

RECEIVED
JUL 14 2009

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: RICHARD WAND
 MJ ENGINEERING & CONSULTING, INC.

C2009-22

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president, and its attorney, Nicole A. Cofer, Assistant Attorney General for the State of West Virginia (hereinafter "the Board") for the purpose of agreeing to disciplinary action to be taken against Richard Wand (hereinafter "Respondent") and MJ Engineering & Consulting, 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, MJ Engineering & Consulting, Inc., is organized under the laws of the State of Ohio with its office in Westerville.
3. Respondent, Richard Wand, as a representative of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of MJ Engineering & Consulting, Inc.
4. Respondent does not have a valid West Virginia Professional Engineer license.

5. Respondent Firm does not have a valid Certificate of Authorization to practice engineering in the State of West Virginia.
6. During a conversation with the Board Investigator, Respondent admitted that he and Respondent Firm had completed performed a finite element analysis for the A. L. Lee Company (hereinafter "Company") in Lester, West Virginia, and had sealed that document with his Ohio seal.
7. The document prepared by Respondents and sealed with an Ohio engineering seal was provided to Company for inclusion in their application for approval of a mine shelter.
8. Thereafter the Board initiated complaint number C2009-22 was filed on May 19, 2009.
9. Respondent admits that he provided engineering services for a project and/or company located in the State of West Virginia without a valid Professional Engineering license in this state. Respondent mailed a completed application for reciprocity to the Board via overnight mail on July 1, 2009.
10. Respondent Firm admits they provided engineering services for a project and/or company located in the State of West Virginia without a valid Certificate of Authorization in this State.
11. Respondents' 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 their 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. It is unlawful for any person to practice or offer to practice engineering in the State of West Virginia unless that person is duly registered under the provision of West Virginia engineering law. West Virginia Code § 30-13-2.
2. 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. West Virginia Code § 30-13-17.
3. 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.” West Virginia Code § 30-13-21(b); *see also* W. Va. Code § 30-13-21(d)(4).
4. Practicing or offering to practice engineering without a license, to which Respondent has admitted herein, is an action that would 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.

5. 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.
6. Each day of continued violation may constitute a separate offense. W.Va. Code R § 7-1-15.3.

CONSENT OF RESPONDENT

Richard Wand, individually and on behalf of MJ Engineering & Consulting, Inc., by affixing his signature hereon, agrees to the following:

1. Respondents are aware of their right to be represented by counsel and of their option to pursue this matter through appropriate administrative and/or court procedures, but Respondents intelligently and voluntarily waives their right to do so.
2. Respondents intelligently and voluntarily waive their right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
3. Respondent admits that he performed engineering services for a project in the State of West Virginia without having a valid license.

4. Respondent Firm admits it performed engineering services for a project in West Virginia without the required Certificate of Authorization.
5. 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.
6. 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 prejudice 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.
7. Respondent 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

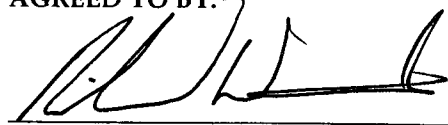
1. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Order shall serve as an informal settlement of this Complaint pursuant to West Virginia Code § 30-13-22(b).
2. This Consent Order is executed by Respondents for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondents authorize the Board to review and examine all investigative file materials concerning Respondents 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 unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.
3. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in the State of West Virginia without a valid license.
4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing engineering in West Virginia without

a valid Certificate of Authorization.

5. 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.
4. Respondent will not practice or offer to practice engineering in the State of West Virginia unless and until Respondent holds a valid license issued by this Board.
5. Respondent Firm will not practice or offer to practice engineering in the State of West Virginia unless and until Respondent Firm has any employee practicing in West Virginia who holds a valid license and Respondent Firm holds a valid Certificate of Authorization issued by this Board, which Certificate of Authorization shall not be issued until Respondent Firm has qualified for same and paid the civil penalties imposed herein.
6. Respondents acknowledge 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).
7. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

8. 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.
9. 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 Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), 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.
10. 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.
11. 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:



RICHARD WAND, individually and
on behalf of MJ ENGINEERING & CONSULTING, INC.


7/8/09

DATE

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

21 day of July, 2009.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS,

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

July 21, 2009
DATE