STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN THE MATTER OF:	:	
	:	
KEVIN BLAIS,	:	**DBR NO 08-DP-E-0192**
	:	
RESPONDENT.	:	

DECISION

Hearing Officer: Neena Sinha Savage, Esq.

Hearings Held: April 29, 2009 (Pre-hearing conference); February 25, 2100 (Pre-hearing conference) and April 27, 2010 (Hearing)

APPEARANCES:

Respondent: *Pro Se*

Department of Business Regulation: Richard W. Berstein, Esq.

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation ("Department") pursuant to: an Order to Show Cause Why an Order to Cease and Desist Should Not Issue, Notice of Hearing, and Appointment of Hearing Officer ("Order to Show Cause") issued by the Director of the Department ("Director") on February 10, 2009 to Kevin Blais ("Respondent") and Respondent's request for hearing in response thereto. The Department issued the Order to Show Cause to enforce the terms of R.I. Gen. Laws § 5-8-1 *et seq.* (the "Act") by requiring Respondent to cease and desist from certain unlicensed and unlawful activities pursuant to the Act.

Pursuant to Central Management Regulation 2 ("CMR2") entitled *Rules of Procedure for Administrative Hearings,* pre-hearing conferences were held on April 29, 2009 and February 25, 2010 and a hearing was held on April 27, 2010.

II. JURISDICTION

The Department has jurisdiction over the Respondent as an individual and entity engaging in the alleged "practice of engineering" pursuant to the Act entitled *Engineers* and R.I. Gen. Laws § 5-84-2 which establishes that the Division of Design Professionals (including the State Board of Registration for Professional Engineers) is a division of the Department.

III. ISSUES

The issues in this matter are:

A. Whether Respondent is in violation of the requirements of the Act?

B. If Respondent is in violation of the requirements of the Act, what is the sanction for that violation?

IV. MATERIAL FACTS AND TESTIMONY

A. Travel

The following is a chronological summary of the proceedings based on the documents provided by the parties. In a letter dated July 31, 2008, the State Board of Registration for Professional Engineers ("BPE") wrote to Respondent and indicated that the BPE in a "routine check of the internet for firms using the title "Engineering " in their names, the BPE discovered that Respondent was using the term "Professional Engineering" in conducting certain business activities and that he did not have a Certificate of Authorization issued by the BPE for "Performance Engineering" registered with the BPE. The BPE in that July 31, 2008 letter requested that Respondent cease using the term engineering in Respondent's company name. On or about September 3, 2008, the BPE again wrote to Respondent, who had not responded to the July 31, 2008 letter, and requested a response by September 12, 2008. The second letter indicated that if Respondent did not provide a response, the BPE would commence formal administrative proceedings against the Respondent to cease and desist from engaging in activity

in violation of the Act. In a letter from Respondent dated September 23, 2008 and received by the Division of Design Professionals on September 25, 2008, the Respondent attached a letter from Respondent dated August 12, 2008[1], the Respondent indicated, in part:

> [a]s a result of my conversation with Mr. Berstein, it became apparent to me that your letter is simply a personal and political attack against me.
>
> Never the less I am and will remain committed to ensuring that I do not represent myself or my D.B.A. as a professional engineering firm.

In a letter dated December 1, 2008 from Respondent to the BPE, Respondent states that the BPE's letter dated November 25, 2008 did not include a copy of the article from the "Call" and requests additional information including "supporting documents," and "the names of the individuals who supplied the documents[.]" In response to Respondent's requests for information (some of which had already been provided by the BPE in its letter dated November 25, 2008), the BPE, in a letter from the BPE dated December 8, 2008 (and sent to Respondent via certified and regular mail), the BPE provides and states:

> We are hereby supplying the information you requested, as follows:
>
> 1. A copy of the complaint, which is based on an article from The Call, was verbally introduced in Executive Session. The complaint was discussed in Executive Session which is sealed until conclusion, and must therefore necessarily remain confidential.
> 2. A copy of the certified [mail] notice [for the letter dated November 25, 2008 from the BPE to Respondent which indicated that it was delivered to a Harrisville, RI address on December 2, 2008.]
> 3. The individual who supplied the article was Mr. L. Robert Smith, as previously identified.
> 4. Rhode Island General Law 5-8-1 requires registration for the practice of engineering. I am enclosing a copy for your ready reference. Note that this law indicates, in pertinent part, that it is

[1] This letter was stamped: "RECEIVED SEP 25 2008 DIVISION OF DESIGN PROFESSIONALS." It is not clear whether the BPE ever received the August 12, 2008 letter or if Respondent did not send the August 12, 2008 letter until September 23, 2008.

> unlawful for any person to practice engineering in Rhode Island or advertise any title or description tending to convey the impression that he or she is an engineer, unless that person has been registered. As such, any out-of-state business operating within Rhode Island cannot hold itself out as engaging in engineering without being registered.
> 5. The tracking number for the certified November 26, 2008 letter is 91 7108 2133 3934 8846 4635.

This contradicts repeated assertions at pre-hearings in 2009 and 2010 and hearing in 2010 that he had not been provided any documentation from the BPE.

