

IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116 AS AMENDED
- and -
IN THE MATTER OF Vladimir Stuchlik P.Eng.

DISCIPLINE COMMITTEE PANEL:	Alexander Black, P.Eng., Chair Darryl Chambers, P.Eng. David Ricketts, P.Eng.
COUNSEL FOR THE ASSOCIATION:	Beth Allard
COUNSEL FOR THE MEMBER:	None
INDEPENDENT COUNSEL TO THE PANEL:	David Martin
DATE OF HEARING:	April 29 and 30, 2014
PLACE OF HEARING:	1000 – 840 Howe Street, Vancouver, BC

DETERMINATION

INTRODUCTION AND HEARING PROCESS

1. A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association") under authority of the *Engineers and Geoscientists Act, R.S.B.C. 1996, C116* (the "Act") held an inquiry to examine the alleged contraventions of the Act by Vladimir Stuchlik P.Eng.
2. Mr. Stuchlik was a member of the Association under the Professional Engineer (P.Eng.) designation at all times relevant to the matters in question.
3. The allegations of unprofessional conduct against Mr. Stuchlik are found in the second and third paragraphs of the Amended Notice of Inquiry dated February 28, 2014, as follows:
 1. *Contrary to the Act, you have demonstrated unprofessional conduct In that while you were being investigated you failed to provide the Association's Investigation Committee's subcommittee conducting the investigation with the information or records that the subcommittee requested from you, or you failed to answer, within a reasonable time and in the manner specified by the Association's Investigation Committee's subcommittee conducting the investigation, the inquiries of you by the subcommittee sent to you, by letters dated February 1, 2012, April 10, 2012 and October 18, 2012.*
 2. *Contrary to the Act, you have demonstrated unprofessional conduct In that, in or about 2001 or 2002 you designed and installed a sewerage system at [REDACTED] in the Village of Nakusp, B.C. ("Sewerage System") contrary to the then Health Act, R.S.B.C. 1996, c. 179 as amended – Sewerage Disposal Regulation ("SDR") or the then Waste Management Act, R.S.B.C. 1996, c. 482, as amended – Municipal Sewage Regulation ("MSR") by reason of one or more of the following:*

- a) *before construction, installation or alteration of the Sewerage System, you failed to obtain a permit, contrary to the SDR;*
 - b) *before using or operating the Sewerage System, you did not obtain a written authorization from a medical health officer or public health inspector, contrary to the SDR;*
 - c) *the Sewerage System did not provide for a minimum of 20 days of emergency storage of reclaimed water, contrary to the MSR;*
 - d) *the Sewerage System did not provide for an alternative method of disposing of the reclaimed water, contrary to the MSR; and*
 - e) *the Sewerage System provided for the use of reclaimed water without specific written authorization, contrary to the MSR.*
4. The Panel convened on Tuesday, April 29, 2014 at 9:30 a.m. Neither Mr. Stuchlik nor his Counsel was in attendance. The Panel waited until 9:40 a.m. to provide Mr. Stuchlik or his Counsel the opportunity to appear in the event that they were delayed. At that time neither Mr. Stuchlik nor his Counsel had appeared and the Chair of the Panel called the proceedings to order and began the Inquiry.
5. Counsel for the Association read the Charges.
6. Ms. Allard submitted to the Panel as Exhibit 1 an Affidavit Of Service sworn by a process server, Ms. Joan O'Connor, who swore that she personally served the following documents on Mr. Stuchlik on March 23, 2014:
- a) Letter addressed to Mr. Vladimir Stuchlik dated March 12, 2014;
 - b) Notice of Inquiry dated August 26, 2013;
 - c) Amended Notice of Inquiry dated February 28, 2014; and
 - d) Expert Report prepared by Mr. David Featherstonhaugh P.Eng. dated March 11, 2014.

Ms. O'Connor stated that she identified Mr. Stuchlik as the gentleman she served when he admitted to her he was Mr. Vladimir Stuchlik and was the person named in the said documents and the proper person to be served.

7. Based on this evidence, the Panel were satisfied that Mr. Stuchlik had been properly and personally served with the Amended Notice of Inquiry stating that the hearing would proceed on April 29, 2014, and the Panel would proceed to hear evidence with respect to the charges in his absence.

BURDEN AND STANDARD OF PROOF

8. Ms. Allard opened the Inquiry by informing the Panel of the burden of proof and the standard of proof that the Panel must apply in reaching its decision. Ms. Allard made it clear that the burden of proof always rests with the Association to prove the elements of the allegations to the required standard of proof. The appropriate standard of proof is proof on a balance of probabilities.

OPENING SUBMISSION

9. There had been no prior agreement on Statement of Facts or Documents. Ms. Allard made an opening statement which was a summary of the evidence she proposed to lead in support of the charges. Ms. Allard reminded the Panel that her opening statement was not evidence.
10. With respect to the first allegation – Failure to provide information or records to Subcommittee, Ms. Allard stated that this inquiry relates to Mr. Stuchlik's design and installation of a sewage disposal system at a factory located at [REDACTED] in Nakusp. The sewage disposal system came to the attention of the Association by way of a complaint from an employee at the factory.
11. Pursuant to Section 29 of the Act, the then Registrar of the Association, Mr. Derek Doyle P.Eng., appointed a designated reviewer to review the

complaint. The designated reviewer, Mr. Troy Vassos, P.Eng. recommended a formal investigation be commenced by the Association.

