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PUBLIC WELFARE – HAZARDOUS WASTE

FACTS:

Technician A is a field technician employed by an consulting environmental engineering firm. At the direction of his supervisor Engineer B, Technician A samples the contents of drums located on the property of a client. Based on Technician A's past experience, it is his opinion that analysis of the sample would most likely determine that the drum contents would be classified as hazardous waste. If the material is hazardous waste, Technician A knows that certain steps would legally have to be taken to transport and properly dispose of the drum including notifying the proper federal and state authorities.

Technician A asks his supervisor Engineer B what to do with the samples. Engineer B tells Technician A only to document the existence of the samples. Technician A is then told by Engineer B that since the client does other business with the firm, Engineer B will tell the client where the drums are located but do nothing else. Thereafter, Engineer B informs the client of the presence of drums containing "questionable material" and suggests that they be removed. The client contacts another firm and has the material removed.

QUESTIONS:

1. Was it ethical for Engineer B to merely inform the client of the presence of the drums and suggest that they be removed?
2. Did Engineer B have an ethical obligation to take further action?

REFERENCES:

- Preamble -Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.
- Section I.1. -Hold paramount the safety, health and welfare of the public in the performance of their professional duties.
- Section II.1. -Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.
- Section II.1.a. -Engineers shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.
- Section II.1.c. -Engineers shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or this Code.
- Section II.3.a. -Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony.
- Section III.1. -Engineers shall be guided in all their professional relations by the highest standards of integrity.
- Section III.3. -Engineers shall avoid all conduct or practice which is likely to discredit the profession or deceive the public.

- Section III.3.a. -Engineers shall avoid the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep statements from being misleading or intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the Engineers' services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.
- Section III.4. -Engineers shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent.

DISCUSSION:

The extent to which an engineer has an obligation to hold paramount the public health and welfare in the performance of professional duties (Section I.1.) has been widely discussed by the Board of Ethical Review over the years. In many of these cases this basic duty has frequently intersected with the duty of engineers not to disclose confidential information concerning the business affairs, etc., of clients (Section III.4.)

For example, in BER Case 89-7 an engineer was retained to investigate the structural integrity of a 60 year old occupied apartment building which his client was planning to sell. Under the terms of the agreement with the client, the structural report written by the engineer was to remain confidential. In addition, the client made it clear to the engineer that the building was being sold "as is" and the client was not planning to take any remedial action to repair or renovate any system within the building. The engineer performed several structural tests on the building and determined that the building was structurally sound. However, during the course of providing services, the client confided in the engineer that the building contained deficiencies in the electrical and mechanical systems which violated applicable codes and standards. While the engineer was not an electrical nor mechanical engineer, he did realize that those deficiencies could cause injury to the occupants of the building and so informed the client. In his report, the engineer made a brief mention of his conversation with the client concerning the deficiencies; however, in view of the terms of the agreement, the engineer did not report the safety violations to any third parties. In determining that it was unethical for the engineer not to report the safety violations to appropriate public authorities, the Board, citing cases decided earlier, noted that the engineer "did not force the issue but instead went along without dissent or comment. If the engineer's ethical concerns were real, the engineer should have insisted that the client take appropriate action or refuse to continue work on the project." The Board concluded that the engineer had an obligation to go further particularly because the Code uses the term "paramount" to describe the engineer's obligation to protect the public safety health and welfare.

More recently, in BER Case 90-5, the Board reaffirmed the basic principle articulated in BER Case 89-7. There, tenants of an apartment building sued its owner to force him to repair many of the building's defects. The owner's attorney hired an engineer to inspect the building and give expert testimony in support of the owner. The engineer discovered serious structural defects in the building which he believed constituted an immediate threat to the safety of the tenants. The tenants' suit had not mentioned these safety related defects. Upon reporting the findings to the attorney, the engineer was told he must maintain this information as confidential as it is part of the lawsuit. The engineer complies with the request. In deciding it was unethical for the engineer to conceal his knowledge of the safety-related defect, the Board discounted the attorney's statement that the engineer was legally bound to maintain confidentiality, noting that any such duty was superseded by the immediate and imminent danger to the building's tenants. While the Board recognized that there may be circumstances where the natural tension between the engineer's public welfare responsibility and the duty of non-disclosure may be resolved in a different manner, the Board concluded that this clearly was not the case under the facts.

Turning to the facts in this case, we believe the basic principles enunciated in BER Cases 89-7 and 90-5 are applicable here as well except in a different context. Unlike the facts in the earlier cases, Engineer B made no oral or written promise to maintain the client's confidentiality. Instead, Engineer B consciously and affirmatively took actions that could cause serious environmental danger to workers and the public, and also a violation of various environmental laws and regulations. Under the facts, it appears that Engineer B's primary concern was not so much maintaining the client's confidentiality as it was in maintaining good business relations with a client. In addition, it appears that as in all cases which involve potential violations of the law, Engineer B's actions may have had the effect of seriously damaging the long-term interests and reputation of the client. In this regard, we would also note that under the facts it appears that the manner in which Engineer B communicated the presence of the drums on the property must have suggested to the client that there was a high likelihood that the drums contained hazardous materials. We believe that this subterfuge is wholly inconsistent with the spirit and intent of the Code of Ethics because it makes the engineer an accomplice to what may amount to an unlawful action.

Clearly, Engineer B's responsibility under the facts was to bring the matter of the drums possibly containing hazardous material to the attention of the client with a recommendation that the material be analyzed. To do less would be unethical. If analysis demonstrates that the material is indeed hazardous, the client would have the obligation of disposing of the material in accordance with applicable federal state and local laws.

CONCLUSIONS:

1. It was unethical for Engineer B to merely inform the client of the presence of the drums.
2. It was unethical for Engineer B to fail to advise his client that he suspected hazardous material and provide a recommendation concerning removal and disposal in accordance with federal, state and local laws.

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Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.