

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

**IN RE:        TAPAN BAKSI**

**C2009-12**

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Edward L. Robinson, P.E., its President, for the purpose of agreeing to disciplinary action to be taken against Tapan Baksi (hereinafter "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 the same.
2.     Respondent Tapan Baksi is a licensed professional engineer in the State of West Virginia and holding PE license number 9150.
3.     Respondent Firm, Ansted Engineering and Surveying Inc., is organized under the laws of the State of West Virginia, holding Certificate of Authorization number CO2880 and with its office located in Gilbert, West Virginia.
4.     The board-initiated complaint was served by certified mail on May 24, 2009, citing two counts of conduct likely to deceive, defraud or harm the public and misuse of seal.

5. No response to the Complaint was received and therefore the allegations of the Complaint are admitted as provided for in West Virginia Code R § 7-2-2.5.
6. The Board noticed this matter for hearing at 1 p.m. on Tuesday, July 21, 2009.
7. The week prior to the hearing, Respondent requested an informal conference, which was granted for 2 p.m. on Tuesday, July 21, 2009, thereby continuing the noticed hearing.
8. Respondents, in requesting and receiving the informal conference, waived any and all objections in connection with the Board members later sitting as the Hearing Panel in the adjudication of this matter.
9. Hearing nothing from Respondents after the informal hearing, an amended notice of hearing was served upon Respondents on August 26, 2009, scheduling the hearing for 1 p.m. on Tuesday, September 29, 2009.
10. Respondent Baksi appeared for said hearing, and certain procedural matters, as well as testimony from the Board's investigator and an expert, are set forth in a transcript of the record made that date.
11. At the request of Respondent Baksi, the hearing was recessed and would resume in November, during which time the parties agreed to attempt to negotiate this Consent Order and Respondent Baksi agreed to perform no engineering work during the interim period.
12. At the request of the Board, Respondent Baksi agreed to and did in fact temporarily surrender his engineering seal to the Board during the interim period.

13. Respondent Baksi did not communicate with the Board regarding this proposed Consent Order forwarded to him prior to the November Board meeting, but appeared for the hearing on November 23, 2009, at which time he chose to agree to this Consent Order rather than proceed with the hearing.
14. Based on information available to the Board, action against the individual respondent is tantamount to action against Respondent Firm inasmuch as Respondent Baksi is the sole owner, principal and engineer for Ansted Engineering and Surveying, Inc.
15. It is therefore unnecessary to include Ansted Engineering and Surveying, Inc., in the disciplinary action set forth in this Consent Order, and therefore Respondent Firm is dismissed from the Complaint.
16. Count One of the "conduct likely to deceive, defraud or harm the public" related to numerous issues in connection with Respondent's engineering work and mine mapping for Bluestone Mine #65, which issues included failure to comply with state and federal mine mapping regulations, reliance on information provided by others without the necessary fieldwork or disclaimers, failure to address safety factors created by an adjacent water impoundment, failure to accurately depict the mine boundaries and outcropping elevation, some of all of which resulted in a federal MSHA safety citation for "unwarrantable failure to comply with a mandatory standard" resulting in a reasonable likelihood of fatal injury to 22 persons, for which Respondent paid a fine.

17. Count Two of the “conduct likely to deceive, defraud or harm the public” related to Respondent’s placing his seal on a mine map for Titan Mining’s Big Eagle #1 mine without doing the requisite work required for said mapping by West Virginia engineering law, as well as state and federal mine mapping regulations, resulting in a violation issued by the West Virginia Office of Miners Health, Safety and Training (WVOMHST), which was assessed by WVOMHST as reasonably likely to injure 6-9 persons and for which Respondent paid a fine.
18. In October 2009, Respondent Baksi physically surrendered his professional engineering stamp to the Board to be held until this matter has been fully resolved.
19. Respondent Baksi admits that his engineering work in connection with (1) Bluestone Mine #65 and the Smith Branch Impoundment and (2) Titan Mining’s Big Eagle #1 mine created conditions reasonably likely to harm the public, which work did not conform to the standards and practices required of a reasonably prudent professional engineer.
20. Respondent Baksi admits that he relied on information which he did not verify and sealed documents which were based on this unverified information, which constitutes misuse of seal.
21. Respondent’s admissions with respect to the violations alleged in the complaint constitute admissions negligence, incompetence or acts of misconduct in the practice of engineering.
22. The Board incurred substantial administrative costs in connection with the

investigation, prosecution and resolution of this complaint. Such costs were in excess of Ten Thousand Dollars (\$10,000.00).

