

BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: P. MICHAEL GREEN and  
GREEN ENGINEERING, INC.

C2010-16

**CONSENT ORDER**

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 resolve a disputed Complaint seeking disciplinary action against P. Michael Green (hereinafter "Respondent Green") and Green Engineering, Inc. (hereinafter "Respondent Firm") (together, "Respondents"). 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 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, Green Engineering, Inc., is organized under the laws of the State of West Virginia, with its principal place of business in Philippi.
3. Respondent Green, as the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. Respondent Green is a professional engineer licensed in the State of West Virginia (#07621).
5. A third-party complaint dated May 18, 2009, was received by the Board on January 21, 2010, was given number C2010-16, and was served upon Respondent by letter dated January 26, 2010.
6. The sum and substance of the allegations in the complaint, filed by one resident with supporting documents by other residents, related to problems with a named street in the City

of Elkins for which Respondents provided engineering services (“the street project”). Some of the specific allegations included:

a. The “as-built” drawings were exactly the same as the plans, although the elevations and locations of the drop inlets were clearly different than was shown on the “as-builts.” These “as-builts” were revised, but were still incorrect.

b. The ground around the drop inlets was sinking, the driveway culverts were useless and the catch basin system did not work, causing flooding.

c. Respondents were aware of but did not remedy the problems.

7. Respondents filed a Response on February 19, 2010, and provided additional information by letter dated March 22, 2010, which addressed the complaint generally, as well as circumstances specific to various named residents, including complainants.

8. Respondent was not the original engineer on the project, but received \$13,000.00 for engineering services, including \$4,000.00 for part-time inspection.

9. The street project was also the subject of a related civil action (Civil Action No. 10-C-173 filed in the Circuit Court of Randolph County), which counsel for Respondent has represented is settled by the parties (Plaintiff - City of Elkins and Defendants - Respondents and the paving contractor) and will be voluntarily dismissed.

10. At some point during the pendency of this Complaint, Respondents’ counsel in the civil matter began to represent them in the matter before this Board.

11. The sum and substance of the settlement were that Defendants would perform itemized work and/or repairs to the street prior to a date certain in the presence of a representative of the Plaintiff, with no admission of liability by Defendants, which is expressly denied in the settlement agreement.

12. Respondents admit that part-time supervision of the street project was insufficient and that problems occurred which had to be remedied before the street project was acceptable, which insufficient supervision could be deemed negligence.

13. The Board has taken into account the following factors and made the following findings in reaching this settlement:

- a. The violation did not pose a harm to the public;
- b. Due to the costs of the litigation and settlement, little economic benefit was gained by Respondents in connection with the matters which gave rise to the complaint;
- c. There need not be additional economic consequences to Respondents to deter future violation; and
- d. Respondents cooperated with the Board in resolving this Complaint.

14. The Board finds that the costs incurred by Respondents in effecting the settlement referred to above, as well as the time and expense of the litigation resulting in the settlement, are sufficient to deter Respondents from practicing engineering in a manner that may give rise to similar complaints in the future.

15. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs under W. Va. Code § 30-13-21(d) (4) and W. Va. Code R. § 7-1-14.4.

### **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. The Board may reprimand any professional engineer who has been negligent, incompetent, or committed an act of misconduct in the practice of engineering. W. Va. Code § 30-13-21(a)(2).

18. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 et seq., in a manner which may be deemed negligent, incompetent or an act of misconduct may

subject a person to discipline by the Board, including a civil penalty up to One Thousand Dollars (\$1,000.00). W. Va. Code R. § 7-1-15.1.

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 violation as a result of 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 RESPONDENTS**

P. Michael Green, individually and as the President of Green Engineering, Inc., by affixing his signature hereon, admits, acknowledges, accepts and/or agrees to the following:

20. Respondents are represented by counsel and are aware of their right to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

21. Respondents admit that part-time supervision of the street project was insufficient and that problems occurred which had to be remedied before the street project could be deemed acceptable, which insufficient supervision constitutes negligence.

22. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

23. Respondents acknowledge 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 C2010-16. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

24. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents' activities in West Virginia in consideration of this Consent Order.

25. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.

26. Respondents acknowledge 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.

27. Upon acceptance by the Board, this Consent Order constitutes a full and final settlement of this matter, but the circumstances giving rise to same may be taken into account by this Board in connection with any future allegations of grounds for disciplinary action.

28. Respondents understand that the complaint, the written response and other submissions by Respondent to this Board, this Consent Order and public documents in the Board's files in the related civil action are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

29. Respondents agree 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).

30. Respondents acknowledge 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 of any license or certification issued to Respondents 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 C2010-16 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **REPRIMANDS** Respondent Green for practicing engineering in a negligent manner.

3. 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).

4. This matter shall be closed upon execution of this Consent Order by both parties.

5. 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:



P. MICHAEL GREEN, individually and on behalf of  
GREEN ENGINEERING, INC.

6/17/12

DATE

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

By: 

EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

**ENTERED** into the records of the West Virginia State Board of Registration for  
Professional Engineers this 26<sup>TH</sup> day of June, 2012.

PREPARED BY:

DEBRA L. HAMILTON (WV Bar ID: 1553)  
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*for the West Virginia Board of Registration for Professional Engineers*

REVIEWED AND APPROVED BY:

R. MIKE MULLENS (WV Bar ID: 2672)  
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*for Respondents*