

RECEIVED

SEP 05 2014

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

WV PE BOARD

IN RE: INDUSTRIAL TURNAROUND CORPORATION

C2015-02

CONSENT ORDER

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 a Complaint seeking disciplinary action against Industrial TurnAround Corporation (hereinafter "Respondent Firm" or "ITAC"). 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 organized under the laws of the Commonwealth of Virginia with its principal place of business in Chester, and John S. Moody is its Vice President of Engineering.
3. In a comity application submitted by one of its employees, the Board was informed that Respondent Firm had offered and practiced engineering in West Virginia after its Certification of Authorization (COA # C03801) had expired on June 30, 2013 and had not been renewed. (The license of Respondent Firm's engineer-in-responsible-charge also had expired on that date.)
4. Respondent Firm submitted an application for reinstatement of its COA on July 10, 2014, which was approved on August 1, 2014.



5. Upon investigation by the Board, Respondent Firm indicated that since the expiration of its COA, Respondent Firm had made six offers to practice engineering in West Virginia, three of which resulted in the practice of engineering.
6. The engineering was performed by an employee of Respondent Firm who is a Professional Engineer whose license in West Virginia was in good standing throughout the 2013-14 licensure year.
7. The Board initiated complaint number C2015-02 at its regular meeting on July 22, 2014, which was served on July 25, 2014.
8. Respondent Firm promptly notified the Board and initiated settlement negotiations rather than filing a response to the Complaint.
9. Respondent Firm admits it practiced and offered to practice engineering without the required COA during the 2013-2014 licensure year, offering engineering services for six (6) projects and being awarded and performing the work on three (3) of those projects.
10. The Board has taken into account the following factors in reaching this settlement: an amount that will be an economic deterrent to the violation; the number of offers and instances of the practice of engineering; the fact that the engineering work was performed by a professional engineer licensed in this State and there was no risk of harm to the public; Respondent Firm has no history of previous violations, self-reported the circumstances which gave rise to this complaint, cooperated with the Board in the investigation and resolution of this Complaint, and promptly took steps to be in good standing with the Board.
11. While the Board may lawfully impose a civil penalty for each of the six (6) offenses of offering to practice without the required COA and the three (3) offenses of practicing without the required COA, the Board has discretion over such matters and agrees to exercise such discretion in agreeing to the civil penalties imposed herein.

A handwritten signature in black ink, appearing to be 'JLW', is located in the bottom right corner of the page.

12. The Board, in its discretion, will not assess administrative costs although West Virginia engineering law authorizes the Board's power to assess such costs.

CONCLUSIONS OF LAW

13. 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.
14. John S. Moody, the Vice President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
15. 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.
16. 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).
17. Practicing or offering to practice engineering, as defined by W. Va. Code § 30-13-1 et seq., 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 (\$5000.00). W. Va. Code R. § 7-1-15.1.
18. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) The circumstances leading to the violation;
 - (c) The nature and severity of the violation and the risk of harm to the public;
 - (d) The history of previous violations;

A handwritten signature in black ink, appearing to be 'JSM', is located in the bottom right corner of the page.

- (e) The extent to which the cited person or firm has cooperated with the Board and the Board's investigation;
- (f) The economic benefits gained by the violator as a result of the noncompliance;
- (g) The interest of the public; and
- (h) Other matters as may be appropriate.

W. Va. Code R. § 7-1-15.4.

19. 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

John S. Moody, as the Vice President of Industrial TurnAround Corporation, by affixing his signature hereon, agrees to the following:

20. Respondent Firm is aware of its right to be represented by counsel and pursue this matter through appropriate administrative and/or court procedures, including its right to a formal hearing before the Board, and Respondent Firm intelligently and voluntarily waives its rights provided the Board accepts the terms and conditions set forth in this Consent Order.
21. Respondent Firm admits that it did not have a Certificate of Authorization to practice or offer to practice engineering in the State of West Virginia from July 1, 2013, until its reinstatement on August 1, 2014.
22. 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.
23. Respondent Firm 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 Number C2015-02. This paragraph is binding upon Respondent Firm even in the event that the Board does not approve this Consent Order.

A handwritten signature in black ink, appearing to be "JSM", enclosed within a circular scribble.

24. Respondent Firm 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 Firm authorizes the Board to review and examine all investigative file materials concerning Respondent Firm's activities in West Virginia in consideration of this Consent Order.
25. 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. This paragraph is binding on Respondent Firm even if the Board does not approve this Consent Order.
26. 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.
27. 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 disciplinary matter involving Respondent Firm which may be before this Board.
28. Respondent Firm understands that the complaint and this Consent Order are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.
29. 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

A handwritten signature in black ink, appearing to be "JMN", enclosed within a circular flourish.

exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

30. 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 issued to Respondent Firm by the Board, and the addition of any other charges which may arise or ensue from Respondent Firm's non-compliance with this Consent Order.
31. Respondent Firm 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 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 C2015-02 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the first offense of offering to practice engineering in West Virginia without a certificate of authorization, without the imposition of civil penalties for the subsequent five (5) offenses.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the first offense of practicing engineering in West Virginia without a certificate of authorization.

A handwritten signature in black ink, appearing to be 'J. M.', located in the bottom right corner of the page.

4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of One Hundred Fifty Dollars (\$150.00) for each of the subsequent two offenses of practicing engineering in West Virginia without a certificate of authorization, for a total of Three Hundred Dollars (\$300.00).
5. The civil penalties totaling Eight Hundred Dollars (\$800.00) shall be paid in full within thirty (30) days of entry of this Consent Order and transferred 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 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 by Respondent Firm shall be immediate cause for further disciplinary action by the Board.
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 the outstanding balance of the amount agreed to herein (\$800.00), together with pre-judgment interest from the date of the Vice 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

A handwritten signature in black ink, appearing to be "J. M.", enclosed within a circular scribble.

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 same with regard to any future disciplinary matter involving Respondent Firm 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:



INDUSTRIAL TURNAROUND CORPORATION
By JOHN S. MOODY

September 3, 2014
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 15th day of Sept, 2014.

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

By: 

EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT