

DIRTY WORDS

**Words Geoprofessionals
Must Use with Care
(or Not at All)**

Why?

**What's the
big deal?**

**You are a professional.
Professionals are the best
society has to offer.
People will compare
your actions to their
preconceived notions
of how professionals
should act.**

**You are a professional.
Professionals are the best
society has to offer.
People are justified to assume
that you, as a professional, are
able to communicate what you
mean.**

**They are justified to
assume you have the ability
to communicate clearly and
unambiguously.
"But I'm not a writer,"
you might say.**

**AND
YOU
WOULD
BE
WRONG!**

**PEOPLE WHO WRITE
ARE WRITERS.
PEOPLE WHO ARE
PAID TO WRITE ARE
PROFESSIONAL WRITERS.**

**PROFESSIONALS WHO
ALSO ARE PROFESSIONAL
WRITERS HAVE TO BE
THE BEST WRITERS OF
ALL; I.E.,
BETTER THAN
PROFESSIONAL WRITERS**

**WHICH MAY NOT BE
ALL THAT DIFFICULT**

People are justified to assume you have the ability to communicate clearly and unambiguously, even though professional journalists, among others, sometimes don't.

CONSEQUENCES

You MUST communicate clearly and unambiguously if you are to avoid the delays, cost overruns, disputes, and claims that can arise when you don't – or when it can be alleged you did not.

The written word is particularly important, because – in the event of a dispute – what’s in writing is the best evidence.

It can all come down to the meaning of just one word. You’d better know the meanings of the words you use (and the words used in documents you’re asked to sign). Words like...

**CERTIFY
CERTIFICATION
CERTIFIED**

**As a result, if you sign a document certifying a certain condition exists, like a bearing pressure, you guarantee its existence.
If it doesn't exist, you and your firm would be liable.**

If you certify a site was remediated in compliance with a regulatory standard and it wasn't, you and your firm would be liable.

If you certify a building or building element was built according to plans, specifications, and applicable codes, and it wasn't, you and your firm would be liable.

Even if you performed your services perfectly, it wouldn't matter. If one of the constructors on the project didn't, you'd have to honor your guarantee.

**HERE'S THE NASTY PART.
Professional-liability insurance provides protection if you violate the standard of care. A certification creates liability EVEN IF YOU DON'T VIOLATE THE STANDARD OF CARE.
When you don't...**

**YOU
HAVE
NO
INSURANCE
PROTECTION**



**If you're asked to sign a document that includes "certify," "certification," or the like, eliminate the language, or change the word to "state" or "declare."
If you cannot, asterisk the word and define it on the same page. ASFE/GBA has a definition you can use.**

**Include definitions in your contracts and reports. You'd also be wise to include a contract provision that addresses use of "certify."
Refer to the *ASFE Contract Reference Guide, Edition 3.1***

**ENSURE
INSURE
ASSURE**
Nonetheless, each of the three has the same impact as "certify." They expand liability greatly, into areas that are not covered by conventional PL or CGL insurance.

**SUPERVISE
SUPERVISOR
SUPERVISION**

Workers' compensation laws shield employers from liability, even when their negligence causes an employee's injury or death.

**SUPERVISE
SUPERVISOR
SUPERVISION**

The trier of fact – a judge or jury – will often reach for any excuse to make the injured party whole.

**REPRESENT
REPRESENTATIVE**

Even though one or both words are still used in some model contracts, some judges have construed them to imply or mean "agent."

**REPRESENT
REPRESENTATIVE**

**If you are your client's agent, you
owe a fiduciary responsibility to
your client, and that can make you
liable for any constructor-cost
overruns related to your services.**

**REPRESENT
REPRESENTATIVE**

**Professional-liability insurance
does not cover
breach of fiduciary responsibility.**

**PRODUCT
especially as in
WORK PRODUCT**

**First, professionals don't
perform "work."
Constructors do.**

PRODUCT
especially as in
WORK PRODUCT

Professionals
perform services.

PRODUCT
especially as in
WORK PRODUCT

Second, professionals don't
produce products. They
transmit the results of their
services via instruments of
professional service.

PRODUCT
especially as in
WORK PRODUCT

If professionals produced
products, they'd be subject to
"strict" or "product" liability.

PRODUCT
especially as in
WORK PRODUCT

Product Liability
It's not necessary to prove
negligence, just demonstrate the
product doesn't work as it's
supposed to; i.e., perfectly.

PRODUCT
especially as in
WORK PRODUCT

Would a trier of fact use
"product" as an excuse to impose
strict liability and thereby make
an injured party whole?

In many cases, what
counts is not a word's legal
definition. What counts
may not even be the
dictionary definition,
because sometimes
Noah Webster
plays second fiddle to...

**THE TRIER
OF FACT**

**Which is why the words
INSPECT
INSPECTION
can create so much trouble.**

**In geoprofessional
practice, we often say
things like "testing and
inspection," or "site
inspection," or
"construction inspection."**

But what does "inspection" mean to John Q.? Does it mean sampling? Does it mean looking at 10% or less to form an opinion about 100%? No. It means a lot more than that.

**LET'S TALK
MEN'S SHIRTS**



Consider the three-armed shirt that got by No. 6. Were he really inspecting, he would have caught the problem. Had he done so, what should he have done with the shirt?

**Pulled it from the line,
because – as an inspector –
No. 6 should have what?**

STOP-WORK AUTHORITY

**If you say you're going to
"inspect," that's just what
you should do, but without
stop-work authority, as
when you perform welding
inspection.**

**Otherwise, you should do
what?**

OBSERVE



**DO
NOT
"MONITOR"**
It means the same as
"inspect."



**The same applies to
INVESTIGATE**
as in performing a
"subsurface investigation" or
a "geotechnical investigation."

**The people on CSI investigate.
They look for hair.
Unless you're also fulfilling a
forensic commission,
you explore.
If you say "investigation" rather
than "exploration," you will
confuse people – judges and/or
juries – about what it is you really
intend or are promising to do.**

SAFETY
can be a dangerous word, too.
Use it when you have to. Avoid
gratuitous usages.

**THE CASE OF
THE WIDOW
JONES**



**NOTE THAT JOHN Q.
CAN EASILY BECOME
CONFUSED WHEN YOU USE
JARGON, LIKE...**



GENERAL COMPLIANCE
It's a dangerous phrase,
even though geoprofessionals
use it often.
What does it mean?



GENERAL COMPLIANCE
You're a professional. You need
to let people know what your
words mean.



Unless you define it differently,
"general compliance" means
"noncompliance." Is that what
you intend?
And why would someone pay
you to not comply?



**COST ESTIMATE
ESTIMATION OF COST**
Unless you are a professional cost estimator who is willing to accept the liability associated with the service, *you should provide*



**COST ESTIMATE
ESTIMATION OF COST**
AN OPINION OF PROBABLE COST



AS-BUILT DRAWINGS
almost never depict what actually was built. **don't use the term; it's misleading.**



Refer to "as-builts" as "record drawings" or "record documents." Should you also define the term?



MARGINALLY STABLE

It means "stable."



**IT DOES NOT MEAN
"OF QUESTIONABLE
STABILITY"**



**JUST AS "LEAST
ACCEPTABLE" MEANS
"ACCEPTABLE," NOT
"UNACCEPTABLE."**



**DO NOT OFFER
ANYONE A
"PERMANENT
POSITION"**



**IT'S A JOB
FOR LIFE**

**BEWARE OF
SUBJECTIVE
MODIFIERS**



**THEY CREATE
INSTANT
MISCOMMUNICATION**



**How many is or are
"A NUMBER OF"?
Two? That's a number.
But so is two million.**

**How many are
"SEVERAL"?**

**MORE
SUBJECTIVE MODIFIERS**

some
many/few
big/small
heavy/light
tall/short
narrow/wide
fast/slow
soon
easily

**BEWARE OF
ABSOLUTE
MODIFIERS**

THEY DON'T
MEAN WHAT YOU
THINK THEY DO!

ABSOLUTE MODIFIERS

all
always
as good as
as many as
as much as
clear
complete
empty

ABSOLUTE MODIFIERS

entire
every
everybody
everyone
everything
everywhere
final
forever

ABSOLUTE MODIFIERS

free
full
full-service
fully
never
no
no one
none

ABSOLUTE MODIFIERS

nothing
nowhere
identical
opposite
square
straight
total
whole

**BEWARE OF WORDS
WITH
MULTIPLE MEANINGS**

"I observed the excavation"