The Department issued its Order to Show Cause on February 10, 2009. According to the Order to Show Cause, the pre-hearing conference in the matter was to be held on March 19, 2009. Respondent contacted the Hearing Officer and requested a continuance of that date due to medical reasons and the undersigned Hearing Officer granted Respondent's request. The Hearing Officer advised Respondent to let her know in writing (and copy all parties) regarding any needed accommodation. On March 17, 2009, Respondent wrote to the Hearing Officer that he would "contact [the Hearing Officer] on or after 4/13/09 to inform you of what assistive listening equipment I may need" and submitted a doctor's note (that did not confirm what accommodation was necessary). In a letter dated April 2, 2009, the undersigned Hearing Officer scheduled the pre-hearing conference for April 29, 2009. The Hearing Officer did not receive any other correspondence requesting a specific accommodation. At the pre-hearing conference on April 29, 2009 held at the Department's offices, the Hearing Officer arrived in the room to Respondent setting up video equipment and asserting that he needed to record the proceedings in order to accommodate a hearing disability. Additionally, Respondent informed the parties that he would be having surgery for his hearing disability and would not know the type of accommodation necessary until the surgery had been assessed and completed. However, Respondent did state at the April 29, 2009 pre-hearing conference that a CART system was a "guarantee" that would afford him equal participation in the adjudication process. On June 10,

2009, the Hearing Officer wrote to the parties and confirmed (based on information received from Respondent via telephone) that his surgery (which was to have occurred sometime in the spring of 2009) had been postponed. The June 10, 2009 letter also directed the parties to confirm any accommodation (for the hearing disability) in writing, copy the Hearing Officer on any correspondence, and once the accommodation for the hearing disability was confirmed, a hearing date and time would be established.

It was eventually determined that the Respondent needed a form of assisted communication device referred to as Communication Access Real-time Translation ("CART"). CART provides a communication link between the hearing impaired or otherwise disabled person and parties in a meeting by transmitting spoken materials in English into a concurrent display that has been put into a text format.

In a letter dated October 27, 2009 from the Hearing Officer to all parties, a status conference and/or hearing with CART services was scheduled for Monday, November 16, 2009 at 10:00 a.m. On Friday, November 13, 2009, the Respondent contacted the Department's counsel and informed him that he was not coming to the status conference on November 16, 2009 because he did not receive the letter in time to prepare for the status conference. (Respondent had previously objected to mail being sent to his Rhode Island home address and he indicated that he only checks his Massachusetts business address mail once a week). As CART services were scheduled for the status conference on November 16, 2009 (at a cost of $220 for the first hour and $90 for every hour thereafter), Department counsel authorized the cancellation and postponement of the status conference. On February 1, 2010, the undersigned Hearing Officer wrote to all parties and informed them of a pre-hearing and/or hearing (both could be held the same day if the parties agreed) on February 25, 2010 at 9:00 a.m. The letter also

advised the parties that the Department would be paying for CART services and all parties should advise if the date was not convenient.[2]

On February 4, 2010 the undersigned Hearing Officer wrote to the parties to document a telephone conversation with Respondent. The Respondent had previously attempted to discuss the merits of the matter with the undersigned Hearing Officer over the telephone and had been repeatedly cautioned that such *ex parte* communication was inappropriate.[3] The Hearing Officer's February 4, 2010 letter indicated that Respondent had called the undersigned Hearing Officer and at first said he was available on February 25, 2010 but ended the conversation by indicating that he would not attend the pre-hearing conference. The undersigned Hearing Officer directed Respondent to communicate with the undersigned Hearing Officer in writing with copies to all interested parties. The February 4, 2010 letter also documented the following representations by Respondent to the undersigned Hearing Officer as well as the Hearing Officer's response as indicated in the parenthetically: (i) Respondent did not know the allegations against him. (The letter directed him to address the issues at the status conference.); (ii) Respondent indicated that the Department did not have the correct name of the business. (The letter directed Respondent to confirm the name of his company and to put his request in writing.); (iii) Respondent wanted to know if he was "entitled" to legal counsel. (The letter indicated that the Hearing Officer was not aware of any such allowance.); (iv) Respondent wanted to have the hearing held in Massachusetts and that the Department did not have the right to take action against a Massachusetts company. (The letter directed him to raise that issue at the status conference or in writing.); (v) Respondent indicated that he had never made a request for

[2] Attempts to schedule dates via email were not successful because Respondent indicated that he does not use email.

[3] The Respondent had been told repeatedly by the Hearing Officer to deal with any issues involving the Hearing Officer in writing to the Hearing Officer, with copies to all parties. Respondent often became angry and hostile in his verbal communications with the Hearing Officer and indicated that he could not hear and that his yelling was part of his disability.

CART services. (The letter documented the request at the 2009 pre-hearing conference at which he had stated that CART services would "guarantee" accommodation of his disability); (vi) Respondent indicated that he would respond to the Hearing Officer's February 1, 2010 letter on "11:59 on February 25, 2010. (The letter informed him that if he did not appear on February 25, 2010, he could be defaulted.)

On February 22, 2010, the undersigned Hearing Officer received a facsimile transmission from Respondent with his business letterhead which confirmed, in part, the documented conversation in the February 4, 2010 letter and again reiterated that Respondent did not know the allegations against him. Respondent also indicated in his February 22, 2010 fax that the correct name of his business is Performance Engineering, Landscape Construction and Excavation. On February 23, 2010 Counsel for the Department addressed Respondent's concerns in writing and sent the document via facsimile, certified, and regular mail. A pre-hearing conference with CART services was eventually scheduled and held on February 25, 2010. Even though CART services were present at the pre-hearing conference, Respondent insisted on videotaping the proceeding as well.

