

APEGA Discipline Committee Order

Date: May 30, 2014 Case No.: 14-002-SO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT AND IN THE MATTER OF THE CONDUCT OF [PROFESSIONAL ENGINEER A]

Editor's Note: *The PEG* publishes all APEGA Discipline Committee decisions that include findings against Members. Names and other identifying information are included unless the decision recommends otherwise. Decisions are published almost verbatim; they are reproductions of regulatory records and therefore subject to only minor editing.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [PROFESSIONAL ENGINEER A] (the Member) with respect to allegations of unprofessional conduct, relating to the misappropriation of funds and used pump components and the misuse of intellectual property and confidential information.

A. COMPLAINTS

1. The Member has engaged in unprofessional conduct that contravenes a code of ethics of the profession as established under the regulations and harms or tends to harm the standing of the profession generally, contrary to Section 44(1)(b) and (c) of the *Engineering and Geoscience Professions Act* ("Act") and Rules of Conduct # 3 and # 5 of the *APEGA Code of Ethics* ("Code") in that he was responsible for the sale of used wire, the property of [COMPANY A] to a scrap metal dealer, and failed to deliver all proceeds from the sales of the wire to [COMPANY A] instead retaining a portion of the proceeds for personal use and gain;
2. The Member has engaged in unprofessional conduct that contravenes a code of ethics of the profession as established under the regulations and harms or tends to harm the standing

of the profession generally, contrary to Section 44(1)(b) and (c) of the *Engineering and Geoscience Professions Act* ("Act") and Rules of Conduct # 3 and # 5 of the *APEGA Code of Ethics* ("Code") in that he removed three pump components, the property of [COMPANY A], with the intention to reverse engineer the components for personal gain;

3. The Member has engaged in unprofessional conduct that contravenes a code of ethics of the profession as established under the regulations and harms or tends to harm the standing of the profession generally, contrary to Section 44(1)(b) and (c) of the *Engineering and Geoscience Professions Act* ("Act") and Rules of Conduct # 3 and # 5 of the *APEGA Code of Ethics* ("Code") in that upon the termination of his employment at [COMPANY A] he retained proprietary information of [COMPANY A], including computer files, client lists and supplier lists with the intent to use them in future business endeavors;

B. AGREED STATEMENT OF FACTS

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

4. At all relevant times the Member was a professional member of APEGA and bound by the Act and the Code;
5. The Member holds a BSc. in Mechanical Engineering from the University of Alberta;
6. The Member was at all relevant times engaged by his employer, [COMPANY A], as an engineer. In the course of its business, [COMPANY A] replaced wire in submersible oil well pumps. It would accept the used wire in trade for the

new wire it installed, and then sell the used wire to recyclers. The Member was responsible for the dispersal of [COMPANY A]'s used wire;

7. In 2009 and 2010, the Member admits that he personally received three payments for the sale of used wire belonging to [COMPANY A] totaling approximately \$20,000. The Member further admits that he did not remit those payments to [COMPANY A] and kept the proceeds;
8. In or about June 2010, the Member inappropriately directed the removal and storage of three used pump components that were in the possession of [COMPANY A]. Those components were, in fact, removed and stored. The Member directed those actions for the purposes of reverse-engineering those components in collaboration with others for personal gain, although this plan was ultimately not carried out;
9. The Member resigned his position with his employer in 2011 and accepted a position with a competitor. The Member possessed confidential and proprietary information belonging to [COMPANY A] on a computer hard drive. The Member acknowledges that he kept that information with the intention of using it for the benefit of others, and did use some of that information; however, there is no evidence that the Member's retention or use of that proprietary information caused actual harm to [COMPANY A];
10. Approximately 6 months after leaving [COMPANY A]'s employ, [COMPANY A] commenced a civil action against the Member related to the taking of the used pump components and alleged misappropriation of intellectual property

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and confidential information. As a result of the civil action the components were returned, intact, to [COMPANY A], along with any documents belonging to [COMPANY A], in a timely manner;

- 11. In 2012, the civil action was settled and the Member complied with all settlement terms;
- 12. The Member has fully cooperated with the APEGA investigation and:
 - a) Admitted that his conduct was inappropriate and described it as "reprehensible" and that he was in violation of Rules #3 and #5 of the *APEGA Code of Ethics*;
 - b) Cited his frustration relating to employment and compensation issues with [COMPANY A] as being the foundation for his behavior. The Member has not been employed with [COMPANY A] since 2011;
 - c) The items and sums at issue have not been pursued by the Complainant, and appear to have been satisfactorily resolved through the parallel civil action;
 - d) There is no evidence that the Member's retention or use of [COMPANY A]'s proprietary information caused any actual harm to [COMPANY A];
 - e) Expressed an interest in dealing with the APEGA complaint expeditiously by way of a Recommended Discipline Order;
 - f) Identified that if faced with similar circumstances in the future he would choose another course to settle his employment differences in compliance with the *APEGA Code of Ethics*.

C. CONDUCT

The Member freely and voluntarily admits that his conduct constitutes unprofessional conduct and that the Complaints 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, and harms or tends to harm the standing of the profession generally contrary to Section 44(1) (b) and (c) of the Act and Rules of Conduct # 3 and # 5 of the Code, in that he retained proceeds from the sale of used wire that belonged to his employer, took pump components, the property of his employer, for the purpose of reverse engineering and retained proprietary information upon leaving his employer with the intent to use the information in future business endeavors.

Section 44(1) of the Act states
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; 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.

and Rules # 3 and # 5 of the APEGA Code

of Ethics:

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

D. ORDERS

On the recommendations of the Investigative Committee, and by agreement of [PROFESSIONAL ENGINEER A] with those recommendations, following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

- a. The Member receive a letter of reprimand;
- b. The Member successfully completes the Professional Practice Examination within one year of acceptance of the Order;
- c. That should the Member fail to successfully complete the Professional Practice Examination in the time specified, that his membership in APEGA be suspended until the Professional Practice Examination is successfully completed;
- d. That the Member pay a fine of \$5,000;
- e. That the details of this case be published in *The PEG* magazine, without names.

Approved this 30th day of May, 2014

MARTY KLAASEN, P.ENG.
Case Manager