

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

IN RE: TENSAR Earth Technologies, Inc.

C2006-17

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter the "Board"), and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action which shall be taken against TENSAR Earth Technologies, Inc. [hereinafter at times referred to as TENSAR or Respondent]. 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 Board is a state entity created by West Virginia Code §30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to West Virginia Code §30-13-1 *et seq.*
2. TENSAR Earth Technologies, Inc., is a wholly owned subsidiary of The TENSAR Corporation.
3. TENSAR Earth Technologies, Inc., held the original Certificate of Authorization (COA) to do business in West Virginia (COA# C01818-00), but at someone's inadvertent request the COA was transferred to its parent company.
4. Subsequent to that time, the Board has clarified its policy that automatic transfers are based on the Federal Employer Identification Number (FEIN).
5. The FEIN associated with COA# C01818-00 has always been the FEIN of Respondent TENSAR Earth Technologies, Inc.

6. Based on representations made by agents for both corporations, only TENSAR Earth Technologies, Inc., practices engineering in West Virginia and was and is required to have a COA.
7. Due to the unusual circumstances presented herein, the Board finds it appropriate to deem COA# C01818-00 applicable to both corporations through June 30, 2006, and to bring this complaint only against TENSAR Earth Technologies, Inc., but reiterates its policy that determinations regarding automatic changes or updates to COA information are based on FEINs and firms with different FEINs cannot do business in West Virginia under the same COA.
8. COA# C01818-00 named Stephen Valero as the engineer in responsible charge, and Mr. Valero left the firm's employ in May 1, 2006.
9. Neither Respondent firm nor The Tensar Corporation notified the Board to update the engineer in responsible, rendering the COA invalid as of the date Mr. Valero left the firm's employ.
10. Neither Respondent firm nor The Tensar Corporation took steps to renew the COA, which expired on July 1, 2006, which renewal would have indicated the need to name another engineer licensed in West Virginia as the engineer in responsible charge.
11. On June 26, 2006, Respondent entered into a sub-contract to provide engineering design services for a mechanically stabilized earth wall for a Monsanto landfill site in West Virginia.
12. After entering into the sub-contract, Respondent recognized that no individual was currently registered in the State of West Virginia and on July 31, 2006, Brendan Sheppard, Manager of Engineering Operations, made comity application for licensure and requested expedited processing of the application.

13. Upon learning of the lack of licensure and prior to signing and sealing any of the work, Respondent sub-contracted the work to an engineer licensed in West Virginia.
14. This complaint resulted from ensuing communications between Mr. Sheppard and Board staff, and Mr. Sheppard's license application was held in abeyance pending resolution of this Complaint.
15. The Board finds it appropriate to issue the license being held in abeyance, but to proceed with disciplinary action against Respondent firm for practicing engineering with an invalid certificate of authorization.
16. The board-initiated complaint was filed on September 5, 2006, and sent by certified mail on September 6, 2006, and this Consent Agreement was provided simultaneously with the serving of the Complaint as a result of communications between the Board and Respondent.
17. Respondent admits it performed engineering work in West Virginia with an invalid COA.
18. TENSAR's prompt sub-contracting of the work to a licensed engineer and cooperation with the Board mitigates respondent's culpability regarding the charge of practicing and offering to practice engineering with an invalid COA.
19. Respondent has waived its right to a hearing on this matter and other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.
20. The Board incurred only minimal expenses with regard to this Complaint and therefore finds it appropriate to enter into this consent order without the imposition of costs.
21. At the time of the contract, the Board had no knowledge of the circumstances rendering the COA invalid and the Board's website would have indicated Respondent had a current COA; therefore, the Board finds no grounds for

proceeding against the party contracting with respondent for aiding and abetting the unlicensed practice of engineering since reasonable steps taken by the contractor would not have indicated the invalid status of Respondent's COA.

CONCLUSIONS OF LAW

22. 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, which remains valid only with a professional engineer licensed in West Virginia being named as the engineer in responsible charge. West Virginia Code §30-13-17.
23. A firm holding a COA must report any change in information within thirty (30) days of such change. West Virginia Code §30-13-17(b).
24. "Updated Information. It is the firm's responsibility to notify the Board of any change in information previously submitted to the Board, such as ... change of PE in responsible charge, or similar matter requiring current information." 7 CSR 1-11.9.
25. 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." West Virginia Code §30-13-21(b); *see also* W. Va. Code §30-13-21(d)(4).
26. Practicing or offering to practice engineering without a valid COA, to which Respondent has admitted herein, is an action that would subject a person or firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
27. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

CONSENT OF TENSAR

Joseph Cavanaugh, Vice President-Technology of TENSAR Earth Technologies, Inc., by affixing his signature hereon, agrees to the following on behalf of Respondent company:

28. Respondent understands this settlement is in part based on the Board's reliance on information contained in correspondence from Brendan Sheppard dated August 1, 2006.
29. TENSAR is aware of its right to be represented by counsel and of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently, knowingly and voluntarily waives its right to do so.
30. Respondent intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
31. Respondent agrees to accept an informal settlement of Complaint 2006-17.
32. Respondent consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
33. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
34. Respondent acknowledges that proof of any misstatement or misrepresentation made by TENSAR herein, Mr. Sheppard's application for licensure, Respondent's application for COA, or any other document or statement relied

upon in the entering of this consent order, will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certificate of authorization issued in connection with this Order, 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

35. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).
36. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing or offering to practice engineering without a valid certificate of authorization.
37. The civil penalty imposed herein must be paid within fifty (50) days of the date of the signature of the Board President, such penalty 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.
38. Respondent will not practice or offer to practice engineering in the State of West Virginia unless and until it holds a valid Certificate of Authorization issued by this Board, which COA shall not issue until Respondent has qualified for same and paid the civil penalty imposed herein.
39. Respondent acknowledges this Consent Order and the underlying Complaint are public records and agrees that the sum and substance of the Complaint and this agreement in part or in their entirety may 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).

40. Any violation of the terms of this Consent Order shall be immediate cause for summary revocation of Respondent's COA and further disciplinary action by the Board.
41. Nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative action initiated by Respondent.
42. If the civil penalty imposed hereunder is not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$250.00), together with pre-judgment interest from the date of the President's signature hereon and post-judgment interest from the date of entry of the Judgment Order, which judgment shall be fully executable in accordance with applicable law.

WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS


E.L. Bonner
Vice President

By:


LEONARD J. TIMMS, P.E.
Board President

Date:

10/2/06


TENSAR EARTH TECHNOLOGIES, INC.
By JOSEPH CAVANAUGH,
ITS VICE-PRESIDENT-TECHNOLOGY

Date:

9/26/06