

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

**IN RE: Cummings-Riter Consultants, Inc.**

**C-2006-3**

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter the **ABoard**), and its attorney, Debra L. Hamilton, Deputy Attorney General for the State of West Virginia, for the purpose of agreeing to disciplinary action which shall be taken against Cummings-Riter Consultants, Inc. 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 West Virginia Code §30-13-1 *et seq.*

2. Patrick F. O'Hara is president of Cummings-Riter Consultants, Inc., an environmental consulting, planning and engineering firm in Pittsburgh, Pennsylvania. While Mr. O'Hara is a licensed P.E. in the states of Pennsylvania, Ohio and New Jersey, he does not hold a valid West Virginia engineering license, nor did any other engineer in Respondent's firm at the time this complaint was filed.

3. This Complaint was initiated by the Board on January 24, 2006, and was served upon Respondent by certified mail.

4. The complaint alleged that Cummings-Riter Consultants, Inc. offered to perform engineering work in West Virginia without the required certificate of authorization (COA).

5. The action complained of was a response by Cummings-Riter Consultants, Inc., to an advertised request for engineering services in Follansbee, West Virginia, with the statement that additional work in West Virginia was indicated.

6. Mr. O'Hara responded to the Board by letter dated February 21, 2006, and information contained therein has been relied upon by the Board in entering into this consent order.

7. In said Response, Mr. O'Hara admitted his firm performed or offered to perform work in West Virginia without a COA, but states the nature of the work was not engineering services. The list of work performed or offered to be performed is attached hereto as Attachment A and incorporated into this Consent Agreement by reference.

8. Cummings-Riter advertises and markets itself as a consulting company that provides services in several areas, including environmental engineering and management services.

9. The Follansbee Request for Proposal was for engineering/consultant services, and Cummings-Riter submitted a proposal for the work.

10. Respondent admits it is reasonable for this Board to conclude that the work to be performed included engineering work and that Respondent submitted an offer to perform same without a COA and without an employee licensed as an engineer in the State of West Virginia.

11. Since the institution of this Complaint, a partner in the firm of Cummings-Riter Consultants, Inc., has been approved for licensure, and on February 22, 2006, Respondent firm submitted its application to the Board for a COA.

12. Cummings-Riter Consultants, Inc.'s, prompt cooperation with the Board has mitigated the firm's culpability regarding the charge of practicing and offering to practice engineering without a COA.

13. Respondent 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.

14. The Board incurred only minimal expenses with regard to this Complaint and therefore finds it appropriate to enter into this consent order without the imposition of costs.

#### **CONCLUSIONS OF LAW**

15. West Virginia Code §30-13-17 allows a firm to practice or offer to practice engineering if it has been issued a certificate of authorization by the Board.

16. West Virginia Code §30-13-21(a)(4) authorizes the Board to discipline any person or firm practicing or offering to practice engineering in the State of West Virginia who has "(f)ailed to comply with any of the provisions of this article ..."

17. Among its other powers, the Board has the power to assess civil penalties and related costs for each count or separate offense in an amount set by the Board. W. Va. Code §30-13-21(d)(4).

18. Practicing engineering without a COA is an action that would subject a person or firm to discipline by the Board, including a civil penalty up to \$5000.00. 7 C.S.R. 1.15.1.

19. Each day of continued violation may constitute a separate offense. 7 C.S.R. 1.15.3.



**CONSENT OF CUMMINGS RITER CONSULTANTS, INC**

Patrick F. O'Hara, P.E., President of Cummings-Riter Consultants, Inc., by affixing his signature hereon, agrees to the following:

20. Mr. O'Hara is represented by counsel and acknowledges he is aware of the option to pursue this matter through appropriate administrative and/or court procedures, but intelligently, knowingly and voluntarily waives his right to do so.

21. Mr. O'Hara intelligently and voluntarily waives Respondent Cummings-Riter Consultants, Inc.'s right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.

22. Respondent agrees to accept an informal settlement of Complaint 2006-3.

23. Respondent consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

24. Respondent 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.

25. Respondent acknowledges that proof of any misstatement or misrepresentation made by Cummings-Riter Consultants, Inc., in its Response, its application for COA, or other document or statement relied upon in the entering of this consent order, will result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may ensue from providing false information to the Board in violation of West Virginia engineering law.

### **ORDER**

26. 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).

27. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for practicing or offering to practice engineering without a certificate of authorization.

28. The civil penalty imposed herein must be paid within fifty (50) days of the date of the signature of the Board President, such penalty 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.

29. Respondent will not practice or offer to practice engineering in the State of West Virginia unless and until it holds a valid Certificate of Authorization issued by this Board, which COA shall not issue until Respondent has qualified for same and paid the civil penalty imposed herein.

30. Respondent acknowledges this Consent Order is a public record and agrees that the sum and substance of the nature of the Complaint and this agreement in part or in its 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).

31. Any violation of the terms of this Consent Order shall be immediate cause for summary revocation of Respondent's COA and further disciplinary action by the Board.

32. 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 initiated by Respondent.

WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS

By   
LEONARD J. TIMMS, P.E.  
Board President

Date: 3/20/06

  
CUMMINGS RITER CONSULTANTS, INC.,  
By PATRICK F. O'HARA, its President

Date: MARCH 15, 2006



## **Attachment A**

### **Work Performed in West Virginia**

- 1) Brooke-Hancock-Jefferson Metropolitan Planning Commission (BHJ), Steubenville, Ohio. Cummings/Riter has an existing contract to provide brownfields redevelopment consulting, environmental site assessments ("ESA"), and community relations for Ohio-based client for sites located in WV.
- 2) Allegheny Power, Greensburg, Pennsylvania. In 2005, Cummings/Riter conducted three Phase I ESAs and one limited Phase II ESA in West Virginia.

### **Work Offered to be Performed in West Virginia**

- 1) Allegheny Power, Greensburg, Pennsylvania. In October 2005, Cumming/Riter completed and submitted an "engineering and procurement contractor pre-qualification questionnaire" for the opportunity to bid on a contract for transmission and distribution projects that could have been located in Pennsylvania, Maryland or West Virginia and involved work related to site investigation and environmental permitting. In response to the questionnaire, Cummings/Riter provided information on its experience in geotechnical design and analysis; site development and storm water design; surveying services, environmental; permit acquisition; and right of way and property acquisition. Cummings/Ritter was not pre-qualified and thus did not have the opportunity to offer services under the contract.
- 2) Bayer CropScience, South Charleston, West Virginia. In 2005, Cummings/Riter had conversations with Bayer CropScience in South Charleston regarding environmental and waste management issues. The discussions were general in nature and did not lead to an offer to perform services.