On March 10, 2010, a pre-hearing conference Order was issued which: (i) clarified the issue (whether or not Respondent's actions violate R.I. Gen. Laws § 5-8-1 et seq.); (ii) provided for a discovery schedule; and, (iii) scheduled the matter for hearing on April 27, 2010 at 9:00 am. The matter was specifically scheduled sixty (60) days after the pre-hearing counsel in order to accommodate Respondent's request that he still needed an opportunity to obtain counsel.

On March 10, 2010, the Department provided an itemized list of answers to Respondent's questions and set forth a list of its witnesses and provided a synopsis of the testimony.

B. The Hearing

1. Department's Motion for Summary Judgment

On March 18, 2010, the Department filed a Motion for Summary Judgment and Memorandum in Support of Its Motion for Summary Judgment ("Motion"). The Motion asserts that pursuant to Rule 56(c) of the Rhode Island Rules of Civil Procedure (which are adopted by the Department in its Central Management Regulation 2), there is no issue of material fact and the Department is entitled to judgment as a matter of law. This Motion was presented at the Hearing on April 27, 2010 and Respondent provided no written objection but did offer testimony and evidence in support of his oral objection.

In addition to setting forth the legal basis in R.I. Gen. Laws § 5-8-1, the Motion lists the following undisputed facts as its basis:

1. Respondent has, by his own admission, a company located in Massachusetts whose d/b/a name includes the word "Engineering."

2. Respondent's company, by his own admission, does business in Rhode Island under this name, which is displayed on company trucks.

3. Respondent is not registered as an engineer in Rhode Island, nor does the company have a required Rhode Island Certificate of Authorization.

4. Respondent's company name is not registered as a corporation with the Rhode Island Secretary of State.

5. Respondent's company name is also registered as "PERFORMANCE ENGINEERING" with the Rhode Island Contractor's Registration Board, License #15184.

6. A complaint was brought to the BPE, part of a Division within the Department, by Board Member L. Robert Smith, as a result of a March 13, 2008 article in the *Woonsocket Call* entitled "Burrillville Wins Suit Against Blais," in which reference was made to Mr. Blais's company, the title of which contains "Engineering."

7. By letter dated July 31, 2008, the BPE notified the Respondent that the use of the word "Engineering" in his company's title without having a

Professional Engineer on staff or a required Certificate of Authorization was a violation of Rhode Island law.

8. The letter also requested that the Respondent stop using the term "Engineering" in his company's name, as it hold Respondent forth as being able to perform engineering work.

9. Respondent has not been exempted from registration. To date, Respondent has not removed the word "Engineering" from his company's title when doing business in Rhode Island.

As a remedy, the Department is requesting a cease and desist order requiring Respondent to cease using the word "Engineering" while conducting any activities in Rhode Island.

On March 25, 2010, the Department filed supplemental information for its Motion. This supplemental information included a sworn, notarized affidavit by L. Robert Smith, Chairman of the BPE which indicated, *inter alia*, that the documents attached (letters from Respondent, Contractor's Board Registration Status Lookup report stating Kevin Blais's d/b/a "PERFORMANCE ENGINEERING," a copy of the *Woonsocket Call* article referencing the use of "Performance Engineering" as the name under which Respondent conducts business) were true and accurate. The affidavit also indicated that Chairman Smith has "personal knowledge that Kevin M. Blais d/b/a Performance Engineering of Uxbridge, Massachusetts has conducted business in the State of Rhode Island under the aforementioned d/b/a."

The *Woonsocket Call* Article titled *Burrillville wins suit against Blais* dated March 13, 2008 (and submitted as part of the Department's Exhibit 3 on April 27, 2010) describes a complaint filed against Respondent and his girlfriend (the owner of the property) by the Town of Burrillville alleging zoning violations related to the operation of Respondent's business from the farming/residential zoned property. The facts relevant to this administrative action in the article include the name of the business which is identified as "Performance Engineering" and described as an unincorporated business engaged in "landscape construction." Further, the article also states that the "Yellow Pages and the Internet listings found for Performance Engineering

identify the Tarklin Road [Burrillville, RI] address as its business address." The article also stated that the Superior Court granted a preliminary injunction that required Respondent to remove his business equipment from the property at issue.

The Department's presentation of evidence and testimony (from Chairman Smith) at hearing confirmed the information in the Motion.

2. The Respondent's Presentation of Evidence

At the beginning of the hearing on this matter on April 27, 2010, Respondent presented an oral objection and stated that he did not receive the Department's Motion for Summary Judgment dated March 18, 2010 nor did he receive the Department's Supplemental Information dated March 25, 2010. Respondent indicated that the Department's failure to provide the documents to Respondent was a violation of the Order and that the Department should be defaulted. When the Hearing Officer asked whether Respondent had provided the Department with any documents or evidence, Respondent reiterated that he had no documents or evidence to provide because he still had not received any information from the Department which substantiated the BPE's allegations. When asked specifically by the Hearing Officer whether he received the Motion, Respondent stated that he "not recall" whether he had received it. The Hearing Officer indicated her dismay at Respondent for raising a procedural issue at hearing even though he had been directed to communicate in writing to all parties with any concerns he may have. The Hearing Officer indicated her concern that Respondent's repeated inaccurate assertions that he had not received any information which would allow him to defend himself were an attempt to delay the adjudication of the proceeding.

