BEFORE THE WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

IN RE: JOSEPH W. SULESKY C2010-19

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 disciplinary action to be taken against Joseph W. Sulesky (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 Board is a state entity created by West Virginia Code § 30-13-1 *et seq.* and is empowered to regulate the practice of engineering pursuant to the same.

2. Respondent Joseph W. Sulesky is a professional engineer in West Virginia, P.E. License No. 12373.

3. This Complaint was submitted by Claudio E. Yon, P.E., [hereinafter at times "Complainant"] on April 23, 2010, and was forwarded to Respondent by cover letter dated April 26, 2010.

4. Respondent submitted a written response on June 15, 2010, and at a later date notified the Board of his representation by counsel.

5. As alleged in the Complaint, the conduct complained of occurred when Respondent was an employee of Complainant's firm, Alliance Consulting, Inc., located in Beaver, West Virginia.

6. The sum and substance of this Complaint alleges as follows:

(a) Respondent took client project-specific digital records, work product prepared from those records, and non-project-specific records, which conduct was prohibited by the published rules of the employee handbook;

(b) Respondent encouraged an employee of Alliance to take Alliance digital records, which employee later went to work for Respondent at his new business;

(c) Thousands of files were copied onto seventeen (17) compact disks and a USB thumb drive and were for the purpose of converting to Respondent's own use in connection with his new business; and

(d) Respondent was terminated immediately, after which Respondent again accessed his employer's computer/server and remotely transferred files and attempted to delete his Alliance email account.

7. In the filed response and otherwise, Respondent denies any conduct which was specifically prohibited by the employee handbook and states that he did not use the digital files for any purpose, returned all the digital files at the request of his former employer and did not disclose any of the digital information to any other person or entity.

8. Respondent admits to personally copying digital information of his employer, including (a) client-specific digital files which had been prepared by or under the direct supervision of Respondent while he was employed by Alliance Consulting, Inc., for Alliance clients; and (b) some generic digital information of the employer.

9. The Board finds that the unauthorized copying by an employee of his employer's digital records constitutes an act of misconduct in the practice of engineering and conduct that is in violation of the Rules of Professional Responsibility in the following particulars:

(a) The conduct does not adhere to standards of highest ethical and moral conduct in all aspects of the practice of engineering, in violation of W. Va. Code R § 7-1-12.2(a);

(b) Respondent did not avoid conflicts of interest and did not faithfully serve the legitimate interests of his employer, in violation of W. Va. Code R § 7-1-12.2(d; and

(c) Respondent did not make full prior disclosures to his employer of the potential conflict of interest and other circumstances which could influence or appear to influence his judgment or the quality of service to his employer, in violation of W. Va. Code R § 7-1-12.4(e).

10. Respondent promptly admitted the allegations forming the basis for the Board's findings of misconduct in violation of the Rules of Professional Responsibility. Therefore, the Board, in its discretion, will not assess administrative costs although the Board did incur costs in connection with this Complaint and has the power to assess such costs.

11. To the extent that this Consent Order is approved by the Board, Respondent waives his right to a hearing on this matter and other rights set forth in West Virginia Code § 30-13-1 *et seq.* and the procedural rules of the Board.

CONCLUSIONS OF LAW

12. The Board developed the Rules of Professional Responsibility in part "to maintain a high standard of integrity and practice" which "are binding on every registrant." W. Va. Code R § 7-1-12.2.

13. All persons registered in West Virginia are required to be familiar with West Virginia Engineering Law, which includes the statutory provisions set forth in W. Va. Code §30-13-1 *et seq.*, the Rules of Professional Responsibility set forth in W. Va. Code R § 7-1-12, and "all applicable laws relating to the practice of engineering... In addition, each registrant is

charged with the responsibility of adhering to standards of highest ethical and moral conduct in all aspects of the practice of engineering." W. Va. Code R § 7-1-12.2(a).

14. Registrants shall avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers within the limits defined by the Rules of Professional Responsibility. W. Va. Code R § 7-1-12.2(d).

15. Registrants shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service. W. Va. Code R § 7-1-12.4(e).

16. 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 been negligent, incompetent or committed an act of misconduct in the practice of engineering. W. Va. Code § 30-13-21(a)(2).

17. The Board may enter an order assessing the appropriate civil penalty for professional misconduct in an amount not to exceed One Thousand Dollars ($1,000.00). W. Va. Code R § 7-1-15.

18. The Board may enter an order assessing the appropriate civil penalty for a general violation of an applicable statute or rules, including the Rules of Professional Responsibility in an amount not to exceed Five Thousand Dollars ($5,000.00). W. Va. Code R § 7-1-15.

CONSENT OF RESPONDENT

Joseph W. Sulesky, by affixing his signature hereon, agrees to the following:

19. Respondent is aware of his option to pursue this matter through appropriate administrative and/or court procedures, but Respondent intelligently and voluntarily waives his right to do so, in the event that this Consent Order is approved by the Board.

20. Respondent intelligently and voluntarily waives his right to a formal hearing before the Board in this matter provided the Board accepts the terms and conditions set forth herein.

21. Respondent admits to actions which violated the Rules of Professional Responsibility set forth in West Virginia Engineering Law.

22. 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.

23. 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 C2010-19. This paragraph is binding on the parties even in the event that the Board does not approve this Consent Order.

24. 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 prior to or in conjunction with consideration of this Consent Order.

25. Should the Board not approve this Consent Order, Respondent waives any objection to the Board or any of its members participating in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Order.

26. Respondent acknowledges that the Board may reject this proposal, complete the hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate.

27. 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 except an action to

enforce the terms of this Consent Order.

28. Respondent understands that this Consent Order, the underlying Complaint, his written response thereto, and certain other documents provided to the Board are public records which must be made available upon legal request pursuant to the state's Freedom of Information Act.

29. 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).

30. Respondent acknowledges that proof of any misstatement or misrepresentation made in connection with this matter will result in the rescission of this agreement, the reinstatement of the Complaint, 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

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 C2010-19 pursuant to West Virginia Code § 30-13-22(b).

1. The Board **ORDERS** disciplinary action be taken again Respondent as set forth below for violating the Rules of Professional Responsibility.

2. On at least four (4) occasions, in accordance with such procedures as may be set or approved by the Board, Respondent shall speak in classrooms or other venues selected or approved by the Board, which speech must include certain teaching points provided by the Board.

3. If Respondent has not complied with the paragraph above within one year from the date Respondent receives notice of the Board President's signature hereon, then the Board may take any lawful action it deems appropriate, including the revocation or suspension of Respondent's license and the imposition of civil penalties, such penalties not to exceed Six Thousand Dollars ($6,000).

4. The Board may take such action without hearing or further proceedings, but shall provide written notice by certified mail to Respondent.

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, including those actions and sanctions set forth in paragraph 3 above.

7. In the event civil penalties are imposed as allowed herein and are 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, together with pre-judgment interest from the date of the Board's signature on this Consent Order, 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 remain open until Respondent receives written notice of his compliance with this Consent Order.

9. This Consent Order relates solely to matters within the jurisdiction of the West Virginia Board of Registration for Professional Engineers 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.

10. Except as to any action by the West Virginia Board of Registration for Professional Engineers, this Consent Order does not constitute any admission by Respondent as to any claim or element of any claim which has or may be asserted by any person or entity in any civil action against Respondent, and this Consent Order may not be admitted into evidence in any civil action brought against Respondent in any court within the State of West Virginia.

AGREED TO BY:

Joseph W. Sulesky
JOSEPH W. SULESKY

4-1-2011
DATE

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this: 20th **day of** April **, 2011.**

WEST VIRGINIA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

By: _____
EDWARD L. ROBINSON, P.E.
BOARD PRESIDENT

PREPARED BY:

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