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WV PE BOARD

BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: STEVEN M. APPLEGATE and APPLEGATE CONSULTING ENGINEERS, LLC

C2018-20

CONSENT ORDER

Comes now the West Virginia State Board of Registration for Professional Engineers by Bhajan S. Saluja, P.E., its President, (hereinafter "the Board") for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Steven M. Applegate (hereinafter "Respondent Applegate") and Applegate Consulting Engineers, LLC (hereinafter "Respondent Firm") (together, the "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 Applegate was and is a licensed professional engineer in Virginia, but was not a licensed professional engineer in West Virginia in November 2017, when he provided engineering services for a West Virginia project. Since then, Respondent Applegate has applied for comity and obtained a certificate of registration, license number 22912, on April 9, 2018.
3. Respondent Applegate is the sole Member of the Respondent Firm which is a Limited Liability Corporation, organized under the laws of the State of Virginia with its principal place of business in Midlothian, Virginia.
4. Respondent Firm did not have a Certificate of Authorization at the time it provided engineering services in West Virginia prior to April 9, 2018, when the firm's Certificate of Authorization (COA# C05797) was activated.

5. A license is required by a person to practice or to offer to practice engineering in West Virginia.

6. A COA is required to practice or to offer to practice engineering in West Virginia.

7. As member and principal of the Respondent Firm, Steven M. Applegate, self-reported that he and Respondent Firm had provided engineering services for a project located in the State of West Virginia, and they did so, without the required license and COA.

8. The Board initiated Complaint Number C2018-20 at its regular meeting on May 9, 2018, which was filed and served on or about May 16, 2018.

9. Respondents have responded through emails stating their position on this matter as well as providing responses to the Board's follow-up inquiries.

10. The Board has taken into account the following factors in reaching this settlement: Respondents self-reported the violations; Respondent Applegate applied for comity and obtained his registration and was in good standing prior to the Board's filing of the complaint; Respondent Firm applied for and obtained a COA and was in good standing prior to the Board's filing of the complaint; and Respondents cooperated with the Board's investigation.

11. The Board, in its discretion, will not assess administrative costs, although it is within its power to assess such costs, if such were incurred in the investigation, initiation and resolution of this complaint.

CONCLUSIONS OF LAW

12. 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.*

13. Steven M. Applegate, as Member of Respondent Firm, has the power and authority to make admissions and otherwise act on behalf of Respondent Firm.

14. Failure to comply with any of the provisions of W. Va. Code §30-13-1 *et seq.*, or any of the rules promulgated under West Virginia Code Chapter 30, Article 13, is a basis for disciplinary action by the Board. W. Va. Code §30-13-21(a)(4).

15. 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.V. Code §30-13-2.

16. 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.

17. Respondents practiced engineering without the required license and COA, in violation of W. Va. Code §30-13-21(a)(4).

18. 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 and W. Va. Code R. §7-1-15.

19. Practicing engineering, as defined by W. Va. Code §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.

20. Practicing engineering, as defined by W. Va. Code §30-13-3(e), 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 ($5,000.00). W. Va. Code R. §7-1-15.1.

21. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the following: whether the amount imposed will be a substantial economic deterrent to the violation; the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the history of previous violations; the extent to which the cited person or firm has cooperated with the Board and the Board's investigation; the economic benefits gained by the violator as a result of the non-compliance; the interest of the public; and other matters as may be appropriate. W. Va. Code R. §7-1-15.4

22. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code §30-13-21(a)(4).

23. The provisions of W. Va. Code §30-13-21(a) are applicable as appropriate to firms. W.Va. Code §30-13-21(d).

24. 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 THE RESPONDENTS

Steven M. Applegate, individually, and as the Member of Respondent Firm, by affixing his signature hereon, agrees to the following on behalf of himself and Applegate Consulting Engineers, LLC:

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

26. Respondent Firm admits it did not have a Certificate of Authorization to provide engineering services in the State of West Virginia prior to April 9, 2018, the date Respondent Firm's COA was activated.

27. Respondent Firm admits that it provided engineering services for a West Virginia project when it did not possess a Certificate of Authorization in violation of West Virginia engineering law.

28. Respondent Applegate admits that he did not have a license to practice engineering in the State of West Virginia when he provided engineering services in West Virginia, in violation of West Virginia engineering law.

29. 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.

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 Respondents' activities in West Virginia in 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 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.

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, 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 Respondents, or either of them, which may be before this Board.

34. Respondents understand that the Complaint and this Consent Order are public records which, together with other public documents 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's 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, non-renewal or non-reinstatement of any Certificate of Registration issued to Respondent Applegate and/or Certificate of Authorization issued to Respondent Firm 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 will result in the rescission of this agreement, the reinstatement of the Complaint, the summary revocation, non-renewal or non-reinstatement of any Certificate of Registration (license) issued to Respondent Applegate and/or Certificate of Authorization issued to Respondent Firm 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 C2018-20 pursuant to West Virginia Code §30-13-22(b).
2. The Board **ORDERS** Respondent Firm to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing engineering without a Certificate of Authorization.
3. The Board **ORDERS** Respondent Applegate to pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250.00) for practicing engineering without a license.
4. The civil penalty 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's 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 penalty imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent Firm's COA is hereby **ORDERED REVOKED**. Said revoked COA may be restored once the civil penalty is paid, and Respondent Firm pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code §30-13-21(d)(1).

8. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, without further notice to Respondent Firm upon application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein of Five Hundred Dollars ($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.

9. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalty agreed to herein, except as to the provisions set forth in paragraph 7, above, regarding revocation of Respondent Firm's COA, and its affects shall survive the closure of this Consent Order.

10. 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.

11. 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.

(Signature line appears on next page.)

AGREED TO BY:

_____ 1-7-19
APPLEGATE CONSULTING ENGINEERS, LLC **DATE**
By: Steven M. Applegate, Member

And

_____ 1-7-19
STEVEN M. APPLEGATE **DATE**
Individually.

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 7th day of January, 20 19.

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____
BHAJAN S. SALUJA, P.E.
BOARD PRESIDENT