The Hearing Officer directed the Department to provide its electronic tracking sheets to confirm mailing of the Motion and Supplemental Information to Respondent. The Department's cover letter for the Motion dated March 18, 2010 indicates that the Motion was sent by regular

and certified mail. There is no tracking for regular mail; however, the Motion delivered via regular mail was not returned to the Department; therefore, it is assumed that it arrived at Respondent's mailing address. The Department provided its tracking sheet which indicated that the United States Postal Service left a notice at an address in Uxbridge, Massachusetts (zip code 01569 which is Respondent's zip code) on March 19, 2010, and the item was unclaimed as of April 3, 2010 and was thereafter returned to the Department. The cover letter dated March 25, 2010 also indicates that the Supplemental Information was mailed via regular and certified mail. The Supplemental Information mailed via regular (first class) mail was not returned; therefore, it too is considered to have arrived at Respondent's mailing address. The Department also provided its tracking sheet for its Supplemental Information mailed on March 25, 2010. The tracking sheet indicates that the certified mail was delivered to an address in Uxbridge, Massachusetts (zip code 01569) on March 27, 2010 at 11:11 a.m. Based on this information (which was copied and provided to Respondent at hearing), it is reasonable that Respondent received, at his address in Uxbridge, Massachusetts, the Motion and the Supplemental Information.

Contrary to his assertion (at the hearing) that he did not have any documents to provide to the Department prior to the hearing, Respondent presented several exhibits at the hearing in support of his contention that he was not violating R.I. Gen. Laws § 5-8-1. None of these documents were provided to the Department prior to the hearing as required by the Order. The four (4) exhibits presented by Respondent at hearing were documents related to the Respondent's alleged license by the Rhode Island Department of Labor and Training ("RIDLT") as a "Hoisting Engineer" under R.I. Gen. Laws § 28-26-1 *et seq.* Respondent argues that because he is licensed as a "Hoisting Engineer" by the RIDLT, he has the right to refer to his business using the term engineering. Upon closer review of the RIDLT's statutory and regulatory paradigm, the

category or title of license actually held by Respondent (in his name individually, not in any d/b/a or entity name including any reference to "Performance Engineering") is a "Payloader/Backhoe" license under Rule 2(I) of the RIDLT's *Rules and Regulations for Examination and Licensing of Hoisting Engineers* ("RIDLT Regulation" submitted as Respondent's Exhibit 4). Respondent's Payloader/Backhoe license is publicly accessible on the RIDLT website (http://www.dlt.ri.gov/profregs/HoistMain.htm) under the "Check a License" tab and then under the "Hoisting" category; there is no Hoisting *Engineer* category or reference on the Check a License screen.

V. DISCUSSION

The undersigned Hearing Officer is taking into account the evidence and legal arguments presented in the Motion for Summary Judgment as part of the hearing;however, the analysis herein is decided on the merits after consideration of all facts, evidence, and testimony by all parties. Therefore, the undersigned Hearing Officer does not need to reach a decision on the Motion for Summary Judgment or address the legal standard related to the consideration of said Motion.

A. Statutory Requirements

The primary issue in this matter is whether Respondent's use of signage, advertising, and other business activities using the name "Performance Engineering" or "Performance Engineering Landscape Excavation and Construction" is a violation of R.I. Gen. Laws § 5-8-1 *et seq*. entitled *Engineers* ("Act"). The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining the statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1977). The Rhode Island Supreme Court has also established that it will not interpret legislative enactments in a manner that renders

them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citing *Cocchini v. City of Providence*, 479 A.2d 108, 111 (R.I. 1984); *Beaudoin v. Petit*, 409 A.2d 536, 540 (R.I. 1979); *Raymond Construction Co. v. Bisbano*, 326 A.2d 858, 861 (R.I. 1974)). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

In determining the policies and purposes of the Act intended by the legislature, it is necessary to examine R.I. Gen. Laws § 5-8-1 *et. seq* in its entirety. An analysis of the purposes and policies of the Act supports construing the Act to allow the Department to protect the public interest by limiting the use of the word "engineer" by expressly stating in R.I. Gen. Laws § 5-8-1:

> **Registration required for practice of engineering.** – In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering in this state is declared to be subject to regulation in the public interest. It is unlawful for any person to practice, or to offer to practice, engineering in this state, as defined in the provisions of this chapter, *or to use in connection with his or her name or otherwise assume, or advertise any title or description tending to convey the impression that he or she is an engineer*, unless that person has been registered or exempted under the provisions of this chapter. The right to engage in the practice of engineering is deemed a personal right, based on the qualifications of the individual as evidenced by his or her certificate of registration, which is not transferable. (Emphasis added)

Additionally, in R.I. Gen. Laws § 5-8-2(f)(2) within the definition of the "Practice of Engineering" the Act details that:

> (2) Any person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

(i) Practices any branch of the profession of engineering;

(ii) *By verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer, or through the use of some other title implies that he or she is an engineer or that he or she is registered under this chapter; or*

(iii) *Holds himself or herself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner or recognized as engineering.* (Emphasis added)

Furthermore, R.I. Gen. Laws § 5-8-20(a), the violation, penalties, and enforcement section of the Act, specifies the prohibitions and remedies[4]:

> **§ 5-8-20 Violations and penalties – Enforcement – Injunctions.** – (a) No individual shall: (1) practice or offer to practice engineering in this state; (2) use any title, sign, card, or device implying that the individual is an engineer or is competent to practice engineering in this state; (3) use in connection with his or her name or otherwise any title or description conveying or tending to convey the impression that the individual is an engineer or is competent to practice engineering in this state; or (4) use or display any words, letters, figures, seals, or advertisements indicating that the individual is an engineer or is competent to practice engineering in this state; unless that individual holds a currently valid certificate issued pursuant to this chapter or is specifically exempted from the certificate requirement under the provisions of this chapter.

