

**IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)**

and

KEVIN A. BROMLEY, P.Eng.

**DETERMINATION OF THE DISCIPLINE COMMITTEE
ON UNPROFESSIONAL CONDUCT**

Discipline Committee Panel:	Paul Adams, P.Eng. (Chair) Dave Ricketts, P.Eng. Oliver Bonham, P.Geo.
Counsel for the Panel:	Eric Wredenhagen
Counsel for Association:	Robert Hunter
Member:	Kevin A. Bromley, P.Eng.
Mr. Bromley was not represented by counsel	

INTRODUCTION

[1] A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), acting under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (the "Act"), held an Inquiry to examine alleged contraventions of the Act and of the Association's Code of Ethics by Kevin A. Bromley, P.Eng.

[2] The hearing took place in the offices of Bull Housser & Tupper LLP on November 18 and 19, 2014. The charges against Mr. Bromley are set out in the Notice of Inquiry as follows:

"Contrary to the Act, you have demonstrated unprofessional conduct in your professional services in relation to soil relocation from one or more of; ██████████ in April 2010, ██████████ in September 2010, ██████████ in September and October 2010, ██████████ in October 2010 and ██████████ in October and November 2010, by one or more of the following breaches of the *Environmental Management Act*, S.B.C. 2003, c. 53 ("*EMA*"), or the Contaminated Sites Regulation, B.C. Reg. 375/96 as amended:

1. Failing to file a Notice of Independent Remediation with the Ministry of Environment;
2. Failing to obtain a soil relocation agreement to relocate contaminated soil from one site to another;
3. Failing to submit soil samples for a Toxic Contaminant Leachate Procedure test;
4. Knew, or ought to have known, that contaminated soil was being transported to unauthorized sites; and
5. Undertaking excavation and transport of soil which he knew, or ought to have known, was contaminated by tetrachlorethene, but did not have monitoring of air vapours conducted during execution of the work to ensure workers or the public were not exposed to vapours at concentrations that may cause adverse health effects."

[3] The Panel convened on November 18, 2014 at 9:30 AM. Mr. Bromley was not represented by counsel. The Chair asked Mr. Bromley if he knew that he had the right to be represented by counsel and Mr. Bromley affirmed that he did and wished to represent himself.

[4] The Chair asked Mr. Bromley if he had read and understood the allegations against him. Mr. Bromley affirmed that he did.

[5] On November 18, 2014, the Panel heard the evidence on the allegation of unprofessional conduct under Section 33 (1) (c) of the Act and on the conclusion of the Association's case adjourned the hearing until 9:30 AM the following day.

[6] On November 19, 2014 the hearing was reconvened and Mr. Bromley was advised that it was now his opportunity to present evidence in support of his case. Mr. Bromley declined to give evidence and indicated that he wished instead to make a closing submission only.

Counsel for the Association, Mr. Hunter, submitted that that the normal practice would be for the Association to give their closing submission first, so that Mr. Bromley would know the Association's arguments before presenting his closing submission. Mr. Bromley affirmed that he understood and accepted the procedure proposed by Mr. Hunter.

- [7] After a short recess, Mr. Hunter made his closing submission, which was followed by some questions from the Panel.
- [8] Mr. Bromley then made his closing submission. At the conclusion of his submission, Mr. Bromley advised the Panel that he was going to leave the hearing to pick up his children from school. Mr. Bromley also advised the Panel of his intent to resign his membership in the Association.
- [9] Mr. Hunter advised the Panel and Mr. Bromley that he wished to make a reply submission. Mr. Bromley left the hearing at 12:15 PM.
- [10] The hearing was adjourned for lunch. When the hearing reconvened, Mr. Hunter asked the Panel whether, since Mr. Bromley not present, his reply submission could be provided in writing to the Panel and to Mr. Bromley.
- [11] The Panel ruled that Mr. Hunter must make his written reply submission by November 21 and that he must advise Mr. Bromley in his cover letter, that if he, Mr. Bromley, wished to make a written sur-reply submission he must do so by November 26, 2014.
- [12] Mr. Hunter submitted his written reply submission to Mr. Bromley and to the Panel on November 20, 2014. Mr. Bromley did not submit a sur-reply submission by November 26, nor did he request an extension to the deadline.

BURDEN AND STANDARD OF PROOF

- [13] In his opening statement, Mr. Hunter explained that the Burden of Proof always rests with the Association and that Mr. Bromley is not required to prove or disprove anything. He explained the standard of proof as follows:

“The standard of proof refers to the degree, or level, of proof that must be achieved in order to prove something in the proceeding. Therefore, as the party bearing the burden of proof, the Association must prove the elements of the allegations to the required standard of proof.

The standard of proof in these discipline proceedings is the civil standard of proof – proof on a balance of probabilities, or 51%, or “that it is more likely than not”. The standard of proof in these proceedings is not the criminal standard – which is proof beyond a reasonable doubt.

The standard of proof of a balance of probabilities is the standard of proof you should apply in this case.”

- [14] The Panel accepted Mr. Hunter's submissions on the burden and standard of proof. Mr. Bromley made no submission on these points.

