

RECEIVED

JUL 29 2015

WV PE BOARD

JUL 23 2015

BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: EXCO Resources (PA), LLC

C2015-12

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 Complaint seeking disciplinary action against EXCO Resources (PA), LLC (hereinafter "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 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 is a natural gas and oil company that does not offer engineering services to the public.
3. Respondent is organized under the laws of the State of Delaware and has been represented in this matter by its in-house counsel, Heather Lamparter, Vice-President of Legal.
4. This Complaint, initiated by the Board on May 12, 2015, relates to engineering work performed on property owned by Respondent by a former employee of Respondent prior to obtaining his WV PE license.
5. The engineering work at issue is the inspection and certification of at least forty-five (45) Aboveground Storage Tanks (AST's) owned by Respondent which utilized an Ohio PE

license number of a former employee and which were then submitted to the West Virginia Department of Environmental Protection (WV DEP).

6. A complaint for unlicensed practice was initiated by the Board on March 24, 2015, based on information received by the former employee in connection with his efforts to obtain a WV PE license; *see* Consent Order in C2015-08.
7. The Board finds that Respondent in certification of forty-five (45) of Respondent's ASTs constitutes forty-five (45) counts of unlicensed practice, that the unlicensed practice inured to the benefit of Respondent.
8. Based on information provided by Respondent's former employee, the Board further finds that the delay in the former employee's obtaining a West Virginia license was in part due to Respondent's recalcitrance in providing required information.
9. Respondent, through its in-house counsel, admitted the allegations and initiated settlement negotiations rather than file a response to the Complaint.
10. The Board has taken into account the following factors in reaching this settlement: the number of counts of unlicensed practice and Respondent's aiding and assisting of same; Respondent cooperated in the prompt resolution of this Complaint, and the certifications by the former employee utilizing an Ohio professional engineering license were accepted by the WV DEP.
11. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs, and administrative costs were incurred in the investigation, initiation and resolution of this Complaint.

#### **CONCLUSIONS OF LAW**

12. 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.

13. Heather Lamparter, as its in-house counsel and Vice-President of Legal for Respondent, has the power and authority to make admissions and otherwise act on behalf of Respondent.
14. It is unlawful for any person to aid or assist another person in violating any provisions of West Virginia Code § 30-13-1 *et seq.* or the promulgated rules of the Board. W. Va. Code § 30-13-21(a)(8).
15. It is unlawful for any person to practice engineering, as defined by West Virginia Code § 30-13-3(e), 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. A person or other business entity is exempt from the provisions of W. Va. Code § 30-13-1 *et seq* only when the entity:
  - Is engaged solely and exclusively in performing engineering services for itself;
  - Is *not required by any [other] provision* of the law ... to be [or use] a registered professional engineer;
  - the services are performed on property it owns or has some other possessory interest; and
  - The engineering services are not offered to the public.

W. Va. Code § 30-13-24(c) [emphasis added].

17. Under another provision of law, every owner or operator of an aboveground storage tank regulated by West Virginia Code § 22-30-1 *et seq.* was required to submit a certification form to the DEP on or before January 1, 2015, based on an inspection by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the State Board of Registration for Professional Engineers. West Virginia Code § 22-30-6(a) [also authorizing certified persons other than registered professional engineers to certify ASTs].

18. Contrary to the requirements for a qualified registered professional engineer licensed by this Board in West Virginia Code § 22-30-6(a) and therefore not exempt under W. Va. Code § 30-13-24(c) , Respondent's AST certifications were done by an engineer utilizing his Ohio professional engineering license in Ohio, and engineering work cannot be submitted to a West Virginia client or governmental agency based on licensure in a state other than West Virginia. W. Va. § 30-13-16(c), W. Va. Code R. § 7-1-7.3(a).
19. Practicing or offering to practice engineering, as defined by W. Va. Code § 30-13-3(e), without a license is an action that may subject a person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00). W. Va. Code R. § 7-1-15.1.
20. The penalty for aiding and assisting a violation shall be no more than the maximum penalty set forth in Board rule. W. Va. Code R. § 7-1-15.2.
21. 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." W. Va. Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4) and West Virginia Code R.§ 7-1-15.
22. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
23. The assessment of administrative costs is within the Board's sole discretion. W. Va. Code § 30-13-21(d) (4) and W. Va. Code R.§ 7-1-14.4.

#### **CONSENT OF RESPONDENT**

Respondent, through its in-house counsel who has affixed her signature hereon, agrees to the following:

24. Respondent is represented by its in-house counsel and is aware of its right to pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
25. Respondent admits it aided and assisted its former employee's unlicensed practice in the inspection and certification of at least forty-five (45) aboveground storage tanks in West Virginia owned by Respondent prior to the former employee obtaining a WV PE license.
26. Respondent accepts the findings set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
27. Respondent acknowledges 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 C2015-12. This paragraph is binding upon Respondent even in the event that the Board does not approve this Consent Order.
28. Respondent acknowledges 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, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent's activities in West Virginia in consideration of this Consent Order.
29. Should the Board not approve this Consent Order, Respondent waives any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondent even if the Board does not approve this Consent Order.
30. Respondent acknowledges 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.

31. Respondent understands 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 the Board to enforce the terms of this Consent Order, but that 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 Respondent which may be before this Board.
32. Respondent understands that the complaint, documents submitted to the Board by Respondent or the Respondent in C2015-08, and both Consent Orders, together with other public documents which may be in the file, are public records which must be made available upon legal request in accordance with the State's Freedom of Information Act.
33. Respondent agrees 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).
34. Respondent acknowledges that non-compliance with this Consent Order may 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 Respondent's non-compliance with this Consent Order.
35. Respondent acknowledges 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, 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 C2015-12 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for aiding and assisting the unlicensed practice of engineering in West Virginia.
3. The civil penalties imposed herein totaling One Thousand Five Hundred Dollars (\$1,500.00) must be paid within thirty (30) days of the date of entry set forth below, 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.
4. 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).
5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00) is 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, 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.

7. 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.
8. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board 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.
9. 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.

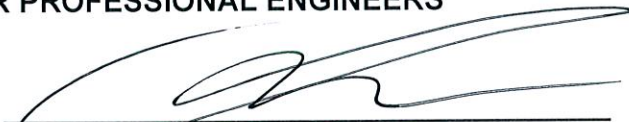
**AGREED TO BY:**

  
\_\_\_\_\_  
EXCO Resources (PA), LLC  
By Heather Lamparter, Vice-President of Legal

7/14/15  
\_\_\_\_\_  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 24 day of July, 2015.

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

By:   
\_\_\_\_\_  
EDWARD L. ROBINSON, P.E.