

RECEIVED

JUN 12 2014

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: KEVIN A. McGLUMPHY
 ROAD SCIENCE DIVISION of
 ARR-MAZ CUSTOM CHEMICALS, INC.

C2014-13

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Kevin A. McGlumphy (hereinafter "Respondent McGlumphy") and Arr-Maz Custom Chemicals, Inc. (hereinafter "Respondent Firm") (together, "Respondents"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such 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 organized under the laws of the State of Delaware, but the facts relevant to this complaint relate to its Road Science Division and the parties agree to amend style of the complaint accordingly.
3. The Road Science Division of Respondent Firm has its principal place of business in Florida, with offices in other states.
4. Patrick G. Lavin is the President of the Road Science Division of Respondent Firm and holds a professional engineering license in several states but not West Virginia.

5. Respondent McGlumphy is a professional engineer employed by Respondent Firm in its Georgia offices and was the primary employee of Respondent Firm involved in the offer of engineering services to the West Virginia Division of Highways (WVDOH).
6. On November 18, 2013, Respondent McGlumphy notified Mr. Lavin and others of Respondent Firm's selection by WVDOH to provide engineering consulting services, at which time Respondents and Mr. Lavin were advised that Respondent Firm needed to qualify to do business in West Virginia prior to entering into the agreement with WVDOH.
7. Respondent McGlumphy applied for and received a professional engineering license in West Virginia effective January 3, 2014, after which Respondent Firm applied for and received a Certificate of Authorization (COA # C04889) on March 1, 2014.
8. The agreement with WVDOH to provide engineering services was entered on January 21, 2014, and signed by Mr. Lavin on behalf of Respondent Firm despite Respondent Firm's failure to obtain its COA as of January 21, 2014.
9. The Board initiated complaint number C2014-13 at its regular meeting on March 25, 2014, which was filed and served on April 9, 2014.
10. Respondent Firm's corporate counsel notified the Board and initiated settlement negotiations in lieu of filing a Response to the Complaint.
11. Mr. Lavin was originally named as a respondent in this matter, but Respondents have represented and the Board accepts that Respondent McGlumphy was the individual actively involved in the offer of engineering services.
12. By agreement of the parties, this Consent Order reflects that Mr. Lavin is dismissed as a Respondent and the complaint is amended to name Kevin McGlumphy as the individual Respondent.

13. Respondent McGlumphy admits that he offered engineering services in West Virginia without a professional engineering license, in violation of West Virginia engineering law.
14. Respondent Firm admits that it offered engineering services in West Virginia in violation of West Virginia engineering law and further admits that Mr. Lavin should have followed the advice to refrain from signing the agreement until such time as Respondent Firm was properly credentialed to provide engineering services in West Virginia.
15. Respondents state that no work was done in West Virginia prior to Respondents being properly authorized to practice engineering in West Virginia.
16. The Board has taken into account the following factors in reaching this settlement:
Respondent McGlumphy, while in the process of applying for licensure in West Virginia, self-reported the circumstances giving rise to this complaint; Respondents are currently in good standing with the Board; Respondents cooperated in the investigation and prompt resolution of this Complaint; and the nature of the violation did not pose a harm to the public.
17. 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

18. 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.
19. Patrick G. Lavin, as the President of the relevant Division of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

20. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 et seq., in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.
21. West Virginia engineering law allows a firm to practice or offer to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.
22. 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).
23. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., without a license is an action that may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
24. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., without a valid Certificate of Authorization is an action that may subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-5.1.
25. 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.

26. 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 RESPONDENTS

Respondent McGlumphy, individually, and Patrick G. Lavin, President of the Road Science Division of Arr-Maz Custom Chemicals, Inc., by affixing their signatures hereon, agree to the following:

27. Respondents are represented by their in-house counsel and are aware of their right to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
28. Respondent McGlumphy admits that he did not have a license to offer or provide engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law.
29. Respondent Firm admits that it did not have a Certificate of Authorization to offer or provide engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law, or at the time the agreement for such services was signed on its behalf.
30. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
31. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action on Complaint Number C2014-13. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

32. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.
33. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.
34. Respondents acknowledge 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.
35. Respondents understand 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 Respondents which may be before this Board.
36. Respondents understand 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.
37. Respondents agree 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 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).

38. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
39. Respondents acknowledge 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 of any license or certification issued to Respondents 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

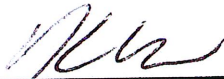
1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2014-13 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent McGlumphy pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a license.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for offering to practice engineering in West Virginia without a certificate of authorization.
4. The civil penalties 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.

5. 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 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).
6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
7. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), together with pre-judgment interest from the date of the 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.
8. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
9. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to 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 Respondents which may come before this Board.

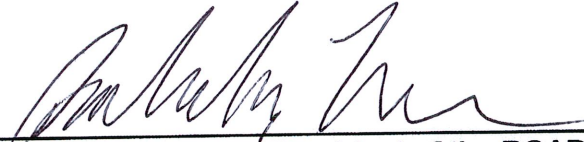
10. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

AGREED TO BY:



KEVIN A. McGLUMPHY, individually

5/31/14
DATE




**PATRICK G. LAVIN, as President of the ROAD
SCIENCE DIVISION of ARR-MAZ CUSTOM
CHEMICALS, INC.**

6/2/14
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 24 day of June, 2014.

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

By: 

**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**