring of WL04 together would be the indicator as to whether WL04 will be significantly drier forward. Based upon his calculations surface runoff, and his belief that groundwater recharge will not make up for the loss of runoff, he believed that WL04 will be significantly drier moving forward.
 - The Complainant stated that calculations absolutely can be performed post-construction, by a qualified hydrologist.
 - The “City Councilor” pointed out that although the Complainant was telling him the calculations could be performed post-construction, others in the room were telling him those calculations cannot be performed.
 - The Complainant hoped that if water balance calculations and monitoring showed that WL04 will be significantly drier (statistically, on average fluctuations aside), post-development, then the City of Calgary should come up with some form of solution to protect homeowners’ interests.
19. No follow-up meeting was generated by the “City Councilor” or any other staff member from City of Calgary to address the Complainants concerns after March 1, 2018. The Complainant later initiated a civil action against several parties, including the City of Calgary to seek out a remedy for his concerns related to the drying up of WL04.
20. [Name Withheld] (“Company B”) was retained as a contracted consultant by APEGA to assist the Panel with its investigations. “Company B” provided reports to the IC for consideration. Relevant portion of “Company B” reports are noted below:
- April 5, 2022 (November 23, 2020) report stated:

(Related to the Complainant’s September 16, 2019, calculations)

The Complainant’s conclusion is reasonable and logical



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“First, his overall conclusion of a decrease in runoff volume is reasonable and logical because it considers that’s all or drainage areas result in lower runoff volumes (if use is the same), and that developed surfaces generally result in higher runoff volume. Thus, Matrix agrees that there would be a meaningful decrease in runoff volume the wetland changes in the catchment area”.

A hydrologic water balance should have been completed

“Second, Hydrologic water balance analysis should have been completed to determine if the wetland sustainable under post development conditions, as water was diverted elsewhere. It is not evident after the review of other documentation provided Matrix that the city of Calgary or Alberta environment parks requested this type of analysis before approving the development”.

21. During a Panel interview the Registrant stated:

- “...I just want to clarify that it wasn’t that I was saying we couldn’t do the calculations; it was just about how we would meaningfully be able to use that information after”.
- “And one thing that we fundamentally disagreed with the “Complainant” about is whether or not the wetland ecological function should be a factor.”
- “...And any time we’re looking at a retained wetland, we have to consider the ecological functions. That’s the primary reason that we retain the wetland... to consider a water level without any consideration for the ecological function just doesn’t seem appropriate for a wetland”.

The Registrant did not ensure that Councilor fully understood the context of their remarks and did not clarify the context of their comments in the March 1, 2018, minutes before signing off on them.

22. The Panel investigation determined that the March 1, 2018, minutes support the Complainant’s contention that the “City Councilor” relied on apparently inaccurate information to support the conclusion that the only appropriate steps going forward was to monitor the wetland – Class 5 wetland.

23. [Name Withheld] (APEGA Member) advised the Panel he was the City of Calgary wetland expert in 2018, and he suggested to City staff to monitor the wetlands (biologically monitor), as the AEP Water Act policies for urban wetlands were unclear to him at that time.



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24. Several witnesses agreed that a Water Act application for impacting a wetland is the responsibility of the Developer or a third-party consultant and not the City.
25. The Panel considers that providing professional opinions on which others, especially non-technical officials, depend to make informed decisions, is a serious professional responsibility. The Panel determined the Registrant did not make certain that the "City Councilor" fully understood the context of their remarks at the March 1, 2018, meeting.
26. The Registrant acknowledges they are required to ensure that non-engineering professions, such as the "City Councilor", who may not have experience with hydrology and/or engineering activities, and therefore the Registrant must have ensured that the "City Councilor" was aware that post-construction engineering/geoscience testing could have occurred, other than only monitoring WL04. The "City Councilor" appears to have accepted the Registrant's position that monitoring WL04 (post-construction) was the only option at this time, and no further meetings or actions were taken by "City Councilor" to address the Complainant's concerns.
27. The Registrant had no professional involvement with the "Company A" development or project. Their only involvement related to the Complainants allegations only related to the meeting on March 1, 2018.

C. CONDUCT BY THE REGISTRANT AND THE COMPANY

28. The Registrant freely and voluntarily admits that at all relevant times, the Registrant was an APEGA Professional Member and was thus bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.
29. The Registrant acknowledges that the conduct described above constitutes unskilled practice 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;*
- (c) *harms or tends to harm the standing of the profession generally;*



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- (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.

30. With respect to the allegation, the Registrant displayed a lack of judgment in the carrying out of their duty or obligation to produce record drawings to the Complainant.

D. RECOMMENDED ORDERS

31. 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:
- a) The Registrant shall be reprimanded for their conduct and this order shall serve as the reprimand.
 - b) The Registrant shall provide written confirmation to the Director, Enforcement within three months of being notified that the Recommended Order has been approved by the Discipline Committee Case Manager, that he has reviewed the following APEGA publications, and that they will comply with requirements therein:
 - i) APEGA Section 2.1 (Professions) of the *Apega Guideline for Ethical Practice, v2.2, February 2013.*
 - c) The Registrant shall **either**:
 - i. Provide the Director, Enforcement, within one year of the date this Recommended Order is approved by the Discipline Committee Case Manager, written confirmation of successful completion of the National Professional Practice Exam (NPPE). The Registrant shall be responsible for all costs associated with completing the NPPE, **or**;
 - ii. Provide the Director, Enforcement, within one year of the date this



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Recommended Order is approved by the Discipline Committee Case Manager, written confirmation/proof of successful completion (passing grade) of a post-secondary level course in ethics, that is satisfactory to the Director, Enforcement, such as ADL 213 Ethics for Professional Practice (University of Calgary Continuing Education). If the noted course is no longer available on approval of this order, at the discretion of the Director, Enforcement, another course in MOC may be substituted. The Registrant shall be responsible for all costs associated with completing the course.

- d) The Registrant shall provide the Director, Enforcement within one year of the date this order is approved by the Discipline Committee Case Manager, written confirmation/proof of successful completion (actively participated) in an educational seminar developed by a professional geologist, Ducks Unlimited and Alberta Environment and Parks, related to professional responsibilities of wetland science, design, and engineering in Alberta. The development of this seminar was facilitated by the Panel for delivery to the Registrant.
- e) If there are extenuating circumstances, the Registrant may apply in writing to the Director, Enforcement, for an extension prior to the deadlines noted in Paragraph 33 b), c), d) and e). The approval for extending a deadline is at the discretion of the Director, Enforcement. If such an application is made, the Registrant shall provide the Director, Enforcement, the reason for the request, a proposal to vary the deadline, and any other documentation requested by the Director, Enforcement.

If the Registrant fails to provide the Director, Enforcement with written confirmation/proof that he has completed the requirements noted above in Paragraph 42 b), c) and d) within the timelines specified, the Registrant shall be suspended from the practice of engineering until the Registrant has provided the Director, Enforcement with written confirmation/proof of successful completion.

If the requirements are not completed within 6 months of the suspension date, the Registrant shall be cancelled. In the event the Registrant is cancelled he will be bound by APEGA's reinstatement policy.

- f) This matter and its outcome will be published by APEGA as deemed appropriate and such publication shall not name the Registrant.



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

Signed,

[REGISTRANT]

DR. JOHN DIWUU, P.Eng.
Panel Chair, APEGA Investigative Committee

JOHN VAN DER PUT, P.Eng.
Case Manager, APEGA Discipline Committee

Date: February 27, 2023