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WV PE BOARD

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

**IN RE:   TERENCE C. MORAN**

**C2017-11**

**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 to be taken against Terence C. Moran (hereinafter "Respondent Moran") in connection with a complaint filed against his employer, Potesta & Associates, in which he was named in connection with specific violations alleged therein related to alleged seal violations. All other allegations in C2017-11 were dismissed without prejudice pursuant to a Board Order entered on March 14, 2018. As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter and have agreed to go forward solely against Respondent Moran, 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 Moran is a licensed professional engineer in the State of West Virginia, holding PE license number 012985.
3.     The third-party complaint was filed by Upton Construction Company, Inc., through its owner, James Upton, on November 30, 2016, and was served by the Board upon Potesta & Associates on said date.
4.     A verified response to the Complaint from Potesta & Associates, by counsel, was received on December 30, 2016.

5. This Complaint as filed alleges various violations in connection with a water system improvement project for the Town of Mill Creek; other complaints related to this project are pending in the Public Service Commission of West Virginia (16-1601-W-C) and the Circuit Court of Randolph County (16-C-165).
6. The allegations being settled herein relate to drawings which were sealed by Respondent Moran for that project: one with an issue date of 7/15/2015 which was signed and sealed on that date and a revised set which was issued on November 12, 2015, which used the 7/15/2015 seal and signature.
7. The Board finds that the issuance of a revised drawing requires that a new seal be affixed to the drawing, with the date and signature of the professional engineer.
8. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: the circumstances leading to the violation; no history of previous violations; the extent to which Respondent and his employer cooperated with the Board in resolving this matter; and other appropriate matters.
9. 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**

10. 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.*

11. W. Va. Code § 30-13-16(c) provides that “(w)henever presented to a client or any public or governmental agency, the seal, signature and date shall be placed on all specifications, reports, drawings, plans, design information and calculations in accordance with rules promulgated by the board...”
12. Revisions shall be numbered, dated, initialed, and sealed by the registrant responsible for the revision. W. Va. Code R. § 7-1-7.3(c).
13. 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).
14. 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).
15. Misuse of a West Virginia professional engineer seal subjects Respondent 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.
16. 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.
17. 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**

Terence C. Moran, individually, by affixing his signature hereon, agrees to the following:

18. Respondent Moran is represented by counsel, who also represented Potesta & Associates in the complaint as filed, and is aware of his right to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and notwithstanding, Respondent Moran intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
19. Respondent Moran acknowledges the findings set forth above regarding same in order to resolve this matter and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
20. Respondent Moran acknowledges that his counsel, as counsel for Potesta & Associates, waived any objections regarding the timeliness of the disposition of complaints and agrees to be bound by this waiver in the event that the Board does not approve this Consent Order.
21. Should the Board not approve this Consent Order, Respondent Moran waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on Respondent Moran and Potesta & Associates even if the Board does not approve this Consent Order.
22. Respondent Moran 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 based on the complaint as filed.
23. Respondent Moran 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 related or unrelated disciplinary matter involving Respondent which may be before this Board.

24. Respondent Moran understands that the complaint, his response, 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.
25. Respondent Moran 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 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).
26. Respondent Moran acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of the license issued to Respondent Moran by the Board, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.
27. Respondent Moran acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any certification issued to Respondent Moran 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 this Complaint pursuant to West Virginia Code §30-13-22(b).
2. The Board **ORDERS** Respondent Moran to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for his failure to affix a new seal and signature to revised drawings, in violation of West Virginia engineering law.
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 Board **ORDERS** that the untimely payment of the civil penalty imposed herein may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.
5. The Board **ORDERS** this Consent Order and the underlying Complaint to 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 rescission of this consent order, reinstatement of the Complaint, the summary revocation of Respondent's license, further disciplinary action by the Board, and/or refusal by the Board to renew or reinstate Respondent Moran's license until such time as Respondent fully complies with the terms herein.
7. If the civil penalties totaling Five Hundred Dollars (\$500.00) are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Moran upon application by the Board for the entry of a

Judgment Order for the total amount of payment agreed to herein, 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 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, unrelated disciplinary matter involving Respondent Moran which may come before this Board.
9. 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.
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:**

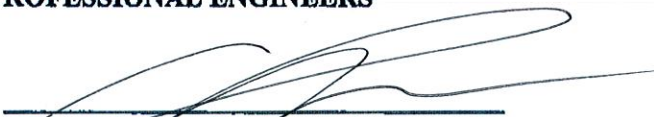
  
\_\_\_\_\_  
TERENCE C. MORAN

4/20/18  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 9<sup>th</sup> day of May, 2018.

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

By:

  
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EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

**PREPARED BY:**

PATRICK MORRISEY  
West Virginia Attorney General

By: DEBRA L. HAMILTON (WV Bar No. 1553)  
Deputy Attorney General  
*Counsel for West Virginia State Board of Registration for Professional Engineers*

**APPROVED BY:**



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*Counsel for Potesta & Associates, Inc.*