

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

IN RE: SAM M. DEAL

C2008-1

FINAL OPINION AND ORDER

Pursuant to a hearing held before the West Virginia State Board of Registration for Professional Engineers, Leonard J. Timms, P.E., presiding, on the 29th day of November, 2007, and deliberation regarding this matter had on the 22nd day of January, 2008, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The hearing on Complaint 2008-01 was duly noticed on October 23, 2007, and held on November 29, 2007. Exhibit 1.
2. Complaint C2008-01 was initiated by the Board and filed on July 30, 2006, and Respondent was served by certified mail on July 31, 2007. Exhibit 2.
3. The Board-initiated complaint charged Respondent with three violations of West Virginia engineering law: conduct likely to deceive, defraud or harm the public, practice without a WV P.E. license, and misuse of seal.
4. Complaint C2008-01 was served with a Proposed Consent Order, and Respondent was advised that he could respond to the Complaint, sign the Consent Order and return it with payment, or contact the Board's attorney and negotiate revisions to the Proposed Consent Order. Exhibit 2.
5. The return receipt for said service was signed by Betty Deal on August 9, 2007. Exhibit 2.

6. Respondent never responded in writing to the Complaint after service of same, nor after the Notice of Hearing. Transcript at 2-3.
7. Respondent was not in attendance at the time noticed for the hearing, which was ten o'clock a.m. Transcript at 2.
8. While under the procedural rules of the Board (7 C.S.R. 2-2.5) the allegations in the Complaint are deemed true if Respondent fails to file a response or otherwise provide any defense, the Board proceeded to make a record prior to any discussion of disciplinary action. Transcript at 2-3.
9. Respondent appeared after the commencement of the hearing and was given the right to defend, despite the procedural rule that allows the Board to deem the allegations as true due to Respondent's failure to timely respond to the Complaint. Transcript at 4-5.
10. Respondent Deal received the notice of hearing, although the record is unclear as to where Respondent currently resides or may be notified by mail. Transcript at 25, 27.
11. Respondent Deal was licensed as a professional engineer in Texas in 1953 or 1954. Transcript at 15.
12. Respondent Deal's Texas license was not renewed in 2006 and therefore Respondent holds no valid engineering license in any state. Transcript at 13, 16.
13. Complaint 2008-1 is based on the Board's receipt of a deposition transcript wherein Respondent represented himself as a petroleum engineer in connection with a lawsuit where he also issued a report offering a professional opinion on a gas well in West Virginia which was signed and sealed by Respondent with his

Texas seal. Exhibit 3, Transcript at 8.

14. The charge relating to Respondent's misuse of seal is based on his use of the Texas seal bearing his Texas license number, which seal appears on the last page of Exhibit A to the Deposition transcript which is Exhibit 3. Exhibit 3, Transcript at 12, 16.
15. Respondent Deal also misrepresented himself as a mining engineer. Exhibit 3, Transcript at 18-19
16. Page 1 of Exhibit A to the Deposition transcript which is Exhibit 3 evidences Respondent utilizing the following letterhead: "S. M. Deal and Associates, Petroleum Engineering" with a post office box in Parkersburg, West Virginia. Exhibit 3, Transcript at 9.
17. Exhibit A to the Deposition transcript which is Exhibit 3 also evidences engineering calculations prepared on a West Virginia well which constitute the practice of engineering in West Virginia. Exhibit 3, Transcript at 9, 11.
18. Respondent Deal represented to the Board's investigator he was licensed in West Virginia and was doing work across the region. Transcript at 9.
19. Respondent Deal performed engineering work in West Virginia prior to moving here in 1960. Transcript at 15.
20. Respondent Deal falsely testified in June 2007 that he was licensed in the states of Texas, West Virginia, Ohio and Kentucky. Exhibit 3, Transcript at 19.
21. Respondent admitted to placing the Texas seal on work performed in West Virginia. Transcript at 26.

22. Respondent Deal may have used his Texas seal on work done in West Virginia as many as fifty (50) times. Transcript at 19.
23. Respondent receives ten to twenty percent (10-20%) of his income from engineering work. Transcript at 20.
24. Respondent Deal's firm, S. M. Deal and Associates, is currently doing business in West Virginia. Transcript at 23.
25. Respondent admitted he did not have a license to practice engineering in West Virginia issued from the Board and did not have a seal authorized by the State of West Virginia, agreeing that these factors mean that he practiced engineering in West Virginia without a license. Transcript at 26-27.
26. Respondent testified that he made some attempt to become licensed in West Virginia although he never applied for licensure. Transcript at 6, 17-18, 19.
27. There is no record of any communication between Respondent and the Board regarding licensure. Transcript at 12.
28. The Board finds that Respondent never took the steps necessary to attempt to become a licensed professional engineer in West Virginia. Transcript at 12.
29. Respondent has never held a West Virginia PE license. Transcript at 11, 26.
30. Although no documentary evidence was presented at the hearing to support Respondent's contention that he attempted to become licensed in West Virginia, the Board allowed the record to remain open in order for Respondent to provide such evidence after the hearing. Transcript at 23-24, 28.
31. Respondent did not provide additional documentary evidence or otherwise

supplement the record after the hearing.

