

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

IN RE:        Michael F. Salley, P.C.

C2012-05

**RECEIVED**

**CONSENT ORDER**

FEB 10 2012

**WEST VIRGINIA STATE BOARD**

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 disciplinary action to be taken against Michael E. Salley, P.E. (hereinafter “the Respondent”). As contained herein, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of the same, 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 is a professional engineer licensed in the state of Pennsylvania.
3. Respondent’s principal place of business is Forty Fort, Pennsylvania.
4. Respondent has no employees and, as such, is deemed under West Virginia engineering law to practice as a sole proprietorship.
5. Respondent never applied for licensure in the State of West Virginia and thus did not qualify for a Certificate of Authorization (COA) as a sole proprietorship to offer or practice engineering in this State.
6. On or about June 1, 2011, the Federal Aviation Administration (FAA) contacted Respondent to do an analysis of the existing runway light support structure at the airport

in Charleston, West Virginia, because Respondent had done a similar job at a Pennsylvania airport.

7. Respondent did not solicit the engineering work and, as represented to the Board, did the work basically as a favor to an agency of the federal government at its request.
8. On or about September 8, 2011, Respondent notified the Board of the engineering work, explained the above circumstances, submitted a comity application for licensure in West Virginia, and was approved for licensure.
9. Respondent will be issued West Virginia P.E. License No. 19538 upon Respondent's completion of the registration process, at which time Respondent will also be issued a COA as a sole proprietorship (COA # 04209).
10. The Board initiated Complaint Number C2012-05 at a regular meeting of the Board, but, under the totality of the circumstances, moved to proceed only as to Respondent's practice of engineering without the required Certificate of Authorization, which complaint was filed on October 17, 2011.
11. Respondent did not offer to practice engineering in West Virginia, self-reported the facts giving rise to the Complaint, promptly took steps to obtain a West Virginia engineering license and COA, and promptly admitted the allegations of the Complaint, all of which mitigated the violation and minimized the costs incurred by the Board.
12. Therefore, the Board, in its discretion, will not take assess administrative costs although the Board finds that it incurred such costs and it is within its power to assess such costs as set forth in West Virginia Code § 30-13-21(d)(4) and West Virginia Code R. § 7-1-14.4.

### **CONCLUSIONS OF LAW**

13. 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.*
14. Practicing engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a valid Certificate of Authorization, to which Respondent has admitted herein, is an action that could subject the practicing entity to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W.Va. Code R. § 7-1-15.1.
15. Respondent has no employees and, as such, qualifies for a Certificate of Authorization as a sole proprietorship. W.Va. Code R. § 7-1-11.2(a).
19. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
  - (b) The circumstances leading to the violation;
  - (c) The nature and severity of the violation and the risk of harm to the public;
  - (d) The history of previous violations;
  - (e) The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
  - (f) The economic benefits gained by the violator as a result of the noncompliance;
  - (g) The interest of the public; and
  - (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

### **CONSENT OF RESPONDENT**

Michael F. Salley by affixing his signature hereto, agrees to the following:

20. Respondent is aware of his right to be represented by counsel and is aware of his option to pursue this matter through appropriate administrative and/or Court procedures, but

intelligently and voluntarily waives his right to do so in the event that this Consent Order is approved by the Board.

21. Respondent admits he practiced engineering in the State of West Virginia without the required Certificate of Authorization, accepts the findings set forth above, agrees to settle this matter in accordance with the terms set forth herein, and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint, or compulsion.
22. Respondent acknowledges 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 C2012-05. This paragraph is binding on the parties hereto, even in the event that the Board does not approve this Consent Order.
23. Respondent 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 authorizes the Board to review and examine all investigative file material concerning Respondent prior to or in conjunction with consideration of this Consent Order. This paragraph is binding upon the parties even if the Board does not approve this Consent Order.
24. 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 upon the parties even if the Board does not approve this Consent Order.
25. Respondent acknowledges that the Board may reject this proposal, notice and complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

26. Upon acceptance by the Board, 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 action between the parties except an action to enforce the terms of this Consent Order.
27. Respondent understands that the complaint and any other written materials in the file which are public records must be made available upon legal request in accordance with the state's Freedom of Information Act.
28. Respondent 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).
29. Respondent acknowledges that proof of any misstatement or misrepresentation made on his behalf in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, 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 and compromise of Complaint C2012-05 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in West Virginia without a Certificate of Authorization.

3. The Board further **ORDERS** Respondent to pay the civil penalty imposed herein within thirty days (30 days) of the date Respondent receives notice of the Board President's signature hereon, 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. Respondent is prohibited from practicing or offering to practice engineering in the State of West Virginia until such time as he has completed the registration process and has been issued a Certificate of Authorization.
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 penalty imposed herein 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 upon herein (\$250.00), 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 penalty agreed to herein.

any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

**AGREED TO BY:**

**MICHAEL F. SALLEY, P.E.**

By   
**MICHAEL F. SALLEY, P.E.**

5 JAN 2012  
**DATE**

**ENTERED** into the records of the West Virginia State Board of Registration for Professional Engineers this 13<sup>TH</sup> day of FEBRUARY, 20 12.

BY:   
**EDWARD L. ROBINSON, P.E.**  
**Its President**

FEB 8, 12  
**DATE**

**PREPARED BY:**

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Telephone (304) 558-2021  
*Counsel for the West Virginia Board  
of Registration for Professional Engineers*

**Emailed to Respondent 3 January 2012.**

**RECEIVED**

**FEB 01 2012**

**WV PE BOARD**