EVIDENCE

[15] Mr. Hunter provided the Panel members with the following documents, which were marked as Exhibits during the course of the presentation of the Association's case:

- | | |
|------------|--|
| Exhibit #1 | Notice of Inquiry |
| Exhibit #2 | Engineers and Geoscientists Act [RSBC 1996] Chapter 116 |
| Exhibit #3 | By-Laws of the Association (as amended October 2013) |
| Exhibit #4 | Agreed Statement of Facts (November 18, 2014) |
| Exhibit #5 | Environmental Management Act [SBC 2003] Chapter 53 – the Panel was only provided with excerpts that were referred to in testimony, but a single copy of the entire Act was provided as Exhibit #5. |
| Exhibit #6 | Contaminated Sites Regulation 375/96 – the Panel was only provided with excerpts that were referred to in testimony, but a single copy of the entire Regulation was provided as Exhibit #6. |
| Exhibit #7 | Binder of documents containing William Donald's report and attached documents (21 tabs) – refer to paragraph [18] below. |
| Exhibit #8 | Association's Opening – the opening is not evidence and not normally provided as an exhibit, however, since it was referred to by Mr. Bromley in his cross examination of the Association's witness, Mr. Donald, it was entered into evidence. |

[16] Mr. Hunter called William R. Donald, P.Eng., as an expert witness. Mr. Donald testified to his experience and knowledge in a number of areas related to the allegations contained in the Notice of Inquiry. In particular, Mr. Donald described his experience with respect to the following:

- 1) An approved professional, by the Ministry of Environment director of waste management, qualified to provide recommendations to the Ministry regarding the remediation of contaminated sites and the issuance of various administrative instruments.
- 2) Site contamination investigation, remediation and risk assessment, particularly with respect to dry cleaning fluids.
- 3) Large remediation projects.
- 4) Notice of Independent Remediation under the *Environment Management Act*.
- 5) Soil Relocation Agreement under the *Environment Management Act*.
- 6) Hazardous Waste Regulations under the *Environment Management Act*.
- 7) WorkSafe BC regulations with respect to the handling of material that poses a threat to workers or the public.

[17] Mr. Bromley had no questions for the witness with respect to his qualification as an expert witness. The Panel accepted Mr. Donald as an expert witness.

[18] Mr. Hunter led Mr. Donald through the various documents in Exhibit #7 as follows:

Tab	Date	Document	Content
	2014-09-30	Expert Report of Mr. William Donald, P.Eng.	Mr. Donald's opinion evidence with respect to the allegations in the Notice of Inquiry and Mr. Donald's resume of his qualifications and experience.
1.	2011-06-21	Letter from Ministry of Environment, Mr. Alan McCammon, P.Geo. to APEGBC, Mr. Geoff Thiele	Complaint from Mr. McCammon regarding Mr. Bromley's failure to provide adequate responses to a series of site specific enquiries regarding his work as an environmental consultant and Mr. McCammon's opinion that Mr. Bromley does not have adequate knowledge of the regulatory requirements.
2.	2011-12-21	Letter from APEGBC, Mr. Geoff Thiele, to Mr. Bromley	Letter to Mr. Bromley asking for his response to the complaint from Mr. McCammon. The letter refers to extensive documentation provided by Mr. McCammon with respect to Mr. Bromley's work at a number of sites, including those in the Notice of Inquiry, and Mr. Bromley's failure to adequately respond to enquiries from the Minister.
3.	2012-01-28	Letter from E-Pro, Mr. Bromley, to APEGBC, Mr. Geoff Thiele	Mr. Bromley's response to the complaint from Mr. McCammon.
4.	2012-04-19	Letter from Ministry of Environment, Mr. Alan McCammon, P.Geo. to APEGBC, Mr. Geoff Thiele	Mr. McCammon comments on Mr. Bromley's response to the Association.
5.	2012-11-27	Letter from E-Pro, Mr. Bromley, to APEGBC, Mr. Geoff Thiele	Response to a request from Mr. Thiele (not provided in evidence) enclosing "... a copy of all files we have on our hard drive including reports, drawings, photos, memos, correspondence, notes, etc. for the events ..."
6.	2013-11-29	Notes of Investigation Committee	Notes of an interview between Mr. Bromley and the Investigation Committee.
7.	2009-09-10	Maxxam Test Report	Ground water analysis of a sample from [REDACTED] showing Tetrachloroethylene (levels at 42 and 150 mg/L).

Tab	Date	Document	Content
8.	2010-10-07	Maxxam Test Report	Soil analysis for [REDACTED]; samples taken August 30, 2010 at BH-1: <ul style="list-style-type: none"> • Pb at 2 ft - 4350 µg/g; the soil standard is 700/4000 µg/g for Commercial/Industrial lands. • Cu at 2 ft - 921 µg/g; the soil standard is 700/4000 µg/g for Commercial/Industrial lands. • Zn at 2 ft - 1670 µg/g; the soil standard is 700/4000 µg/g for Commercial/Industrial lands. and at BH-5: <ul style="list-style-type: none"> • Pb at 2.5-3 ft - 1460 µg/g; the soil standard is 700/4000 µg/g for Commercial/Industrial lands.
9.	2012-01-19	Notification of Independent Remediation	Notification of Independent Remediation for [REDACTED] Notification submitted on January 19, 2012 for remediation between October 1, 2010 and October 15, 2010.
10.	2010-10-22	Maxxam Test Report	Soil analysis for [REDACTED]; samples taken October 15, 2010 and described as confirmatory. No elevated concentrations were noted.
11.	2008-11-24	E-Pro Drawing	Borehole location plan for [REDACTED]
12.	2008-10-28	E-Pro Drawing	Borehole location plan for [REDACTED]. Shows the location of boreholes adjacent to the [REDACTED] property.
13.	2010-10-26 to 2010-10-28	E-mails between Kevin Bromley and Erin Magee	This is part of an email string, which is not complete and some content has been redacted re: FOI section 21. The email refers to relocation of 25 loads of soil from [REDACTED]. In the email Bromley says that he has resampled the material and is waiting for TCLP data from Maxxam.
14.	2010-12-08	E-Pro Report	Test report of Leachate Metals in Soil from Thetis ([REDACTED]) Stockpile B.
15.	2010-12-08	E-Pro Report	Test report of Soil Chemistry for EPH/BTEX/PAH Parameters from Thetis ([REDACTED]) Stockpile B.
16.	2010-12-08	E-Pro Report	Test report of Total Metals in Soil from Thetis ([REDACTED]) Stockpile B.

