

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

**IN RE:            WILLIAM L. TONEY, JR.**

**C2014-15**

**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 disputed Complaint seeking disciplinary action against William L. Toney, Jr. (hereinafter “Respondent Toney”). 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 Toney is an engineer licensed in West Virginia, holding license number 11844, and is the President of Engineering & Testing 2000, Inc., organized under the laws of the State of West Virginia, with its principal place of business in Lewisburg.
3.        Respondent Toney was retained by a law firm to review the impact of the construction of a new road on the commercial building of an owner seeking compensation from the West Virginia Department of Highways (WV DOH), preparing both a slope stability analysis and a construction vibrations analysis, providing his findings via two unsealed letters addressed to the client dated October 12 and December 15, 2009.
4.        After discovering an incorrect magnitude of the surcharges on the slope stability analysis dated December 15, 2009, Respondent submitted a revised analysis via a third unsealed letter addressed to the client dated May 28, 2011.

5. An expert retained by the Board concluded that, while the methods used by Respondent were valid, Respondent used incorrect information, the calculations in his construction vibrations analysis were incorrect, and that these inaccuracies or inconsistencies indicated a lack of understanding of the methods being used and/or a lack of care in reviewing and checking his work.

6. The Board, by motion at its regular meeting on March 25, 2014, initiated C2014-15.

7. Respondent, in his sealed response to the Complaint, admits to the errors in his initial slope stability analysis and further admits there were computational errors in his construction vibrations analysis, but states that correct computations would still have shown structural damage.

8. The Board finds and Respondent admits that the work described above violated the following provisions of West Virginia engineering law, including the Rules of Professional Responsibility:

- a. Presentation of a report or calculations to a client without the professional engineer's seal, signature and date, in violation of W. Va. Code § 30-13-16(c) and W. Va. Code R. § 7-1-7.3;
- b. Negligence, incompetence or an act of misconduct in the practice of engineering, in violation of W. Va. Code § 30-13-21(a)(2);
- c. Failure to comply with any of the provisions of Article 13 or any of the rules promulgated under Article 13, in violation of W. Va. Code § 30-13-21(a)(4);
- d. Performing services outside his area of competence and not in accordance with current standards of technical competence, in violation of W. Va. Code R. § 7-1-12.2(b); and
- e. Undertaking an assignment in slope stability analysis and construction vibration assessment for which he was not qualified by education or experience, in violation of W. Va. Code R. § 7-1-12.4(a).

9. Respondent Toney is in good standing with the Board but, pursuant to a Consent Order entered in connection with Board Complaint C2012-09, Respondent Toney is prohibited from performing hydrological or hydraulic engineering services since he has not attempted to demonstrate to the Board that such services are within his area of competence.

10. While Respondent considers himself qualified in a broad range of civil engineering practice, the Board notes that this is the second instance of discipline by this Board based on Respondent's practice of engineering in a manner which is found to violate Rules of Professional Responsibility relating to quality of work.

11. The Board has taken into account the following factors in reaching this settlement: Respondent's previous violation, which also addressed Respondent's competency in another specific technical field of engineering, and the fact that the mistakes in Respondent's forensic work did not pose a risk of harm to the public.

12. The Board has expended in excess of Twenty-Five Hundred Dollars (\$2,500.00) in the investigation and prosecution of this Complaint.

#### **CONCLUSIONS OF LAW**

13. 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.*

14. A professional engineer's seal, date and signature shall appear on the first or title page of all final and/or record documents of drawings, specifications, reports, drawings, plans, design information and calculations presented to a client or any public or government agency to certify that the work was done by or under the control of the professional engineer. W. Va. Code § 30-13-16(c) and W. Va. Code R. § 7-1-7.3(a).

15. Respondent's failure to affix his seal to any of the three documents submitted to his client violates the provisions of West Virginia engineering law requiring that the seal, signature and date appear on such documents.

16. The Board may discipline any professional engineer who has been negligent, incompetent or committed an act of misconduct in the practice of engineering. W. Va. Code § 30-13-21(a)(2).

17. The Board may discipline any professional engineer who has failed to comply with any of the provisions of Article 13 or any of the rules promulgated under Article 13. W. Va. Code § 30-13-21(a)(4).

18. Professional engineers shall perform services only in the areas of their competence according to current standards of technical competence. W. Va. Code R. § 7-1-12.2(b).

19. Professional engineers shall undertake assignments only when qualified by education or experience in the specific technical fields of engineering involved. W. Va. Code R. § 7-1-12.4(a).

20. Respondent's errors in both the slope stability analysis and construction vibration assessment evidence a lack of competence according to current standards of technical competence and a lack of qualification by education or experience in those specific technical fields of engineering, in violation of the Rules of Professional Responsibility cited above, constitutes negligence in violation of W. Va. Code § 30-13-21(a)(2), and violates W. Va. Code § 30-13-21(a)(4).

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).

22. The Board is further authorized to assess related costs for each count or offense in an amount set by the Board. W. Va. Code § 30-13-21(d)(4).

23. A violation of the Rules of Professional Responsibility 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.

24. 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.

#### **CONSENT OF RESPONDENT**

William L. Toney, by affixing his signature hereon, agrees to the following:

25. Respondent is aware of his right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including his 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.

26. Respondent Toney admits that he violated the Rules of Professional Responsibility, 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 C2014-15. 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 C2014-15 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 complete the 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 same may be the subject of any appeal or other civil or administrative action except an action to enforce the terms of this Consent Order in the Circuit Court of Kanawha County. Respondent further understands that the Board shall consider this and the former disciplinary action taken by this Board against Respondent with regard to any future disciplinary matter involving Respondent's quality of work which may come before this Board. The Board may take such into account in connection with any other matter involving Respondent which may come before this Board.

32. Respondent understands that the complaint, the expert's report, the written response, this Consent Order, and perhaps other documents not exempted from disclosure 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, the summary revocation of any

license or certification issued to Respondent by the Board, 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, the summary revocation of any license or certification issued to Respondent 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, and upon entry of this Consent Order, the Board hereby ORDERS that this Consent Order shall serve as settlement of Complaint number C2014-15 pursuant to West Virginia Code § 30-13-22(b).

2. The Board REPRIMANDS Respondent for his violations of West Virginia engineering law admitted to herein, including his failure to affix his seal to any of reports at issue in this matter.

3. The Board ORDERS Respondent not to perform any slope stability analyses or construction vibration assessments, or related geotechnical engineering work, until such time as he successfully demonstrates to the Board that such services are within his area of competence and done in conformity with current standards of technical competence or is done under the supervision of a qualified professional engineer.

4. The Board ORDERS Respondent to pay administrative costs in the amount of Twenty-Five Hundred Dollars (\$2,500.00).

5. The administrative costs agreed to herein must be paid within ninety (90) days from the date of the Board's entry of this Consent Order, as evidenced by the date of the President's signature hereon, such payment to be made to the WV PE Board.

6. If the administrative costs assessed 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 (\$2,500.00), together with pre-judgment interest from the date of entry of this Consent Order, 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. 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).

8. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

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 to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the former 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.

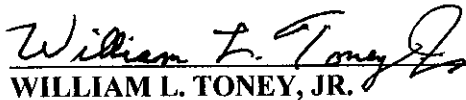
10. This is the second disciplinary action taken against Respondent by the Board which is based on the quality of Respondent's engineering work. Therefore, Respondent is put on notice that any future disciplinary action taken by the Board which is based on the quality of Respondent's engineering work which was completed prior to entry of this Consent Order may result in supervised probation or the suspension or revocation of Respondent's license to practice engineering. If the action is based on work, all or any part of which was performed after the entry of this Consent Order, the sanction shall include limitations on or the termination of Respondent's privilege to practice engineering.



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

12. 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:**

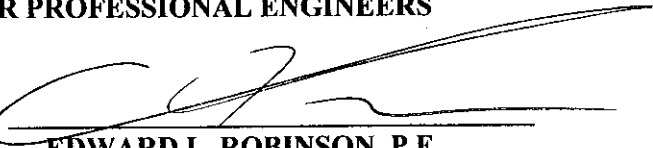
  
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WILLIAM L. TONEY, JR.

10/16/14  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 23 day of October, 2014.

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

By:

  
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EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT