Ethics and Professional Conduct: A Summary of Wisconsin Disciplinary Decisions

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Approved for: Wisconsin

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Introduction

Engineering ethics and professional conduct provide a set of standards that define the professional engineer's obligations to the public, his employer, and the profession. This course presents a summary and analysis of seven disciplinary case studies that are based on actual Reports of Decisions retrieved from the Wisconsin Department of Regulation & Licensing (the Department) website. These case studies were selected to highlight examples where the Department determined professional engineers had violated Wisconsin laws and statutes. It is expected that engineers will better understand ethical behavior and the standards of professional conduct by studying past ethical issues faced by other engineers and the Department's rationale for disciplining them for their mistakes.

Each Disciplinary Case Study includes a summary of the circumstances surrounding the charges and the engineer's behavior, the Department's findings, a citation of the applicable regulations and statutes, and an analysis of the respondent's conduct as it relates to the ethics and professional conduct expected of professional engineers. The names of the Respondents and their employers have been removed from the case studies to protect their privacy. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Disciplinary Case Study #1 – Failure to Use Reasonable Care

ORDER: 0000048-00004145

Details of the Case

The Department received a consumer complaint alleging the Respondent provided an inaccurate professional engineering report to the Wisconsin Department of Natural Resources (DNR) on four rebuilt United Liquid Waste Recyclers (ULWR) waste storage tanks, located in Clyman, Wisconsin. The Respondent served as the professional engineer who prepared an inspection report on four waste storage tanks. The Respondent certified to the DNR that the four waste storage tanks: (1) were in good structural condition and 2) had been properly erected in accordance with the design drawings furnished by the manufacturer.

During the Department's investigation, it was revealed that the structural condition of the four waste storage tanks, the design drawings and their usage were considered questionable because the tank manufacturer had not provided the design for the four waste storage tanks to anyone. Based on the lack of a tank design from the manufacturer, the Department concluded that the tanks had not been erected in accordance with the design drawings of the manufacturer. During the Department's investigation, it was discovered that the Respondent and his employer may have relied on inaccurate information to reach the conclusion of the engineering report.

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Violations
The Respondent violated Wis. Stat. § 443.11 (d)(e) and Wis. Admin. Code §§ A-E 8.04(3) and 8.06(1) by failing to use reasonable care and competence in providing a professional engineering report on a subject where sufficient knowledge had not been established.

Penalty
The Department ordered that the Respondent complete an on-line engineering ethics course. Once completed, they required proof the Respondent met the continuing education requirement in the form of verification from the institution providing the education.

The Department also ordered the Respondent to pay to a $500 fine.

Discussion of Violations
This case study involves a common activity that many professional engineers perform – performing and inspection various structures and certifying that the structure was constructed in accordance with the design, applicable codes, and/or some minimum standard. In this example, the engineer was contracted to inspect several waste storage tanks and then produce an engineering report certifying the tanks had been built to the manufacturer's design specifications. This report was submitted to the Wisconsin DNR Bureau of Watershed Management (DNR), which is the state agency responsible for ensuring the integrity of tanks used to store waste.

The Respondent certified to the DNR that the four waste storage tanks: (1) were in good structural condition and 2) had been properly erected in accordance with the design drawings furnished by the manufacturer. It was subsequently determined that the manufacturer did not provide the design drawings or any documents related to the intended purpose of the tanks, and, consequently, it would not have been possible for the Respondent to determine whether or not the tanks had been erected in accordance with the manufacturer's design.

The requirement to provide a certification is not unique to tank inspections. In fact, professional engineers in Wisconsin and other states are required to attest to similar conditions as part of completing a wide variety of forms and engineering reports. Examples include building occupancy permits, SPCC plans, stormwater pollution prevention plans, and many discharge permits. It is incumbent upon the engineer to carefully read and understand the certification statement he is signing, including the referenced standards, statutes, and other documents. Failure to use reasonable care is a violation of Wisconsin engineering statutes (and most other states) and is inconsistent with ethical and professional conduct. Engineers must confirm that all of the requirements of the certification are true and accurate. If this is not possible, they must provide sufficient details and explanation to carefully present the work completed by the engineer and then explain any exceptions to the requested certification. In the Case Study, one possible solution to address the lack of design documents from the manufacturer would have been for the engineer to note that at the time of construction the manufacturer did not provide the required design documents, combined with one or more of the following approaches:

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- Determine if the tanks might be “grandfathered” by demonstrating that, at the time of construction, it was not necessary to have design drawings from the manufacturer to certify that the tanks were fit for service.
- Contact the manufacturer to determine if the tanks had been erected in a manner consistent with their design or the standards in use at the time of construction.
- Perform an analysis of the existing tank design to see if it meets current design standards and then certify that the tanks had been constructed in accordance with the engineer’s equivalent design.
- Contact the State Agency to discuss the absence of design drawings to determine if another certification method would be acceptable.
- Write an engineering report that concludes the tanks do not meet the manufacturer’s design requirements and should be taken out of service.

If the Respondent had been more careful in reviewing the available information and in the presentation of the facts, he could possibly have provided an appropriate evaluation of the tanks and offered a certification (assuming this is what the evaluation proved) that satisfied the DNR. However, by failing to do a thorough evaluation of the tanks and the available information, the Respondent violated the Wisconsin administrative code and failed to meet his professional obligations as the engineer of record.

Disciplinary Case Study #2 – Lack of Competence

ORDER: 0000609

Details of the Case

In 2009, the Department opened a disciplinary investigation in response to a complaint alleging mistakes and inadequacies in a report prepared by Respondent. The Department's investigation revealed that the Respondent prepared a stormwater runoff report for a property owner who was seeking a stormwater management permit (permit) for piping that had been installed during the construction of his new home. The Walworth County Land Use and Resource Management Department required calculations and plans from a certified engineer to ensure that the stormwater velocity was reduced to pre- construction levels. The Respondent prepared a report to obtain approval from the County for the permit. The engineering report was signed and stamped by the Respondent and submitted on behalf of the owner to the Walworth County Land Use and Resource Management Department (the WCLURMD). The WCLURMD, which lacked engineering resources, relied on the Respondent’s report to determine the velocity of rainwater through the drainage pipe and evaluate if the drainage pipe would adversely affect the adjacent property owners.

In the engineering report, the Respondent certified:

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> I have reviewed the drawings, calculations and attachments of the enclosed "Engineering Analysis for velocity flow though pipe at Address, WI[."] I certify and approve that they are correct according to sound engineering principals, codes and laws of the state of Wisconsin.

Based on this certification, the WCLURMD approved the permit for the existing drainage permit. Following this approval, a complaint was filed with the Department alleging the engineering report contained mistakes and inadequacies. During the Department's investigation, the Respondent stated that he did not perform any calculations or engineering analysis in producing his report. He provided a defense in which he asserted that he did not believe the drain pipe issue involved a wastewater problem, and, therefore, he did not think the project rose to the level of professional engineering work. He also stated that he did not believe the report he prepared was an "engineering" report. As part of the investigation, the Respondent admitted that he had no experience in either waste or stormwater design. Following the investigation, the Respondent submitted a letter to Department admitting that "no inspection was done" and further stating that the "report was gathered information from public resources." The Respondent also admitted that the type of engineering work he normally does is shoring, concrete forming, and structure design.

Violations

The Department found that by producing a report containing the deficiencies described above, the Respondent had violated:

a. Wis. Admin. Code § A-E 8.04(3) by performing services which the Respondent was not qualified to perform by education or experience without retaining the services of another who is qualified;
b. Wis. Admin. Code § A-E 8.06(1) by failing to use reasonable care and competence in providing professional services; and
c. Wis. Admin. Code § A-E 8.09(1) by his failure to comply with the requirements of chapter A-E 8.

Penalty

The Department ordered that the Respondent be reprimanded and pay a $650 fine.

Discussion of Violations

This case highlights one of the fundamental canons of ethics and professional conduct – engineers must only perform work that they are qualified to do based on their education and experience. The Wisconsin administrative code requires that licensed professional engineers only practice engineering in their area of expertise and competence. Board records for each PE reflect an area of engineering in which an engineer has demonstrated competence. In this instance, the Respondent was working outside his area of experience and expertise, which is a violation of the administrative code. He should have known that this type of work was not consistent with his prior engineering experience, and, therefore, he was not competent to perform the work. By knowingly performing work that he was not qualified to perform, the Respondent was behaving in an unethical and unprofessional manner.

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Another problem with the Respondent's behavior is that he misrepresented the work that he completed. Specifically, he did not perform calculations or inspect the pipe to determine if it was negatively impacting the abutting properties, despite the fact he stated in the engineering report that he had performed the inspection. The Department appears to have made the most favorable interpretation of the facts because they only cited the Respondent for failing to use reasonable care and competence rather than fraudulently misrepresenting that he had conducted an inspection when he had not.
Professional engineers must always strive to provide accurate information in a report and take care not to misrepresent facts and other information.

The engineer could have used one of several possible solutions to address his lack of relevant experience and competency related to the stormwater design such as:

- Hiring a professional engineer to complete the stormwater engineering work.
- Declining to perform the requested services and explaining to his client that he is not qualified to perform stormwater engineering services.

By failing to acknowledge that he was competent to perform the stormwater system inspection, the Respondent violated the Wisconsin administrative code and was not behaving in an ethical and professional manner. Professional engineers must thoroughly understand the type of work they are qualified to perform, and make certain that they only provide services for which they are competent.

Disciplinary Case Study #3 – Lack of Trustworthiness

ORDER: 0000610

Details of the Case

The Respondent pleaded guilty to a felony count of conspiracy to commit mail and wire fraud in the United States District Court for the Eastern District of Wisconsin and was sentenced to one year and one day of incarceration to be followed by two years of supervised release. As part of his plea agreement, the Respondent admitted to the following facts that established his guilt beyond a reasonable doubt, to wit:

> At all times relevant to this prosecution, the defendant, Respondent ("Respondent "), was a principal of and employed by Respondent' Employer ("Respondent's Employer"). Respondent's Employer is a business located in Delafield, Wisconsin that provides consulting and other services to real estate developers. These services include engineering, surveying, landscape architecture, and planning. In September 2002, Respondent set up a separate business under the name Respondent's Additional Employer ("RAE"). Respondent also opened a bank account in the name of NCCBH.

Another engineer (Co-defendant) was employed as the head of the Development Department and, later, the Chief Executive Officer of another engineering company (Company 2). Company 2 is a residential

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