

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN

BEFORE THE PROFESSIONAL ENGINEER SECTION OF THE WISCONSIN EXAMINING
BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS,
DESIGNERS, AND PROFESSIONAL LAND SURVEYORS

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES E. MIERKE,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

0004509

Division of Legal Services and Compliance Case No. 15 ENG 027

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

James E. Mierke
532 S. Oak Ave.
Westmont, IL 60559-2314

The Professional Engineer Section of the Wisconsin Examining Board of Architects,
Landscape Architects, Professional Engineers, Designers and Professional Land
Surveyors
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison WI 53707-7190

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 Professional Engineer Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors (Section). The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent James E. Mierke (DOB 11/21/1972) is registered in the State of Wisconsin as a Professional Engineer, having certificate of registration number 36614-6, first issued on January 7, 2004 and current through July 31, 2016. Respondent's most recent address

on file with the Department of Safety and Professional Services (Department) is 532 South Oak Avenue, Westmont, Illinois 60559-2314.

2. In 2014, the Department initiated an audit of registered Professional Engineer professional development/continuing education (P.D./C.E.) for the 2012-2014 biennial registration period (August 1, 2012 to July 31, 2014).

3. Pursuant to the Department's audit, Respondent was found to be noncompliant with the P.D./C.E. requirements for registered Professional Engineers in the 2012-2014 biennial registration period, as Respondent only submitted verification of completion for 20 professional development hours or continuing education units during that time period.

4. Respondent stated that he had completed the deficient 10 hours but could not produce the required verification.

5. Between April 7, 2015 and November 11, 2015, Respondent completed 11 approved professional development hours or equivalent continuing education units, 10 of which were applied retroactively to satisfy Respondent's P.D./C.E. requirements for the 2012-2014 biennial registration period. The professional development hours or continuing education units completed by Respondent were:

a. On April 23, 2015, Respondent completed 3 hours of professional development hours or continuing education units by attending "New Tomorrows for Today's Buildings: Existing Building Commissioning."

b. On May 20, 2015, Respondent completed 6 professional development hours or continuing education units by attending "2012 International Energy Conservation Code Applications for Illinois & Chicago REPs."

c. On November 19, 2015, Respondent completed 2 professional development hours or continuing education units by attending "Engineering Ethics for Wisconsin PE's."

6. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Professional Engineer Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors has jurisdiction to act in this matter pursuant to Wis. Stat. § 443.11, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § A-E 13.07(1) by failing to maintain records of his continuing education units and professional development hours earned for a minimum of the three most recent biennia on a form approved by the professional engineer section.

3. As a result of the above violation, Respondent has engaged in misconduct in the practice of Professional Engineering as defined in Wis. Admin. Code § A-E 8.03(3)(a) and is subject to discipline pursuant to Wis. Stat. § 443.11(1)(d).

ORDER

1. The attached Stipulation is accepted.
2. Respondent James E. Mierke is REPRIMANDED.
3. The professional development hours or equivalent continuing education units listed above in Finding of Fact paragraph 5, that were completed and retroactively applied to satisfy Respondent's P.D./C.E. requirements for the 2012-2014 biennium, may not be used to satisfy any other registered Professional Engineer P.D./C.E. requirements with the Section.
4. Within 90 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$162.00.
5. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov
6. In the event Respondent fails to timely submit payment of the costs as ordered and as set forth above, Respondent's certificate of registration (no. 36614-6) may, in the discretion of the Section, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs.
7. This Order is effective on the date of its signing.

THE PROFESSIONAL ENGINEER SECTION OF THE WISCONSIN EXAMINING BOARD
OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS,
DESIGNERS AND PROFESSIONAL LAND SURVEYORS

by:



A Member of the Section

1-28-16

Date

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

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JAMES E. MIERKE,	:	
RESPONDENT.	:	

Division of Legal Services and Compliance Case No. 15 ENG 027

Respondent James E. Mierke and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.


4. Respondent agrees to the adoption of the attached Final Decision and Order by the Professional Engineer Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors (Section). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Section's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Section, the parties agree not to contend that the Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.

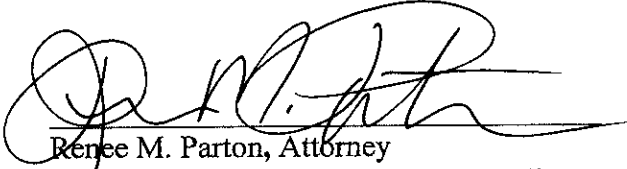
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.


James E. Mierke, Respondent
532 S. Oak Ave.
Westmont, IL 60559-2314
Registration no. 36614-6

12/23/15
Date


Renee M. Parton, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

12/23/2015
Date