The Act details additional requirements for registration consistent with ensuring that certain national and state professional standards are enforced for the benefit of public safety and welfare. R.I. Gen. Laws § defines "Engineer" very specifically as:

> a person who, by reason of his or her special knowledge and use of the mathematical, physical, and engineering sciences and the

[4] R.I. Gen. Laws § 5-8-20(a) stated herein is similar to the prohibitions in R.I. Gen. Laws § 5-8-20(b) which applies to sole proprietorships, partnerships, limited liability partnership, corporation, or limited liability company. According to evidence presented at hearing Respondent is a sole proprietorship operating as a "doing business as" or "d/b/a" under the name of Performance Engineering or Performance Engineering Landscape Construction and Excavation. Therefore, the Act clearly covers the activity at issue broadly regardless of whether that activity is conducted by an individual or an entity.

> principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, as subsequently defined, and as attested by his or her registration as an engineer.

Additional statutory requirements in the Act include: (i) BPE conformance to national standards with respect to classification of types of engineers (R.I. Gen. Laws § 5-8-3); (ii) application, reference letters, registration, national qualification, graduation from a four year engineering curriculum, an examination, experience, as well as other criteria depending on the type of designation desired (R.I. Gen. Laws § 5-8-11); (iii) verification of technical experience and payment of fees (R.I. Gen. Laws § 5-8-12); and (iv) detailed examination requirements (R.I. Gen. Laws § 5-8-13).

B. Respondent's Violations

These education, examination, and verification procedures exist to ensure that the technical expertise is such that the public may rely on the skill set of registrants to carry out their professional duties in a competent manner—especially when that competence may directly affect public safety related to construction of public roads, highways, buildings, and other public structures or facilities. Therefore, it is logical that the legislature prohibited the use of the term or variation of engineering in a manner that may lead the public to believe that an individual is competent to perform engineering functions. Respondent acknowledges that he does not meet the criteria to be registered as a professional engineer by the BPE under the Act.

It is clear that the legislature intended to prevent individuals and entities from the exact type of allegation in this matter. That is, the use of the term "Performance Engineering" either alone or as part of another title, as used by Respondent, is clearly in violation of the above statutory requirements or prohibitions. Respondent's signage (as reflected in Respondent's Pre-hearing Exhibit 1 (picture of his truck) and as presented on his facsimile cover sheet letterhead; see in Attachment 1 to this Decision) not only uses the word "ENGINEERING" but highlights

the word "ENGINEERING" in a way that ~~emphasis~~ emphasizes the word as part of the business signage. The words "PERFORMANCE ENGINEERING" are written on Respondent's trucks in the same manner that it is on his facsimile letterhead (with the word "ENGINEERING" stressed in both color and font from the rest of the signage).

Respondent's activities fall within the definition of "Practice of Engineering" in R.I. Gen. Laws § 5-8-2(f)(2) which states that a person is construed to engage in the practice of engineering if he does so by "verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer[.]" Additionally, Respondent acknowledges that he is currently registered as a Rhode Island Residential Contractor under the name "Performance Engineering." Therefore, Respondent is in violation of R.I. Gen. Laws § 5-8-1 because he is "offer[ing] to practice engineering in this state" and is using "in connection with his...name" and advertising a title "intended to convey the impression" that he is an engineer without complying with the registration requirements in the Act.

Because Respondent does not hold (nor is he eligible to hold) a currently valid certificate or registration to act as an Engineer, he is consequently in violation of the prohibition in R.I. Gen. Laws § 5-8-20(a) which bars him from not only practicing or offering to practice engineering in this state but also from using "any title, sign, card, or device implying that the individual is an engineer or is competent to practice engineering in this state" or using "in connection with his or her name or otherwise any title or description conveying or tending to convey the impression that the individual is an engineer or is competent to practice engineering in this state[.]" Respondent is holding himself out as "Performance Engineering" or "Performance Engineering Landscape Construction and Excavation" in different contexts. Either name is contrary to the statutory prohibitions as detailed above.

C. Respondent's Arguments

While Respondent is correct that the statutory title, the title of the RIDLT regulation title, and the pamphlets, and application refer to "Hoisting Engineers," the use of the the term engineering under the Hoisting Engineer statutory and regulatory scheme (which is governed by a separate agency, under a different title of the Rhode Island General Laws and relates to a different concept than that of the BPE statutory and regulatory paradigm) serves a different function in a different context. The fact that the RIDLT categorized its licenses based on the type of machinery that its licensees operate and Respondent holds a "Payloader/Backhoe" license is further evidence that the word "Engineer" is not meant to be the primary identifier of its licenses.

