

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

IN RE: APPALACHIAN COAL SERVICES, LLC

C2014-02

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 Appalachian Coal Services, LLC (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 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. On or about July 16, 2013, an employee of Respondent Firm licensed as a professional engineer with the Board notified the Board that, in attempting to renew her license for 2013-14, discovered that Respondent Firm's Certificate of Authorization (COA) had been moved to inactive status in October 2012.
3. The correspondence listed five projects which had been awarded to Respondent Firm during the 2012-13 licensure year and subsequent investigation revealed additional incidents of Respondent Firm's practicing and offering to practice engineering.
4. Respondent Firm is organized under the laws of the State of West Virginia with its principal place of business in Princeton.
5. Andrew K. Alvis, Respondent Firm's managing member, requested on October 1, 2012, that the Firm be placed on inactive status.

6. Respondent Firm applied for reinstatement in June of 2013, and its Certificate of Authorization #C-04099 was reinstated on June 29, 2013.
7. The Board initiated complaint number C2014-02 at its regular meeting on August 6, 2013, which was served on August 14, 2013.
8. Respondent Firm, by counsel, promptly notified the Board and initiated settlement negotiations rather than filing a response to the Complaint.
9. Respondent Firm knew of the COA requirement, as it had previously been issued a COA, but states that its Managing Member, a non-engineer, voluntarily requested that its COA be placed on inactive status because of a downturn in business without informing the staff engineer.
10. Respondent Firm, despite its choice not to renew its COA even though it qualified for same, practiced and offered to practice engineering until its professional engineer became aware Respondent had no COA when she was unable to renew her registration.
11. Respondent Firm admits it practiced and offered to practice engineering without the required COA during the 2012-2013 licensure year, offering engineering services for fifteen (15) projects and being awarded and performing the work on nine (9) of those projects.
12. The Board has taken into account the following additional factors in reaching this settlement: an amount that will be a substantial economic deterrent to the violation; the number of offers and instances of the practice of engineering; the fact that the engineering was performed by a professional engineer 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, and cooperated with the Board in the investigation and resolution of this Complaint.
13. While the Board may lawfully impose a civil penalty for each of the fifteen (15) offenses of offering to practice without the required COA and the nine (9) 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.

14. The Board has incurred expenses in excess of Five Hundred Dollars in the initiation and resolution of this Complaint.

CONCLUSIONS OF LAW

15. 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.
16. Andrew K. Alvis, as the managing member of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.
17. 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.
18. 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).
19. Practicing or offering to practice engineering, as defined by W. Va. § 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. § 7-1-5.1.
20. 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;

- (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.

21. 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

Andrew K. Alvis, as managing member of Appalachian Coal Services, LLC, by affixing his signature hereon, agrees to the following:

- 22. Respondent Firm is represented by counsel and is aware of its right to 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 these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
- 23. Respondent Firm admits that it did not have a Certificate of Authority to practice or offer to practice engineering in the State of West Virginia at any time during the 2012-2013 licensure year (July 1, 2012 through June 30, 2013).
- 24. 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.
- 25. 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 C2014-02. This paragraph is binding upon Respondent even in the event that the Board does not approve this Consent Order.
- 26. 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.

27. Should the Board not approve this Consent Order, Respondent 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.
28. Respondent 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.
29. 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.
30. 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.
31. 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 exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
32. 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.

33. Respondent 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 C2014-02 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 of the fifteen of offering to practice engineering in West Virginia without a certificate of authorization, without the imposition of civil penalties for the subsequent 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.
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 eight offenses of practicing engineering in West Virginia without a certificate of authorization, for a total of Twelve Hundred Dollars (\$1,200.00).
5. The Board **ORDERS** Respondent to pay administrative costs in the discounted amount of Five Hundred Dollars (\$500.00).

6. The administrative costs of Five Hundred Dollars (\$500.00) shall 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.
7. The civil penalties totaling Seventeen Hundred Dollars (\$1,700.00) shall be paid in full on or before December 31, 2013, such amount to be made payable to the W. Va. P.E. Board in payment amounts no less than Five Hundred Dollars (\$500.00) each but for the final payment, which may be for the remaining balance due.
8. The Seventeen Hundred Dollars (\$1,700.00) in civil penalties shall be transferred to the general fund of the State of West Virginia upon receipt.
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 by Respondent Firm shall be immediate cause for further disciplinary action by the Board.
11. 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 outstanding balance of the amount agreed to herein (\$2,200.00), 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.
12. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties and administrative costs 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 same with regard to any future disciplinary matter involving Respondent Firm 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:



ANDREW K. ALVIS, MANAGING MEMBER
APPALACHIAN COAL SERVICES, LLC.

11/1/2013

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 22 day of November, 2013.

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

By:



EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

APPROVED BY:

JERRY CAMERON, ESQ.
Brewster, Morhous, Cameron, Caruth, Moore & Kersey
P.O. Box 529
Bluefield, WV 24701
for Respondent Firm