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BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: JOHN ARTHUR HERBST

C2018-07

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Bhajan S. Saluja, P.E., its Vice-President, (hereinafter “the Board” with the exclusion of President Edward L. Robinson, who voluntarily recused himself from the matter) for the purpose of agreeing to resolve a Complaint seeking disciplinary action against John Arthur Herbst (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. Mark Francis Sindelar, a West Virginia-licensed professional engineer and a professor at the Statler College of Engineering and Mineral Resources at West Virginia University, brought the above-styled third-party complaint against Respondent on September 29, 2017, which was then served upon Respondent, who filed a timely response.

3. Based on the allegations in the complaint and the response thereto, the Board finds as follows:

- a. Respondent Herbst is the former Chair of the Department of Mining Engineering at West Virginia University.

- b. Respondent, on his submission for the position at WVU dated March 26, 2015, signed as “Dr. John A. Herbst P.E., thereby representing himself as a licensed professional engineer.
- c. Respondent is not a licensed professional engineer and therefore is not qualified to use the P.E. designation in any manner.
- d. Respondent in other acts and omissions which were directed to his academic colleagues and the public at large encouraged the impression that he was a professional engineer, which impression is false.

4. Respondent claims the submission to WVU was the only time he has ever used the P.E. designation, that he now knows that membership in the National Academy of Engineering and the National Society of Professional Engineers does not qualify him as a P.E., and that he will not add the P.E. designation to his signature blocks in the future.

5. The Board has taken into account the following factors in reaching this settlement: that while Respondent’s improper use of the P.E. designation could have misled the public and likely did mislead his employer, it did not pose a threat of harm to the public;

6. 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

7. 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.*

8. West Virginia Code § 30-13-3(e) states in part: “Any person who ..., by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional engineer ... is considered to practice or offer to practice engineering within the meaning and intent of this article.”

9. It is unlawful for any person to practice or offer 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.

10. 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 person 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).

11. Respondent’s improper use of the P.E. designation on his submission to WVU constitutes the practice of engineering without a license, which violates W. Va. Code § 30-13-2, which in turn violates W. Va. Code § 30-13-21(a)(4).

12. 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).

13. Practicing 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.

14. 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.

15. 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 John Arthur Herbst, individually, by affixing his signature hereon, agrees to the following:

16. 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.

17. Respondent Herbst admits that he has never had a license to practice engineering in any state and therefore has never had the privilege of using the P.E. designation after his name.

18. 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.

19. 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 C2018-07. This paragraph is binding on Respondent even in the event that the Board does not approve this Consent Order.

20. 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.

21. 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.

22. 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.

23. 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.

24. Respondent understands that the complaint, his response, 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.

25. 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'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).

26. 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.

27. 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 C2018-07 pursuant to West Virginia Code § 30-13-22(b).
2. Respondent is **REPRIMANDED** for representing himself to the general public, including his academic colleagues, as a licensed professional engineer.
3. Respondent is **PROHIBITED**, by verbal claim, sign, advertisement, letterhead, card or in any other way representing himself to be a professional engineer.
4. The Board **ORDERS** Respondent Herbst to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for representing himself as a P.E. and therefore considered to be practicing engineering in West Virginia without a license pursuant to West Virginia engineering law.

5. The civil penalties imposed herein totaling Five Hundred Dollars (\$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.
6. 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).
7. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
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 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.
9. 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.
10. 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.

11. 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:



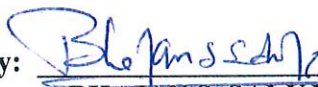
JOHN ARTHUR HERBST

Feb 11, 2018

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 28 day of February, 2018.

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

By: 

**BHAJAN S. SALUJA, P.E.
BOARD VICE-PRESIDENT**