Consistent with the Rhode Island Supreme Court's precedent on statutory construction as detailed in Section V(A) herein, it is also necessary to take into account the scope of the statute and the purpose sought to be accomplished through the enactment of the statute when determining how it is to be construed. Respondent's arguments regarding statutory construction based on titles of statutory subsections are not conducive to protecting the public from licensees who may pose a threat to the public interest by holding themselves out as or giving the appearance that one is a professional engineer-- which is conduct that is specifically barred by a more specific statute. Specifically, the Rhode Island Supreme Court has stated that it will not read a statute literally if to do so will attribute to the legislature a meaning or result which is contrary or inconsistent with the evident purposes of the act. *See Rhode Island Consumers' Council v. Public Utilities Commission*, 267 A.2d 404 (R.I. 1970). Thus, one cannot interpret a statutory section based on its title alone. *See Orthopedic Specialists, Inc. v. Great Atlantic & Pacific Tea Co., Inc.*, 388 A.2d 352 (R.I. 1978) (declaring that "as a general proposition of statutory construction, titles do not control meaning of statutes").

Further, Respondent's assertions that he is somehow exempt from compliance with the Act, is not credible or compelling given his failure to use the word "hoisting" as part of his letterhead or business name. Further, any assertion that he is exempt from the Act because of his status as a Payloader/Backhoe licensee of RIDLT under the Hoisting Engineer statutory and regulatory paradigm is also without merit for the factual and legal reasons delineated above. For the reasons stated above, Respondent's assertions that he somehow does not have to comply with the Act or is exempt from the Act because he is a hoisting engineer are without merit.

The Rhode Island Supreme Court has held that "when 'the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized.'" *Labor Ready v. McConaghy*, 849 A.2d 340, 345 (R.I. 2004). The Rhode Island Supreme Court has also established the "well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency * * * even when the agency's interpretation is not the only permissible interpretation that could be applied." *Pawtucket Power Associates Limited Partnership v. City of Pawtucket*, 622 A.2d 452, 456-57 (R.I. 1993); see *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 99 (R.I. 2007) ("[W]hen the administration of a statute has been entrusted to a governmental agency, deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized."); *Gallison v. Bristol School Committee*, 493 A.2d 164, 166 (R.I. 1985) ("[W]here the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized."); see also *Labor Ready Northeast, Inc. v.*

McConaghy, 849 A.2d 340, 344-45 (R.I. 2004); In re Lallo, 768 A.2d 921, 926 (R.I. 2001); see also *Auto Body Association of Rhode Island v. State of R.I. Department of Business Regulation*, 996 A.2d 91(R.I. 2010). The interpretation put forth by the Department and the BPE is not clearly erroneous and clearly authorized in the statute which limits the manner in which individuals and entities engage in the "practice of engineering" as defined in the Act. Respondent's assertion that the RIDLT statutory and regulatory scheme shield him from very specific violations related to holding himself out as an engineer, therefore, are without merit.

Respondent's assertion that he has had minimal activity in the past two or three years is not credible in light of the fact that Respondent has been registered as a Rhode Island Residential Contractor with the Rhode Island Contractors' Registration Board since 1997 under the name "PERFORMANCE ENGINEERING." Further, as Chairman Smith testified at hearing, in late 2008, he observed Respondent's truck in North Providence, Rhode Island and Respondent admitted to doing work in Rhode Island. Additionally, there is evidence of Superior Court litigation regarding storage of business equipment in Rhode Island as recently as 2008.

Respondent also raised the issue of certain entities that had been allowed to use the term "engineer" in their names without being required to register. According to Chairman Smith's testimony, that "grandfathering" right was afforded to entities that had been using the word "engineer" in their names in 1990 and legally incorporated and registered with the Rhode Island Secretary of State as of the date of the enactment of the Act (which appears to have been enacted in 1990 with the simultaneous repeal of public laws and general laws dating back to 1938). Respondent's company name is a d/b/a and was not registered in 1990 and is not registered currently as a legally incorporated entity with the Rhode Island Secretary of State. Therefore, the treatment of those entities in 1990 is not relevant to the analysis related to Respondent's actions.

D. Respondent's Credibility

Respondent's request for default and repeated procedural objections regarding having not received any information are without merit for the following reasons. Respondent has asserted at every proceeding and in every contact with the Hearing Officer that he either has not received information or does not know the allegations against him. The undersigned finds that Respondent has had the allegations specifically provided to him since at least November 25, 2008. It is clear to the undersigned that the Respondent makes these conclusory allegations in an attempt to delay the process and to circumvent statutory compliance. These assertions by Respondent that he had not received any information that would allow a defense were not credible in light of the BPE's letters dated July 31, 2008, September 3, 2008, November 25, 2008, and December 1, 2008. Additionally, Respondent had been provided information in the Order to Show Cause and in documents mailed to him prior to the hearing as indicated herein.

For Respondent to assert at hearing, on April 27, 2010, that he had not received any information which would allow him to present a defense, simply defies reality and underscores the serious issues with Respondent's credibility and motives. It is well established that notice by certified and regular mail meets the requirements of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, as well as the due process provisions of the Rhode Island Constitution. *See Mennonite Board of Missions v. Adams,* 462, U.S. 791 (1983) (holding that mailed notice meets the requirements of the Due Process Clause of the Fourteenth Amendment); *Quinn Trust v. Emil Ruiz*, 723 A.2d. 1127, 1129 (R.I. 1999); (holding that mail or personal service must be rendered to interested parties in order for Due Process demands to be met); see also *Koslow v. Department of Business Regulation*, 2002 WL 31749518 (R.I. Super. 2002). R.I. Gen. Laws § 5-8-18(e), with respect to notice of hearing, only requires only personal service or service by "mailing" to the last known address of the Respondent "at least thirty (30)

days before the date fixed for hearing." The service requirements were met in this matter because the Hearing Officer's Order dated March 10, 2010 which set the date of hearing on April 27, 2010 was mailed to Respondent on March 10, 2010 at his Massachusetts business address (at his request) by both certified and regular mail. Additionally, there is ample evidence in this matter that the BPE and the Department repeatedly mailed the same information to Respondent on more than one occasion. Additionally, it is clear from Respondent's defense and presentation that he clearly understands the allegations against him.

VI. FINDINGS OF FACT

A. Respondent has a company located in Massachusetts that uses the d/b/a name of "Performance Engineering" or "Performance Engineering, Landscape Construction, and Excavation" on signage, advertising, letterhead, and documentation.

B. Respondent's company name is registered as "PERFORMANCE ENGINEERING" with the Rhode Island Contractor's Registration Board, License number 15184 and has been so registered since at least 1997.

C. Respondent's company name is not registered as a corporation with the Rhode Island Secretary of State.

D. Respondent's trucks with the name "PERFORMANCE ENGINEERING Landscape Construction Excavation" have been observed doing work in Rhode Island in 2008.

E. Respondent, individually, holds a "Payloader/Backhoe" license with the RIDLT under R.I. Gen. Laws § 28-26-1 *et seq.* and the regulation promulgated thereunder.

F. Respondent does not use the term "hoisting" or "payloader" or "backhoe" in any of his signage relating to his business operations.

G. Respondent is not registered as an engineer in Rhode Island nor does Respondent's company have a required Rhode Island Certificate of Authorization.

H. A complaint was brought to the BPE, a division within the Department, by a BPE Board member as the result of facts describing Respondent's alleged business activities in Rhode Island in a March 13, 2008 article in the *Woonsocket Call.*

I. The BPE made Respondent aware of the alleged violation of the Act in letters to Respondent dated July 31, 2008, September 3, 2008, November 25, 2008, and December 1, 2008. ~~These letters specifically requested that Respondent~~ (Clarified via deletion by Hearing Officer on August 30, 2010).

J. The Respondent was adequately informed of the allegations in this matter prior to the hearing in this matter.

K. Respondent has not been exempted from registration under the Act.

L. Respondent's signage, advertising, letterhead, and the name under which he is registered with the Rhode Island Contractor's Registration Board appear to offer the practice of engineering in Rhode Island.

M. Respondent's signage, letterhead, advertising, and name under which he is registered with Rhode Island Contractor's Registration Board imply that he may be competent to practice engineering in Rhode Island.

N. Respondent's signage, letterhead, advertising, and name under which he is registered with Rhode Island Contractor's Registration Board convey the

impression that the Respondent is an engineer competent to practice engineering in this state and indicate that Respondent is a competent to practice engineering in this state.

O. To date, Respondent has not removed the word "Engineering" from his company's title when doing business in Rhode Island.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

A. The Department has jurisdiction over this matter as set forth in Section II, *supra*.

B. Respondent's use of the word "engineering" in signage, advertising, letterhead, and name under which he is registered with Rhode Island Contractor's Registration Board without compliance with all requirements of the Act constitutes the "Practice of Engineering" as defined in R.I. Gen. Laws § 5-8-2(f)(2).

C. Respondent's use (in his individual capacity) of the word "engineering" in signage, advertising, letterhead, and name under which he is registered with Rhode Island Contractor's Registration Board without compliance with all requirements of the Act is a violation of R.I. Gen. Laws §§ 5-8-20(a)(1), (2), (3), and (4).

D. Respondent's use (in his capacity as owner of the sole proprietorship) of the word "engineering" in signage, advertising, letterhead, and name under which he is registered with Rhode Island Contractor's Registration Board without compliance with all requirements of the Act is a violation of R.I. Gen. Laws § 5-8-20(b).

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department of Business Regulation order the Respondent to:

A. Cease and desist from the use of the word "Engineering" (or any of its derivations) in any business name, signage, document, or advertising or in any other manner or context in the State of Rhode Island consistent with the requirements of the Act.

B. Immediately provide to the BPE evidence that Respondent's business name, signage, advertising, registration with the Rhode Island Contractor's Registration Board has been amended to comply with the Act and this cease and desist order to the satisfaction of the BPE.

C. Authorize the BPE to refer the matter to the Attorney General for prosecution pursuant to R.I. Gen. Laws §§5-8-20 (c) and (e) if Respondent fails to comply with the cease and desist order herein;

D. Pursuant to R.I. Gen. Laws § 5-8-20(d) authorize the BPE to seek any and all appropriate remedies from the Superior Court including, but not limited to: (i) ordering Respondent to reimburse it for any and all fees, expenses, and costs incurred by the Board in connection with the proceedings including attorneys fees, which amounts shall be deposited as general revenues; (ii) be subject to public censure and reprimand (at Respondent's expense).

Dated: August 24, 2010

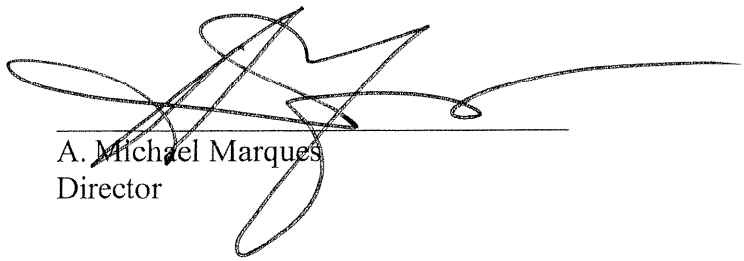
Neena Sinha Savage, Esq.
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with respect to the Decision and Recommendation:

✓ ADOPT
_____ REJECT
_____ MODIFY

Dated: 08-24-2010



A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

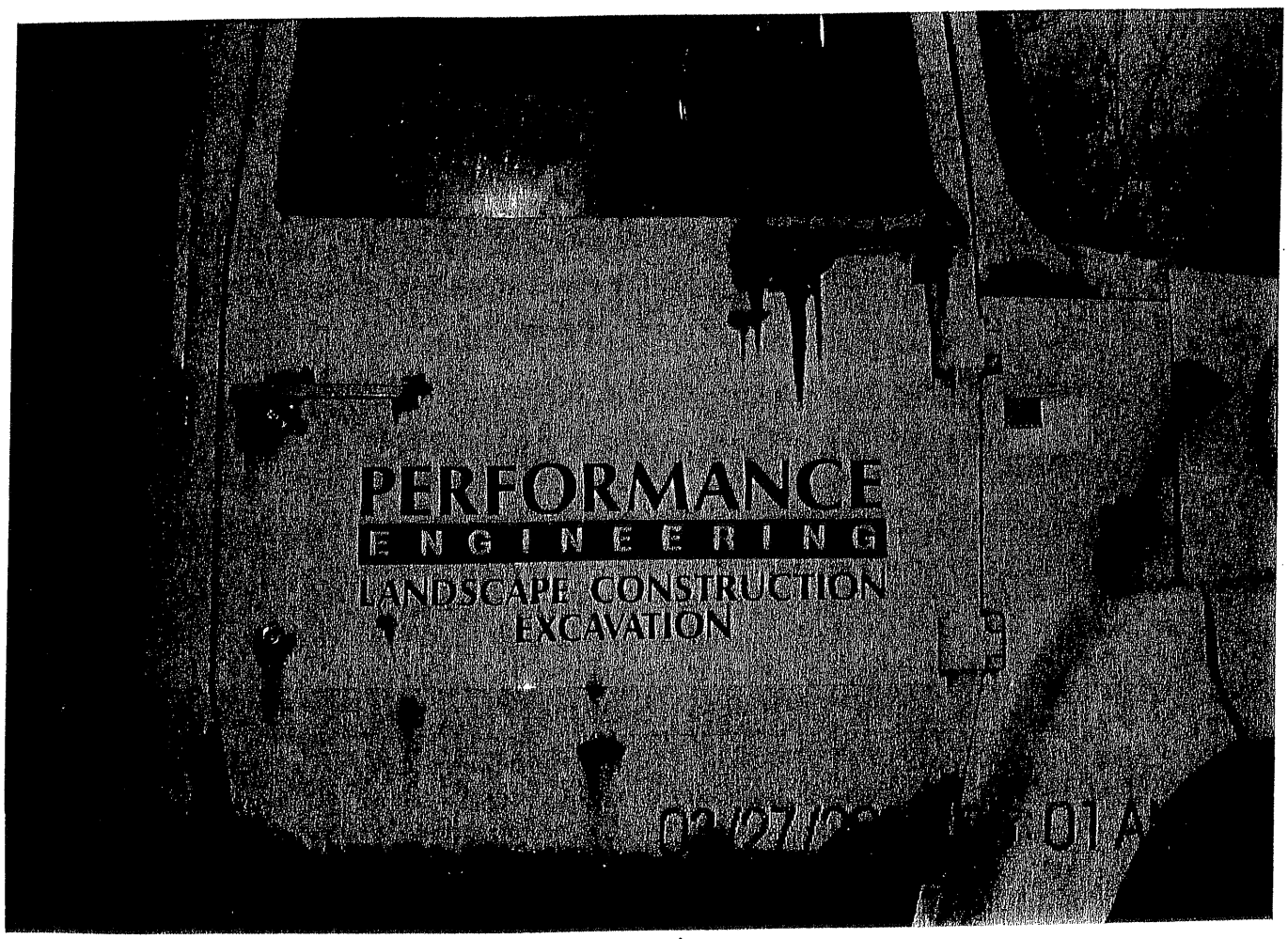
THIS DECISION AND DECLARATORY RULING CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT ITSELF DOES NOT STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

ATTACHMENT 1

"We're Everything Outdoors"

PERFORMANCE
ENGINEERING
Landscape · Construction · Excavation
810 Quaker Highway
Uxbridge, MA 01569
401-640-1794

letterhead or FAX →
(Hearing Officer Clarification on Attachment)



signage on truck ↑
(Hearing Officer Clarification in Attachment)

CERTIFICATION

I hereby certify on this 31st day of August, 2010, that a copy of the within Decision was sent by first class and certified mail, postage prepaid to:

Kevin M. Blais
810 Quaker Highway
Uxbridge, MA 01569

And by electronic mail to the following personnel of the Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920:
Louis DeQuattro, Esq.; State Board of Registration for Professional Engineers.

NOTE: Due to clerical error, the Decision was mistakenly mailed to Respondent on August 24, 2010 at 815 Quaker Highway, not 810 Quaker Highway in Uxbridge, MA 01569 and was returned to the Department of Business Regulation. Additionally, there are two errata that are marked: on pages 16 (top) and page 22 (paragraph I) that constitute minor technical changes that do not alter the Decision.