23. The Board advised Respondent Baksi of his right to counsel and recommended same, but Respondent Baksi voluntarily chose to proceed without representation.
24. Respondent Baksi's failure to communicate with the Board and otherwise professionally address matters raised in this Complaint are facts considered by this Board in determining an appropriate resolution.
25. The Board accepts as true Respondent Baksi's representation that the terms and conditions agreed to herein will create a financial hardship and have taken such hardship into account in the terms and conditions set forth herein.
26. Respondent waives his 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.

### **CONCLUSIONS OF LAW**

27. The Board is a State entity created by West Virginia Code § 30-13-1 *et seq.* to regulate the practice of professional engineering in this State.
28. The Board is authorized to suspend or revoke or refuse to issue, restore or renew a license or impose a civil penalty upon any licensee who has
  - a. engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive or defraud the public, to which Respondent has admitted to two counts herein [W. Va. Code § 30-13-21(a)(11); W. Va. Code R § 7-1-14.1];

- b. signed or affixed the professional engineer's seal or permitted the professional engineer's seal or signature to be affixed to any specifications, reports, drawings, plans design information, construction documents or calculations or revisions which have not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control, to which Respondent has admitted [W. Va. Code § 30-13-21(a)(10)]; or
  - c. been negligent, incompetent or committed an act of misconduct in the practice of engineering, to which Respondent has admitted [W. Va. Code § 30-13-21(a)(2)].
- 29. 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).
- 30. Engaging in actions which threaten the public health, safety and welfare subjects Respondent to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00) for each offense. W. Va. Code R § 7-1-15.1.
- 31. 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.

32. Professional misconduct, negligence or incompetence 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.
33. The Board has the authority to assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity found in violation of its rules, which shall be paid to the West Virginia Board of Registration for Professional Engineers by check or money order within a period of thirty (30) days from the date this Consent Order is entered. W. Va. Code R § 7-1-14.4.
34. Each day of continued violation may constitute a separate offense. W. Va. Code R § 7-1-15.3.

#### **CONSENT OF RESPONDENT**

Tapan Baksi, individually, by affixing his signature hereon, agrees to the following:

35. Respondent is aware of his right to be represented by counsel and of his option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives his right to do so.
36. Respondent intelligently and voluntarily waives his right to continue and complete the formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.

37. Respondent 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.
38. Respondent requested that the hearing being held on this matter be recessed for the purpose of negotiating this consent order and agreed to and did surrender his engineering seal during the period of such recess.
39. Respondent Baksi acknowledges that he repeatedly failed to communicate with the Board regarding the hearings on this Complaint.
40. Respondent acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of the six-month time limit set forth in West Virginia Code § 30-13-22(b) for the disposition of Complaint Number C2009-12. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.
41. Respondent acknowledges that this Consent Order is being executed for the purpose of avoiding further administrative action with respect to this cause.
42. Respondent acknowledges that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.
43. Should the Board not approve this Consent Order, Respondent waives any objections to the Board or any of its members participating in the adjudication of this



matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.

44. Respondent understands that 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 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).
45. Respondent acknowledges that proof of any 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 his license and the certificate of authorization issued to Respondent Firm, 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**

46. On the basis of the foregoing, and upon entry of this Consent Order by this tribunal, 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).
47. The Board **ORDERS** that Respondent's firm, Ansted Engineering and Surveying, Inc., is dismissed as a party to Complaint No. C2009-12.

