

RECEIVED

MAR 16 2020

RECEIVED

MAR 06 2020

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: SOIL & STRUCTURE CONSULTING, INC.

C2020-12

CONSENT ORDER

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 Soil & Structure Consulting, Inc. (hereinafter "Respondent Firm"). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter. This complaint, C2020-12, is related to a previous Board-initiated complaint C2019-23 which alleges that Respondent Firm, amongst other things, offered and practiced engineering on a WV project. During the investigation of C2019-23, Respondent Firm provided information, and the Board has accepted, that the project related to C2019-23 was completed by a current employee of Respondent Firm while previously employed by a duly licensed firm. The Board has agreed to dismiss C2019-23 initiated by the Board in its entirety and to proceed solely with C2020-12. 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 Commonwealth of Virginia, with its principal place of business in Reston, Virginia.
3. State law requires a provider of engineering services to possess an active Certificate of Authorization (hereinafter "COA") in order to practice engineering or to offer to practice engineering in West Virginia.
4. On or about February 25, 2020, Respondent Firm applied for a COA.
5. Respondent Firm's COA (COA# C06199) was activated on March 2, 2020.

6. In December 2018, a West Virginia licensed, registered professional engineer associated with Respondent Firm, utilized the Board's website to renew his West Virginia PE registration. As part of the Board's biennial audit of its PE renewals, this engineer was chosen for an audit. During the audit process, this professional engineer failed to provide the Board with requested information germane to the audit.
7. This resulted in a Board-initiated investigation, which was the basis of the Board's Complaint C2019-23, which charged the above referenced professional engineer and Respondent Firm, sub judice, with the failure to produce the information requested by the Board within thirty (30) days of said request: a violation of W. Va. Code §30-13-21(a)(6).
8. As a result of this Complaint C2019-23, Respondent Firm, sub judice, indicated that it had offered engineering services and/or practiced engineering in the State of West Virginia without a COA.
9. This led to another Board-initiated investigation, which was the basis of the Board's Complaint C2020-12, sub judice, which set forth allegations that Respondent Firm, allegedly offered and provided engineering services for six projects in the State of West Virginia herein described as two projects in Harpers Ferry, West Virginia; one project in Falling Waters, West Virginia; and three projects in Martinsburg, West Virginia (hereinafter, collectively, "Projects"), all prior to Respondent Firm obtaining its COA.
10. The Board initiated Complaint Number C2020-12 at its regular meeting on November 13, 2019, which was filed and served on November 20, 2019.
11. Respondent Firm filed an untimely Response to the Complaint on January 14, 2020.
12. The Board and Respondent Firm agreed to settle this matter in lieu of further formal administrative proceedings. As part of the settlement, C2019-23 would be dismissed.
13. Respondent Firm admits that it offered to provide engineering services, and did provide engineering services for six projects in West Virginia without a COA.
14. The Board has taken into account the following factors in reaching this settlement: the offers and practice of engineering services did not pose a harm to the public; Respondent

Firm applied for and received a COA and is currently in good standing with the Board; Respondent Firm voluntarily disclosed that it offered and/or provided engineer services in West Virginia without a COA; Respondent Firm has cooperated in the resolution of this Complaint; and that the aforesaid professional engineer is in good standing with the Board at this time.

15. 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

16. 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.*
17. Kenneth G. Fraine, President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm, and he makes such admissions, knowingly, freely, voluntarily, and without any threat of harm or act of coercion.
18. West Virginia engineering law allows a firm to practice engineering or to offer engineering services only upon the issuance of a Certificate of Authorization by the Board. W. Va. Code §30-13-17.
19. It is unlawful for any firm to practice or offer to practice engineering, as defined by West Virginia Code §30-13-3(e), in the State of West Virginia without a COA. W. Va. Code §30-13-17.
20. 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).

21. The provisions of W. Va. Code §30-13-21(a) are applicable as appropriate to unlicensed persons and firms. W. Va. Code §30-13-21(b) and (d).
22. Practicing engineering, and offering to practice engineering as defined by W. Va. Code §30-13-3(e), without a valid Certificate of Authorization are actions that may subject any person or firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00) for each offense. W. Va. Code R. §7-1-15.1.
23. 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).
24. 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.
25. 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 FIRM

Mr. Kenneth G. Fraine, President of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of Soil & Structure Consulting, Inc.:

26. Respondent Firm has the power and authority to make admissions, and otherwise act on its own behalf, and it makes such admissions herein, knowingly, freely, voluntarily, and without any threat of harm or act of coercion.
27. Respondent Firm acknowledges its right to consult an attorney of its choosing, at its sole expense, and it knowingly, freely, voluntarily, and without any threat of harm or act of coercion waives its right to consult counsel, and will proceed pro se. Further, Respondent

Firm is aware of its rights to pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm knowingly, freely and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

28. Respondent Firm admits it did not have a Certificate of Authorization when it offered and provided engineering services for the Projects described above.
29. Based on the findings of fact set forth above, the legal citations set forth herein, and Respondent Firm's admission above, Respondent Firm violated W. Va. Code §30-13-17 six times when it offered engineering services for the Projects without the required COA, and it violated W. Va. Code §30-13-17 six additional times when it provided engineering services for the Projects without the required COA. These acts constitute twelve separate violations of West Virginia engineering law, W. Va. Code §30-13-1 *et seq.* and/or the rules promulgated under it.
30. Respondent Firm accepts the findings set forth above and consents to the entry of this Consent Order knowingly, freely and voluntarily, and not under duress, restraint or compulsion.
31. 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.
32. 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.

33. 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.
34. If the Board does reject this proposal, any admissions made herein by Respondent Firm are deemed null and void.
35. 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.
36. 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.
37. 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).
38. 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, and the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.
39. 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 Number C2020-12 pursuant to West Virginia Code §30-13-22(b), and that Complaint Number C2019-23 is **DISMISSED** as part of this settlement.
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for each of the six separate violations of offering engineering services without a Certificate of Authorization. The civil penalty for offering engineering without a COA is One Thousand, Five Hundred Dollars (\$1,500.00).
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for each of the six separate violations of practicing engineering without a Certificate of Authorization. The civil penalty for practicing engineering without a COA is One Thousand, Five Hundred Dollars (\$1,500.00).
4. The civil penalty imposed herein, totaling Three Thousand Dollars (\$3,000.00), 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’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).

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 penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm's COA is hereby **ORDERED REVOKED**. Said revoked COA may be restored once the civil penalty is paid, and Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code §30-13-21(d)(1).
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 Three Thousand Dollars (\$3,000.00) 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 paragraph 7, above, regarding revocation of Respondent Firm's COA, if any, and its 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:

RESPONDENT FIRM



SOIL & STRUCTURE CONSULTING, INC.
By: KENNETH G. FRAINE, PRESIDENT

3/3/2020

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 11 day of March, 2020.

WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

By:



BHAJAN S. SALUJA, P.E.
BOARD PRESIDENT