

JUN 09 2012

WV PE BOARD

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

**IN RE: ROBERT J. RACE and
 RACE ENGINEERING AND ASSOCIATES**

C2012-11

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 disputed Complaint seeking disciplinary action against Robert J. Race (hereinafter "Respondent Race") and Race Engineering and Associates (hereinafter "Respondent Firm") (together, "Respondents"). 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. Respondent Race's West Virginia PE license (#10534) expired on July 1, 2009.
3. Respondent Race indicated on his reinstatement application that he had engineered and sealed a retaining wall in Spencer, West Virginia, during the time his license was expired, and admits to same.
4. Respondent Race's West Virginia PE license was approved for reinstatement on March 2, 2012, but the license will not be reinstated until Respondent Race returns his seal letter.
5. Respondent Firm, Race Engineering and Associates, is organized under the laws of the State of Minnesota, with its principal place of business in Eagan.

6. Respondent Race, as the President of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

7. On information and belief, Respondent Firm does not qualify for a Certificate of Authorization (COA) because, until Respondent Race's license is reinstated, it has no professional engineer to serve as its engineer in responsible charge.

8. The Board initiated complaint number C2012-11 at its regular meeting on March 20, 2012, which was filed on April 11, 2012.

9. The parties agreed to this informal settlement, and Respondents waived their right to file a timely response to the Complaint.

10. Respondent Race admits that he practiced engineering in West Virginia without a valid license and admits that Respondent Firm practiced engineering without a COA.

11. The Board has taken into account the following factors in determining the amount of civil penalty to be assessed: Although the municipality's lawyer had put the property owner on notice about using unlicensed professionals, the Board learned of this one instance of practicing engineering on an expired license through Respondent Race's reinstatement application which is deemed a self-reported violation; the nature and severity of the violation did not pose a risk of harm to the public; Respondents have no prior history of violations; and Respondent Race cooperated with the Board and the Board's investigation.

12. The Board, in its discretion, will not assess administrative costs although it is within its power to assess such costs under West Virginia Code § 30-13-21(d) (4) and West Virginia Code R. § 7-1-14.4.

CONCLUSIONS OF LAW

13. 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.*

14. 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.

15. 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.

16. 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).

17. Practicing or offering to practice engineering, as defined by West Virginia § 30-13-1 *et seq.*, 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.

18. Practicing or offering to practice engineering, as defined by West Virginia Code § 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.

19. 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.

CONSENT OF RESPONDENTS

Robert J. Race, individually and as the President of Race Engineering and Associates, by affixing his signature hereon, agrees to the following:

20. Respondents are aware of their right to be represented by counsel and to pursue this matter through appropriate administrative and/or court procedures, including their right to a formal hearing before the Board, and Respondents intelligently and voluntarily waive these rights provided the Board accepts the terms and conditions set forth in this Consent Order.

21. Respondent Race admits that he did not have a license to offer or provide engineering services in the State of West Virginia at the time he provided engineering services in West Virginia, in violation of West Virginia engineering law.

22. Respondent Firm admits that it did not have a Certificate of Authorization to offer or provide engineering services in the State of West Virginia at the time it provided engineering services in this State, in violation of West Virginia engineering law.

23. Respondents accept the findings set forth above and consent to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.

24. 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 on Complaint Number C2012-11. This paragraph is binding on Respondents even in the event that the Board does not approve this Consent Order.

25. 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 Respondents' activities in West Virginia in consideration of this Consent Order.

26. 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.

27. Respondents acknowledge that the Board may reject this proposal, notice and complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

28. Upon acceptance by the Board, 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 action by Respondent except an action to enforce the terms of this Consent Order.

29. Respondents understand 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.

30. 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).

31. 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.

32. Respondents acknowledge 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 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, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint No. C2012-11 pursuant to West Virginia Code § 30-13-22(b).

2. The Board **ORDERS** Respondent Race to pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) in settlement of Complaint No. C2012-11 for practicing engineering without a license.

3. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars (\$250.00) in settlement of Complaint No. C2012-11 for practicing engineering without a certificate of authorization.

4. The civil penalties imposed herein totaling Five Hundred Dollars (\$500.00) must 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 for transfer to the general fund of the State of West Virginia upon receipt.

5. 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).


6. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.

7. If the civil penalties imposed herein are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondents upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein (\$500.00), 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.

8. 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.

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:



**ROBERT J. RACE individually and on behalf of
RACE ENGINEERING & ASSOCIATES**

6.6.2012
DATE

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

By: _____

**EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT**

6/13/12

DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 18th day of JUNE, 2012.

PREPARED BY:

DEBRA L. HAMILTON (WV Bar ID: 1553)
DEPUTY ATTORNEY GENERAL
STATE CAPITOL BLDG. 1, ROOM 26-E
CHARLESTON, WEST VIRGINIA 25305
for the West Virginia Board of Registration
for Professional Engineers