48. The Board **ORDERS** that Respondent Baksi's license is hereby **REVOKED**. The Board further **ORDERS** that such revocation will be stayed pending successful completion of a probationary period prescribed by the Board and outlined below.
49. The Board **ORDERS** Respondent Baksi to surrender his professional engineer seal to the Board for such time as it take Respondent to fulfill the terms and conditions prescribed by the Board and outlined below, and further **ORDERS** Respondent not to apply his seal, including any electronic facsimile, to any engineering work until such time as all the Board provides notice in writing in accordance with the terms and conditions set forth herein.
50. The Board **ORDERS** Respondent Baksi to complete a two (2) year probationary period commencing with Board approval of a licensed professional engineer who agrees to review and seal any and all engineering work performed by Respondent Baksi, which approval must be obtained on or before April 1, 2010, unless Respondent requests and is granted an extension of time by the Board for good cause shown.
51. The Board **ORDERS** that the reviewing professional engineer agree to provide the Board with four (4) written reports, one every six months, summarizing the quantity and quality of engineering work performed by Respondent during the prior six-month period.
52. The Board reserves the right to request any and all work papers and calculations performed by Respondent regarding any work done during the probationary

period.

53. The Board reserves the right to extend the period of probation for up to an additional two years if, in the opinion of the reviewing professional engineer or the Board, Respondent has not performed work sufficient to demonstrate competence in the practice of engineering.
54. Upon the recommendation of the reviewing professional engineer, but no sooner than upon receipt of the second (2<sup>nd</sup>) six-month (6-month) report, the Board may return Respondent's engineering seal and allow its use in accordance with such terms as are then agreed to by the Board, the Respondent, and the reviewing professional engineer.
55. The Board **ORDERS** Respondent to pay for any and all costs incurred by the Board-approved professional engineer in furtherance of the terms of this Consent Order.
56. The Board **ORDERS** Respondent to successfully complete within one year from the date of entry of this Order the Basic Studies in Engineering Ethics offered by Murdough Center for Engineering Professionalism at Texas Tech University, Lubbock, Texas.
57. The Board **ORDERS** Respondent to provide documentation to the Board that he has successfully completed the course in a timely manner.
58. The Board **ORDERS** that such course be in addition to the annual professional development hours required by law to maintain a license with this Board.

59. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for Count One, engaging in conduct likely to harm the public at the Bluestone Mine.
60. The Board **ORDERS** Respondent to pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for Count Two, engaging in conduct likely to harm the public at the Big Eagle Mine.
61. The Board **ORDERS** Respondent to pay a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for misuse of a professional engineer seal.
62. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for professional misconduct, negligence or incompetence.
63. The Board **ORDERS** that payment of the civil penalties imposed herein totaling Ten Thousand Dollars (\$10,000.00) be stayed until such time as the Board allows Respondent to apply his engineering seal in accordance with such payment schedule as may be agreed to by the parties. Such payment shall be completed no later than July 1, 2012, with all payments made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.
64. The Board **ORDERS** Respondent to pay administrative costs in the amount of Ten Thousand Dollars (\$10,000.00), which administrative costs must be paid on or before January 1, 2010, and made payable to the W. Va. P.E. Board (Administrative

Costs).

65. The Board **ORDERS** that any violation of the terms of this Consent Order, including timely payment of the civil penalties and administrative costs imposed herein, constitutes grounds for an immediate lift of the stay of revocation granted herein and permanent revocation of Respondent's professional engineering license, as well as possible cause for further disciplinary action by the Board.
66. 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).
67. 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 action except an action to enforce the terms of this Consent Order.
68. If the civil penalties and administrative costs imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent for such amount as is then due and owing, 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.

69. This matter shall remain open until such time as the Board enters an Order regarding either successful completion of the terms and conditions agreed to herein or permanent revocation of Respondent's license, as set forth in this Consent Order.
70. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers 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:

Tapan Baksi  
TAPAN BAKSI

11/23/09  
DATE

Entered into the records of the WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS by:

Edward L. Robinson  
EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

11/23/09  
DATE

**THIS CONSENT ORDER PREPARED BY:**

**DEBRA L. HAMILTON  
DEPUTY ATTORNEY GENERAL  
BUILDING 1, ROOM 26-E  
CHARLESTON, WV 25305  
304-558-2021**