

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS;  
PROFESSIONAL ENGINEERS SECTION

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
JOHN WELLNER, P.E., :  
RESPONDENT. :  
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The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

John Wellner  
Box 689  
Old Highway 65 N  
Albert Lea, Minnesota 56007

Examining Board of Architects, Professional Engineers, Designers and  
Land Surveyors  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the Stipulation and makes the following:

FINDINGS OF FACT

1. John Wellner, Respondent herein, currently holds a certificate of registration to practice as a professional engineer in the State of Wisconsin. His certificate bears number 006 0014865 and was issued June 6, 1975.
2. Respondent's date of birth is October 8, 1946, and current address is Box 689, Old Highway 65 N, Albert Lea, Minnesota 56007.
3. On December 14, 1984, the Iowa State Board of Engineering and Land Surveying Examiners filed Findings of Fact, Conclusions of Law and Order in its disciplinary case against Respondent.

4. The Iowa Board ordered that Respondent be suspended for a period of 3 months and 14 days. At the end of the suspension period, the Board ordered that Respondent be placed on probation for a period of 9 months. Said Final Decision is attached as Exhibit A.

#### CONCLUSIONS OF LAW

1. The Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to Wis. Stats. sec. 443.11.

2. The Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent engaged in misconduct contrary to Wis. Stats. sec. 443.11(1)(e) and Wis. Adm. Code sec. A&E 4.003(3)(a), now renumbered sec. A&E 8.03(3)(a), and is subject to discipline in that his engineering registration in the State of Iowa has been suspended.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED:

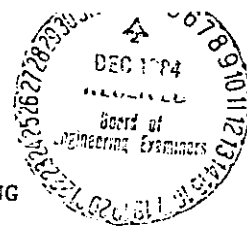
That the professional engineer certificate of registration of John Wellner, P.E., shall be suspended for a period of 3 months effective on the 15<sup>th</sup> day of August, 1987.

EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS, AND LAND  
SURVEYORS; PROFESSIONAL ENGINEERS SECTION

BY: Edward P. Crowley  
A Member of the Board

Date 7.31.87

SS:lm1  
2723



BEFORE THE IOWA STATE BOARD OF ENGINEERING  
AND LAND SURVEYING EXAMINERS

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IN THE MATTER OF JOHN WELLNER, )	
JOHN T. WALKER, DUANE R. DAVICK )	
and LYLE R. FLETCHALL )	
Professional Engineers )	FINDINGS, CONCLUSION
Iowa Registration Numbers )	AND ORDER
7730, 4453, 5676 and 3973 )	
respectively )	

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THIS MATTER came on for hearing on November 20, 1984, before the Iowa State Board of Engineering Examiners on specifications of charges filed by the Board's discipline counsel against each of the respondents. Respondents Walker, Davick and Fletchall were unrepresented by counsel and Walker did not appear for the hearing or present evidence except by way of an explanatory letter introduced as evidence on his behalf at the hearing. Respondent Wellner appeared at the hearing and was represented by counsel. Board Member Gary Darlund heard the proceeding but took no part in the consideration of such evidence relating to respondent Wellner. After hearing the evidence and the arguments of counsel and the individual respondents the Board FINDS as follows:

1. That the Board has jurisdiction over the individual respondents and the subject matter of this action.
2. That each of the respondents is a registered professional engineer in the State of Iowa at all times material to this action.
3. Each of the respondents was for at least some time material to this action employed by an engineering firm based in Fort Dodge, Iowa known as Associated Engineers, Inc. Fletchall was president of the corporation, Davick and Walker were project engineers and Wellner was an engineer with design responsibilities.
4. In the latter portion of the 1970's the City Council of the City of Winthrop, Iowa became concerned about the age and adequacy of its municipal water system. An engineering concern

was hired to study the situation and based upon its report the Council determined that it was necessary to upgrade the municipal water system.

5. Associated Engineers, Inc. was hired to design the desired improvements which included a new water tower and various modifications of the distribution system including enlarged water mains in various sections of the town.

6. Along with its design responsibilities AEI helped the town secure government grants necessary to finance the projected improvements.

7. The design responsibilities for the new water tower and attendant distribution system was assigned to respondent Wellner, then a professional engineer employed by AEI.

8. Wellner designed the system without ever checking the elevation of the old city water tower or the elevation of the site for the proposed new tower. In fact, when constructed, the overflow of the new tower was approximately thirty feet below that of the old tower. This fact alone led to a substantial reduction in the static water pressure in many portions of the community, particularly at higher elevations.

9. The project for upgrading the water system was to be completed in two phases. However, when Wellner designed the initial stage of the system he did not do any calculations to determine the effect of the first stage of improvements (being the tower, a holding tank and some new mains) on the entire system.

10. In early January of 1980, Davick then the project engineer from AEI in charge of construction of the new tower was about to leave AEI for other employment. The new project engineer was to be respondent Walker. Davick and Walker went to the site and observed that the new tower appeared to be lower than the old tower. A couple of days later Davick left AEI's employ but not before he or Walker had contacted AEI's home office in Fort Dodge and asked them to look into the problem of the effect of the lower tower and to determine what design data were available.

