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WEST VIRGINIA STATE BOARD

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

**IN RE: HURD AND OBENCHAIN, INC.**

**C2010-09**

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Leonard J. Timms, P.E., its president, for the purpose of agreeing to disciplinary action to be taken against Hurd and Obenchain, Inc. (hereinafter "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 Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to the same.
2. Respondent Firm, Hurd and Obenchain, Inc., is organized under the laws of the State of Virginia with its office located in city of Roanoke.
3. John B. Obenchain, Jr., as a representative of Respondent Firm, and has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
4. Mr. Obenchain submitted an application to reinstate his West Virginia Professional Engineering license number 15519 in August 2009, on which he stated that Respondent Firm had offered to do work in the State of West Virginia.
5. In verifying this information, it was uncovered that Respondent Firm did not have a

Certificate of Authorization to practice engineering in the State of West Virginia.

6. Thereafter the Board initiated Complaint Number C2010-09 which was filed on September 29, 2009.
7. At all relevant times, with regard to the allegations contained in Complaint Number C2010-09, Respondent Firm did not have a valid Certificate of Authorization.
8. Respondent Firm, through Mr. Obenchain, was made aware that offering services for engineering work to be done in the State of West Virginia without a valid Certificate of Authorization constitutes a violation of the laws as they pertain to the practice of engineering.
9. Respondent Firm requested an informal meeting with the Board where it admitted that it offered to provide engineering services for a project located in the State of West Virginia without a valid Certificate of Authorization in this State.
10. On September 29, 2009, after making appropriate application to the Board, Respondent Firm was issued Certificate of Authorization Number C01478.
11. Respondent Firm's prompt response in connection with this Complaint mitigates Respondent Firm's culpability regarding the admitted violations of West Virginia engineering law; therefore, based upon the foregoing, the Board, in its discretion, will not assess administrative costs although the Board does find that it is within their power to assess such costs according to W.Va. Code R § 7-1-14.4.
12. Respondent Firm 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.

### **CONCLUSIONS OF LAW**

1. West Virginia engineering law allows a firm to practice or offer to practice engineering in this State only upon the issuance of a Certificate of Authorization by the Board. W. Va. Code § 30-13-17.
2. 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).
3. Practicing or offering to practice engineering without a valid Certificate of Authorization, to which Respondent Firm has admitted herein, is an action that could subject a firm to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5000.00). W.Va. Code R § 7-1-15.1.
4. The Board may assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity that violates the law as it pertains to the practice of engineering. W.Va. Code R § 7-1-14.4.
5. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

### **CONSENT OF RESPONDENT**

John B. Obenchain, Jr., on behalf of Hurd and Obenchain, Inc., by affixing his signature hereon, agrees to the following:

1. Respondent Firm is aware of its right to be represented by counsel and of its option to pursue this matter through appropriate administrative and/or court procedures, but Respondent Firm intelligently and voluntarily waives their right to do so.
2. Respondent Firm intelligently and voluntarily waives its right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
3. Respondent Firm admits it offered to provide engineering services for a project in West Virginia without the required Certificate of Authorization.
4. Respondent Firm accepts the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
5. Respondent Firm 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. Should the Board not approve this Consent Order, presentation and consideration of this Consent Order and other documents and matters by the Board shall not preclude the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.

6. Respondent Firm acknowledges that entering into the negotiation of this Consent Order constitutes a waiver of the six month time limit set forth in West Virginia Code § 30-13-22(b) for the disposition of Complaint Number C2010-09. This paragraph is binding on the participants even in the event that the Board does not approve this Consent Order.
7. Respondent Firm understands that this Consent Order and the underlying Complaint are public records and 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).
8. Respondent Firm acknowledges that proof of any 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 of authorization issued to Respondent Firm, 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 by this tribunal,

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).

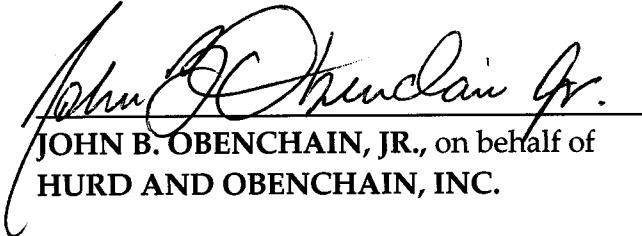
2. This Consent Order is executed by Respondent Firm for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm prior to or in conjunction with consideration of this Consent Order. Furthermore, should this Consent Order not be accepted by the Board, it is agreed that presentation to and by the Board shall not preclude the Board or any of its members from further participation, consideration or resolution of these proceedings.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for offering to practice engineering in West Virginia without a valid Certificate of Authorization.
4. The civil penalties imposed herein must be paid within thirty (30) days of the date Respondent Firm receives notice of the Board President's signature hereon, 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. Failure to remit the payment of these civil penalties within the prescribed time period will result in further disciplinary action by the Board.
5. Respondent Firm acknowledges this Consent Order and the underlying Complaint are public records and agree that the sum and substance of the Complaint and this

agreement in part or in their entirety may 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. 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 action except an action to enforce the terms of this Consent Order.
8. 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 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.
9. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty and administrative costs agreed to herein.
10. This Consent Order relates solely to matters within the jurisdiction of the West

Virginia Board of Registration for Professional Engineers 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 B. OBENCHAIN, JR., on behalf of  
HURD AND OBENCHAIN, INC.

11/9/09  
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this:

11<sup>TH</sup> day of NOVEMBER, 2009.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

By:   
LEONARD J. TIMMS JR., P.E.,  
BOARD PRESIDENT

11/14/09  
DATE