

RECEIVED

SEP 08 2015

RECEIVED

AUG 21 2015

BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

WV PE BOARD

IN RE: JON HALL

C2015-08

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 Jon Hall (hereinafter "Respondent"). 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. In early 2015, Respondent applied for and obtained WV PE license 21189.
3. This Complaint, initiated by the Board on March 24, 2015, relates to engineering work performed by Respondent prior to obtaining his WV PE license.
4. The engineering work at issue is the inspection and certification of at least forty-five (45) Aboveground Storage Tanks (ASTs) owned by Respondent's former employer, EXCO Resources LLC, which utilized his Ohio PE license number and which were then submitted to the West Virginia Department of Environmental Protection (WV DEP) in December 2014.
5. Respondent notified the Board, admitted the allegations, and initiated settlement negotiations rather than file a response to the Complaint.
6. The Board finds that several provisions of the Aboveground Storage Tank Act, including the annual inspection and certification provisions of West Virginia Code § 22-30-6,

specify that “a qualified registered professional engineer” must be “regulated and licensed by the State Board of Registration for Professional Engineers ...”

7. The Board finds that the WV DEP’s acceptance of Respondent’s certifications utilizing his Ohio PE license number is not a defense to Respondent’s disregard of practicing engineering in this State without a license, in violation of West Virginia Engineering Law, as well as violation of the provisions of the AST Act.
8. The Board further finds that Respondent’s actions inured to the benefit of Respondent’s former employer and that the delay in Respondent’s West Virginia licensure was in part due to the employer’s recalcitrance in providing information to Respondent required for his West Virginia licensure.
9. Due to the role of Respondent’s former employer in connection with this violation, on May 12, 2015, the Board initiated a related complaint against the former employer, and the Board has taken into account the following factors in reaching this settlement:
Respondent cooperated in the prompt resolution of this Complaint and promptly applied for and obtained a license to practice engineering in West Virginia and Respondent’s unlicensed practice was mitigated by the role played by his former employer in delaying his attempts to become licensed prior to his certification of ASTs.
10. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs, and administrative costs were incurred in the investigation, initiation and resolution of this Complaint.

CONCLUSIONS OF LAW

11. 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.
12. It is unlawful for any person to practice or offer to practice engineering, as defined by West Virginia Code § 30-13-3(e), 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.

13. Practicing or offering to practice engineering, as defined by W. Va. § 30-13-3(e), without a license is an action that may 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.
14. A registrant's license number or seal is used to identify his or her professional work. West Virginia Code § 30-13-16(c).
15. Only a West Virginia license number or seal issued in accordance with West Virginia Code § 30-13-16(c) may be used on engineering work performed for or submitted to a West Virginia client or governmental agency.
16. Every owner or operator of an aboveground storage tank regulated by West Virginia Code § 22-30-1 *et seq.* was required to submit a certification form to the DEP on or before January 1, 2015, based on an inspection by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the State Board of Registration for Professional Engineers. West Virginia Code § 22-30-6(a) [also authorizing certified persons other than registered professional engineers to certify ASTs].
17. 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) and West Virginia Code R. § 7-1-15.
18. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm

has cooperated with the Board and the Board's investigation; and 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

Jon Hall, by affixing his signature hereon, agrees to the following:

20. Respondent is aware of his right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and Respondent intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
21. Respondent admits he inspected and certified at least forty-five (45) aboveground storage tanks in West Virginia prior to obtaining this WV PE license, in violation of West Virginia Engineering Law.
22. Respondent admits he did not have a license to practice engineering services in the State of West Virginia, in violation of West Virginia engineering law.
23. Respondent admits that he knew or should have known that the use of his professional engineering license number from Ohio did not comply with West Virginia Engineering Law requirements concerning the preparation of West Virginia engineering reports, nor did it comply with the certification requirements of the AST Act.
24. Respondent 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 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 C2015-08. This paragraph is binding upon Respondent even in the event that the Board does not approve this Consent Order.

26. Respondent 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 authorizes the Board to review and examine all investigative file materials concerning Respondent'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 the Respondent 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 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 which may be before this Board.
30. Respondent understands that the complaint, documents submitted to the Board by Respondent, and this Consent Order, together with other public documents which may be in the file, are public records which must be made available upon legal request in accordance with the State's Freedom of Information Act.
31. Respondent 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 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 license or certification issued to Respondent by the Board, and the addition of any other charges which may arise or ensue from Respondent'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 license or certification issued to Respondent 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 C2015-08 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) for the unlicensed practice of engineering in West Virginia.
3. The civil penalty shall be paid in full within thirty (30) days of entry of this Consent Order, such amount to be made payable to the W. Va. P.E. Board, and shall be transferred to the general fund of the State of West Virginia upon receipt.
4. 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).

5. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
6. If the civil penalty agreed to herein in the amount of Two Hundred Fifty Dollars (\$250.00) is not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein, 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.
7. 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.
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 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 Respondent which may come before this Board.
9. 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:



JON HALL

August 17, 2015
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 2nd day of September, 2015.

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

By:


EDWARD L. ROBINSON, P.E.