

NOV 09 2022

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

WV PE BOARD

IN RE: MICHAEL C. SUN**C2022-35****CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers (hereinafter “the Board”) by Garth E. Thomas, Jr., P.E., its President, for the purpose of agreeing to resolve a Complaint seeking disciplinary action against Michael C. Sun (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 this 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. State law requires a provider of engineering services to possess an active license in order to practice engineering or to offer to practice engineering in West Virginia.
3. Respondent is a licensed Professional Engineer in West Virginia, and other states.
4. Respondent’s Certificate of Registration, a.k.a. “license,” number 23194 was initially activated on September 12, 2018, and the Respondent has renewed his license for the 2019-2020 and 2021-2022 licensure periods. His current license expires December 31, 2022.
5. Every West Virginia Registered Professional Engineer (hereinafter “Registrant”) is required to obtain a seal reflecting one’s name and license number.
6. A Registrant is required to place one’s seal, signature and date on all final / record specifications, reports, drawings, plans, design information and calculations whenever presented to a client or any public or governmental agency.
7. In March 2022, the Board became aware that Respondent, on or about December 15, 2021, signed a report titled, “*Geotechnical Exploration Report, WCS-WHS Bleachers,*

Williamstown, Wood County, West Virginia, CTL Project No.: 21050050MOR”
(hereinafter “Report”).

8. The unsealed, final Report was submitted to Respondent’s former employer’s client for its use and reliance thereon.
9. This resulted in a Board-initiated investigation, which was the basis of the Board’s Complaint which set forth allegations that Respondent had failed to apply his seal to the Report.
10. The Board initiated Complaint Number C2022-35 against Respondent and his former employer, at its regular meeting on March 22, 2022, which was received and filed by the Board on said date.
11. The Board and Respondent have agreed to settle this matter through the entry of this Consent Order, wherein, Respondent would forego his right to an administrative hearing, and his right to appeal, by making certain admissions set forth herein.
12. Respondent admits that he failed to seal the Report with his West Virginia Professional Engineer seal. Respondent contends that the failure was not an intentional act, but an inadvertent error.
13. The Board has taken into account the following factors in reaching this settlement: the violation did not pose harm to the public; Respondent was in good standing with the Board prior to the service of this Complaint upon him, and he has cooperated in the resolution of this Complaint.
14. 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

15. 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.*
16. Michael C. Sun, Respondent, has the power and authority to make admissions and otherwise act on his own behalf, and he makes such admissions, knowingly, freely, voluntarily, and without any threat of harm or act of coercion.
17. 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).
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(d)(4), and W. Va. Code R. §7-1-15.
19. The Board may reprimand, suspend or revoke or refuse to issue, restore or renew a certificate of registration or authorization, or place on probation, impose a civil penalty or reprimand any professional engineer or firm, 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), (b) and (d), and §30-13-22(d).
20. A registrant's seal is used to identify his or her professional work. West Virginia Code §30-13-16(a).
21. A registrant's seal and signature shall appear on the first or title page of all final and/or record documents presented to a client or any public or governmental agency to certify that the work was done by a registrant or under the control of a registrant. West Virginia Code R. 7-1-7.3(a).
22. Failure to affix a seal and signature on a final report presented to a client in violation of West Virginia Code R. 7-1-7.3(a) is a form of misuse of seal and also constitutes a general

- violation of applicable statutes and rules, both of which allow civil penalties of up to \$5,000.00. West Virginia Code R, S 7-1-15.1.
23. Misuse of a person's West Virginia professional engineer seal subjects the person to discipline by the Board, including a civil penalty up to Five Thousand Dollars (\$5,000.00) for each offense. W. Va. Code R. § 7-1-15.1.
 24. 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.
 25. 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 RESPONDENT

- Michael C. Sun, Respondent, by affixing his signature hereon, agrees to the following:
26. Respondent acknowledges his right to consult an attorney of his choosing, at his sole expense, and he knowingly, freely, voluntarily, and without any threat of harm or act of coercion waives his right to consult counsel, and will proceed pro se. Further, Respondent is aware of his rights to pursue this matter through appropriate administrative and/or court proceedings, including his right to a formal hearing before the Board, and Respondent knowingly, freely and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
 27. Respondent admits that the Report constituted the practice of engineering as defined by W. Va. Code §30-13-3, for an engineering project located in Williamstown, Wood County, West Virginia.
 28. Respondent admits that he did not seal the Report which was presented to his former employer's client, in violation of West Virginia engineering law.

29. Respondent accepts the findings set forth above and consents to the entry of this Consent Order, knowingly, freely and voluntarily, and not under duress, restraint or compulsion.
30. 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.
31. 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 Respondent even if the Board does not approve this Consent Order.
32. 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.
33. If the Board does reject this proposal, any admissions made herein by Respondent are deemed null and void.
34. 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.
35. Respondent understands 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.
36. 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'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).

37. 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, non-renewal or non-reinstatement of any Certificate of Registration 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.
38. 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, non-renewal or non-reinstatement of any Certificate of Registration 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 C2022-35 pursuant to West Virginia Code § 30-13-22(b).
2. The Board **ORDERS** Respondent to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for the failure to seal the aforesaid Report in violation of West Virginia engineering law.
3. The total civil penalty imposed herein is Five Hundred Dollars (\$500.00), and must be paid within thirty (30) days of the date of entry set forth below, and 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.

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'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).
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 imposed herein is not paid within thirty (30) days of the date of entry set forth below, then Respondent's license is hereby **ORDERED REVOKED**. Said revoked license may be restored once the civil penalty is paid, and Respondent pays the appropriate fees, and is otherwise in good standing with the Board. West Virginia Code § 30-13-21(d)(1).
7. This Consent Order may be summarily enforced in the Circuit Court of Kanawha County, West Virginia, 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 of Five Hundred Dollars (\$500.00), together with pre-judgment interest from the date of the Board 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 penalty agreed to herein, except as to the provisions set forth in paragraph 6, above, regarding revocation of Respondent's license, and its affects shall survive the closure of this Consent Order.
9. 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 Respondent which may come before this Board.

10. 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:

Michael C. Sun
MICHAEL C. SUN

11/3/2022
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 16th day of November, 2022.

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

By: Garth E. Thomas, Jr.
GARTH E. THOMAS, JR., P.E.
BOARD PRESIDENT