11. Rather than stop construction when the problem of the lower tower appeared, the project was allowed to proceed to conclusion. When the new tower was first used in the system a few months later the effect of the lower tower became immediately apparent as static water pressure was reduced throughout the community but was particularly apparent at high elevations. Indeed, at various locations it appears there would not be sufficient pressure to meet fire safety requirements.

12. After complaints from various citizens, the City Council and Mayor met with Walker concerning the problems and were assured by him that the water pressure met specifications.

13. Ultimately after suit was instituted, a financial settlement was made with the engineering concern's errors and omissions insurance carrier. Thereafter a new water tower is being constructed on the site of the old tower.

14. Based on the evidence presented the Board therefore concludes as follows:

- a. The charges against Davick and Fletchall are unsupported by any evidence.
- b. That respondent Walker was negligent in failing to stop construction when he knew or had reason to know that the height of the new water tower would cause a reduction in water pressure in the community. Further, Walker made misleading and deceptive statements to the Council and Mayor concerning the adequacy of the water system as built to meet safety requirements and normal usage requirements. These acts constitute violations of section 258 A.3(2)(b) and section 114.21(3) of the Code of Iowa.
- c. That respondent Wellner was negligent in designing a water system which would purportedly improve water pressure without checking the elevations of the old and new tower sites. Further, he was negligent in failing to do a flow analysis on the first phase of the supposed improvements in order to determine its effect on the entire system. Finally, he was negligent in failing to stop construction when the height of the new tower relative to the old was brought to his attention.

The above mentioned negligent acts evidence professional incompetence to the Board. Therefore, the foregoing acts constitute violation of §258A.3(2)(b) and §114.21(2) of The Code.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The specifications of charges against respondents Davick and Fletchall be and the same are hereby dismissed.


2. The registration of respondent Walker is suspended for a period of three months and respondent shall not act in responsible charge of any professional engineering activities for that three month period. Walker shall return his Iowa registration certificate to the Board's Secretary and his suspension shall commence on the date of its receipt but not after January 1, 1985. The Secretary shall return said certificate to Walker on the ninetieth day after its receipt.

3. The registration of respondent Wellner is suspended for a period of three months and fourteen days to commence on the date he returns his certificate of registration to the Secretary of the Board but no later than January 1, 1985. During the first two weeks of such suspension respondent is prohibited from performing any professional services whatever during the succeeding three months he is prohibited from acting in responsible charge of any professional engineering work. Wellner's certificate of registration shall be returned to him three months and fourteen days from its receipt by the Secretary of the Board.

In addition to the suspension, the Board places Wellner on probation for a period of nine months. That period is to commence following the suspension period. During the suspension and probation periods Wellner shall be obligated to provide the Board notice of any suits filed against him or complaints made against him by clients which arise out of his past or present activities as a professional engineer.

4. These findings, conclusions and orders shall be published in accordance with the Board's rules.

DATED: December 4, 1984

  
Otto Tennant  
Chairman, Iowa State Board of  
Engineering and Land Surveying  
Examiners

STATE OF WISCONSIN  
BEFORE THE EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS;  
PROFESSIONAL ENGINEERS SECTION

---

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: STIPULATION  
JOHN WELLNER, P.E., :  
RESPONDENT. :  
:

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The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation of John Wellner's certificate of registration by the Division of Enforcement (case file 85 A&E 1). Mr. Wellner consents to the resolution of this investigation by stipulation and without the issuance of a formal disciplinary complaint and hearing.
2. The Respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by clear, satisfactory and convincing evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
3. The Respondent admits the allegations and statements found in the attached Final Decision and Order.
4. The Respondent and the Complainant urge the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section to adopt this Stipulation and the attached Final Decision and Order in this matter.
5. If the terms of this Stipulation and attached Final Decision and Order are not acceptable to the Board, then none of the parties shall be bound by any of the terms.
6. The attached Findings of Fact, Conclusions of Law, Final Decision and Order may be made and entered in this matter by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section, without prior notice to any party.
7. All parties agree that Counsel for the Department of Regulation & Licensing, Division of Enforcement and the Board Advisor appointed in this matter may appear before the Wisconsin Examining Board of Architects,



Professional Engineers, Designers and Land Surveyors; Professional Engineers Section, to argue in favor of acceptance of this stipulation and the entry of the attached Findings of Fact, Conclusions of Law, Final Decision and Order.

8. That this agreement in no way prejudices the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section, from any further action against Respondent based on any acts not stated in the present Findings of Fact which might be violative of the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section, Statutes and Rules.

9. That if this Stipulation is adopted by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors; Professional Engineers Section, the attached Order shall become effective as stated in the order.

July 10, 1987  
Date

Sherry Steffel  
Sherry Steffel, Attorney  
Division of Enforcement

July 20, 1987  
Date

John Wellner  
John Wellner, Respondent

July 31 1987  
Date

Edward P. Crawley  
A Member of the Board

SS:la  
370-534

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Examining Board of Architects; Professional Engineers, Designers and Land Surveyors, Professional Engineers Section

The date of mailing of this decision is August 5, 1987.

WLD:dms  
886-490