BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: GARY L. VAN BALEN
SCI-TEK CONSULTANTS, INC.

C2014-03

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter “the Board”) by Edward L. Robinson, P.E., its President, for the purpose of agreeing to disciplinary action to be taken against Gary L. Van Balen (“Respondent Van Balen”) and Sci-Tek Consultants, Inc. (“Respondent Firm”) (together, “Respondents”). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter.

FINDINGS OF FACT

The Board, upon approval of such agreement, does hereby FIND the following:

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

2. Respondent Van Balen is a licensed professional engineer in the State of Pennsylvania and has been employed by Respondent Firm as its Engineering Manager since 2007.

3. Respondent Firm is organized under the laws of the State of Pennsylvania, with its principal offices in Pittsburgh, and is owned by Charles Toran. Mr. Toran is also the President of Respondent Firm.

4. Including Respondent Van Balen, Respondent Firm employs five professional engineers licensed in the State of Pennsylvania and/or other states, none of whom have ever been licensed in the State of West Virginia.

5. Pursuant to the Board’s investigation and additional information provided by Respondent Van Balen at an informal conference before the Board on August 6, 2013, the facts which gave rise to this Complaint include the following:

a. On or about March 28, 2013, a design-build consultant for a gas processing plant already under construction at a Superfund site in Moundsville, West Virginia,
contacted Respondent Firm’s marketing department, requesting a proposal for geotechnical engineering services;

b. Respondent Van Balen directed the Respondent Firm’s marketing department to decline the job for reasons other than his and Respondent Firm’s lack of authority to offer or provide engineering services in West Virginia;

c. Respondent Firm’s marketing department proceeded to submit a proposal, which was accepted;

d. The Respondent Firm’s scope of services included preparation of an engineering report;

e. Respondent Van Balen later became involved in the engineering work and submitted a draft report;

f. The client requested that the report be sealed;

g. Respondent sealed the report using his Pennsylvania PE seal;

h. The client then requested that the report be sealed with a West Virginia PE seal;

i. Respondent realized his inadvertent, unlicensed practice in West Virginia and promptly sought information from the Board regarding how to secure proper licensure and to otherwise rectify the situation, effectively self-reporting his violation; and

j. Respondents then engaged a professional engineer licensed in West Virginia to review and seal the report.

6. The Board initiated Complaint Number C2014-03 at its regular meeting on August 6, 2013, which was served on August 14, 2013.

7. Respondents, by counsel, having previously cooperated with the Board’s investigation, promptly notified the Board and initiated settlement negotiations rather than filing a response to the Complaint.

8. Respondents admit the facts set forth in Paragraphs 2 through 5 above, which gave rise to the Complaint.

9. Respondent Van Balen had a duty to adhere to the laws of any state in which he practiced or offered to practice engineering services.

10. As the Engineering Manager of Respondent Firm, Respondent Van Balen had an additional, independent duty to make reasonable efforts to ensure that the Respondent
Firm adhered to the laws of any state in which it practiced or offered to practice engineering services.

11. The placement of a Pennsylvania seal on a West Virginia engineering report does not meet the requirements of West Virginia engineering law.

12. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: the circumstances leading to the violation; the lack of history of previous violations; though inadvertent, the fact that Respondent Van Balen self-reported the facts giving rise to the discipline and that he and Respondent Firm proceeded to cooperate with the Board in investigating and resolving this Complaint; and other appropriate matters.

13. The Board incurred administrative costs in connection with the investigation, initiation and resolution of this Complaint, but, in its discretion, agrees to resolve this Complaint without the assessment of administrative costs.

**CONCLUSIONS OF LAW**

14. 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. The allegations set forth in the Complaint, as resolved in this Consent Order, are matters that are within the jurisdiction of this Board.

15. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 et seq., in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.

16. 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.

17. A registrant’s seal is used to identify his or her professional work. W.Va. Code § 30-13-16(c).
18. A registrant’s seal and signature shall appear on the first or title page of all final and/or record documents presented to a client or any public or governmental agency to certify that the work was done by a registrant or under the control of a registrant. West Virginia Code R § 7-1-7.3(a).

19. Only a West Virginia seal issued in accordance with West Virginia Code § 30-13-16(c) may be used to meet the seal requirements set forth in West Virginia engineering law.

20. 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.


22. Charles Toran, as the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

**CONSENT OF RESPONDENTS**

Gary L. Van Balen, individually, and Charles Toran, as owner and President of Sci-Tek Consultants, Inc., by affixing their signatures hereon, agree to the following:

23. 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.

24. Respondent Firm admits that it did not have a Certificate of Authorization to offer engineering services in the State of West Virginia at the time of the offer, in violation of West Virginia engineering law.

25. Respondent Firm admits that it did not have a Certificate of Authorization to practice engineering in the State of West Virginia at the time engineering work was performed in West Virginia, in violation of West Virginia engineering law.

26. Respondent Van Balen admits that he did not have a license to practice engineering in the State of West Virginia at the time he performed engineering work in West Virginia, in violation of West Virginia engineering law.

27. Respondent Van Balen admits that he knew or should have known that the use of his Pennsylvania engineering seal did not comply with West Virginia engineering law requirements concerning the sealing of West Virginia engineering reports.

28. Respondents consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion. Respondents’ consent to the entry of this Consent Order does not constitute an admission to the factual or legal determinations of the Board, except to the extent expressly admitted herein.

29. 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 C2014-03 through the date this Consent Order is submitted for final approval. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

30. 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 the subject matter of Complaint Number C2014-03 in its consideration of this Consent Order.

31. 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.

32. Respondents acknowledge that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate. Should the Board not approve this Consent Order, the admissions of Respondents as set forth herein will be deemed null, void and withdrawn.

33. Respondents and the Board understand that 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 actions except an action by Respondents or the Board to enforce the terms of this Consent Order. Nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future disciplinary matter involving Respondents which may be before this Board.

34. Respondents understand that the Complaint, documents submitted to the Board by Respondents, and this Consent Order are public records which must be made available upon legal request in accordance with the State’s Freedom of Information Act.

35. 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).

36. Respondents acknowledge that non-compliance with this Consent Order may 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 Respondents’ non-compliance with this Consent Order.

37. Respondents acknowledge that proof of any material misstatement or misrepresentation made in connection with this matter may 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, 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).

2. The Board ORDERS Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) in settlement of Complaint #C2014-03 for offering to practice engineering in West Virginia without a Certificate of Authorization.

3. The Board ORDERS Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) in settlement of Complaint #C2014-03 for practicing engineering in West Virginia without a Certificate of Authorization.

4. The Board REPRIMANDS Respondent Van Balen for not making reasonable efforts to ensure that the Respondent Firm adhered to the engineering laws of the State of West Virginia, for practicing engineering in West Virginia without a license, and for affixing a seal from another jurisdiction to an engineering report for which a West Virginia seal was required.

5. The civil penalties agreed to herein in the total amount of Five Hundred Dollars ($500.00) as to the Respondent Firm shall be paid within thirty (30) days of the date of entry of this Consent Order, evidenced by the date of the Board President’s signature,
made payable to the West Virginia State Board of Registration for Professional Engineers for transfer to the general fund of the State of West Virginia upon receipt.

6. The untimely payment of the civil penalty imposed herein or any violation of the terms of this Consent Order may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.

7. The Board ORDERS this Consent Order and the underlying Complaint to 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).

8. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to the Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of the payment agreed to herein, 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.

9. 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 actions except an action by the Board or the Respondents to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondent which may come before this Board.

10. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.

11. 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.

AGREE TO BY:

GARY L. VAN BALEN, individually

CHARLES TORAN, President
SCI-TEK CONSULTANTS, INC

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 6th day of December, 2013.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By:

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

PREPARED BY:
Debra L. Hamilton (WVSB #1553)
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For the West Virginia State Board of Registration for Professional Engineers

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