



- a. it erroneously named its former engineer-in-responsible-charge (“EIRC”) as the EIRC for the upcoming license period although the former EIRC had left the employ of Respondent Firm on May 29, 2015; and
  - b. it erroneously had 1415 South Roselle Road, Palatine, Illinois as its address although Respondents had sold that facility in June of 2015.
6. On February 29, 2016, the Board emailed a questionnaire to each engineering firm with a COA valid through December 31, 2017 requesting clarification regarding the number of professional engineers employed by that firm.
7. The questionnaire made clear that the questionnaire sought information and that “misinformation to the Board is grounds for disciplinary action.”
8. Respondent Firm had been issued Certificate of Authorization (COA) #C03260 in March of 2008 and was therefore one of the firms sent the email questionnaire
9. After the initial questionnaire, the Board attempted to follow-up with firms which had not responded, including Respondent Firm, which was contacted at least five more times by way of electronic mail and telephone and by first class mail and certified mail to the address of record in Illinois.
10. In the certified letter dated April 14, 2016, Respondent Firm was advised that “failure to provide information requested by the Board could result in disciplinary action, including a civil penalty imposed by the Board ...”
11. Still not hearing from Respondent Firm or receiving the information requested, the Board initiated Complaint Number C2016-25 at its regular meeting on May 17, 2016, which was filed and served on May 24, 2016.
12. On June 6, 2016, Respondent Carlin contacted the Board and filed a timely response dated June 7, 2016, wherein Respondent Carlin:
  - a. informed the Board that the named individual Respondent had left Respondent Firm prior to the February 29, 2016 transmittal of the questionnaire;

- b. stated all subsequent inquiries had gone to a firm mailing address which had changed; and
  - c. that Respondents “clearly failed to notify the Board of these changes.”
13. With the response, Respondent Firm attached the completed questionnaire and its COA application naming Respondent Carlin as its new engineer-in-responsible-charge and using an address in Ohio where Respondent Firm had employees.
  14. The number of professional engineers set forth on the completed questionnaire comported with the four-or-more COA classification which had been issued to Respondent Firm.
  15. Thereafter, it was determined that Respondent Firm had practiced engineering twenty times in West Virginia between the date the former EIRC left Respondent Firm and the date Respondent Carlin was named as its successor EIRC.
  16. Eleven (11) of those projects were performed from the date of Respondent Firm’s renewal which erroneously named someone no longer in its employ as its EIRC for the upcoming licensure period until the modification of its COA renewal in June of 2016 naming Respondent Carlin as its EIRC for the current licensure period.
  17. The Board has been provided confirmation that Respondent Carlin has the authority to bind Respondent Firm with regard to all matters set forth in this Consent Order.
  18. Respondent Carlin admits he failed to update his and Respondent Firm’s information to the Board, in violation of West Virginia engineering law.
  19. Respondent Carlin admits he provided misinformation to the Board in submitting a renewal naming an EIRC who was no longer with the firm and failing to use an up-to-date address for Respondent Firm, in violation of West Virginia engineering law.
  20. Respondent Carlin admits he failed to timely respond to the Board’s request for information which, the Board acknowledges, was likely not received due to Respondent Carlin’s failure to update Respondents’ information to the Board.

21. Respondent Firm admits it provided engineering services in West Virginia without a valid COA inasmuch as the named EIRC was no longer with the company, in violation of West Virginia engineering law.
22. The Board has taken into account the following factors in reaching this settlement: the fact that all engineering work done during the time the firm did not have a valid COA was performed by a professional engineer licensed to practice in West Virginia; the absence of risk of harm to the public given that the geotechnical letter report was for a project that did not proceed; and Respondents' cooperation in the resolution of this Complaint.
23. The Board has incurred legal costs in connection with Complaint Number C2016-25 in the excess of Seven Hundred Fifty Dollars (\$750.00) in addition to the internal administrative costs incurred by the Board in its attempts to contact Respondent Firm and in connection with the investigation, initiation and resolution of Complaint Number C2016-25.

#### **CONCLUSIONS OF LAW**

24. 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.*
25. 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.
26. For a COA 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).
27. Respondent's failure to have a qualified engineer-in-responsible-charge violates W. Va. Code § 30-13-17.

28. It is a professional engineer's responsibility to notify the Board of any change in information previously submitted to the Board, such as name change, change of address, change of employer, or similar matters requiring current information. W. Va. Code R. § 7-1-6.5.
29. Respondent Carlin's failure to update his change of address violates W. Va. Code R. § 7-1-6.5.
30. It is a firm's responsibility to notify the Board within thirty (30) days of any change in information previously submitted to the Board, such as name change, change of address, change of PE in responsible charge, or similar matters requiring current information. W. Va. Code R. § 7-1-11.9.
31. Respondent Firm's failure to update its information regarding Respondent Firm's engineer-in-responsible-charge and its change of address violates W. Va. Code R. § 7-1-11.9.
32. 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).
33. Failure within thirty days to provide information requested by the Board as a result of a formal or informal complaint which would indicate a violation of W. Va. Code § 30-13-1 *et seq.* is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(6).
34. The follow-up to the emailed questionnaire repeatedly requesting the information constituted an informal complaint, and Respondents' failure to provide the information within thirty days violated W. Va. Code § 30-13-21(a)(6).
35. Providing false information to the Board is a basis for disciplinary action by the Board. W. Va. Code § 30-13-21(a)(12).
36. Respondent Carlin's renewal naming an EIRC who was no longer in Respondent Firm's employ and using an address which was no longer Respondent Firm's address constituted misinformation to the Board, in violation of W. Va. Code § 30-13-21(a)(12).

37. 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.
38. 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).
39. The provisions of W. Va. Code § 30-13-21(a) are applicable as appropriate to firms. W. Va. Code § 30-13-21(d).
40. 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.
41. Providing misinformation to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to Fifteen Thousand Dollars (\$15,000.00). W. Va. Code R. § 7-1-15.1.
42. Failure to timely provide information to the Board may subject any person or firm to discipline by the Board, including a civil penalty up to One Thousand Dollars (\$1,000.00). W. Va. Code R. § 7-1-15.1.
43. 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.
44. 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.

45. 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**

John R. Carlin, individually, and as the authorized signatory to this agreement for Schneider Electric Engineering Consultants LLC, agrees to the following:

46. Respondents are aware of their rights, both individually and jointly, 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 notwithstanding, Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
47. Respondent Carlin admits he:
  - a. failed to update his or Respondent Firm's address with the Board;
  - b. submitted a COA renewal on behalf of Respondent Firm which contained two instances of misinformation to the Board; and
  - c. failed to timely provide information requested by the Board regarding Respondent Firm's COA.
48. Respondent Firm admits that it offered and practiced engineering in West Virginia in West Virginia without a valid COA from the time the named engineer-in-responsible-charge left its employ until Respondent Carlin was named as the new EIRC in June 2016.
49. 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, but also does so in order to avoid the costs, expenses and uncertainty of a hearing before the Board.
50. 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 based on

the Board's participation in the informal conference and considering this Consent Order. This paragraph is binding on Respondents even if the Board does not approve this Consent Order.

51. 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.
52. 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 same with regard to any future, unrelated disciplinary matter involving Respondents which may be before this Board.
53. Respondents understand that this Complaint, documents submitted to the Board by Respondents, 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.
54. Respondents agree that the sum and substance of the Complaints 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).
55. Respondents acknowledge that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaints, the summary revocation of any license or certification issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.



56. Respondents acknowledge 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 Complaints, the summary revocation of any license or certification 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 C2016-25 pursuant to W. Va. Code § 30-13-22(b).
2. The Board **ORDERS** that Complaint C2016-25 be impliedly amended to name the Respondents disciplined herein and to reflect the violations on which the agreed-to discipline is based and the allegations in support of the discipline.
3. The Board **ORDERS** Respondent Carlin be reprimanded for:
  - a. his failure to update information to the Board on his own behalf and that of Respondent Firm;
  - b. providing misinformation to the Board with regard to Respondent Firm's COA renewal;
  - c. failing to take the steps necessary to ensure that Respondent Firm had a valid COA; and
  - d. failing to timely respond to the Board's request for information.
4. The Board **ORDERS** Respondent Carlin to pay total civil penalties in the amount of Five Hundred Dollars (\$500.00) for the following violations:
  - a. Two Hundred Fifty Dollars (\$250.00) for providing misinformation to the Board; and

- b. Two Hundred Fifty Dollars (\$250.00) for failing to timely respond to the Board's request for information.
5. The Board **ORDERS** Respondent Firm to pay total civil penalties in the amount of Five Hundred Dollars (\$500.00) for the following violations:
  - a. Two Hundred Fifty Dollars (\$250.00) for the first instance of practicing without a valid COA after the date Respondent Carlin submitted the renewal which named an engineer-in-responsible-charge who as no longer employed by Respondent Firm; and
  - b. Two Hundred Fifty Dollars (\$250.00) for the ten (10) additional instances of practicing without a valid COA prior to the re-issuance of a COA with Respondent Carlin named as Respondent Firm's engineer-in-responsible-charge.
6. The Board **ORDERS** that Respondents pay administrative costs in the substantially discounted amount of Three Hundred Dollars (\$300.00).
7. The civil penalties imposed herein totaling One Thousand Dollars (\$1,000.00) 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.
8. The administrative costs agreed to herein in the amount of Three Hundred Dollars (\$300.00) 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.
9. 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).

10. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
11. If the civil penalties and administrative costs totaling One Thousand Three Hundred Dollars (\$1,300.00) 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, 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.
12. 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.
13. 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 Respondents which may come before this Board.
14. 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:**

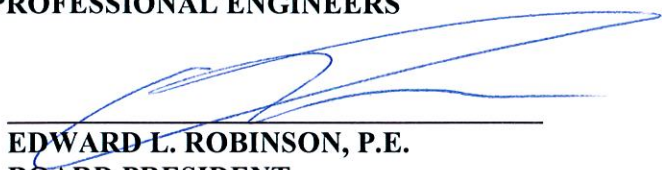
  
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**JOHN R. CARLIN**, individually and as the  
Authorized Signatory on behalf of **SCHNEIDER  
ELECTRIC ENGINEERING SERVICES, LLC**

09/30/2016  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 13<sup>th</sup> day of October, 2016.

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

By:

  
\_\_\_\_\_  
**EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT**