

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

RECEIVED

JUL 29 2014

WV PE BOARD

IN RE: JOHNSON CONTROLS, INC.

C2013-06

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter "the Board") by Edward L. Robinson, P.E., its President, for the purpose of agreeing to a resolution of charges made against Johnson Controls, Inc. ("Respondent Firm"). The initial complaint also named John J. Sirc, who is dismissed as a Respondent pursuant to the terms of this Consent Order, but is included in the term "Respondents" as to procedural matters discussed herein. As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter.

FINDINGS OF FACT

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 has never held a certificate of authorization to practice or offer to practice engineering in West Virginia, nor did it employ persons licensed to offer or practice engineering in West Virginia at any time relevant to this Complaint.
3. John J. Sirc is an employee of Respondent Firm and a licensed professional engineer in Pennsylvania, but not a licensed professional engineer in West Virginia.

4. In 2012, Respondent Firm presented a list of potential work to the Kanawha County Board of Education (“the school board”) in part to assist the school board in saving money on energy use at multiple schools in the county, a portion of which was accepted by the school board and referred to herein as “the scope of work.”
5. Part of this scope of work, involved the measurement and verification of energy consumption baselines which used “(a)cccepted engineering practices” and the school board was required to make payments for “Engineering Development”.
6. Respondent Firm contracted with a licensed professional engineer to perform other portions of the scope of work requiring a professional engineering seal, an acceptable practice which does not violate WV Engineering Law.
7. John J. Sirc was the project manager for the scope of work at the time the Board began investigating this matter.
8. The Board initiated Complaint Number C2013-06 at its regular meeting on December 19, 2012, which was served on or about that date.
9. Respondents did not timely respond to the Complaint and, after communication from the Board and provision of another copy of the Complaint, Mr. Sirc provided a response on February 22, 2013, stating that Respondents did not believe they were in violation of the laws of West Virginia. After further investigation, it was determined that John J. Sirc was not the project manager at the time of Respondent Firm’s offer and performance of the scope of work.
10. The Board accepts Respondent Firm’s representations that the scope of work was performed by persons, including project development employees, who are either unidentified or are no longer employees of Respondent Firm.

11. Based on the Board's findings, the Complaint is amended to dismiss the Complaint as to Mr. Sirc and to add a claim against Respondent Firm for the unlicensed offer to practice engineering and actual practice of engineering.
12. Despite the terminology in the scope of work, Respondent Firm states the energy consumption measurements in the scope of work are common calculations available to non-engineers and do not constitute the offer or practice of engineering.
13. The Board finds that engineering was included in the offer and was part of the scope of work performed by unlicensed employees of Respondent Firm.
14. Respondent Firm admits that it did not and does not have a Certificate of Authorization ("COA") in West Virginia.
15. Respondent Firm has elected not to contest the Board's findings that Respondent Firms' employees performed the scope of work without a license to practice engineering.
16. In determining the amount of a civil penalty to be assessed, the Board has considered the following factors: The nature and severity of the violation, which did not pose a risk of harm to the public, and the overall cooperation with the Board in its investigation and the resolution of this Complaint despite Respondent Firm's lack of promptness in both regards.
17. The Board has incurred in excess of over Two Thousand (\$2,000.00) Dollars in administrative costs in connection with the investigation, initiation and resolution of this Complaint and exercises its discretion to require the payment of a portion of those administrative costs. The Respondent Firm agrees to pay such administrative costs.

CONCLUSIONS OF LAW

18. The Board is the State entity required and authorized to regulate the practice of engineering in the State of West Virginia. W. Va. Code § 30-13-1 et seq., and the allegations set forth in the Complaint, as resolved in this Consent Order, are matters that are within the jurisdiction of this Board.
19. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-1 et seq., in the State of West Virginia unless that person is duly registered under the provisions of West Virginia engineering law. W. Va. Code § 30-13-2.
20. It is unlawful for any person to aid or assist another person in violating any provision of West Virginia Code § 30-13-1 et seq., including the unlicensed practice or offer to practice engineering. W. Va. Code § 30-13-21(a)(8).
21. 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.

22. The assessment and amount of administrative costs are within the Board's sole discretion.
W. Va. Code § 30-13-21(d) (4) and W. Va. Code R § 7-1-14.4.
23. Steve Keane, as Vice President and General Counsel of North America Direct Business for Respondent Firm, has the power and authority to execute this Consent Order.

CONSENT OF RESPONDENT FIRM

John J. Sirc, individually, and Steve Keane, as Vice President and General Counsel of North America Direct Business for Respondent Firm, Johnson Controls, Inc., by affixing their signatures hereon, agree to the following:

24. Respondents agree to the dismissal of John J. Sirc as a respondent in C2013-06.
25. Respondent Firm is represented by its in-house 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.
26. Respondent Firm admits that it did not and does not have a Certificate of Authorization to offer or practice engineering in West Virginia.
27. Respondent Firm has elected not to contest the Board's finding that former or unidentified employees offered and provided engineering services in West Virginia.
28. Respondents consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
29. Respondents acknowledge that entering into the negotiation of this Consent Order constitutes a waiver of any and all objections regarding the timeliness of Board action or

Respondents' action on Complaint Number C2013-06. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

30. Respondents acknowledge 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, Respondents authorize the Board to review and examine all investigative file materials concerning the subject matter of Complaint Number C2013-06 in its consideration of this Consent Order.
31. Should the Board not approve this Consent Order, Respondents waive any objections to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the Respondents even if the Board does not approve this Consent Order.
32. Respondents acknowledge 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. Should the Board not approve this Consent Order, the admissions and other statements herein will be deemed null, void and withdrawn.
33. Respondents understand 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. 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 Respondents which may be before this Board.

34. Respondents understand that the Complaint, documents submitted to the Board by Respondents, and this Consent Order are public records which, together with any other public records in the file, must be made available upon legal request in accordance with the State's Freedom of Information Act.
35. Respondents agree 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).
36. Respondents acknowledge 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 license or certification which may be issued to Respondents by the Board, and the addition of any other charges which may arise or ensue from Respondents' non-compliance with this Consent Order.
37. Respondents acknowledge that proof of any material misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation of any license or certification which may be issued to Respondents 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, 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. The Board hereby **ORDERS** that Respondent Firm **CEASE AND DESIST** offering engineering services in West Virginia and practicing engineering in West Virginia unless and until such time as Respondent Firm is authorized to practice and offer to practice engineering in West Virginia or makes clear in the offer that such services will be performed by sub-contractors authorized by this Board to practice engineering in this State.
3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of this Complaint #C2013-06 for offering engineering in West Virginia without a Certificate of Authorization, an allegation which the Respondent Firm disputes.
4. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of Complaint #C2013-06 for practicing engineering in West Virginia without a Certificate of Authorization, an allegation which the Respondent Firm disputes.
5. The Board **ORDERS** Respondent Firm to pay a civil fine in the amount of Five Hundred Dollars (\$500.00) in settlement of Complaint #C2013-06 for practicing and offering to practice engineering in West Virginia without a license.
6. The Board **ORDERS** Respondent Firm to pay administrative costs in the amount of Two Thousand Dollars (\$2,000.00) in partial reimbursement of the costs of the investigation, prosecution and resolution of this complaint.
7. The civil penalties agreed to herein in the total amount of One Thousand Dollars (\$1,000.00) shall be paid within thirty (30) days of the date of entry of this Consent

Order, evidenced by the date of the Board President's signature, made payable to the WV PE Board for transfer to the general fund of the State of West Virginia upon receipt.

8. The administrative costs agreed to herein in the total amount of Two Thousand Dollars (\$2,000.00) shall be paid by separate check to the WV PE Board within thirty (30) days of the date of entry of this Consent.
9. The untimely payment of the civil penalties and administrative costs agreed to herein or any other violation of the terms of this Consent Order may result in the reinstatement of this Complaint and/or further disciplinary action by the Board.
10. The Board **ORDERS** this Consent Order and the underlying Complaint to 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).
11. If the amounts agreed to herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to the Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of the payment agreed to herein, together with pre-judgment interest from the date of the Board 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 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. This shall not prohibit the Board from considering this

disciplinary action or the circumstances giving rise to the same with regard to any future disciplinary matter involving Respondents which may come before this Board.

13. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the amounts agreed to herein.

14. 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 J. SIRC, individually

7/23/14

DATE



Steve Keane, VP and General Counsel
of North America Direct Business
for JOHNSON CONTROLS, INC.


7/21/2014

DATE

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

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____



EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT