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FEB 08 2019

**BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS**

WV PE BOARD

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**IN RE: SMITH LAND SURVEYING, INC.  
D.B.A. SLS Land & Energy Development**

**FEB 19 2019**

**C2019-06**

**CONSENT ORDER**

WV PE BOARD

Comes now the West Virginia State Board of Registration for Professional Engineers by Bhajan S. Saluja, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Smith Land Surveying, Inc. d.b.a. SLS Land & Energy Development (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of this agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Firm is a corporation organized under the laws of the State of West Virginia with its principal place of business in Glenville, West Virginia.
3. Respondent Firm's Certificate of Authorization (COA# C04162) was initially activated on September 23, 2011.
4. On August 9, 2018, the Board received a Third-Party Complaint against Respondent Firm. Wherein, the Complainant alleged that Respondent Firm presently had violated West Virginia law by having a "fraudulent [sic] Engineer in Responsible Charge (EIRC)." Her complaint is based upon her representation that she was the Respondent Firm's EIRC when she separated her employment with Respondent Firm on or about February 14, 2018, and Respondent Firm has since failed to notify the Board that its EIRC had left its employ, and that as of August 3, 2018, the date of her Complaint, she was still named Respondent Firm's EIRC in the Board's licensure record.

5. On August 9, 2018, the Third-Party Complaint was filed and docketed upon the record of this Board, and assigned the case number C2019-06. It was served on Respondent Firm by certified mail, on or about, August 9, 2018.
6. Respondent filed a formal response on August 21, 2018, wherein Respondent Firm admitted to the allegation that as of August 21, 2018 it had failed to name a successor EIRC, but such failure was done inadvertently. The Respondent Firm named a successor EIRC on August 24, 2018.
7. By email dated January 11, 2019, Respondent Firm notified the Board that as of December 14, 2018, its then, current named EIRC had separated from his employment with the Respondent Firm, and that Respondent Firm would not practice engineering until it employed a PE who would serve as its EIRC.
8. Respondent Firm and the Board agreed to settle this matter in lieu of further administrative action with respect to the above-styled matter
9. The Board has considered the following factors in reaching this settlement: Respondent Firm admitted to the failure to naming a successor EIRC; that at the time of the Complainant's departure, Respondent Firm had in its employ a duly licensed P.E. which Respondent Firm named as its successor EIRC; that the violation did not pose harm to the public; and Respondent Firm cooperated in the resolution of this Complaint.
10. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs and administrative costs were incurred in the investigation, initiation and resolution of this complaint.

#### **CONCLUSIONS OF LAW**

11. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code §30-13-1 *et seq.*

12. Sarah A. Smith, as the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
13. No person or firm is authorized to practice or offer to practice engineering in this state until the person or firm has been issued a Certificate of Authorization (COA) by the Board. W.Va. Code §30-13-17(a).
14. A person or firm desiring a COA must file all the required information with the Board on an application form specified by the Board. The required information shall include the sworn statement of the EIRC who is a professional engineer registered in this state. W. Va. Code §30-13-17(a).
15. Holders of a COA have a duty to notify the Board promptly of any change of information previously submitted to the Board in an application for a COA, and all holders shall notify the Board within thirty (30) days of any change in information previously submitted to the Board, such as changes of EIRC. W. Va. Code §30-13-17(h). W. Va. Code R. §7-1-11.9.
16. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code §30-13-21(a)(4).
17. The provisions of W. Va. Code §30-13-21(a) are applicable as appropriate to firms. W.Va. Code §30-13-21(d).
18. The Board is authorized to “assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the Board.” W. Va. Code §30-13-21(b); see also W. Va. Code §30-13-21(d)(4). W. Va. Code R. §7-1-15.1.
19. Failure to timely provide information to the Board is an action that may subject a person or firm to discipline by the Board, including a civil penalty up to One Thousand Dollars (\$1,000.00) for each offense. W. Va. Code R. §7-1-15.1.

20. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. §7-1-15.4.
21. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code §30-13-21(d)(4) and W. Va. Code R. §7-1-14.4.

### **CONSENT OF RESPONDENT**

Sarah A. Smith, the President of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of Smith Land Surveying, Inc.:

22. Respondent Firm is aware of its rights to be represented by counsel in this matter and to pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
23. Respondent Firm admits it failed to notify the Board that the Complainant separated her employment from the Respondent Firm, and that she was no longer its EIRC, and failed to name the change of its EIRC within the aforementioned thirty (30) day requirement in violation of West Virginia engineering law.
24. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
25. Respondent Firm acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to the above-styled matter. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.

26. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.
27. Respondent Firm acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
28. Respondent Firm understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondent Firm which may be before this Board.
29. Respondent Firm understands that the Complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.
30. Respondent Firm agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
31. Respondent Firm acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation, non-renewal or non-reinstatement of any Certificate of Authorization issued to Respondent Firm by the Board, the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.

32. Respondent Firm acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation, non-renewal or non-reinstatement of any Certificate of Authorization issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

### **ORDER**

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint No. C2019-06 pursuant to West Virginia Code §30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for its failure to notify the Board within thirty (30) days of any change in information previously submitted to the Board; specifically, failure to update its PE in responsible charge.
3. The civil penalty imposed herein totaling Five Hundred Dollars (\$500.00) must be paid within thirty (30) days of the date of entry set forth below, such amount to be made payable to the “**W. Va. P.E. Board**” for transfer to the general fund of the State of West Virginia upon receipt.
4. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board’s website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then the Respondent Firm’s COA is hereby **ORDERED REVOKED**.

Said revoked COA may be restored once the civil penalty is paid, and the Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code §30-13-21(d)(1).

7. In that Respondent Firm has informed the Board that as of December 14, 2018, it no longer employs a West Virginia PE that could serve as its EIRC, the Board **ORDERS** Respondent Firm be prohibited from advertising, or otherwise offering engineering services or practicing engineering in West Virginia, unless and until, it notifies the Board of the name of its EIRC, and is otherwise in good standing.
8. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein of Five Hundred Dollars (\$500.00), together with pre-judgment interest from the date of the Board President's signature hereon, post-judgment interest from the date of entry of the Judgment Order, and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.
9. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein, except as to the provisions set forth in paragraphs numbered 6 and 7 of this section, regarding revocation of the Respondent Firm's COA and its EIRC, and their effects shall survive the closure of this Consent Order.
10. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent Firm which may come before this Board.

11. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

**AGREED TO BY:**

  
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SMITH LAND SURVEYING, INC.  
By: Sarah A. Smith, its President

01/29/2019  
DATE

**ENTERED** into the records of the West Virginia State Board of Registration for Professional Engineers this 13 day of February, 2019.

**WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS**

By:   
\_\_\_\_\_  
BHAJAN S. SALUJA, P.E.  
BOARD PRESIDENT