

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

**IN RE: JENNMAR CORPORATION
 KEYSTONE MINING SERVICES, LLC**

C2011-10

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 disciplinary action to be taken against Jennmar of Pennsylvania, LLC, and Keystone Mining Services, LLC, (hereinafter "Respondents" or "Respondent Jennmar" or "Respondent Keystone"). 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 allegations set forth in this Complaint are matters that are within the jurisdiction of this Board, which is a State entity required and authorized to regulate the practice of engineering in West Virginia pursuant to W. Va. Code § 30-13-1 *et seq.*
2. Respondent Jennmar is organized under the laws of the State of Pennsylvania with its principal place of business in Pittsburgh.
3. Respondent Keystone is a wholly owned subsidiary of Respondent Jennmar.
4. John C. Stankus, Ph.D., as President of Keystone, and Gene F. Zurawsky, as Vice-President of Jennmar, have the power and authority to make admissions and otherwise act on behalf of Respondents.
5. Prior to the institution of this Complaint, neither Respondent had a Certificate of Authorization (COA) to offer or practice engineering in the State of West Virginia but, based on

the representations set forth above and other provisions set forth in this Consent Order, only Respondent Keystone is and will be required to have the COA.

6. On or about March 3, 2011, an application to take the Professional Engineer's exam was received by an individual who represented himself as an employee of Jennmar and as part of his application indicated that Respondent Jennmar was performing engineering in West Virginia.

7. The Board subsequently discussed the requirement for a COA with the applicant and others in Respondents' employ, but no application for a COA was received by the Board from either Respondent despite continued communications between Board staff and Respondents prior to the filing of the Complaint.

8. As a result, the Board initiated Complaint Number C2011-10 at the regular meeting of the Board on March 22, 2011, which was filed on April 5, 2011.

9. Respondents jointly, through their counsel, submitted a written response on May 5, 2011.

10. Respondent Keystone obtained a COA on May 6, 2011 [COA #C04009].

11. Respondent Jennmar has represented to the Board that it has always and intends in the future to offer and provide engineering services solely through its subsidiary, Respondent Keystone.

12. The Board accepts Respondents' representation that the employee made an error on his exam application which was later corrected to reflect he was an employee of Respondent Keystone.

13. Respondent Keystone admits that it performed engineering in West Virginia prior to obtaining the required Certificate of Authorization in violation of West Virginia Code § 30-

13-17, but states that it employed professional engineers licensed in the State of West Virginia who were responsible for the work performed in this State.

14. Respondents represent that no employee of either corporation ever affixed a professional engineer's seal to any document done in West Virginia or on behalf of a West Virginia client.

15. Respondents state in mitigation of Respondent Keystone's failure to have a COA that there is no COA requirement in Pennsylvania, their principal place of business.

16. Any firm offering engineering services in the State of West Virginia is required to be informed of the requirements of West Virginia Engineering Law, and ignorance of the law does not mitigate its violation.

17. However, one or both Respondents had in its employ professional engineers licensed in the State of West Virginia and eventually made such changes as allowed Respondent Keystone to legally practice and offer to practice engineering in this State, which facts serve to mitigate the violation.

18. Respondents have assured this Board that only Respondent Keystone, which has obtained the required COA, will practice engineering in West Virginia and that Respondent Jennmar has not and does not intend to offer engineering services. If Respondent Jennmar makes a decision to offer engineering services in the future, it will apply for a COA prior to any offer of such services.

19. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: imposing an amount that will be a substantial economic deterrent to this or any other firm's practicing engineering in this State without the required COA; the circumstances leading to the violation; the extent to which Respondents have

cooperated with the Board and the Board's investigation; the economic benefits gained by Respondents as a result of the numerous engineering jobs performed in West Virginia while in noncompliance with the COA requirement; and other appropriate matters, including the length of time and amount of engineering work performed by Respondent Keystone prior to obtaining the required COA.

20. The Board, in its discretion, will not 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 W. Va. Code § 30-13-21(d)(4) and W. Va. Code R. § 7-1-14.4.

CONCLUSIONS OF LAW

21. The Board is the State entity required and authorized to regulate the practice of engineering in the State of West Virginia. W. Va. Code § 30-13-1 *et seq.*

22. All professional engineers are charged with having knowledge of the Rules of Professional Responsibility (RPR). W. Va. Code R. § 7-1-12.1.

23. All professional engineers are required to be familiar with the W. Va. Code § 30-13-1 *et seq.*, this RPR, and all applicable laws relating to the practice of engineering. W. Va. Code R. § 7-1-12.2(a).

24. 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. W. Va. Code § 30-13-17.

25. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-1 *et seq.*, without a valid Certificate of Authorization, to which Respondent Keystone has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W. Va. Code R. § 7-1-15.1.

26. Each day of continued violation may constitute a separate offense pursuant to West Virginia Code R. § 7-1-15.3.

27. 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

John C. Stankus, as President of Respondent Keystone, and Gene F. Zurawsky, as Vice President of Respondent Jennmar, by affixing their signatures hereon, agree and consent to the following:

28. Respondents are represented by counsel and are aware of their option to pursue this matter through appropriate administrative and/or Court procedures, but Respondents intelligently and voluntarily waive their right to do so in the event that this Consent Order is approved by the Board.

29. Respondents intelligently and voluntarily waive their right to a formal hearing before the Board in this matter provided that the Board accepts the terms and conditions set forth herein.

30. Respondents accept the findings set forth above, agree to settle this matter in accordance with the terms set forth herein, and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint, or compulsion.

31. 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 C2011-10. This paragraph is binding on the parties hereto, even in the event that the Board does not approve this Consent Order.

32. 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 material concerning Respondents 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.

33. In the event the Board does not approve this Consent Order and the matter proceeds to hearing, Respondents waive 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.

34. Respondents acknowledge that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

35. 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 or one based on any misstatement or misrepresentation made by Respondents in connection with this matter.

36. Respondents understand that the Complaint and their written response are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

37. 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).

38. Respondents acknowledge that proof of any misstatement or misrepresentation made on either or both their 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 C2011-10 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** Respondent Keystone to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for practicing engineering in West Virginia without a Certificate of Authorization.

3. The Board further **ORDERS** that the civil penalty imposed herein be paid within thirty days (30 days) of the date Respondents receive 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. Failure to remit the payment of these civil penalties within the prescribed time period may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.

4. The Board **ORDERS** that Respondent Jennmar is prohibited from providing or offering to provide engineering services in the State of West Virginia until such time as Respondent Jennmar is legally qualified to do so.

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 are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed upon herein (\$5,000.00), 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.

9. 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:

JENNMAR OF PENNSYLVANIA, LLC

By



GENE F. ZURAWSKY, VICE-PRESIDENT

DATE

9/19/2011

KEYSTONE MINING SERVICES, LLC

By




JOHN C. STANKUS, PRESIDENT

DATE

9/19/2011

ENTERED into the records of the West Virginia State Board of Registration
for Professional Engineers this 26 day of September, 2011.

BY:



EDWARD L. ROBINSON, P.E.
Its President

DATE

9/26/11

PREPARED BY:

Debra L. Hamilton (WV Bar # 1553)
Deputy Attorney General
State Capitol, Room 26-E
Charleston, WV 25305
Telephone (304) 558-2609
*Counsel for the West Virginia Board
of Registration for Professional Engineers*

INSPECTED BY:

Paul Konstanty (WV Bar #9210)

STEPTOE & JOHNSON PLLC

P.O. Box 1588

Charleston WV 25326

Telephone (304) 353-8170

Counsel for Respondents