

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

IN RE: WV Electric Industries, Inc.

C-2006-06

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter "the Board"), and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action which shall be taken against WV Electric Industries, Inc.. 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 Board is a state entity created by West Virginia Code §30-13-1 *et seq.* and is empowered to regulate the practice of engineering pursuant to West Virginia Code §30-13-1 *et seq.*
2. Dennis Toothman is the president of WV Electric Industries, Inc., a firm organized under the laws of the State of West Virginia with offices in Fairmont and Beckley.
3. Respondent firm offers a variety of services, including engineering services under certificate of authorization #C02127.
4. This complaint was initiated by Darrell Stephen Rulon on February 9, 2006, and was served upon Respondent by certified mail.
5. Mr. Rulon is an engineer with the Respondent and holds professional engineering license number 015746.
6. This complaint alleges that WV Electric Industries engaged in misleading

advertising, including information on its employees' business cards. Specifically, the complaint alleges that five named employees are given engineering titles without sufficient credentials for such title.

7. Respondent was previously brought before this Board on similar charges in Complaint 2002-5 which resulted in a letter requiring West Virginia Electric to cease any current and future improper use of the terms "engineering" and "engineer."
8. The earlier complaint resulted in Mr. Rulon, P.E., being hired by Respondent, and listed as the engineer in responsible charge on its application for COA, allowing Respondent to advertise engineering services.
9. Regarding the instant Complaint, Mr. Toothman provided a response to the Board on behalf of Respondent dated March 16, 2006, and has verbally provided other information, all of which has been relied upon by the Board in entering into this consent order.
10. In the written response, Mr. Toothman offers the following remedial action:
 - (a) All business cards of the employees listed in the complaint, as well as others with questionable credentials, have been collected and disposed of. Re-issued business cards will not use have "Engineer" in the title; and
 - (b) Appropriate changes have been made to the company website.
11. The Board has taken into account the following in mitigation of the charges raised in this Complaint:
 - (a) Mr. Rulon as an employee of Respondent brought this matter to the Board's attention.
 - (b) Mr. Toothman voluntarily took remedial measures which this Board deemed acceptable in addressing the issues raised in the

Complaint.

12. Respondent has waived its right to a hearing on this matter and other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.
13. The Board incurred only minimal expenses with regard to this Complaint and therefore finds it appropriate to enter into this consent order without the imposition of costs.

CONCLUSIONS OF LAW

14. West Virginia Code §30-13-3(e) states: "Any person ... who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of this article."
15. West Virginia Code §30-13-2 states: "It is unlawful for any person to practice or offer to practice engineering in this state (as defined above) or to use in connection with his or her name or otherwise assume or advertise any title or description tending to convey the impression that he or she is a registered or licensed engineer, unless the person has been duly registered or exempted under the provisions of this article."
16. Misleading or illegal advertising of engineering services is an action that could subject a person or firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 C.S.R. 1.15.1.
17. Implicit in the authority of the Board to take disciplinary action pursuant to West Virginia Code §30-13-21 against any professional engineer or holder of a COA is the authority not to take disciplinary action.

CONSENT OF DENNIS TOOTHMAN for WV ELECTRIC INDUSTRIES, INC.

Dennis Toothman, President of WV Electric Industries, Inc., by affixing his signature hereon, agrees to and acknowledges the following:

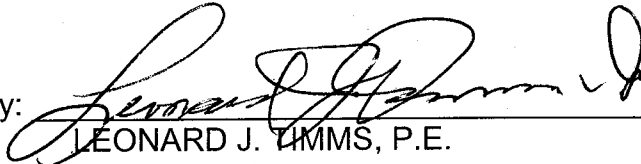
19. Mr. Toothman is aware of the firm's option to retain and be represented by legal counsel and/or to pursue this matter through appropriate administrative and/or court procedures, but intelligently, knowingly and voluntarily waives the firm's right to do so.
20. Mr. Toothman intelligently and voluntarily waives Respondent's right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
21. Respondent agrees to accept an informal settlement of Complaint 2006-06.
22. Respondent consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
23. Respondent acknowledges that the Board may reject this proposal and may hold a hearing to impose such sanctions of a disciplinary nature as it deems appropriate.
24. Respondent acknowledges that proof of any misstatement or misrepresentation made by WV Electric Industries in its response or in any other document or statement relied upon in the entering of this consent order will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of Respondent's COA, and the addition

of any other charges which may ensue from providing false information to the Board in violation of West Virginia engineering law.

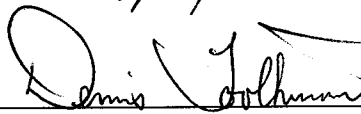
ORDER

25. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).
26. The Board **ORDERS** Respondent to provide copies of all business cards issued to its employees through January 1, 2008.
27. The Board **ORDERS** that it be notified of any changes to Respondent's website made through January 1, 2008.
28. Respondent acknowledges this Consent Order is a public record and agrees that the sum and substance of the nature of the Complaint and this agreement and/or the documents in their entirety may be set forth in Board publications and on the Board website.
29. Inasmuch as no disciplinary action was taken other than the requirement for continued remedial action, this matter will not be posted to enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
30. Any violation of the terms of this Consent Order shall be immediate cause for summary revocation of Respondent's COA, in addition to further disciplinary action by the Board after hearing.
31. 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 initiated by Respondent.

WEST VIRGINIA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

By: 
LEONARD J. TIMMS, P.E.
Board President

Date: 4/5/06


WV ELECTRIC INDUSTRIES, INC.,
by DENNIS TOOTHMAN, its President

RECEIVED

APR 4 - 2006

WV REGISTRATION BOARD

Date: 3-31-06