

ONSITE WASTEWATER CASE SUMMARIES 2015

CASE #13-50

STATEMENT OF COMPLAINT:

That the Respondent, a Registered Onsite Wastewater Practitioner (ROWP) in the Planner, Installer and Maintenance Provider categories, constructed a sewage system on a property prior to registering a Filing with a Health Authority, as required by the BC Sewerage System Regulation.

INVESTIGATION:

The above allegation, if found to be true, would be contrary to Principle 1 (c) of the ASTTBC Code of Ethics and Practice Guidelines.

The PRB investigation determined that the initial complaint centered on a neighbour's concerns that an inappropriate system type was being installed, and a request for documentation from the Health Authority revealed that no paperwork had been filed. The date and times contained within the metadata of the installation photographs provided by the Respondent contradicted the Respondent's claim that the system was installed after the paperwork was filed, and supported the claims of the anonymous tipster. It was noted that the Respondent did not respond to questions about the soil descriptions listed in the Filing, a significant issue that affects the suitability of the system installed. The Respondent's registration as a Planner and Installer was restricted to gravity dispersal systems only, however the Respondent's training would have been sufficient to identify site and soil conditions that were not suitable for the use of a gravity dispersal system. The PRB determined that the Respondent had breached Principle 1 of the Code of Ethics and raised concerns about the Respondent's competency to undertake planning work consistent with the minimum provincial standards as set out in the BC Standard Practice Manual.

PRACTICE REVIEW BOARD RECOMMENDATIONS:

The PRB recommended that the Respondent submit the Filing that led to this complaint to the ASTTBC Registrar, who would arrange for an independent technical review by an Authorized Person approved by ASTTBC (at the Respondent's cost) to demonstrate compliance with the BC Standard Practice Manual, or show corrective action to make it so. The Respondent was also required to arrange for a Practice Assessment, at the Respondent's cost. Further, the Respondent was levied a fine of \$250.00, as a deterrent to future violations of the Code of Ethics.

OUTCOME:

Upon receipt of the PRB recommendations, the Respondent emailed the Registrar, indicating non-acceptance of the recommendations. Further correspondence took place between ASTTBC and the Respondent and the case was reviewed again. Key findings of this second review were: a) confirmation that the Respondent had knowledge of and allowed the installation of the septic tank prior to the system being designed and registered with the Interior Health Authority, which in and of itself was a violation of the Sewage Systems Regulation, b) it was unclear but suggested by the Respondent that the dispersal field was also installed by a non-Authorized person without the Respondent's supervision, which is also contrary to the Sewage Systems Regulation and ASTTBC policies for Onsite Wastewater Practitioners, and c) with respect to the soil logs, the Respondent admitted to the error of retaining 2 separate soil logs in the Filing when one of them was not applicable due to a change of system design. Neither soil log identified where the test pits were dug in relation to the dispersal field or identified in the subsequent as-built, which was an expectation of the BC Standard Practice Manual.

The PRB reviewed the results of the second investigation and recommended that the Respondent submit to a Practice Assessment Review, with the Respondent's portion of the cost being a maximum of \$500.00. The Respondent was also levied a fine of \$250.00, as a deterrent to future violations of the Code of Ethics and Practice Guidelines.

The Respondent accepted the recommendations, and paid the fine. Since the Respondent had agreed to comply with the PRB recommendations, no further action was required and the file was closed. ASTTBC staff continued to monitor the file to ensure successful completion of all conditions.

CASE #13-53

STATEMENT OF COMPLAINT:

That the Respondent, a Registered Onsite Wastewater Practitioner (ROWP) in the Planner and Installer categories, installed a septic system for which the final cost had significantly exceeded the quoted cost, and utilized a treatment product different from that originally specified by the engineer that designed the system. It was further alleged that the Respondent received personal consideration from the manufacturer for using this product.

INVESTIGATION:

The above allegations, if found to be true, would be contrary to Principles 4, 5 and 7 of the ASTTBC Code of Ethics and Practice Guidelines.

The PRB investigation noted that the Complainant received a document on the Respondent's company letterhead wherein estimated costs for several options were provided, that had the appearance of being a quote. The document did not include a reference to a 'cost plus' arrangement. This document was relied upon and used by the Complainant when deciding to undertake the project. It was also noted that there was no other document to show any proposed changes to the system, additional costs or terms of payment. Further, the Respondent did not ensure that any contract between the Respondent and the Complainant was clearly understood and realistic in estimated costs. The Respondent also admitted to having informed the Maintenance Providers in the area about the payment dispute, encouraging them not to become involved with the Complainant, thus hindering the Complainant's ability to have the system maintained in a cost effective manner, and also damaging the Complainant's reputation.

PRACTICE REVIEW BOARD RECOMMENDATIONS:

The PRB determined that the Respondent had violated Principles 4, 5 and 7 of the ASTTBC Code of Ethics, and recommended that the Respondent submit a written statement to the maintenance providers previously advised to avoid the Complainant, informing them that such advice was a breach of the ASTTBC Code of Ethics, and a copy of this statement to be provided to the Registrar. The Respondent was also required to submit to a Practice Assessment Review (PAR), with the Respondent's portion of the cost being a maximum of \$500.00, and further, was levied a fine of \$500.00, as a deterrent to future violations of the ASTTBC Code of Ethics and Practice Guidelines.

OUTCOME:

Upon receipt of the PRB recommendations, the Respondent submitted a letter to the Registrar, indicating a willingness to submit to a PAR as recommended by the PRB, but objecting to the requirement to write to all Maintenance Providers that the Respondent had previously spoken to, and to the payment of a \$500 fine. Further correspondence took place between ASTTBC and the Respondent and the case was reviewed again.

During the second review, the Respondent's recollection of comments regarding notifying Maintenance Providers was very different from statements made during the first investigation. As there was no value to pursuing a potential "he said, she said" situation, the original PRB recommendation that the Respondent submit a written statement to the maintenance providers was rescinded, giving the Respondent the benefit of the doubt. However, the PRB concluded that while verbal contracts may be legally allowed, a misunderstanding did occur with the complainant, thus violating Principle 4 of the Code of Ethics. The PRB also concluded that a breach of Principle 5 should stand, in light of the fact that the Respondent set terms verbally for a cost-plus arrangement while the complainant believed it was a quotation. The only document available was on the letterhead of the Respondent's business and included the Respondent's name at the bottom of the document. This was compelling and no other evidence to the contrary was available from the Respondent.

The PRB reviewed the results of the second investigation and recommended that the Respondent be levied a fine of \$500 as a deterrent to future violations of the ASTTBC Code of Ethics and Practice Guidelines.

The Respondent paid the fine. Since the PRB recommendation was completed, no further action was required and the file was closed.

CASE #13-56

STATEMENT OF COMPLAINT:

That the Respondent, a Registered Onsite Wastewater Practitioner (ROWP) in the Planner and Installer categories, designed and installed a sewage system that malfunctioned, causing a potential health hazard and necessitating premature replacement of the system. Further, no Letter of Certification or Operation & Maintenance Plan was registered by the Respondent with the Health Authority or provided to the property owner as is required by the BC Sewerage System Regulation.

INVESTIGATION:

The above allegation, if found to be true, would be contrary to Principle 1 of the ASTTBC Code of Ethics.

The PRB investigation determined that a prior complaint with respect to the same sewage system had been initiated by an Environmental Health Officer against the Respondent. Upon review of that complaint, the PRB had determined that no evidence of a breach of the ASTTBC Code of Ethics had occurred and the file was closed.

The investigation of the new case file #13-56 attempted to find evidence of new circumstances beyond what was found during the previous PRB investigation. None was found, and therefore, there was insufficient evidence to support the re-opening of the previous complaint investigation. Reopening a case file without compelling circumstances would amount to the Respondent being tried again for an allegation that was previously refuted. Furthermore, to re-introduce a charge against the Respondent would have constituted Double Jeopardy under common law.

PRACTICE REVIEW BOARD RECOMMENDATIONS:

The PRB recommended that, as there was no cause to support the re-opening of the previous investigation relating to this matter, this case be dismissed and the file closed.

OUTCOME:

No further action was required, and the file was closed.

CASE #14-14

STATEMENT OF COMPLAINT:

That the Respondent, a Registered Onsite Wastewater Practitioner (ROWP) in the Planner and Installer categories, planned and installed a sewage system that was substantially non-compliant with the BC Standard Practice Manual (BC SPM). When the property owner became concerned with how the system was planned and installed, the Respondent communicated with the owner in a manner that was unethical and unprofessional. When the property owner contacted ASTTBC expressing concern, the Registrar determined that the Respondent's actions warranted further investigation, and initiated a staff complaint.

INVESTIGATION:

The above allegations, if found to be true, would be contrary to Principles 1 & 7 of the ASTTBC Code of Ethics and Practice Guidelines.

The PRB investigation determined that the property owner asked reasonable and valid questions, including whether the type of sewage system installed was appropriate to the site, yet was rebuffed and dismissed by the Respondent on the basis of the Respondent's training and experience. The PRB determined that the property owner's concerns were substantiated based on sound reasoning, observations of site and soil conditions, and sufficient general knowledge of how sewage systems should be constructed.

A review of the correspondence between the Respondent and the property owner showed that the Respondent did not act with courtesy and good faith towards the client, which is a breach of Principle 7 of the ASTTBC Code of Ethics. With respect to the sewage system design itself, numerous areas of concern were identified that cast the Respondent's competency into doubt, specifically regarding the ability to properly assess site and soil conditions, apply appropriate tables and concepts contained within the BC SPM, and convey these in appropriate documents to the level expected by the BC SPM.

PRACTICE REVIEW BOARD RECOMMENDATIONS:

The PRB determined that, in addition to Principle 7, the Respondent had also violated Principles 2 and 3 of the ASTTBC Code of Ethics, and recommended that, as a deterrent to future violations of the ASTTBC Code of Ethics, the Respondent be levied a fine of \$250.00 for each Principle violated, bringing the total fine levied to \$750.00. In addition, the Respondent was required to immediately submit to a Practice Assessment Review, with the Respondent's portion of the cost being a maximum \$500.00.

OUTCOME:

The Respondent paid the fine, and agreed to a Practice Assessment Review. Since the Respondent had agreed to comply with the PRB recommendations, no further action was required and the file was closed. ASTTBC staff continued to monitor the file to ensure successful completion of all conditions.