12. The matter was referred to the Investigation Committee. On November 4, 2010, the Investigation Committee resolved to investigate Mr. Stuchlik in relation to the sewage disposal system, and appointed Mr. Tony Mikes P.Eng. as a Subcommittee to prepare a report and to direct Association staff in the gathering of any further information as may be required. Subsequently, because of the resignation of Mr. Mikes from the Investigation Committee, on March 28, 2013, the Investigation Committee appointed Mr. Neil Nyberg P.Eng. and Mr. Allan Dakin P.Eng. as a Subcommittee.
13. During the investigation, Mr. Geoff Thiele, the then Director of Investigations and Discipline at the Association, facilitated requests for information and documents as directed by the Subcommittee to Mr. Stuchlik. Mr. Thiele wrote three letters to Mr. Stuchlik – dated February 1, 2012, April 10, 2012 and October 18, 2012 – seeking information and documents requested by the Subcommittee. Mr. Stuchlik provided letters in response to each of these letters – dated February 17, 2012, April 17, 2012 and October 29, 2012. However, Ms. Allard stated that in the opinion of the Subcommittee the letters from Mr. Stuchlik failed to provide responses to the requests for information and documents detailed in Mr. Thiele's letters.
14. Ms. Allard said that it was the Association's position that Mr. Stuchlik failed to respond to the Subcommittee of the Investigation Committee and this has resulted in the first allegation before the Panel.
15. Ms. Allard said, in support of the Association's position, the Panel would hear evidence from Mr. Thiele. This evidence would include the chronology and details of a list of documents that would be presented to the Panel, the directions from the Subcommittee and Mr. Stuchlik's alleged failure to

respond to the requests for information and documents.

16. With respect to the second allegation – Design and Installation of Sewage System contrary to the Sewage Disposal Regulation and the Municipal Sewage Regulation – Ms. Allard alleged the investigation by the subcommittee indicated the sewage system had been designed and installed contrary to the applicable regulations governing sewage systems and that Mr. Stuchlik had not complied with the required specific permitting, approval and registration process applicable to sewage systems.
17. The system that was designed and installed by Mr. Stuchlik consisted of a treatment system whereby effluent was treated with ozone and the treated effluent was reused for the five toilets at the factory. Ms. Allard stated that this makes the sewage system a reclaimed water system governed by the Municipal Sewage Regulation (*MSR*). Ms. Allard said the system also had two points at which treated effluent could be discharged to the surface of the land and she said this is not permitted under any regulation.
18. Ms. Allard said, in support of the Association's position, the Panel would hear evidence from Mr. Paul Geisler, an Environmental Health Officer at Interior Health. This evidence would be in regard to the system installed at the factory, Mr. Stuchlik's application to the Ministry of Health to install sewage holding tanks as the sewage disposal system at the factory and the alleged absence of any permits or written authorization from the Ministry of Health regarding the sewage holding tanks or the sewage system actually installed at [REDACTED]
19. Ms. Allard said Mr. Geisler's evidence would include a number of documents relating to the sewerage system provided to the Ministry of Health by Mr. Stuchlik.

20. Ms. Allard said the Panel would hear an expert opinion from Mr. Dave Featherstonhaugh P.Eng. regarding the non compliance of the design of the sewage system with the applicable regulations and with professional engineering standards.

EVIDENCE

21. Mr. Geoff Thiele was the Associations first witness and Ms. Allard referred the Panel to Exhibit 6 which was a binder with a series of tabs. Mr. Thiele testified he was the Director of Investigation and Discipline at the Association on February 4, 2010 when he was made aware of the sewerage system at the Azco Industries Ltd's plant at [REDACTED], Nakusp by an email sent by two former employees at the plant. These former employees, in the email, expressed concerns regarding the design and operation of the sewerage system by Mr. Stuchlik, who was President of Azco Industries.
22. Mr. Thiele said he had one of his staff review all the documents submitted to the Association and on September 17, 2010 he wrote to Dr. Troy Vassos P.Eng. appointing him the Designated Reviewer to determine whether the file should be forwarded to the Investigation Committee for further investigation or closed. Mr. Thiele said that Dr. Vassos's report to the Association on September 30, 2010 concluded that he believed there is sufficient grounds for concern regarding the professional conduct of Mr. Stuchlik and he recommended that the Association initiate a formal investigation.
23. Mr. Thiele said that on November 4, 2010, the Investigation Committee of the Association, on his recommendation, passed a motion considering it appropriate to investigate Mr. Stuchlik and appointing Mr. Tony Mikes P.Eng. as a subcommittee to prepare a report and to direct staff in the gathering of any further information as may be required and this was conveyed to Mr. Mikes by letter on November 10, 2010.

24. Mr. Thiele said he received two preliminary reports from Mr. Mikes on March 14, 2011 and June 29, 2011 with preliminary findings and requesting the Association obtain further information. Mr. Thiele said he received a final report from Mr. Mikes on January 29, 2012 expressing concerns regarding the design and installation of the sewage system at [REDACTED], Nakusp and recommending that the file be forwarded to the Discipline Committee of the Association.
25. Mr. Thiele said that on February 1, 2012 he wrote to Mr. Stuchlik advising him that the Association had received a complaint regarding the sewage plant at [REDACTED], Nakusp and had appointed a Designated Reviewer to review the complaint to determine if sufficient grounds exist to warrant further investigation. The Designated Reviewer recommended further investigation and the Association's Investigation's Committee appointed a Subcommittee to prepare a report. Based on its review of the documents at its disposal, the subcommittee had concerns Mr. Stuchlik may have installed a sewerage system that was not authorised by the Interior Health Authority and that it could create a health and environmental hazard. In order to address these issues, Mr. Thiele said that the subcommittee had instructed him to write to Mr. Stuchlik for further information and/or documents in accordance with Section 30(4) of the Act and this letter of February 1, 2012 contained eighteen specific requests in point form for Mr. Stuchlik's response.
26. Mr. Thiele testified that the Association received a response from Mr. Stuchlik dated February 17, 2012. He said the only document provided with the letter of response was a copy of a Business Licence issued by the Village of Nakusp. Referring to Mr. Stuchlik's letter, no drawings referred to in paragraph B1 were received and no documentation from Mr. John Rowse at the Ministry of Health that he had approved the design were received. No documents were attached from the Village of Nakusp referred to in paragraph B2. and no documents from any Regulatory Authorities giving approval of the

system. Mr. Thiele said that on page 7 of Mr. Stuchlik's letter he refers to his qualifications being in Electronic Engineering.

27. Mr. Thiele said he had Mr. Mikes review Mr. Stuchlik's response and in correspondence with Mr. Thiele on February 23, 2012 and February 25, 2012, Mr. Mikes indicated that Mr. Stuchlik had not provided the information and documentation requested in the Association's letter of February 1, 2012.
28. Mr. Thiele testified he then wrote a second letter to Mr. Stuchlik dated April 10, 2012 stating that the Association's Investigation Committee's subcommittee had reviewed his submission and based on the review did not consider that Mr. Stuchlik had provided the information or documentation required and had directed Mr. Thiele to write to Mr. Stuchlik to obtain the missing or incomplete information and documents. The items sought were detailed in point form and Mr. Thiele said that Mr. Stuchlik was asked to ensure that no information was missed by providing individual answers to each fourteen numbered items.
29. Mr. Thiele testified that the Association received Mr. Stuchlik's response dated April 17, 2012 but it did not provide the required information. No documents from the Ministry of Environment (MOE), Ministry of Health (MOH), Village of Nakusp or Interior Health Authority (IHA) were included with his response letter.
30. Mr. Thiele said that, following review with Mr. Mikes, a final letter dated October 18, 2012 was sent to Mr. Stuchlik stating that the subcommittee of the Investigation Committee had reviewed his response and found it incomplete or required further clarification. The information sought was again listed in fourteen numbered items requiring individual answers. The letter also quoted Section 30(4) of the Act and the possible penalty if found liable.

31. Mr. Thiele said the Association did receive a response from Mr. Stuchlik dated October 29, 2012 and upon review with Mr. Mikes, it was considered that Mr. Stuchlik did not provide the documentation or clarification set out in the Association's letter of October 18, 2012. Mr. Thiele testified that two drawings were received with the letter entitled "AZCO Nakusp Factory Sewer System" signed with the same signature on Mr. Stuchlik's letter.
32. Mr. Thiele said that at this point, Mr. Mikes resigned from the Investigation Committee for personal reasons and on March 28, 2013, the Investigation Committee appointed Mr. Allan Dakin P.Eng. and Mr. Neil Nyberg P.Eng. to act as a subcommittee to review this matter and report their findings and recommendations to the Investigation Committee.
33. Mr. Thiele testified that the subcommittee's report dated July 18, 2013 to the Investigation Committee stated that it was of the opinion that Mr. Stuchlik had demonstrated unprofessional conduct.
34. The report, which was included as tab 29 of Exhibit 6 concludes that "It is the opinion of the subcommittee that Mr. Stuchlik has demonstrated unprofessional conduct in that he designed, installed and operated a sewerage system at [REDACTED] in the Village of Nakusp contrary to the *Health Act*, *Sewerage Disposal Regulation ('SDR')*; *The Environmental Management Act Municipal Sewerage Regulation ('MSR')*. There is evidence that Mr. Stuchlik P.Eng.:
- failed to file with local health authority the required documentation, contrary to the *SDR*;
 - failed to have the local health authority conduct an inspection of the Sewerage System, contrary to the *SDR*;
 - implemented a Sewerage System that did not discharge to a subsurface disposal field contrary to the *SDR*;
 - implemented a Sewerage System with a bypass discharge pipe to surface disposal, creating a health hazard contrary to the *SDR*;

- implemented a Sewerage System which used treated effluent (reclaimed water) contrary to the *SDR*;
 - implemented a Sewerage System which did not provide for a minimum of 20 days of emergency storage of reclaimed water contrary to the *MSR*;
 - failed to obtain specific authorization for the Sewerage System in writing from the Director of the Ministry of Environment Regional Office, contrary to the *MSR*; and
 - failed to have a qualified professional develop an operating plan for the Sewerage System and provide a signed statement that the operating plan is adequate for the design of the Sewerage System, contrary to the *MSR*.
35. Mr. Thiele said that Amended Notice of Inquiry dated February 28, 2013 was the same as the Notice of Inquiry dated August 28, 2013 which he prepared. Mr. Thiele completed his evidence and the Panel had no questions.
36. Ms. Allard presented the second witness, Mr. Paul Geisler to provide factual evidence. Mr. Geisler said he had been employed at the Interior Health Authority as an Environmental Health Officer for fifteen years commencing in April 1999 in Prince George and from January 2004 in Nelson.
37. Mr. Geisler said that he implements the *Environmental Management Act* ("*EMA*") and investigates for non-compliance. He said that before 2005 the *SDR* was in effect but in 2005 it was repealed and that after May 31, 2005, it is the *SSR* that applies. He said that a reclaimed water system would fall under the jurisdiction of the *MSR* not the *SDR* or *SSR*.
38. Mr. Geisler testified he was familiar with the Azco Holdings facility at [REDACTED] Nakusp after being made aware on November 27, 2009 by Mr. Nick Morris, a WorkSafeBC officer who had issued an inspection report of

the sewerage facility at [REDACTED] citing various infractions of the *Occupational Health and Safety Regulations*.

39. Mr. Geisler said he visited the facility at [REDACTED] and inspected the sewerage treatment facility. He was given a sketch of the facility by staff. Ms. Allard produced a sketch identified as Exhibit 7 and Mr. Geisler said that was the sketch he received.
40. Mr. Geisler said the grey water retention tank had ozone injection and was visually not clean water. He observed that the ventilation system was not connected to the tank and the building had an ozone smell. He testified that the sketch, shown as Exhibit 7, was a reasonable representation of what he observed.
41. Mr. Geisler said as a result of his inspection of the facility, he had concerns that this may be an illegal system. Mr. Geisler said he had a telephone discussion with Mr. Stuchlik which he described as frustrating.
42. Mr. Geisler gave evidence on information the Interior Health Authority had on file with respect to an application for a sewerage treatment facility at [REDACTED]. Mr. Geisler said that Mr. Phil Muirhead was Environmental Health Officer for the Kootenay Boundary Community Health Services Society at the time of a submission of Application for Permit to Construct a Sewage Disposal System for a facility at [REDACTED], Nakusp, dated June 8, 2001. Mr. Geisler said this was for a holding tank system not a reclaimed water system which he observed on site.
43. Ms. Allard submitted to the Panel, as Exhibit 8, a copy of the application which had a drawing attached. Mr. Geisler that this drawing accompanying the application had no details on reclaimed water and was not what he observed on site.

44. Ms. Allard referred Mr. Geisler to Exhibit 8, a letter from Mr. Muirhead dated June 15, 2001 to the Village of Nakusp's approving officer, with a copy to Mr. Stuchlik, stating that his office had received an application for a holding tank system at [REDACTED]. Mr. Muirhead stated in the letter that the Village was to confirm that the applicant's proposal met the Village of Nakusp's ByLaw No. 94-1 Schedule A requirements for sewage holding tanks. The Health Authority would then be prepared to issue the permit for a pump and haul holding tank.
45. Mr. Geisler said that no response is on file from the Village of Nakusp and he said this has been confirmed with the Village and that no approval was given for a holding tank. Mr. Geisler said since no approval was forwarded to the Health Authority, no Permit was issued. Mr. Geisler testified that the Health Authority never issued a Permit for the use of holding tanks or any other system.
46. Mr. Gesler said the applicant did not submit an application for permission for reclaimed water system as required under the *MSR*.
47. Ms. Allard referred Mr. Geisler to Exhibit 10, the two drawings submitted by Mr. Stuchlik to the Association. Mr. Geisler testified that they were similar to what he observed on site.
48. The Panel had no questions for Mr. Geisler and that concluded his evidence.
49. Ms. Allard presented a curricula vita for the Association's next witness, Mr. David Featherstonhaugh P.Eng. who would give expert opinion and report. Prior to hearing Mr. Featherstonhaugh's evidence, in response to a question from the Panel, Mr. Featherstonhaugh clarified that while in the employment with Hydroxyl Systems Inc. he had no dealings with Mr. Stuchlik who was a

supplier of ozone equipment to that company. Mr. Featherstonhaugh was then accepted as an expert witness.

50. Ms. Allard introduced Mr. Featherstonhaugh's report, dated March 11, 2014 as Exhibits 11 and 12. In his preamble to his report, Mr. Featherstonhaugh said that Mr. Stuchlik on June 12, 2001 applied to the Ministry of Health for a permit to install a holding tank for sewage at his company's premises. He has seen no evidence that a Permit was issued and at some point, the sewage handling system was changed from holding tanks to a wastewater treatment system as shown on drawings dated October 24, 2002 provided by Mr. Stuchlik to the Association.
51. Mr. Featherstonhaugh said that in 2001, the design of this proposed holding tank system was governed by the *SDR* which was administered by the MOH through the Interior Health Authority. The *SDR* was repealed in 2005 and replaced with the *SSR*.
52. Mr. Featherstonhaugh said the date when the system was designed and installed by Mr Stuchlik is unclear based on the information provided. However, regardless of whether the *SDR* or *SSR* applied, neither allow for the reclamation of treated effluent. The October 24, 2002 drawings provided by Mr. Stuchlik clearly show a reclaimed water system and as such it would have fallen under the jurisdiction of the *MSR*.
53. Mr. Featherstonhaugh reviewed the three regulations and gave numerous examples of Mr. Stuchlik being in violation.
54. With respect to the specific allegations detailed in the Amended Notice of Inquiry, Mr. Featherstonhaugh commented as follows:

- a) "before construction, installation or alteration of the Sewerage System, you failed to obtain a permit, contrary to the *SDR*."

Mr. Featherstonhaugh in his report said Section 3 of the *SDR* requires a permit for the construction or alteration of a sewage disposal system and he is not aware of a Permit being issued and operating a sewerage system without a Permit is a violation.

- b) "before using or operating the Sewerage System, you did not obtain a written authorization from a medical officer or public health inspector, contrary to the *SDR*."

Mr. Featherstonhaugh in his report said Section 4(1) requires written authorization from a medical health officer or public health officer before a system is placed in operation and he has not been provided with any evidence that Mr. Stuchlik obtained such written authorization

- c) "the Sewerage System did not provide for a minimum of 20 days of emergency storage of reclaimed water, contrary to the *MSR*."

Mr. Featherstonhaugh in his report said Section 10(1)(ii) requires a minimum 20 days of emergency storage and he is not aware of any such volume of storage being provided as part of the System.

- d) "the Sewerage System did not provide for an alternative method of disposing of the reclaimed water, contrary to the *MSR*"

Mr. Featherstonhaugh in his report said Section 10(c)(i) requires a means of diverting effluent flow when the required quality is not met

and he is not aware of any such provision for diversion as part of the System.

- e) "the Sewerage System provided for the use of reclaimed water without specific written authorization, contrary to the *MSR*."

Mr. Featherstonhaugh in his report said Section 10(7)(a) states that no person may provide for the use of reclaimed water unless specifically authorized in writing by the local health authority having jurisdiction and he is not aware of any evidence that being done by Mr. Stuchlik.

55. Mr. Featherstonhaugh said that there were two discharges shown on the drawings, dated October 24, 2002, an overflow pipe for disposal to surface at the north side of building and a filter backwash discharge to an area in the woods. In his opinion, the overflow pipe would be considered a health hazard under Section 2.1(1)(b) and the backwash discharge was not a proper subsurface disposal field as defined in the *SSR* and would be considered a health hazard under the *SSR* Section 2.1(1)(b). Mr. Featherstonhaugh said that Section 10(1)(c)(i) of the *MSR* requires a means of diverting effluent flow when the required quality is not met. Examples of diversions include holding tanks, approved subsurface disposal and discharge to a municipal sewer system and he was not aware of any such provisions for diversion being part of the System.
56. In response to a question from the Panel, Mr. Featherstonhaugh said he was not aware of any monitoring or testing reports of the Sewerage System being submitted to MOE or IHA.
57. Mr. Featherstonhaugh concluded his report by stating, in his opinion, the design and installation of the System by Mr. Stuchlik is in violation of the *SDR*

and the *MSR* which are the two Regulations that appear to have been in effect when the System was constructed.

FINAL SUBMISSIONS

58. With respect to the First Allegation, Ms. Allard for the Association, said the evidence clearly establishes that Mr. Stuchlik failed to provide information or records to the Subcommittee as requested by it, and failed to answer the inquiries of the Subcommittee of the Investigation Committee.
59. Ms. Allard summarised the evidence given by Mr. Thiele and said that each of the letters sent to Mr. Stuchlik by Mr. Thiele were sent to Mr. Stuchlik at the direction and with the approval of the Subcommittee as is shown in the various documents in Exhibit 6.
60. Ms. Allard said it is clear, from the documents in Exhibit 6, that in the opinion of the Subcommittee, Mr. Stuchlik failed almost completely to provide the information and records requested and failed to answer the inquiries of the Subcommittee, in his three letters to Mr. Thiele. Ms. Allard said, at best, Mr. Stuchlik answered a small number of the questions asked.
61. In reviewing the February 17, 2012 response by Mr Stuchlik, Ms. Allard drew the Panel's attention to Mr Stuchlik's response to his qualifications, where he advised his qualifications were in electronic engineering, and the septic system design is 95% electronics. She said Mr. Stuchlik also said that in relation to the septic system "besides 95% electronics, the rest is just a few pipes, pumps, and vessels."
62. Ms. Allard said Mr. Thiele, in his third letter to Mr. Stuchlik dated October 18, 2012 again advised Mr. Stuchlik of his obligations under Section 30(4) of the *Act* and of the consequences of failing to provide a response. Ms. Allard said Mr. Thiele had clearly indicated that the Investigation Committee had

specified that Mr. Stuchlik provide clear and complete answers to the subcommittee's questions in numerical form corresponding to the numerical form corresponding to the numerical form of the questions of the subcommittee.

63. Ms. Allard referred to tab 27 of Exhibit 6 which details the subcommittee's response to Mr. Stuchlik's third letter, dated October 29, 2012 which said the only new information provided by Mr. Stuchlik was a listing of standards and regulations and two drawings.
64. Ms. Allard said the documentary evidence and the evidence of Mr. Thiele is clear and concise and leaves little, if any, doubt Mr. Stuchlik failed to provide responses to the requests of the Subcommittee for information and records, and failed to answer the inquiries of the Subcommittee in the matter specified by the Subcommittee. Accordingly, Ms. Allard said the Association submits Mr. Stuchlik breached Section 30(4) of the *Act*.
65. With respect to the Second Allegation, Ms. Allard said the evidence indicates the sewerage system at [REDACTED] was designed and installed in 2001 or 2002. Ms. Allard said the drawings signed by Mr. Stuchlik and provided by him to the Subcommittee are dated October 24, 2002. Mr. Stuchlik, as shown in his letters and the two drawings he provided to the Association, admits he designed and installed a sewerage system which uses treated recycled water, known as reclaimed water. Ms. Allard argued the evidence of Mr. Geisler and Mr. Featherstonhaugh clearly places the sewage system within the *MSR*. Ms. Allard referred the Panel to Mr. Stuchlik's letter dated October 29, 2012 when he advised the Subcommittee of the standards and regulations to which the sewerage system was designed and installed. Ms. Allard said he made no reference to the *MSR*.

66. Ms. Allard referred to Mr. Featherstonhaugh's evidence where he stated that once reclaimed water is being used, a sewage system automatically falls under the MOE and the *MSR*. Ms. Allard argued, given that Mr. Stuchlik appeared not to be aware of the *MSR* and did not think it fell under the jurisdiction of the MOE, it is not surprising the sewage system he designed and installed does not meet the standards required under the *MSR*.
67. Ms. Allard said that Mr. Featherstonhaugh, in his report, states the reclaimed water system does not meet the standards required under the *MSR* by:
- a. providing a means for diverting the reclaimed water until such time as the standards of the *MSR* are met and designated water uses can continue as required under Section 10(1)(c)(i);
 - b. providing a minimum of 20 days of emergency storage for the reclaimed water as required under Section 10(1)(c)(ii) of the *MSR*; and
 - c. Requiring specific written authorization from the local health authority having jurisdiction before providing for the use of reclaimed water in a sewage system as required under Section 10(7) of the *MSR*.

Ms. Allard argued it is clear from the evidence of Mr. Geisler and Mr. Featherstonhaugh that Mr. Stuchlik did not comply with these requirements of the *MSR*.

68. Ms. Allard argued that the evidence of Mr. Geisler is clear that Mr. Stuchlik did not obtain the necessary permits with respect to the sewage holding tanks for which an application for a permit to construct was made in June 2001 for the sewage system actually installed at [REDACTED]. Ms. Allard said the evidence of Mr. Geisler was that Mr. Stuchlik did submit an application for a permit to construct three sewage holding tanks and it was a prerequisite of the Ministry of Health for the installation of sewage holding tanks that the municipality assume responsibility for the sewage holding tanks. Bylaw 94-1

of the Village of Nakusp was the applicable bylaw with respect to Mr. Stuchlik's application. Mr. Geisler's evidence was that the local health authority would have issued a permit if the Village of Nakusp had confirmed the sewage holding tanks proposed in the June 12, 2001 application met the requirements of its Bylaw 94-1. Mr. Geisler's evidence was that the local health authority received no confirmation from the Village of Nakusp and no permit was issued to construct the holding tanks.

69. Ms. Allard said that the evidence of Mr. Geisler and Mr. Featherstonhaugh show that not only did Mr. Stuchlik fail to obtain the necessary permit for the three holding tanks, he did not even apply for a permit to install the sewerage system actually installed after June 2001 as required by Section 3(1) and Section 3(4) of the *SDR*.
70. Ms. Allard argued that the evidence of Mr. Geisler and the report of Mr. Featherstonhaugh show that Mr. Stuchlik did not obtain the necessary written authorization from a medical health officer or public health officer to operate the sewage system, either as holding tanks or the sewage system actually installed as required by Section 4 of the *SDR*.
71. Ms. Allard said in relation to the information provided by Mr. Stuchlik that reclaimed water was discharged into the woods on a corner of his property, it is the evidence of Mr. Featherstonhaugh that this is not a proper subsurface disposal field.
72. Ms. Allard said it is the evidence of Mr. Geisler and Mr. Featherstonhaugh that if sewerage system fell within the *SSR*, it did not meet the requirements of that regulation.
73. Ms. Allard argued that the evidence is overwhelming that Mr. Stuchlik designed and installed a sewerage system contrary to the *SDR* and the *MSR*. Ms. Allard said after submitting the original application to install sewage holding tanks, there is no evidence Mr. Stuchlik obtained any of the

necessary permits or written authorizations for the sewage holding tanks, or for the system he designed and installed at [REDACTED]

74. Ms. Allard submits the second allegation is proven to the standard of proof required.
75. The Panel asked Ms. Allard if Mr. Thiele had contacted Mr. Stuchlik following Mr. Stuchlik's letters of April 17, 2012 and October 29, 2012 giving his telephone number. Ms. Allard said she was not aware if Mr. Thiele had tried to contact Mr. Stuchlik.
76. The Panel asked Ms. Allard if the Association had tried to contact the Village of Nakusp. Ms. Allard said she understood they had tried but the Village had been non responsive.

ANALYSIS

77. The allegations against Vladimir Stuchlik P.Eng. are laid out in the Amended Notice of Inquiry dated February 28, 2014.
78. The relevant sections of the Act with respect to unprofessional conduct are 30(9)(c), 32(2) and 33(1)(c) and states:

30(9) Subject to subsection (10), if the investigation committee has reasonable and proper grounds to believe that a member, licensee or certificate holder has demonstrated incompetence, negligence or unprofessional conduct, the investigation committee must cause its recommendation for an inquiry to be delivered to the discipline committee.

32(2) On receipt of the investigation committee's recommendation under section 30(9) or (10) for an inquiry, the discipline committee must cause an inquiry to be held before it by causing written notice of an inquiry to be personally served on the person who is the subject of the inquiry or, failing

personal service, by leaving the notice at, or by mailing it by registered mail to, the person's last address on file with the Association.

33(1) After an inquiry under section 32, the discipline committee may determine that the member, licensee or certificate holder has demonstrated incompetence, negligence or unprofessional conduct.

79. The issues facing this Panel are whether they consider Mr. Stuchlik acted unprofessionally in:

(a) failing to provide the Association's Investigation Committee's subcommittee conducting the investigation with information or records that the subcommittee requested of him or that he failed to answer, within a reasonable time and in the manner specified by the subcommittee, the inquiries of him by the subcommittee sent to him by letters dated February 1, 2012, April 10, 2012 and October 18, 2012. and that:

(b) Mr. Stuchlik designed and installed a sewerage system at [REDACTED] in the Village of Nakusp, BC contrary to the *SDR* or the *MSR* by reason of the following:

(i) before construction, installation or alteration of the Sewerage System, Mr. Stuchlik failed to obtain a permit, contrary to the *SDR*;

(ii) before using or operating the Sewerage System, Mr. Stuchlik did not obtain a written authorization from a medical health officer or public health inspector, contrary to the *SDR*;

(iii) the Sewerage System did not provide for a minimum of 20 days of emergency storage of reclaimed water, contrary to the *MSR*;

(iv) the Sewerage System did not provide for an alternative method of disposing of the reclaimed water, contrary to the *MSR*;
and

(v) the Sewerage System provided for the use of reclaimed water without specific written authorization, contrary to the *MSR*.

80. The Panel carefully considered the evidence of the three witnesses and all of the documentary evidence.
81. With respect to the first charge, the Panel concluded that Mr. Thiele gave a detailed and thorough chronology of the process followed by the Investigation Committee and its appointed subcommittee and accepted Mr. Thiele's evidence that each of the letters sent to Mr. Stuchlik by him, were sent at the direction, and with the approval of the subcommittee.
82. The Panel carefully reviewed the correspondence between the Association and Mr. Stuchlik and the reports of the subcommittee. It was evident to the Panel that it was made clear to Mr. Stuchlik the information required of the subcommittee of the Investigation Committee and that his replies did not substantially provide this information. He did not answer in the form required and the bulk of the information required was not provided. The Panel, in its deliberations, referred to Section 30(4)(a) and (b) of the Act which states:

A member, licensee or certificate holder being investigated under subsection (3) must

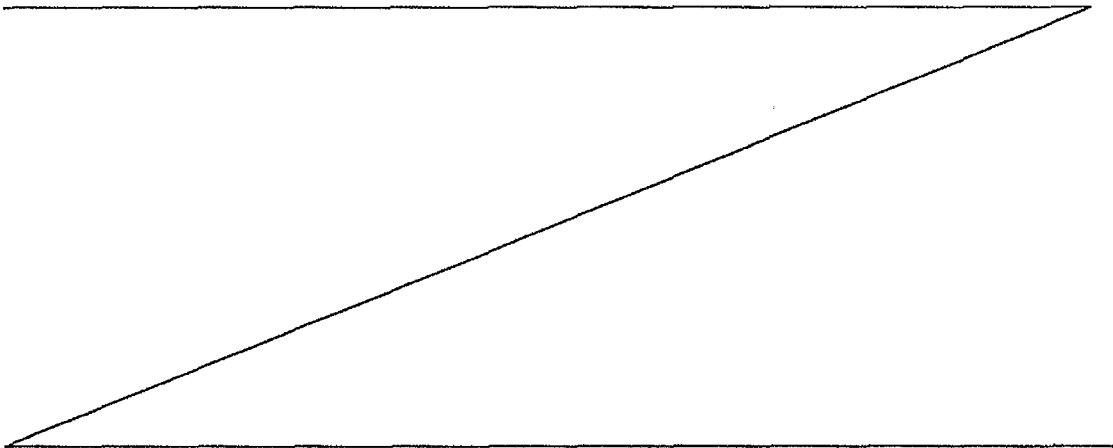
- (a) provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require,*
- (b) answer, within a reasonable time and in the manner specified by the committee or subcommittee, any inquiries of the committee or subcommittee*

