

**STATE OF WASHINGTON
BOARD OF REGISTRATION FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS**

In the Matter of the License to Practice as a
Professional Engineer of:

Clifton W. Berkey, PE

Respondent.

License #37708

NO. 2020-12-1960-00ENG

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER

The Washington State Board of Registration for Professional Engineers and Land Surveyors ("Board"), and Clifton W. Berkey ("Respondent"), stipulate and agree to the following:

**Section 1
BACKGROUND**

- 1.1 Clifton W. Berkey, Respondent, holds a license (#37708) to practice as a professional engineer.
- 1.2 The Respondent's license to practice engineering is currently due to expire August 18, 2023.
- 1.3 On March 15, 2023, the Board issued a Statement of Charges against the Respondent alleging that the Respondent violated the following: RCW 18.43.105(5) & (10); RCW 18.235.130(4) & (8); and WAC 196-27A-020 (2)(a)(e) & (f).

**Section 2
PROCEDURAL STIPULATIONS**

- 2.1 The Respondent understands that the Board is prepared to proceed to a hearing on the allegations in the Statement of Charges.
- 2.2 The Respondent understands that he has the right to defend himself against the allegations in the Statement of Charges by presenting evidence at a hearing.
- 2.3 The Respondent understands that, should the Board prove at a hearing the allegations in the Statement of Charges, the Board has the power and authority to impose sanctions, including fines, pursuant to RCW 18.235.110 and/or RCW 18.43.110.
- 2.4 The Respondent and the Board agree to expedite the resolution of this matter by means of

this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (“AGREED ORDER”).

2.5 The Respondent waives the opportunity to present evidence at a hearing on the Statement of Charges contingent upon signature and acceptance of this Agreed Order by the Board.

2.6 This AGREED ORDER is not binding on any party unless and until it is signed and accepted by the Board. Should this Agreed Order be rejected, the Respondent waives any objection to the participation at a hearing of all or some of the Board members who considered the Agreed Order. The exception is Board Member Nirmala Gnanapragasam, PE, PhD, Case Manager for this matter, who is recused from participating as a presiding or reviewing officer in an adjudicative hearing on this matter.

2.7 Once this AGREED ORDER is signed by the Board, the Respondent waives any and all right to judicial review and/or reconsideration by the Board.

Section 3 STIPULATED FACTS

The Respondent acknowledges that evidence is sufficient to justify the following finding of facts:

3.1 Respondent, in his capacity as a professional engineer, showed a lack of understanding of geotechnical engineering design principles for two projects he designed in the Cities of Pasco and Kennewick, Washington. These projects did not meet regulatory requirements.

3.2 In 2019, Respondent was hired to design a tiered concrete block wall system located at 3906 Equinox Court, Pasco, Washington.

3.2.1 During construction of the system a retired geotechnical engineer noticed a steep unsupported vertical cut while passing by; he reported it to the City because of a public safety concern. Following a site inspection, the City halted the construction. The City found the Respondent’s design was not specific to the site, but was a typical design.

3.2.2 A second Professional Engineer (Complainant) was hired to perform a site-specific design of the retaining wall. The work was completed by the Complainant and a secondary inspection was done to make sure the hillside was not disturbed.

3.2.3 Respondent claimed he designed the retaining wall and the contractor used those

plans to obtain a permit without any site plans. The Respondent further claimed the contractor built the wall without conforming to the design provided by the Respondent.

3.2.4 Respondent was asked to provide staff with a copy of the design drawings provided to the contractor. Respondent stated his computer was affected by a virus, and could not produce a copy of the drawings.

3.2.5 Board staff was able to obtain a copy of the engineering drawings provided to the City with the Respondent's stamp and signature.

3.2.6 The Respondent provided a general design rather than a site-specific design for the retaining wall to the client, who then had to hire the Complainant to complete the work.

3.3 In 2020, Respondent was hired to design a rock retaining wall located at 4036 West 47th Court, Kennewick, Washington.

3.3.1 A second Professional Engineer (Complainant) was contacted by the site owner to inquire if he performs density testing for a structural fill at the suggestion of the Respondent. The Complainant does not perform structural fill density testing in-house and referred the owner to a testing company.

3.3.2 An individual from the testing company and the contractor's foreman expressed concerns about the wall design. The Complainant highlighted several errors and omissions in the Respondent's design drawings.

3.3.3 The Respondent claimed he used field measurements provided by the contractor in the design of the wall. However, the Respondent claimed the soil parameters included in the design drawings were typos from past projects and that he was complacent because the wall was only a little higher than his knee cap.

3.3.4 The Board Case Manager reviewed the drawings and determined these identical soil parameters were also used in the engineering drawings of 3.2 described above. These drawings were stamped and signed by the Respondent and were provided to Board staff by the City.

3.3.5 Respondent provided Board Staff a geotechnical engineer's letter with

recommendations for the design parameters. This letter is dated May 21, 2021, approximately five (5) months after the complaint was filed.

3.3.6 The design parameters recommended by the geotechnical engineer were significantly different than the parameters used by the Respondent in his original design.

3.3.7 There are errors and omissions in the drawings provided to the client by the Respondent.

3.3.8 Geotechnical engineering advice was sought by the Respondent almost five months after the complaint was filed. The design parameters used in the Respondent's design are significantly different than the values recommended by the geotechnical engineer.

3.4 Respondent used the same design parameters in projects 3.2 and 3.3 above.

Section 4 AGREED CONCLUSIONS OF LAW

The Respondent acknowledges that, based upon the Findings of Fact, the following Conclusions of Law are justified:

4.1 The Board has jurisdiction over the subject matter of this proceeding and over the Respondent.

4.2 The Respondent's acts, errors, or omissions in connection with his practice as a professional engineer represent violations of one or more of the following: **RCW 18.43.105(5) & (10); RCW 18.235.130(4) & (8); and WAC 196-27A-020(2)(a)(e) & (f).**

The acts, omissions, errors and/or discrepancies stated above in this AGREED ORDER, individually and cumulatively, constitute misconduct, malpractice and/or unprofessional conduct as defined in chapters 18.43 and 18.235 RCW. Such acts are grounds for the Board to suspend or revoke the license to practice engineering issued to Clifton W. Berkey and/or to impose a monetary fine against the Respondent, as provided in RCW 18.235.110.

Section 5 AGREED ORDER

The Board and the Respondent stipulate and agree to the following terms and conditions:

5.1 Upon the effective date of this AGREED ORDER Respondent's license to practice is suspended for one year and Respondent is assessed a fine in the amount of five thousand (U.S.) dollars (\$5,000). The license suspension and fine are stayed (not imposed) contingent upon Respondent complying with the following conditions outlined in 5.2 through 5.6.

5.2 Respondent shall not practice geotechnical engineering services.

5.3 Respondent will either hire a Professional Engineer (PE) competent to perform geotechnical engineering services or use an existing report by a PE competent to perform geotechnical engineering services that has already been performed, provided and/or paid for by others according to the standard generally expected of those practicing professional engineering, for projects requiring geotechnical engineering services. The following non-exhaustive list contains examples of work that requires Respondent to retain geotechnical engineering services:

- Retaining walls
- Design/construction near or on slopes
- Deep excavations
- Foundations on or near soft soils

5.4 For a period of one (1) year, Respondent will submit to the Board, on a quarterly basis, a report of work he is performing, if that work involves geotechnical engineering services or the services identified in 5.3. Respondent will include in the report, the name and contact information of the PE performing the geotechnical engineering services. The Board may audit any of the work submitted by the Respondent. If through an audit, the Board finds deficiencies in Respondent's work, correction will be required at Respondent's expense.

5.5 Respondent shall be responsible for all costs, expenses, fees and/or tax consequences incurred by the Respondent in complying with this AGREED ORDER.

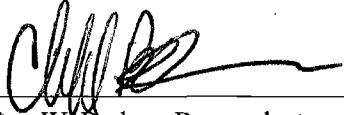
5.6 Should the Respondent fail to comply with any of the terms or conditions of this AGREED ORDER, the Board will initiate administrative steps for imposition of the stayed penalties and/or additional

sanctions authorized by law and deemed appropriate. In making a determination of compliance under the terms of this AGREED ORDER, the Board may rely upon the records in their possession, or lack thereof, in reaching such a decision.

5.7 This AGREED ORDER addresses and concerns itself solely with those issues referenced herein relating to the Respondent's practices as a professional engineer that are within the license-disciplining authority of the Board. This AGREED ORDER should not be considered to address, encompass, or limit judicial or other remedies relating to those practices and activities of the Respondent not deemed within the Board's license-disciplining authority.

5.8 The AGREED ORDER becomes effective immediately upon its being served pursuant to RCW 18.235.080. Service of this order is complete upon mailing. RCW 34.05.010(19).

I, Clifton W. Berkey, Respondent, certify that I have read this Stipulated Findings of Fact, Conclusions of Law and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. If the Board accepts the Stipulated Findings of Fact, Conclusions of Law and Agreed Order, I understand that I will receive a signed copy.



Clifton W. Berkey, Respondent

5-18-23

Date

Attorney for Respondent WSBA #:
(if applicable)

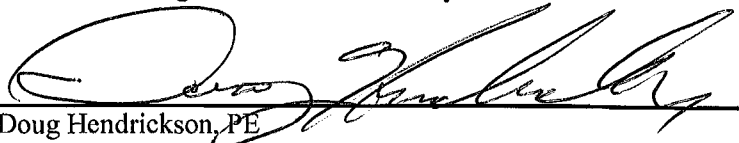
Date

Section 6
FINAL ORDER

The Board accepts and enters this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

DATED this 22nd day of June, 2023

State of Washington Board of Registration for
Professional Engineers and Land Surveyors



Doug Hendrickson, PE
Presiding Officer

Presented by:

Danitza M. Casselman, WSBA #49826
Assistant Attorney General, Prosecutor for Board

Date