

BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

**RECEIVED**  
MAY 7 - 2007  
WV REGISTRATION BOARD

IN RE: THE BABCOCK AND WILCOX COMPANY

C2007-03

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against The Babcock and Wilcox Company [hereinafter at times referred to as 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. The Babcock and Wilcox Company is a corporation organized under the laws of the State of Delaware with its principal offices in Barberton, Ohio.
3. Richard L. Killion is Vice President and General Manager of the Fossil Power Division of The Babcock and Wilcox Company and has the power and authority to make admissions and otherwise act on behalf of Respondent.
4. Respondent has been represented in this matter by their in-house counsel, John Dziewisz .
5. Based on information made known to the Board through its own investigation, a board-initiated complaint was served by certified mail on January 8, 2007, and this Consent Order was promptly negotiated as a result of communications

between the Board and Respondent.

6. Initially served as C2006-23, the Board finds that the complaint should have been numbered C2007-03 and therefore modifies same.
7. Respondent admits it provides customized engineered products to customers in West Virginia without a valid certificate of authorization (COA).
8. Respondent accepts that this Board considers this to constitute the practice of engineering as defined by West Virginia engineering law and therefore admits it practiced engineering in the State of West Virginia in violation of that law.
9. Respondent's conduct in connection with this Complaint, including its acceptance that it engaged in the practice of engineering in the State of West Virginia, mitigates Respondent's culpability regarding the charges of practicing engineering without a COA.
10. The Board, in its discretion based on the foregoing, will not assess administrative costs and will not initiate a complaint against any individual engineer(s) who may have practiced in West Virginia on Respondent's behalf although the Board finds it is within its power to assess such costs and bring such a complaint.
11. The Board, in its discretion, finds it was and is in the best interests of the West Virginia public to allow Respondent to continue its work with existing customers in West Virginia during the pendency of this complaint process and therefore makes no order regarding the cessation of such work with regard to its existing customers.
12. 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.

### **CONCLUSIONS OF LAW**

13. 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. West Virginia Code §30-13-17.
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.” West Virginia Code §30-13-21(b); *see also* W. Va. Code §30-13-21(d)(4).
15. Practicing or offering to practice engineering without a valid COA, to which Respondent has admitted herein, is an action that would subject a firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 CSR 1.15.1.
16. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

### **CONSENT OF RESPONDENT**

Richard L. Killion, Vice President and General Manager of the Fossil Power Division of The Babcock and Wilcox Company, by affixing his signature hereon, agrees to the following on behalf of Respondent company:

17. Respondent is represented by its in-house counsel, who is aware of the option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives its right to do so.
18. 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.

19. Respondent has no objection to the re-numbering of the Complaint and agrees to accept an informal settlement of Complaint 2007-03.
20. Respondent admits it practiced engineering in the State of West Virginia in violation of West Virginia engineering law.
21. 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.
22. 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.
23. 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 any certificate of authorization issued to Respondent, 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**

24. 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).
25. 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 Certificate of Authorization.
26. The civil penalty imposed herein must be paid within thirty (30) days of the date


of the signature of the Board President, 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.

27. Respondent will not provide customized engineered products or otherwise make offers to new customers 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.
28. 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).
29. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
30. 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.
31. 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 to 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.

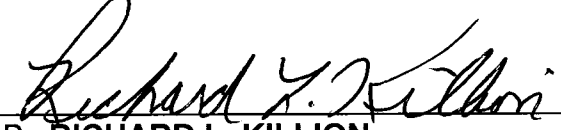
32. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein.
33. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

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

By:   
LEONARD J. TIMMS, P.E.  
Board President

Date: 05/08/07

**THE BABCOCK AND WILCOX COMPANY**

  
By RICHARD L. KILLION  
Vice President and General Manager  
Fossil Power Division

Date: May 4, 2007