Tab	Date	Document	Content
17.	2010-12-08	E-Pro Report	Test report of Soil Chemistry for Volatile Organic Compounds from Thetis (██████████) Stockpile B. This shows Tetrachloroethylene in sample SP-B1 and SP-B2 at 48 µg/g and the BC standard at 5 µg/g.
18.	2010-12-16	Maxxam Test Report	Test report for Thetis (██████████) soil samples taken on December 12, 2010 and referred to in the E-Pro reports in Tabs 14 to 17. This report also shows Tetrachloroethylene in sample SP-B1 and SP-B2 at 48 µg/g whereas the BC standard is 5 mg/kg.
19.	2010-11-03	Maxxam Test Report	Test report for ██████████ for samples taken on November 1, 2010. This report shows Tetrachloroethylene in sample SP-A-1 at 36 mg/kg whereas the BC standard is 5 mg/kg.
20.	2010-11-01	Maxxam Receipt	Confirmation that samples were received by Maxxam on November 1, 2010 from 140 Hallowell taken on November 1, 2010.
21.	2010-10-28	Maxxam Test Report	Test report for ██████████ for samples taken on October 22, 2010. This report shows Tetrachloroethylene in sample SP-A-1 at 140 mg/kg, SP-A-2 at 44 mg/kg and SP-A-3 at 13 mg/kg; whereas the BC standard is 5 mg/kg.

[19] Section 54 (2) of the *Environmental Management Act* requires that

“(2) Any person undertaking independent remediation of a contaminated site must:
a) Notify a director in writing promptly on initiating remediation, and
b) Notify the director in writing within 90 days of completing remediation.”

this notification is made with a Notice of Independent Remediation (NIR).

[20] Mr. Donald testified that, in his opinion, the *Environmental Management Act*, Section 55 requires a Soil Relocation Agreement (SRA) when contaminated soil is to be transported to an unauthorized site.

[21] The Association has made five allegations against Mr. Bromley for his remediation work at different combinations of job sites and times. The evidence that follows was provided during the hearing, but is organized here against the five different job sites and times.

██████████ – April 2010

[22] The work at this site in April 2010 involved the excavation and relocation of contaminated soil. The soil was excavated, placed into bins and transported to ██████████ (██████████)

██████████), which is an unauthorized site, and subsequently to Hazco, which is an authorized site.

- [23] A NIR was filed on January 19, 2012 by Jim West, but this was related to remediation between October 1 and October 15, 2010 [Exhibit #7 Tab 9].
- [24] Mr. Bromley admitted during his testimony that no NIR was filed [Transcript day 1 page 162] at the time the work was undertaken. He contended that Jim West, as expert consultant, should have filed an NIR [Transcript day 1 page 156-157].
- [25] In his report, Mr. Donald states that Mr. Bromley advised during an interview of Mr. Bromley called by the Investigation Committee that he was not aware that a NIR was required [Exhibit #7 Tab 6 and Exhibit 7 page 3].
- [26] Mr. Donald's expert opinion is that Mr. Bromley failed to submit a NIR as required by the *Environmental Management Act* [Exhibit #7 page 6].
- [27] Mr. Bromley testified that he thought no SRA was required since he sub-contracted for the shipment to go to Hazco, an authorized site, and that he was not aware until after the fact that it was shipped to the ██████████ property at ██████████ where it was transferred from bins to a truck for shipment to Hazco [Transcript day 1 page 169-173]. Mr. Bromley also testified that the manifest showed the shipment went to the Hazco site [Transcript day 1 page 173].

██████████ – September 2010

- [28] The work at this site involved the excavation and relocation of soil to ██████████ (an unauthorized site) on September 27, 2010.
- [29] Mr. Bromley claims that the soil was tested and found to be not contaminated, and he provided a test report of samples of the wall and floor of the excavation taken on October 15, 2010 [Exhibit #7-Tab 10].
- [30] Mr. Donald in his testimony asserts that the sample tested was of material remaining at the site after the contaminated material had been removed. He bases this conclusion on the date that the soil sample was taken, October 15, 2010, the notation that the test was confirmatory and the names of the sample locations, which suggest that they are from the wall and floor of the excavation. [Transcript day 1 page 58-60].
- [31] Mr. Donald, in his report, states "Nonetheless, ██████████ was known to be a contaminated site on September 2010 and the excavation of soil to ██████████ required a SRA, which was not obtained." [Exhibit #7, page 4]
- [32] In testimony, Mr. Bromley admitted that he did not file a NIR and that he relied on a prior consultant to have filed a NIR [Transcript day 1 page 162-166]. No evidence was provided as to the existence of a prior NIR.
- [33] Mr. Donald's opinion is that Mr. Bromley failed to submit a NIR as required by the *Environmental Management Act* [Exhibit #7 page 6].

[34] Mr. Bromley testified as follows:

"I wasn't giving the reports right away, but the previous consultant, I was advised, had taken out an underground storage tank that was for dry cleaning fluids, and then that tank -- that tank nest area was then backfilled, and you could -- I mean, it was pretty definitive. There was a liner as well that differentiated between the native soil and the actual gravel backfill that was put in the hole. So we were taking out the gravels, and putting those in bins because for the most part that soil, which we did test was clean.[sic]" [Transcript day 1 page 164]

[35] In his letter to the Association of January 28, 2012, Mr. Bromley wrote:

"The work being performed by E-Pro was initially to determine if there was significant contamination (specifically VOC contaminant migration) in and around the former tank area. Considering the limited area available to work in, the soil removed from the excavation area was placed in large steel bins so that (1) the soil that was clean fill could readily be isolated from any suspect material, (2) the total volume of soil kept on site could be increased as much as possible, as well as (3) preventing off-site migration of leachate that may escape from the contaminant suspect stockpiles. The first two bins were filled with clean back-fill originally placed atop the former tank nest placed there by the previous environmental consultant separated by a membrane placed there to prevent cross-contamination. Subsequent bins were then filled with either lightly contaminated material followed by stock-piles with higher VOC levels. [sic]"
[Exhibit #3 page 2]

[36] Mr. Donald's expert opinion is that Mr. Bromley's shipment of soil from ██████████ to ██████████ ██████████ in September, 2010 required a SRA and was in contravention of the *Environmental Management Act* [Exhibit #7 page 6].

██████████ – September and October 2010

[37] The work at this site involved the excavation and relocation of soil contaminated with dry cleaning fluid to ██████████ (an unauthorized site) on September 18, October 1 and October 2, 2010.

[38] This property has been owned by Mr. Bromley from early 2010 [Transcript day 1 page 175]

[39] The site was contaminated by dry cleaning fluid and groundwater tests of samples taken on September 3, 2009 showed that the site was contaminated with tetrachlorethene (PERC) levels as high as 42,000 µg/L and 150,000 µg/L [Exhibit #7-Tab 7]. In his report Mr. Donald stated that the allowable limit for tetrachlorethene is only 3,000 µg/L [Exhibit #7 page 6].

[40] Mr. Bromley testified that the site is very wet and physically constrained so excavation and sampling was impaired. Mr. Bromley was able to place some large rock and boulders to permit equipment access for excavation. In September 2010, Mr. Bromley excavated

contaminated soil and transported it to [REDACTED], an unauthorized site [Transcript day 1 page 177-181].

[41] Soil analysis of samples of the stock-piled material from [REDACTED], taken on December 8, 2010 showed high levels of tetrachlorethene. Stock-pile SP-B1 measured 48 µg/g, stock-pile SP-B2 measured 48 µg/g and stock-pile SP-B3 measured 15 µg/g. Mr. Donald testified that the allowable concentration was 5 µg/g.

[42] Mr. Bromley testified under examination in chief by Mr. Hunter regarding the odour emitting from the stock-piled material at [REDACTED] as follows:

"The only complaint put forth was by a local resident who was concerned that contaminated material was being 'dumped' at the [REDACTED] site. This resident was illegally entering the site while walking her dog (as many local residents do) and thus noted the smell. To the contrary to her concern, this soil was being transferred here solely on an interim basis so that disposal to a contaminated waste facility could be accomplished in a practical manner."

[43] Mr. Bromley testified that Jim West filed a NIR in 2008 or 2009 [Transcript day 1 page 146-148]. This NIR was not provided in evidence.

[44] The Association maintains that Mr. Bromley should have filed a new NIR, and relies on Section 54 (2) of the *Environmental Management Act* that requires "...any person undertaking independent remediation of a contaminated site..." to submit a NIR. Mr. Bromley testified that he was working with Jim West and that in his opinion a new NIR was not required [Transcript day 1 page 150-153].

[45] Donald's opinion is that Mr. Bromley failed to submit a NIR as required by the *Environmental Management Act* [Exhibit #7 page 6].

[46] Mr. Bromley testified that he knew that a SRA was required for the material he shipped to [REDACTED] and that he didn't apply for one, because he knew it would not be granted [Transcript day 1 page 173-174].

[47] Mr. Donald's opinion is that Mr. Bromley's shipment of soil from [REDACTED] to [REDACTED] on September 18, October 1 and October 2, 2010 required a SRA, and that the shipment of that soil without a SRA was a contravention of the *Environmental Management Act* [Exhibit #7 page 6].

[48] Mr. Donald, in his expert report states: "When the concentration exceeds 20 times the [leachate] standard, it may be hazardous waste." and later in his report states: "The leachate standard for tetrachlorethene is 3 mg/L (3000 µg/L). With groundwater concentrations reported at 42,000 µg/L and 150,000 µg/L, he [Mr. Bromley] should have known that the material may be Hazardous Waste and failed to submit soil samples for analysis" [Exhibit #7 page 6].

[49] Mr. Donald in his report describes the harmful effects of tetrachlorethene and the procedures which must be in place to protect workers and the public.

“While not a toxicologist, I am aware that tetrachlorethene is carcinogenic, mutagenic, and is known to damage the human central nervous system. When present at a remediation site, a health and safety plan is necessary to ensure that site workers and the public near the site and potentially exposed to the chemical, are protected from adverse effects. Mr. Bromley did advise that there was a health and safety plan in place at the time of the work; he also advised that monitoring of air quality was not conducted. Worker and public exposure in this work is mainly by inhalation of tetrachlorethene vapours. To ensure the site conditions are maintained so as to be protective of worker and public health, monitoring of air quality is necessary. Mr. Bromley advised that air quality monitoring was not conducted.”

[50] From Mr. Bromley’s testimony, it is clear that he recognized the potential hazard related to the high concentrations of PERC in the soil at [REDACTED]; [Transcript day 1 page 174-184]. In response to Mr. Hunter’s question as to who the excavator operator was, Mr. Bromley testified as follows: “I did it all. I didn’t want to expose anybody, so I did it myself.” [Transcript day 1 page 184].

[REDACTED] – October 2010

[51] The work at this site involved the excavation and relocation of 23 truckloads of soil contaminated with metals to [REDACTED] (an unauthorized site) on October 3, 2010.

[52] A test report provided in evidence for soil samples taken on August 30, 2010 at [REDACTED] report high levels of various metals [Exhibit #7 Tab 8].

	Sample from BH-1 at 2 feet	Sample from BH-5 at 3.5-5 feet	Limit for Commercial land	Limit for Industrial land
Lead	4350 µg/g	1460 µg/g	700 µg/g	4000 µg/g
Copper	921 µg/g		250 µg/g	250 µg/g
Zinc	1670 µg/g		600 µg/g	600 µg/g

The units used in the test report are µg/g whereas the units used in testimony in the following paragraph [59] are in mg/kg. These are equivalent.

[53] Mr. Donald’s expert opinion is that: “In transporting soil from [REDACTED] to [REDACTED], Mr. Bromley contravened the Contaminate Sites Regulation and, while not proven Hazardous Waste, the soil was suspect Hazardous Waste and its transport to [REDACTED] was in contravention of the Hazardous Waste Regulation.” [Exhibit #7 page 5]

[54] A NIR was filed after the fact on Jan 19, 2012 by Jim West, well after the material was transported [Exhibit #7 Tab 9].

[55] Mr. Bromley admits that a new NIR was not filed [Transcript day 1 page 162].

[56] Mr. Bromley contends that Jim West, as expert consultant, should have filed the new NIR.

[57] Mr. Donald’s expert opinion is that Mr. Bromley failed to submit a NIR as required by the *Environmental Management Act* [Exhibit #7 page 6].

[58] Mr. Donald's expert opinion is that Mr. Bromley's shipment of soil from [REDACTED] to [REDACTED] on October 3, 2010 required a SRA, and that the shipment of that soil without a SRA was a contravention of the *Environmental Management Act* [Exhibit #7 page 6].

[59] Mr. Donald in his expert report states:

"Mr. Bromley managed the remediation and transport of soil from [REDACTED]. A soil sample contained 4250 mg/kg lead and a second sample contained 1670 mg/kg lead. When a soil sample is subjected to the Modified Leachate Extraction Procedure and the leachate contains a substance concentration greater than that listed in the Leachate Quality Standards, it is classified as Hazardous Waste. By the nature of the test, when a soil sample contains less than 20 times the leachate standard, it will pass the test. That is, it will not contain a leachate concentration equal to or greater than the standard. When the concentration exceeds 20 times the standard, it may be hazardous waste. The two samples referenced in this paragraph exceed 100 mg/kg and, as such, the soil may be Hazardous Waste. Mr. Bromley failed to submit soil samples for a Toxic Contaminant Leachate Procedure test before being [prompted] by the Hazardous Waste Contractor and only then after shipping it to a site that was not authorized to receive suspect Hazardous Waste." [Exhibit #7 page 6]

[REDACTED] – October and November, 2010

[60] The work at this site involved the remediation of stockpiles of soil from [REDACTED] and the relocation of this contaminated soil from [REDACTED] to SIA at [REDACTED] on October 29 and November 3, 2010. Neither site is authorized to receive contaminated soil. In Mr. Bromley's letter to the Association of January 28, 2012 [Exhibit #7 Tab 3] Mr. Bromley writes:

"After approximately a month the VOC's concentrations in the first stock-piles (from the parts of the [REDACTED] site where contaminant concentrations were deemed to be the lowest) showed levels well below CSR RL and CL/IL limitations. Several stock-piles from the lower elevations of the [REDACTED] site were found to bear concentrations well above the standards set either the CSR Industrial limitations deeming it Hazardous Waste (20xCSR IL limitation) [sic]. Post a morning meeting with my support staff where I described that a "good portion of this soil was substantially remediated", I requested my tech forward this data to either Hazco or Quantum Murray for a quote to dispose of this soil. Based on this comment made by me, E-Pro's tech regrettably understood that this soil was now "non-contaminated" and resultantly stated in his email (and not to my knowledge) that it was "clean" (despite the analysis showing quite the contrary). To exacerbate this error, Quantum's tech agreed to this stating, "yes it looks good". Quantum, then chose the same contaminated waste disposal site as the May 2010 shipping event and, shortly thereafter, on the day before shipment was planned for, Quantum's tech changed it to SIA's dump-site."

[61] Mr. Bromley admits he did not file a NIR and contends that the site is registered as a contaminated site so a NIR was already done (by others). [Transcript day 1 page 168].

[62] Mr. Hunter submitted that Mr. Bromley should have filed a new NIR as required by Section 54 (2) of the *Environmental Management Act* which states that "...any person undertaking independent remediation of a contaminated site..." must submit a NIR. Mr. Bromley admitted that it was an oversight not to have filed a NIR [Transcript day 1 page 168-169].

[63] Mr. Donald's expert opinion is that Mr. Bromley failed to submit a NIR as required by the *Environmental Management Act* [Exhibit #7 page 6].

[64] Mr. Donald testified as follows:

"I have concluded that Mr. Bromley ought to have known the soil was contaminated, and that it must be transferred only to sites that are authorized to receive it, or transferred to a site under a soil relocation agreement, and none of the sites that received the material, being the [REDACTED] were authorized to receive the soil, which is then in contravention of the Environmental Management Act and Contaminated Sites Regulation." [Transcript day 1 page 94]

[65] Mr. Donald's expert opinion is that Mr. Bromley's shipment of soil from [REDACTED] to SIA site at [REDACTED] on October 29 and November 3, 2010 required a SRA and was in contravention to the *Environmental Management Act* [Exhibit #7 page 6].

ANALYSIS

[66] As set out in the Notice of Inquiry, the Association has made five allegations against Mr. Bromley related to the five different combinations of job sites and times, but not all of the allegations are applicable to all the job sites and times. These allegations are:

- 1) Failing to file a Notice of Independent Remediation with the Ministry of Environment (applicable to all the job sites and times);
- 2) Failing to obtain a soil relocation agreement to relocate contaminated soil from one site to another (applicable to all the job sites and times);
- 3) Failing to submit soil samples for a Toxic Contaminant Leachate Procedure test (applicable to the [REDACTED] site and the October 2010 activity at the [REDACTED]);
- 4) Knew, or ought to have known, that contaminated soil was being transported to unauthorized sites (applicable to all the job sites and times); and
- 5) Undertaking excavation and transportation of soil which he knew, or ought to have known, was contaminated by tetrachlorethene, but did not have monitoring of air vapours conducted during execution of the work to ensure workers or the public were not exposed to vapours at concentrations that may cause adverse health effects. (applicable to the [REDACTED] site).

[67] For clarity, the analysis presented below is separated into each of the five different job sites and times.

██████████ – April 2010

- [68] The evidence shows that Mr. Bromley was aware that ██████████ was a contaminated site, that he knew that the material he was shipping was contaminated and that he intended the soil to be transferred to Hazco, which is an authorized site.
- [69] The Panel accepts the opinion of the expert witness that a NIR was required for this site to comply with the *Environmental Management Act* and Regulations. In his closing submission, Mr. Bromley contends that he asked Jim West to submit a NIR; however, there was no evidence given to support this contention. Mr. Hunter, in his closing, argued that "... it is very clear from the EMA section 54 (2) that Mr. Bromley was obliged to notify the MOE of the independent remediation...".
- [70] With respect to Allegation #1, and based on the evidence, the Panel has determined that Mr. Bromley was required to submit a NIR or to ensure that a NIR was submitted, and that he failed to do so.
- [71] The Panel accepts the opinion of the expert witness that a Soil Relocation Agreement (SRA) is required when contaminated soil is transported to a site that has not been authorized to receive contaminated soil and that no SRA is required if the soil is being transported to a site authorized to receive contaminated soil. The evidence shows that the Hazco site is authorized and the ██████████ property at ██████████ is not authorized.
- [72] In his closing statement, Mr. Bromley argued that he should not be responsible for what the shipping company did once the shipment left his site and that he contracted for the soil to be shipped to the authorized site at Hazco. The Panel accepts Mr. Bromley's argument.
- [73] With respect to Allegation #2, and based on the evidence, the Panel has determined that Mr. Bromley was required to obtain a SRA if he was shipping to ██████████, but not if he was shipping to Hazco. On a balance of probabilities, the Panel finds that the Association has not proved that Mr. Bromley was required to obtain a SRA when the shipping company moved the material to an unauthorized site, when they had been contracted to ship the material to an authorized site.
- [74] With respect to Allegation #4, and based on the evidence, the Panel has determined that Mr. Bromley was aware that the material he was shipping was contaminated, but he had contracted for the material to be shipped to an authorized site.
- [75] Allegations #3 and #5 are not applicable to the work undertaken at this site in April 2010.

██████████ – September 2010

- [76] This site is a relatively small property, where a previous contractor had removed a leaking dry-cleaning fluid tank, lined the excavation and backfilled the hole with clean material. Mr. Bromley removed the material and shipped it to an unauthorized site at ██████████.
- [77] Mr. Bromley's evidence, in paragraph [35] above, shows that the site at ██████████ contained contaminated soil in stockpiles.

- [78] The Panel accepts the opinion of the expert witness that Mr. Bromley was required to obtain an NIR for this site to comply with the *Environmental Management Act* and Regulations.
- [79] With respect to Allegation #1, and based on the evidence, the Panel has determined that Mr. Bromley was required to submit a NIR or to ensure that a NIR was submitted, and that he failed to do so.
- [80] The Association argues that the material which was shipped to [REDACTED] was contaminated and that the test samples provided in evidence were taken after the fact and of the soil remaining at the [REDACTED] site. Mr. Bromley does not contest the fact that the sample evidence is not from the soil he shipped to [REDACTED] and he argues that he had provided Mr. Donald with incorrect soil analysis. Mr. Bromley did not provide the correct analysis in evidence.
- [81] With respect to Allegation #2, and based on the evidence, the Panel accepts the opinion of the expert witness that a SRA is not required when uncontaminated material is being shipped to an unauthorized site. On a balance of probabilities, the Panel finds that the Association has not proved that the soil shipped to [REDACTED] was contaminated.
- [82] With respect to Allegation #4, and based on the evidence, the Panel has determined that the Association has not proved that the soil shipped to [REDACTED] was contaminated.
- [83] Allegations #3 and #5 are not applicable to the work undertaken at this site.

[REDACTED] – September and October 2010

- [84] This site is contaminated with dry cleaning fluid and groundwater tests taken in 2009 indicate very high concentrations of tetrachlorethene. Mr. Bromley was attempting to remediate the contaminated soil, but due to the wet soil conditions and difficulty with equipment access he elected to move some of the soil to an alternate site to facilitate the interim remediation work.
- [85] A NIR was filed for this site by Jim West in 2008 or 2009. Mr. Bromley argued that he worked with Mr. West and can therefore rely on the previous NIR. The Association argued that this was not adequate and that Mr. Bromley was required to submit his own NIR.
- [86] With respect to Allegation #1, and based on the evidence, the Panel finds that the Association did not prove on a balance of probabilities that a second NIR was required or that Mr. Bromley could not rely on the NIR submitted by Mr. West.
- [87] There was no evidence presented of any analysis of the the contamination level of the material transported from the [REDACTED] property to [REDACTED]. The Association argued that the evidence of the contaminant levels of the material stock-piled at [REDACTED], the odour reported by a woman walking her dog and the high concentration of tetrachlorethene in the groundwater at [REDACTED] proves that the material transported was heavily contaminated. On a balance of probabilities, the Panel accepts that the material transported was heavily contaminated.

- [88] With respect to Allegation #2, and based on the evidence, the Panel accepts the opinion of the expert witness, and finds that a SRA is required when contaminated material is being shipped to an unauthorized site and that the material shipped from [REDACTED] was contaminated and the receiving site is not authorized to receive contaminated material.
- [89] With respect to Allegation #3, and based on the evidence, the Panel accepts the opinion of the expert witness, and finds that based on the groundwater analysis the material may be a Hazardous Waste and a Toxic Contaminant Leachate Procedure test was required and that the test was not conducted.
- [90] With respect to Allegation #4, and based on the evidence, the Panel has determined that Mr. Bromley was aware that the material he was shipping was contaminated and that he shipped it to an unauthorized site.
- [91] With no evidence to the contrary, the Panel accepts the expert opinion of Mr. Donald as to the potentially harmful effects of tetrachlorethene vapours and that monitoring of tetrachlorethene vapours was required during the excavation and transportation of the heavily contaminated soil at this site. Mr. Bromley provided evidence that he transported the contaminated material himself so as to not endanger his workers and argued in his closing statement that there was "...no proof that these are harmful vapours. This was overburden..." and by implication that monitoring was not required.
- [92] With respect to Allegation #5, and based on the evidence, the Panel has determined that Mr. Bromley knew or ought to have known that the material he excavated and transported was potentially harmful and therefore required monitoring to prevent injury to his workers or the public. The fact that Mr. Bromley performed the work himself does not release him from the requirement to monitor the worksite for harmful vapours for his own protection and for the protection of the public.

[REDACTED] – October 2010

- [93] The work at this site involved the excavation and relocation of 23 truckloads of soil contaminated with metals to [REDACTED], an unauthorized site, on October 3, 2010. A NIR was filed by Mr. West in January 2012 for work to be completed between October 1 and October 15, 2010.
- [94] The Panel accepts the opinion of the expert witness that a NIR was required for this site to comply with the *Environmental Management Act* and Regulations. In his closing submission, Mr. Bromley contended that he had asked Jim West to submit a NIR; however, because Mr. Bromley did not testify, there was no evidence on the record to support this contention. Mr. Hunter, in his closing, argued that "... it is very clear from the EMA section 54 (2) that Mr. Bromley was obliged to notify the MOE of the independent remediation...".
- [95] With respect to Allegation #1, and based on the evidence, the Panel has determined that Mr. Bromley was required to submit a NIR or to ensure that a NIR was submitted, and that he failed to do so. The Panel does not accept that filing a NIR 15 months after the work has been performed would meet the requirements of the *Environmental Management Act*.

- [96] The Panel accepts the opinion of the expert witness that a Soil Relocation Agreement (SRA) is required when contaminated soil is transported to a site that has not been authorized to receive contaminated soil. The evidence shows that the site at [REDACTED] is not authorized.
- [97] With respect to Allegation #2, and based on the evidence, the Panel has determined that Mr. Bromley was required to obtain a SRA to transport the soil from [REDACTED] to [REDACTED] and that he did not do so.
- [98] With respect to Allegation #3, and based on the evidence, the Panel accepts the opinion of the expert witness that based on the soil analysis, the material may be a Hazardous Waste and a Toxic Contaminant Leachate Procedure test was required and that the test was not conducted.
- [99] With respect to Allegation #4, and based on the evidence, the Panel has determined that Mr. Bromley was aware that the material he was shipping was contaminated and that he shipped it to an unauthorized site.
- [100] Allegations #5 is not applicable to the work undertaken at this site.

[REDACTED] – October and November, 2010

- [101] The work at this site involved the remediation of stockpiles of soil from [REDACTED] and the relocation of this contaminated soil from [REDACTED] to SIA¹ at [REDACTED] on October 29 and November 3, 2010. Neither site is authorized to receive contaminated soil.
- [102] Mr. Bromley's own letter of January 28, 2012 (see paragraph [60] above) stated that the transported soil was contaminated and that Mr. Bromley had intended it to be transported to a site suitable for accepting such material, but due to an error by his technician, it was sent to an unauthorized site. The Panel does not accept that an error or misunderstanding on the part of a subordinate relieves Mr. Bromley from the responsibility of meeting his legal obligation under legislation.
- [103] The Panel accepts the opinion of the expert witness that a NIR was required for this site to comply with the *Environmental Management Act* and Regulations.
- [104] With respect to Allegation #1, and based on the evidence, the Panel has determined that Mr. Bromley was required to submit a NIR or to ensure that a NIR was submitted, and that he failed to do so.
- [105] The Panel accepts the opinion of the expert witness that a Soil Relocation Agreement (SRA) is required when contaminated soil is transported to a site that has not been authorized to receive contaminated soil. The evidence shows that the site at [REDACTED] is not authorized to receive contaminated soil.

