

BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE:            Jerry A. Carter

C-2006-4

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Leonard J. Timms, P.E., its president (hereinafter the "Board"), 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 Jerry A. Carter, an engineer in the Asheville, North Carolina, office of Vaughn & Melton. 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.     Jerry A. Carter is an engineer and vice-president in the engineering firm of Vaughn & Melton.
3.     Vaughn & Melton was issued West Virginia certificate of authorization (COA) Number 00691 in September of 1993.
4.     Vaughn & Melton has several branch offices, and Respondent Carter is in the office located in Asheville, North Carolina.
5.     On or about January 5, 2006, Respondent Carter self-reported he had recently become aware that his West Virginia professional engineer's license

had expired, but that had been practicing engineering in the State of West Virginia.

6. The Board determined that Respondent Carter had held West Virginia P.E. license #11442, which had expired on July 31, 1991.
7. By letter dated January 6, 2006, Respondent informed the Board of the jobs performed in West Virginia by Vaughn & Melton. Of the nine listed projects, Respondent Carter was named as the sole engineer on four of the projects and the structures engineer on two other projects utilizing other engineers with Vaughn & Melton who were licensed in West Virginia at the time of the projects in this State.
8. The Board-filed complaint against Respondent alleged that Mr. Carter engaged in the unlicensed practice of engineering in that he practiced engineering on an expired license.
9. Respondent Carter admits he practiced engineering in West Virginia without a license.
10. Inasmuch as Respondent admits to working on six projects in West Virginia during the timeframe where he did not hold a valid license, the Board finds Respondent's actions constitute at least six separate offenses.
11. In his correspondence of January 6, 2006, Respondent Carter admits his unlicensed practice was a "gross error" but states it "was not done intentionally but was just an error where the fee was overlooked years ago."
12. While the Board appreciates the fact that Respondent came forward immediately upon discovery of the non-licensure, the Board considers fifteen years to be an inordinate and inexcusable amount of time wherein an Engineer takes no steps to confirm valid licensure status in a State where he is clearly practicing engineering.

13. Respondent has waived his right to a hearing on this matter and waive other rights set forth in W. Va. Code §30-13-1 *et seq.* and the procedural rules of the Board.
14. Respondent Carter agrees to accept an informal settlement of Complaint 2006-4.
15. In reaching this informal settlement, the Board finds it appropriate to take into consideration factors set forth in 7 C.S.R. 1.15.4, especially "the extent to which the cited person or firm has cooperated with the Board and the Board's investigation." 7 C.S.R. 1.15.4(3).
16. Due to the self-reporting and the expeditious manner in which this matter was brought to resolution, the Board incurred only minimal expenses with regard to this Complaint and chooses not to exercise its authority to assess administrative costs.

#### **CONCLUSIONS OF LAW**

17. West Virginia Code §30-13-21 authorizes the Board to discipline any person practicing or offering to practice engineering in the State of West Virginia.
18. Practicing engineering without a license, including an expired license, 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. 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).
20. Each day of continued violation may constitute a separate offense. 7 C.S.R. 1.15.3.



### CONSENT OF JERRY A. CARTER

Jerry A. Carter, by affixing his signature hereon, agrees to the following:

21. Mr. Carter is aware of his option to pursue this matter through appropriate administrative and/or court procedures, but intelligently, knowingly and voluntarily waives his right to do so.
22. Mr. Carter intelligently and voluntarily waives his right to a formal hearing before the Board in this matter if the Board accepts the terms and conditions set forth herein.
23. Mr. Carter consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
24. Mr. Carter understands he is prohibited from practicing engineering in West Virginia until he is licensed in this State but may perform services under the direct supervision and control of a professional engineer duly licensed in West Virginia.
25. Mr. Carter 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
26. Mr. Carter acknowledges that proof of any misstatement or misrepresentation made by him in connection with this complaint, in his application for licensure, or in any other document or statement relied upon in the entering of this consent agreement 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

27. On the basis of the foregoing the Board hereby **ORDERS** that this Consent Agreement shall serve as an informal settlement of this Complaint pursuant to West Virginia Code §30-13-22(b).
28. The Board **ORDERS** Respondent Carter to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for multiple counts of practicing engineering without a license.
29. The Board **ORDERS** that consideration of Respondent's application for reinstatement be held in abeyance until January 1, 2007, at which time Respondent must be in full compliance with this Consent Agreement and otherwise meet the requirements for reinstatement prior to issuance of a professional engineering license.
30. The Board **ORDERS** that Respondent be prohibited from practicing engineering in West Virginia until he is licensed in this State, although Respondent may perform services under the direct supervision and control of a professional engineer duly licensed in this State.
31. The Board **ORDERS** that the civil penalty imposed herein 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 immediate transfer to the general fund of the State of West Virginia upon receipt.
32. The Board makes no order with regard to the payment of administrative costs in this matter.
33. Respondent acknowledges the Complaint and this Consent Agreement are public records and may be made available upon request, and this Agreement may be set forth in Board publications and accessed 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).

34. Any violation of the terms of this Consent Agreement shall be immediate cause for a hearing and further disciplinary action by the Board.

WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS

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

Date: 2/22/06

  
JERRY A. CARTER

Date: 2/14/06