83. The Panel did take into consideration that the Association had no direct contact with Mr. Stuchlik and whether direct contact would have resulted in Mr. Stuchlik providing the required information. The Panel, however, considers the correspondence from the Association to Mr. Stuchlik was not ambiguous and it should have been evident to an experienced engineer what information was required and Mr Stuchlik did not provide it.
84. The Panel, after careful consideration, accepts the evidence of Mr. Thiele and the reports of the subcommittee of the Investigation Committee that Mr. Stuchlik did not provide the information required to the subcommittee of the Investigation Committee as required under Section 30(4)(a) and (b) of the *Act*.
85. With respect to the second charge, the Panel heard evidence from Mr. Geisler as health officer for Interior Health. Mr. Geisler testified that he visited the sewerage plant at [REDACTED] and observed a plant that used recycled water. He said this would automatically require this plant to meet the requirements of the *MSR* and not the *SDR*. He said Interior Health have no record of a permit being issued in 2001 or 2002 when the plant appears to have been designed and installed. He said there was an application made by Mr. Stuchlik in 2001 for a system that included three sewage holding tanks but a permit was never issued as it was a prerequisite of Ministry of Health for the installation of sewage holding tanks that the municipality assume responsibility for the sewage holding tanks and that Bylaw 94-1 was the applicable bylaw. Mr. Geisler testified Interior Health had written to the Village of Nakusp with a copy to Mr. Stuchlik on June 15, 2001, which Ms. Allard introduced as Exhibit 9, advising the village that Interior Health required confirmation from the village that the requirements of Bylaw 94-1 had been met and no permit was issued. Mr. Geisler said he did confirm with the village that no confirmation had been sent to Interior Health.

86. Mr. Geisler and later Mr Featherstonhaugh also testified that Mr. Stuchlik did not obtain the necessary written authorization from a medical health officer to operate the sewerage system, either with holding tanks, or as the recycled water system actually installed.
87. After careful consideration, the Panel accepts the evidence of both Mr. Geisler and Mr. Featherstonhaugh that Mr. Stuchlik failed to obtain a Permit before construction, installation or operation or obtain written authorisation from a medical health officer or public health officer before using or operating the Sewerage System, contrary to both the *SDR* and the *MSR*.
88. Mr. Featherstonhaugh's curricula vita indicated that he is an experienced wastewater engineer with extensive experience in small systems and the use of recycled water. In his evidence and his report he explained the chronology and applicability of the *SDR*, *SSR* and *MSR*. The Panel accepts Mr. Featherstonhaugh's evidence that the original application in 2001 - 2002 for three holding tanks would have been regulated by *SDR* but the actual recycled water system installed would have been regulated by *MSR*. The Panel, in its deliberations, made note that Mr. Stuchlik made no reference to the *MSR* in any of his submissions to the Association and it is Mr. Featherstonhaugh's evidence that if one is to be qualified to design this sewerage system, one should be aware of the requirements of the *MSR*.
89. With respect to the design and installation of the sewerage system, the Panel has taken into consideration that Mr. Stuchlik has acknowledged he designed a system that uses treated recycled water but has made no reference to the *MSR*, which Mr. Geisler and Mr. Featherstonhaugh both testified is the governing regulation for such a system. The Panel also has taken into consideration Mr. Featherstonhaugh's review of the two drawings, which he referred to as process drawings, which he said show the general layout of the components of the system. Mr. Featherstonhaugh stated in his report that

these drawings do not have sufficient detail to be used for approval or for construction of the treatment system. The Panel accepts Mr. Featherstonhaugh's conclusion that, in his opinion, the design and installation of the system is in violation of the *MSR*.

90. The Panel noted that Mr Featherstonhaugh and Mr. Geisler's evidence is that the drawings and the actual site conditions show two pipes discharging to the surface and this would be considered a health hazard under the *MSR*. In addition, it is the evidence of Mr. Featherstonhaugh that the design prepared by Mr. Stuchlik required 20 days of emergency storage of reclaimed water to be provided and that a means of providing of diverting flow when the required quality is not met and Mr. Featherstonhaugh in his report stated that these were not provided. The Panel accepts the evidence of Mr. Geisler and Mr. Featherstonhaugh in this regard and that not providing the required storage is in violation of the *MSR*.
91. The Panel, in their deliberations, made note of the statement from Mr. Stuchlik in his letter to the Association of February 17, 2012 that his qualifications were in electronic engineering and "*when it comes to the septic system, besides 95% electronics, the rest is just a few pipes, pumps and vessels*". This is not a statement the Panel would associate with one who is qualified in this work.



FINDINGS

92. After careful consideration, and based on a reasonable preponderance of the credible evidence, the Panel finds the charges are proven to the requisite standard and that Mr. Stuchlik has demonstrated unprofessional conduct on all charges.

Dated this 20th day of May, 2014.

Discipline Committee Panel,



Alexander Black, P.Eng., Chair



Darryl Chambers, P.Eng.



David Ricketts P.Eng.