¹ The Panel believes that this acronym stands for South Island Aggregates; however, this information was not provided in evidence.

[106] With respect to Allegation #2, and based on the evidence, the Panel has determined that Mr. Bromley was required to obtain a SRA to transport the soil from [REDACTED] to [REDACTED] and that he did not do so.

[107] With respect to Allegation #4, and based on the evidence, the Panel has determined that Mr. Bromley was aware that the material he was shipping was contaminated and that it was shipped to an unauthorized site.

[108] Allegations #3 and #5 are not applicable to the work undertaken at this site.

DECISION OF THE PANEL

[109] The allegation against Mr. Bromley in the Notice of Inquiry is that he demonstrated unprofessional conduct contrary to section 33(1)(c) of the Act. In determining whether there has been unprofessional conduct, the Panel is guided by the Act and by the Code of Ethics of the Association, which is contained in section 14 (a) of the By-Laws of the Association. The Code of Ethics states:

“The purpose of the code of ethics is to give general statements of the principles of ethical conduct in order that members and licensees may fulfill their duty to the public, to the profession and their fellow members and licensees.

Members and licensees shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall:

- 1) Hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace;*
- 2) Undertake and accept responsibility for professional assignments only when qualified by training or experience;*
- 3) Provide an opinion on a professional subject only when it is founded upon adequate knowledge and honest conviction;*
- 4) Act as faithful agents of their clients or employers, maintain confidentiality and avoid a conflict of interest but, where such conflict arises, fully disclose the circumstances without delay to the employer or client;*
- 5) Uphold the principle of appropriate and adequate compensation for the performance of engineering and geoscience work;*
- 6) Keep themselves informed in order to maintain their competence, strive to advance the body of knowledge within which they practice and provide opportunities for the professional development of their associates;*
- 7) Conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept, as well as give, honest and fair professional comment;*
- 8) Present clearly to employers and clients the possible consequences if professional decisions or judgments are overruled or disregarded;*

- 9) *Report to their association or other appropriate agencies any hazardous, illegal or unethical professional decisions or practices by members, licensees or others; and*
- 10) *Extend public knowledge and appreciation of engineering and geoscience and protect the profession from misrepresentation and misunderstanding.”*

[110] After a careful review of the evidence, and of the arguments made by the Association and by Mr. Bromley, the Panel has determined that the Association has proven the following allegations on a balance of probabilities, and therefore finds that Mr. Bromley demonstrated unprofessional conduct in his professional services in relation to soil relocation at each of the job sites and times named in the Notice of Inquiry, as follows:

- 1) At [REDACTED] in April 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment;
- 2) At [REDACTED] in September 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment;
- 3) At [REDACTED] in September and October 2010, by failing to obtain a Soil Relocation Agreement to transport contaminated soil, by failing to submit soil samples for a Toxic Contaminant Leachate Procedure test, by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated and undertaking excavation and transportation of soil which he knew or ought to have known, was contaminated by tetrachlorethene, without monitoring the air for harmful vapours;
- 4) At [REDACTED] in October 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment, by failing to obtain a Soil Relocation Agreement to transport contaminated soil, by failing to submit soil samples for a Toxic Contaminant Leachate Procedure test and by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated; and
- 5) At [REDACTED] in October and November 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment, by failing to obtain a Soil Relocation Agreement to transport contaminated soil and by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated.

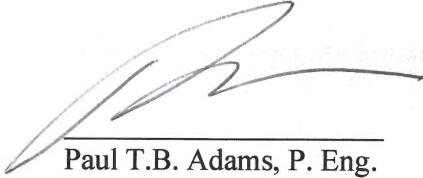
[111] The Panel finds that the most egregious example of Mr. Bromley's unprofessional conduct relates to the site at [REDACTED], where he blatantly ignored the requirements for the safe handling of soil that was potentially harmful. By his own evidence, he did not obtain a Soil Relocation Agreement because he knew that the Ministry of Environment would not agree to the relocation of the soil to [REDACTED].

DETERMINATION OF DISCIPLINARY ACTION AND COSTS

[112] The Panel having made a finding of unprofessional conduct against Mr. Bromley, it is now required to determine what disciplinary action should flow from that finding, and what (if any) order should be made as to costs. The Panel therefore directs that the Association provide it, and Mr. Bromley, with a submission in writing as to: (1) the appropriate disciplinary action to be taken pursuant to s. 33(2) of the Act; and (2) the appropriate costs payable pursuant to s. 35 of the Act. Mr. Bromley should be given a reasonable amount of time to respond to the Association's submission on disciplinary action and costs with a written submission of his own. Alternatively, if Mr. Bromley, following his review of the Association's submission, requests a hearing before the Panel on disciplinary action and costs, he may make that request in writing to the Panel and the Panel will make a decision on that request.

Dated this 29th day of December, 2014.

Discipline Committee Panel:



Paul T.B. Adams, P. Eng.
Chair



David Ricketts, P.Eng.



Oliver Bonham, P.Geo.