32. The Board finds that Respondent represented himself as a professional engineer and practiced engineering in West Virginia without a license by this Board, in violation of West Virginia engineering law.
33. The Board finds that using a seal from another State on work done in West Virginia without a temporary permit or other form of licensure from this Board constitutes a misuse of seal, in violation of West Virginia engineering law.
34. The Board finds that Respondent's violations of West Virginia engineering law are of a character likely to deceive, defraud or harm the public.
35. The Board finds that Respondent should have had a Certificate of Authorization (COA). Transcript at 9.
36. Respondent Deal's practice of engineering without a COA is another violation of West Virginia engineering law, but the Board, in its discretion, will not amend the Complaint to include that infraction and will not discipline Respondent Deal based on his failure to obtain a COA.
37. The Board incurred administrative expenses in the prosecution of this Complaint in the amount of \$500.

CONCLUSIONS OF LAW

38. 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.*
39. Failure to file a response to the Complaint is deemed an admission of the factual allegations contained in the Complaint, and failure to file a response is not grounds for delaying hearing or other action on the Complaint. 7 CSR 2.2.5.

40. It is unlawful for any person to practice or offer to practice engineering in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. West Virginia Code §30-13-2.
41. Respondent Deal practiced engineering in West Virginia in violation of West Virginia engineering law.
42. West Virginia engineering law prohibits the use a seal from another State on work done in West Virginia without a temporary permit or other form of licensure. West Virginia Code §30-13-16.
43. Respondent Deal misused his Texas seal in West Virginia in violation of West Virginia engineering law.
44. West Virginia engineering law allows the Board to take disciplinary action against any person who practices engineering and who engages in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public. West Virginia Code §30-13-21(a)(11).
45. Such disciplinary action may include the imposition of civil penalties, with a maximum of \$5,000 for practicing without a license, \$5,000 for misuse of seal, and \$15,000 for an action which is likely to deceive or defraud the public. West Virginia Code §30-13-21, 7 CSR 1.14.3, 7 CSR 1-15.1.
46. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.
47. 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* West Virginia Code §30-13-21(d)(4).
48. Any civil penalty assessed as a result of a hearing must be paid within fifty (50) days after the decision becomes final. West Virginia Code §30-13-21(f).
49. The Board is authorized to assess administrative costs incurred in the

performance of its enforcement or investigatory activities against any person in violation of West Virginia engineering law, which costs must be paid to the Board by check or money order within a period of thirty (30) days from the date of the final order entered by the Board. West Virginia §30-13-21(d)(4), 7 C.S.R. 1.14.4.

50. The complaint, the hearing record and this Final Opinion and Order are matters of public record. West Virginia Code §30-13-11.

51. Orders of the Board may be enforced in the Circuit Court of Kanawha County. West Virginia Code §30-13-9(c) and 7 C.S.R. 2.5.2.

ORDER

On the basis of the foregoing the Board hereby **ORDERS** the following:

52. The Board **ORDERS** that Respondent be prohibited from performing or offering to perform any engineering in the State of West Virginia, from representing himself as a professional engineer licensed in West Virginia, and from representing himself as a professional engineer licensed in any other state unless and until he is licensed in that state.

53. The Board **ORDERS** that Respondent be prohibited from using the letterhead that is part of Exhibit A to the Deposition Transcript marked as Hearing Exhibit 3.

54. The Board **ORDERS** that Respondent be permanently barred from receiving a professional engineer's license in West Virginia.

55. 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 license.


56. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Hundred Fifty Dollars (\$500.00) for misuse of seal.
57. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.
58. The civil penalties imposed herein must be paid within fifty (50) days from the date of the 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.
59. Respondent Deal shall pay administrative costs in the amount of Five Hundred Dollars (\$500.00) within thirty (30) days from the date of entry of this Order, which amount shall be made payable to the WV P.E. Board and deposited to the appropriate Board account to cover the costs of this enforcement action.
60. A copy of this Final Opinion and Order shall be served upon Respondent by certified mail within five days after entry by the presiding officer.
61. Any violation of this Order shall be immediate cause for further disciplinary action by the Board.
62. If the civil penalties and administrative costs imposed herein are not timely paid, this 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 imposed herein (\$1,750.00), 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

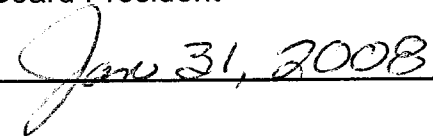
accordance with applicable law.

63. The sum and substance of the Complaint and this Final Opinion and Order, in part or in their entirety, may be set forth in Board publications and on the Board website, and shall be reported to the enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

64. Respondent may appeal this Final Opinion and Order in accordance with applicable law.

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

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

Date: 
Jan 31, 2008