

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

IN RE: **FESCO, LTD.**

RECEIVED 2017-03

MAR 06 2017

CONSENT ORDER

WV PE BOARD

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 the Board-initiated Complaint against FESCO, LTD (“Respondent Firm”). 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 a corporation organized under the laws of the State of Texas, with its principal place of business in Alice, Texas, and with twenty (20) branch offices located throughout the country, including a branch office in West Virginia.
3. The logo for “FESCO Petroleum Engineers” appeared in a program for the Harrison County Chamber of Commerce’s 2016 Legislative Preview Lunch held in January of 2016, which was not a firm which had a certificate of authorization (COA) issued by this Board, which is required to offer or practice engineering in West Virginia.
4. “FESCO Petroleum Engineers” was a logo / name for FESCO, LTD., used primarily in the State of Texas.
5. Respondent Firm represents that its manager in West Virginia, who is not an engineer, provided the logo for use in the Harrison County Chamber of Commerce’s 2016 Legislative Preview Lunch program and did not realize it constituted an offer by the Respondent Firm to practice engineering in West Virginia.

6. Respondent Firm further represented that the logo with the terms "Petroleum Engineers" will not be used again in West Virginia unless and until Respondent Firm has the necessary credentials to offer engineering services in this State.
7. As a result of the Board's investigation of Respondent Firm and discussions regarding Respondent Firm's not having a professional engineer licensed in West Virginia, Edwin P. Bickham, Jr., filed an incomplete application for licensure which was received May 11, 2016.
8. Respondent Firm takes the position that, while it offers engineering services in many states, only field services are offered and provided in West Virginia and that a Certificate of Authorization is not required for these non-engineering services.
9. Respondent Firm admits that use of its old logo as a form of advertisement constituted an offer of engineering services in West Virginia.
10. The Board has taken into account the following factors in reaching this settlement: no engineering work was performed in West Virginia; Respondent Firm represents it will not offer or practice engineering in West Virginia until such time as the proper credentials for same have been issued by this Board; and Respondent Firm otherwise cooperated in the resolution of this Complaint.
11. The Board has incurred legal costs in connection with Complaint Number C2017-08 in addition to the internal administrative costs incurred by the Board in connection with the investigation, initiation and resolution of Complaint Number C2017-08.

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. Edwin P. Bickham, Jr. is the Vice-President of Technology Development of Respondent Firm, and as such has the signature authority to bind Respondent Firm to this agreement.

14. 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.
15. For a COA to be issued and to remain valid there must be an engineer-in-responsible-charge who is a full-time employee, owner or principal of the firm. W. Va. Code § 30-13-17(d).
16. Respondent has no professional engineers in West Virginia and therefore cannot qualify for a COA.
17. Failure to comply with any of the provisions of W. Va. Code § 30-13-1 *et seq.* or any of the rules promulgated under Article 13 is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(4).
18. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
19. 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 W. Va. Code R. § 7-1-15.
20. Practicing engineering, as defined by W. Va. Code § 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. A general violation of applicable statutes and rules may subject any person or 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.
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 FIRM

Edwin P. Bickham, Jr. as the authorized signatory to this agreement for FESCO, LTD., agrees to the following:

24. Respondent Firm is aware of its right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures including its right to a formal hearing before the Board; and notwithstanding, Respondent Firm intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
25. Respondent Firm admits that it offered engineering in West Virginia without a valid COA and further admits that it does not qualify for the issuance of the required COA.
26. Respondent Firm 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. Should the Board not approve this Consent Order, Respondent Firm waives any objections to the Board or any of its members participating in the adjudication of this matter based on the Board's consideration of this Consent Order. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.
28. Respondent Firm 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.
29. Respondent Firm 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, unrelated disciplinary matter involving Respondent Firm which may be before this Board.

30. Respondent Firm understands that this Complaint, documents submitted to the Board by Respondent Firm, and this Consent Order, 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.
31. Respondent Firm 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).
32. Respondent Firm 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 certification which may be issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.
33. Respondent Firm acknowledges 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 certification issued to Respondent Firm 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 C2017 08 pursuant to W. Va. Code § 30-13-22(b).

2. The Board **REPRIMANDS** Respondent Firm for advertising engineering services in West Virginia, which advertising constituted an offer of engineering services in West Virginia at a time when it (1) did not have the required Certificate of Authorization and (2) did not qualify for a Certificate of Authorization, having no professional engineer licensed in this State.
3. The Board **ORDERS** that Respondent Firm be prohibited from advertising or otherwise offering engineering services in West Virginia unless and until it qualifies for and is issued the Certificate of Authorization required by this Board.
4. The Board **ORDERS** Respondent Firm to pay Administrative Costs in the amount of Five Hundred Dollars (\$500.00), which 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.
5. 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).
6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
7. If the Administrative Costs totaling Five Hundred Dollars (\$500.00) are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent Firm 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.
8. 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.

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 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, unrelated disciplinary matter involving Respondent Firm which may come before this Board.
10. 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:

Edwin P. Bickham, JR.
FESCO, LTD.
By EDWIN P. BICKHAM, JR., its Vice-President
of Technology Development

3-1-2017
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 21st day of March, 2017.

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

By: 
EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT