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AUG 22 2016

BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: GARY AMENDOLA  
AMENDOLA ENGINEERING, INC.

RECEIVED

C2016-26

AUG 16 2016

WV PE BOARD

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 Gary Amendola (hereinafter "Respondent Amendola") and Amendola Engineering, Inc. (hereinafter "Respondent Firm") (together, "Respondents"). 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 Firm is organized under the laws of the State of Ohio and does not have the Certificate of Authorization (COA) required to practice engineering in West Virginia.
3. Respondent Amendola is the President and Owner of Respondent Firm and has never been licensed to practice engineering in West Virginia, although he is licensed in the State of Ohio.
4. It came to the attention of the Board that Respondents were doing regulatory work in West Virginia and, in connection therewith, provided design drawings for an effluent diffuser and an overflow structure for an existing client's ("Client A's") request to modify an NPDES permit issued by the West Virginia Department of Environmental Protection.

5. After further investigation, it was learned that Respondent Amendola also prepared three engineering reports for another existing client (“Client B”) in connection with expert testimony before the WV Environmental Quality Board.
6. The Board initiated complaint number C2016-26 at its regular meeting on May 17, 2016, which was filed and served on May 24, 2016.
7. Respondents admitted the allegations and initiated settlement negotiations in lieu of filing a response to the Complaint.
8. During the negotiations, Respondent informed the Board of three additional instances of the practice of engineering in West Virginia:
  - a. a similar conceptual drawing of an effluent diffuser provided (“Client B”);
  - b. a review and certification of Spill Prevention Control and Countermeasure Plan (SPCCP) for Client B; and
  - c. another SPCCP certification for a company formerly affiliated with Client B.
9. The Board finds that, in preparing for his expert testimony, Respondent Amendola practiced engineering in West Virginia, but agrees to not take disciplinary action for this engineering work and proceed only as to the four (4) counts of practicing engineering without a license and COA in connection with the two (2) effluent diffuser design drawings and the two (2) SPCCP certifications.
10. The Board has taken into account the following factors in reaching this settlement: Respondents’ candor and cooperation in initiating the communications with this Board and resolving this Complaint, especially in coming forward during the negotiation with the three additional practices of engineering, and the fact that Respondent Amendola has a comity licensure application and Respondent Firm has a COA application pending with the Board.

11. The Board has incurred legal costs of over Six Hundred Dollars (\$600.00) in addition to the internal administrative costs incurred by the Board in connection with the investigation, initiation and resolution of Complaint C2016-26.

### **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. Gary Amendola, as the owner and President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
14. 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.
15. West Virginia engineering law allows a firm to practice engineering only upon the issuance of a certificate of authorization by the Board. W. Va. Code § 30-13-17.
16. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration of, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).
17. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to unlicensed persons and firms. W. Va. Code §§ 30-13-21(b) and (d).
18. 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).

19. Practicing or offering to practice engineering, as defined by W. Va. § 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. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-3(e), without a valid certificate of authorization is an action that may subject a firm 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.
21. 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.
22. 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 RESPONDENTS**

Respondent Amendola, individually and as the President and Owner of Amendola Engineering, Inc., by affixing his signature hereon, agrees to the following:

23. Respondents are aware of their right to be represented by counsel and 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 Amendola admits that he did not have a license to practice engineering in the State of West Virginia at the time he provided engineering services in West Virginia, in violation of West Virginia engineering law, and acknowledges that he cannot practice engineering in this State until so licensed.
25. Respondent Firm admits that it did not have a COA at the time it practiced engineering in West Virginia, in violation of West Virginia engineering law, and acknowledges that the firm cannot practice engineering in this State until a COA has been issued by this Board.
26. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
27. 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 Respondents' activities in West Virginia in consideration of this Consent Order.
28. 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.
29. 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.

30. Respondents 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 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 the same with regard to any future disciplinary matter involving Respondents which may be before this Board.
31. Respondents understand that the complaint and this Consent Order are public records which, together with other public documents in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.
32. 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's 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).
33. 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 certificate 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.
34. Respondents acknowledge 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 certificate 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, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint number C2016-26 pursuant to West Virginia Code § 30-13-22(b).
2. Respondents are prohibited from practicing engineering in the State of West Virginia until such time as Respondent Amendola is duly licensed by the Board and Respondent Firm has been issued a COA by the Board.
3. The Board **ORDERS** Respondent Amendola to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) for the first count of practicing engineering in West Virginia without a license.
4. The Board **ORDERS** Respondent Amendola to pay a civil penalty in the amount of One Hundred and Fifty Dollars (\$150.00) for the additional three counts of practicing engineering in West Virginia without a license, for a sub-total of Four Hundred Fifty Dollars, and a total of Seven Hundred Dollars (\$700.00) for the four counts.
5. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the first count of practicing engineering in West Virginia without a certificate of authorization, without additional penalty for the subsequent counts.
6. The civil penalties imposed herein totaling Nine Hundred Fifty Dollars (\$950.00) 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.

7. The parties agree to the payment of administrative costs in the discounted amount of Two Hundred Fifty Dollars (\$250.00), which shall be paid by separate payment within thirty (30) days from the date of entry, such amount to be made payable to the W. Va. P.E. Board.
8. 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's 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).
9. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
10. 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 Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$1,200.00), 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.
11. 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.



12. 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 Respondents which may come before this Board.
13. 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:**

  
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GARY AMENDOLA, Individually, and as  
President of AMENDOLA ENGINEERING, INC.

August 12, 2016  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 16<sup>th</sup> day of August, 2016.

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

By:

  
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EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT