

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: WEST VIRGINIA ENGINEERING COMPANY

C2008-13

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") and West Virginia Engineering Company (hereinafter at times "Respondent" or "WVE"), and its legal counsel, Thomas N. Hanna, for the purpose of agreeing to a resolution of Complaint C2008-13 against 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. C2008-13 was a Board-initiated complaint filed on March 25, 2008, and delivered via certified mail on April 1, 2008.
3. The complaint was based on the letterhead of West Virginia Engineering Company, which stated it was a company of "Electrical and Mechanical Engineers" with "Resident Engineers" in Mullens, West Virginia.
4. West Virginia Engineering Company has also advertised itself for years in the white and yellow pages of various phone books as a consulting engineering company.
5. The Board, during the 2006-07 renewal cycle become aware that West Virginia Engineering Company had no professional engineer on staff due to

the death of Harry P. Musser, Jr., and contacted the current President, David W. Musser, to discuss Respondent's need for a new engineer in responsible charge in order to stay compliance with West Virginia engineering law.

6. President Musser responded in writing on January 22, 2007, stating he "performed most of the engineering work for WVE for the last 10 or so years" and would pursue his P.E. registration.
7. Having heard nothing from Respondent for more than a year, Board counsel inquired regarding the status of the registration on January 30, 2008.
8. Still hearing nothing, the Board initiated this Complaint, to which Respondent failed to timely respond.
9. Notice of hearing was served on June 19, 2008, for a hearing on July 22, 2008.
10. Prior to July 22nd, counsel for Respondent requested an informal conference and provided the Board with an affidavit from President Musser which stated, *inter alia*, that "no engineering work that would require a WV Professional Engineer's license and/or certificate of authorization has been performed by West Virginia Engineering Company."
11. The affidavit further stated WVE's Articles of Incorporation would be amended to change the company name to "West Virginia Utility Company" as set forth in resolutions passed by WVE's Board of Directors.
12. The requested informal conference was held immediately prior to the scheduled hearing, at which time Respondent waived any objections related to the Board's ability to sit as a hearing panel in the matter in the event the informal conference did not result in settlement.
13. WVE provides management, accounting and engineering services for seven

affiliated utility companies, which are also serviced by affiliated companies providing real estate and supply services.

14. David Musser serves as the President, on the Board of Directors and as an employee of all the companies referenced in Paragraph 13 above.
15. Respondent represented to the Board it did no consulting work and did no engineering work for any entity other than its affiliated companies.
16. By Order of the Public Service Commission (PSC) dated April 18, 2007, the PSC approved certain transactions between WVE and its affiliated utility companies regulated by the PSC, thereby allowing expenses of WVE to be allocated among the affiliated utility companies for rate-making purposes, which Order supports Respondent's contention that WVE services only its affiliated companies.
17. Respondent represented to the Board it will seek PSC approval to merge all these related entities into West Virginia Utility Company.
18. The Board accepted as true all representations made by Respondent, by its President or its counsel, and, in a reasonable exercise of its discretion, agreed to deem WVE's engineering work for its affiliated companies to fall within the exemption set forth in West Virginia Code §30-13-24(c) due solely to Respondent's stated intention to seek approval by the Public Service Commission to merge all such companies into one company as soon as practicable.
19. The Board finds that Respondent's other alleged violation of West Virginia engineering law – use of engineering in its name – is essentially a violation of the prohibition against holding yourself as able to perform engineering services, which is considered the practice or offer to practice of engineering.

20. The Board finds this violation exacerbated by the letterhead utilized by Respondent and its telephone advertising.
21. Respondent admits that its name, letterhead, and advertising may be misleading, but there is no evidence any member of the public was misled.
22. The parties agree to modify the Complaint so as to allow a settlement based on Respondent's advertising of engineering services in violation of West Virginia engineering law and Respondent's failure to provide timely information to the Board.
23. After negotiating the agreed upon settlement set forth below, the parties agreed to cancel the hearing and enter into this Consent Order.
24. The Board incurred expenses in connection with this Complaint in an amount in excess of \$500.00, including the appearance fee of the court reporter present for the hearing.
25. In determining the amount of negotiated civil penalty, the Board considered several mitigating factors, including the circumstances of the death of the President's father, the lack of evidence regarding risk of harm to the public, and Respondent's contention there was no economic benefit gained as a result of the noncompliance, but for the continued use of the misleading letterhead.

CONCLUSIONS OF LAW

26. Any person ... who, by ... letterhead, card or in any other way represents himself or herself to be a professional engineer ... or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice

engineering within the meaning and intent of W. Va. Code '30-13-1 *et seq.*
West Virginia Code '30-13-3 (e).

27. Failure within thirty days to provide information requested by the Board as a result of a formal or informal complaint to the Board which would indicate a violation of W. Va. Code §30-13-1 *et seq.* is a basis for disciplinary action. West Virginia Code §30-13-21(a)(4).
28. The Board may make a person or firm subject to conditions as the Board may specify. W. Va. Code §30-13-21(d)(3).
29. Illegal advertising of engineering services 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.
30. Failure to provide timely information to the Board is an action that would subject a firm to discipline by the Board, including a civil penalty up to \$1000.00. 7 CSR 1.15.1.
31. Each day of continued violation may constitute a separate offense. 7 CSR 1.15.3.

CONSENT OF WEST VIRGINIA ENGINEERING COMPANY

David W. Musser, President of West Virginia Engineering Company, by affixing his signature hereon, agrees to the following on behalf of Respondent West Virginia Engineering Company:

32. Respondent is represented by counsel and is aware of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives its right to do so.

33. 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.
34. Respondent agrees to pay a civil penalty in the amount of two hundred fifty dollars (\$250.00) for its illegal advertising of engineering services.
35. Respondent agrees to pay a civil penalty in the amount of two hundred fifty dollars (\$250.00) for its failure to provide timely information to the Board.
36. Respondent agrees to pay one hundred dollars (\$100.00) in partial payment of the administrative costs incurred in this disciplinary proceeding.
37. Respondent accepts the findings set forth above and agrees to fulfill the obligations set forth in the order below.
38. Respondent agrees to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
39. Respondent acknowledges that the Board may reject this proposal and may reschedule the hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
40. 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 this 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.
41. Respondent acknowledges the Complaint, this Consent Order and any written submissions of Respondent to the Board are public records.

42. Respondent agrees that the sum and substance of Complaint C2008-13 and this Consent Order 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).

ORDER


43. 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).
44. The Board **ORDERS** that Respondent take steps immediately to change the name of West Virginia Engineering Company to West Virginia Utility Company and to provide the Board with evidence of such name change on or before September 30, 2008.
45. The Board **ORDERS** that Respondent cease using the name West Virginia Engineering Company for any present or future purpose immediately upon the new name taking legal effect.
46. The Board **ORDERS** that Respondent be prohibited from providing engineering services to any company other than a utility company affiliated with WVE through shared officers, stockholders and employees.
47. The Board **ORDERS** that Respondent, on or before December 1, 2008, take such steps as may be necessary to commence the merger of the companies for which Respondent is providing engineering services and to provide an affidavit to the Board by its President that such merger has commenced.

48. The Board **ORDERS** that Respondent pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for its illegal advertising of engineering services.
49. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for its failure to provide timely information to the Board.
50. The Board **ORDERS** Respondent to pay administrative costs in the amount of One Hundred Dollars (\$100.00).
51. 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.
52. The Board **ORDERS** that this Consent Order be published on the Board website, summarized in the next annual newsletter of the Board, and reported to the enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
53. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
54. Nothing in this Consent Order may be the subject of any appeal or other civil or administrative action brought by Respondent, although the Board may take such action as may be necessary to enforce the terms of this Consent Order.
55. If the civil penalties and administrative costs imposed herein are 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 (\$600.00), together with pre-judgment interest from the date of the Board 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.

56. This matter shall be remain open until the Board has received verification that Respondent has fulfilled all the obligations set forth in this Consent Order.
57. 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: Aug 27, 2008

WEST VIRGINIA ENGINEERING COMPANY

By: 
DAVID W. MUSSER, President

Date: Aug 22, 2008