

JUN 02 2011

STATE OF MINNESOTA  
BOARD OF ARCHITECTURE, ENGINEERING,  
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE  
AND INTERIOR DESIGN

In the matter of John Whalen  
PROFESSIONAL ENGINEER  
License Number 41451

STIPULATION AND ORDER

Board File No. 2011-0065

TO: John Whalen  
2064 Lynwood Drive  
Sun Prairie, Wisconsin 53590

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2010) and Minnesota Statutes section 326.111 (2010) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning John Whalen ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Stipulation and Order.

**STIPULATION**

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. The Respondent was first issued a Professional Engineer license by the Board on September 11, 2001. Respondent is subject to the jurisdiction of

the Board with respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed as a Professional Engineer in the State of Minnesota on September 11, 2001.

b. On July 1, 2010, Respondent's Minnesota Professional Engineer license in the State of Minnesota expired.

c. On February 1, 2011, Respondent's Minnesota Professional Engineer license was reinstated.

d. Respondent's Minnesota Professional Engineer license is current with an expiration date of June 30, 2012.

e. During the time Respondent's license was lapsed (July 1, 2010 until February 1, 2011), Respondent admits that he held himself out and practiced as a Professional Engineer. In a letter dated January 25, 2011, that was attached to the Application for License/Certificate Reinstatement through 6/30/2012, Respondent stated: "Unfortunately, I am unable to sign the Affidavit for Reinstatement because I have provided Professional Engineering Services since the time my license lapsed." A true and correct copy of the January 25, 2011, letter with the Application for License/Certificate Reinstatement through 6/30/2012, is attached as Exhibit A.

f. In a letter dated February 28, 2011, Respondent stated: "Please accept the following as a response to the allegation that I practiced professional engineering in the state of Minnesota during a lapse in my license from July 1,

2010 until February 1, 2011. I have self reported this violation, and offered the following explanation in my request for reinstatement." A true and correct copy of the letter dated February 28, 2011, is attached as Exhibit B.

g. In the same letter dated February 28, 2011, Exhibit B, Respondent provided a list of eight (8) Minnesota projects that he signed and certified the plans for from July 1, 2011 until February 1, 2011.

- Trachte Job #11020
- Trachte Job #11130
- Trachte Job #11190
- Trachte Job #11208
- Trachte Job #11213
- Trachte Job #11221
- Trachte Job #11222
- Trachte Job #11246

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326.02, subdivisions 1 and 3 (2010) and are sufficient grounds for the action specified below. Specifically, the Committee's position is that the Respondent held himself out as a Professional Engineer and practiced engineering during the lapse of his Professional Engineer's license, from July 1, 2010 until February 1, 2011.

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

- a. Reprimand. Respondent is reprimanded for the foregoing conduct.
- b. Civil Penalty. Respondent shall pay to the Board a civil penalty of

Three Thousand Dollars (\$3,000.00). Respondent shall submit a civil penalty of Three Thousand Dollars (\$3,000.00) by cashier's check or money order to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.

5. Additional Discipline for Violations of Order. If Respondent violates this Stipulation and Order, the Board may impose additional discipline pursuant to the following procedure:

- a. The Committee shall schedule a hearing before the Board. At least thirty days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Within fourteen days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

- b. At the hearing before the Board, the Complaint Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The Complaint Committee may submit affidavits responding to any affidavits submitted by Respondent. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

6. Waiver of Respondent's Rights. For the purpose of this Stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2010), and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

7. Collection. In accordance with Minnesota Statutes section 16D.17 (2010), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

8. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any

purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2010), Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation and the record.

9. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

10. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

11. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2010). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter.

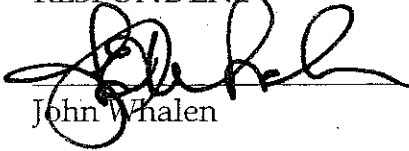
A summary will also be sent to the national discipline data bank pertaining to the practice of engineering.

12. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

13. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.

14. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

  
John Whalen

Dated: JUNE 1, 2011

COMPLAINT COMMITTEE

By:   
Lisa Hanni, LS  
Committee Chair

Dated: Aug 4, 2011

**ORDER**

Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings herein, all terms of the Stipulation are approved and hereby issued as an Order of this Board on this the 4 day of AUGUST, 2011.

MINNESOTA BOARD OF  
ARCHITECTURE, ENGINEERING,  
LAND SURVEYING, LANDSCAPE  
ARCHITECTURE, GEOSCIENCE AND  
INTERIOR DESIGN

By: 

~~William D. Arockiasamy, PE  
Board Chair~~

ROBERT SEEGER, AR  
TREASURER





Your Partner for Building & Shelter Solutions

January 25, 2011

Minnesota Board of AELSAGID  
Attn: Lynette Dufresne  
85 E. 7<sup>th</sup> Place, Suite 160  
St. Paul, MN 55101

RECEIVED  
JAN 31 2011

RE: Professional Engineer License reinstatement

Dear Ms. Dufresne:

Please find enclosed an Application for License/Certificate Reinstatement through 6/30/2012 as well as a check for \$192.00. Unfortunately, I am unable to sign the Affidavit for Reinstatement because I have provided Professional Engineering Services since the time my license lapsed.

The lapse of my license was inadvertent, and the work I performed was done with the honest belief that my license was current. I take full responsibility for this lapse, and am offering the following only so that the Board will have a better understanding of what has happened. It appears that I had a complete breakdown in the system I was using to maintain my license renewals. The main reason for the breakdown was my change in employment. I used my electronic calendar on my desktop computer to maintain my license renewals. I had it set up to give advanced warning of a license renewal. In my attempt to use my smart phone to transfer my electronic calendar data from my desktop computer at my old employer to my new employer some of the calendar information got changed. At the time of the transfer, I was concerned that this might happen, so I reviewed the transferred information. Unfortunately, I didn't catch that there was an error in the renewal date for my Minnesota license. My back-up system for renewals was the reminder card that was sent out by the Board. It was my belief that all of my renewals were being sent to my home address, but I have recently learned that my Minnesota renewal was sent to my former employer. This will be corrected as soon as my license is reinstated. I intend to take two additional steps to insure that this never happens again. First, I will set up a spread sheet with all of my renewal dates. This document will be electronically shared with the individual responsible for mailing all engineering documents to customers. Prior to stamping any documents, I will verify that my license is current, and the individual mailing the documents out will also verify that my license is current.

Trachte, Inc. \* 422 N. Burr Oak Ave. \* Oregon, WI 53575-3102  
(608) 835-5707 fax (608) 835-7279 \* [www.trachteusa.com](http://www.trachteusa.com)

*More than 90 years of metal building experience*

**EXHIBIT A**

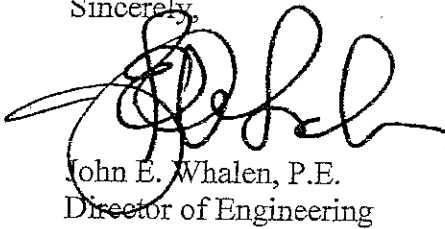
Again, I am embarrassed and truly sorry for this oversight. I pride myself as being detailed in my engineering work and this situation is not characteristic of my work. I intend to cooperate fully with the Board to resolve this issue as quickly as possible.

I would request that all correspondence be sent to my home address:

2064 Lynwood Drive  
Sun Prairie, WI 53590

Should you need any additional information to reinstate my license, please contact me at 608-835-5707 x259.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Whalen", with a large, stylized flourish extending to the left.

John E. Whalen, P.E.  
Director of Engineering

Enclosures:

Minnesota Board of Architecture, Engineering, Land Surveying,  
Landscape Architecture, Geoscience and Interior Design  
85 E. 7<sup>th</sup> Place, Suite 160, St. Paul, MN 55101  
[www.aelslagid.state.mn.us](http://www.aelslagid.state.mn.us)

RECEIVED  
JAN 31 2011

Processed  
2-9-11  
AB

### Application for License/Certificate Reinstatement through 6/30/2012

The licensee or certificate holder is responsible for completing ALL sections of this form. If any information is missing or the form is not signed, the application will be considered incomplete and be returned.

Please be advised, reinstating your license does not preclude the possibility that the Board may initiate an investigation of you for possible violations of Minnesota Statute §§ 326.02-326.15, or Minnesota Rule Chapters 1800 and 1805. Please read the enclosed Tennessee Warning.

#### Personal Information

Name: JOHN E. WHALEN  
Profession: ENGINEER  
License/Certificate #: 41451  
Mailing Address:  Home  Business  
Is this a new address?  Yes  No

Company Name: TRACHTE, INC.  
Address 1: 422 N. BURR OAK  
Address 2: \_\_\_\_\_  
City, State, Zip: OREGON, WI 53575  
Country: USA  
Contact Phone #: 608-835-5707 x259

#### Continuing Education

Requirement: 24 Professional Development Hours earned on or after July 1, 2008, unless you are exempt. Continuing education requirements can be found at [www.aelslagid.state.mn.us/conted.html](http://www.aelslagid.state.mn.us/conted.html).

I am exempt from reporting continuing education for this renewal (select reason below):

- My MN license/certificate was issued on or after July 1, 2008. (Automatic exemption)
- I requested an exemption from the Board and it was granted. (Attach Board approval)

\* Exemption requests must be pre-approved. Renewal will not be processed prior to approval. State of Minnesota Board of AELSLAGID

\* Continuing education cannot be carried over from an exempt period.

I am not exempt from the continuing education requirement.

**Do not call the Board office to request your carry-over hours!**

Total PDH earned 7/1/2008 – 6/30/2010: 16.5  
Carryover from previous renewal: 12  
Total PDH submitted: 28.5

FEB 01 2011  
Rec'd 192<sup>00</sup>  
120<sup>00</sup>: 19  
12<sup>00</sup>: 36  
60<sup>00</sup>: 3

#### Fees and Affidavit

If postmarked on/after 10/1/10: \$192\*

Make checks payable to: MN Board of AELSLAGID  
US Funds Only  
Your canceled check is your receipt.

\* This licensure fee notice contains an electronic licensing surcharge. The Minnesota Office of Enterprise Technology (OET) recently sponsored and the Minnesota Legislature passed legislation requiring a 10% surcharge of no less than \$5 and no more than \$150 on each business, commercial, professional or occupational license. The funding from this surcharge will go to OET, which will establish an electronic licensing system for the state. The surcharge will be in place through June 30, 2015. See Laws of Minnesota 2009, Chapter 101, Article 2, Section 59.

Since your last renewal, have you had a license disciplined, denied, surrendered, suspended or revoked?  
(If yes, provide a statement of explanation.)  Yes  No

I swear or affirm that I have read the foregoing renewal application and that the statements are true and complete.

Signature: [Handwritten Signature] Date: 1/25/2011

The data you furnish on this form will be used by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design to assess your qualifications for renewal of your license and/or certificate. You are not legally required to provide this data; however if you fail to do so, the Board may be unable to renew your license. Information contained on this application is public pursuant to Minnesota Statutes §13.41, Subd. 4

AFFIDAVIT FOR REINSTATEMENT

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

I, \_\_\_\_\_, being duly sworn, do hereby depose and swear that:

1. I have read and will comply with the provisions of Minnesota Statutes §§ 326.02 – 326.15 (2006) and the Rules and Regulations adopted thereunder;
2. I am not now under any disciplinary proceeding or action, pending or otherwise, in any other jurisdiction;
3. I have never been convicted of a felony;
4. I have not represented myself as an architect, professional engineer, land surveyor, landscape architect, professional geologist, professional soil scientist, or certified interior designer, without proper licensure or certification, either verbally or on any printed matter, in the State of Minnesota, nor will I do so until such time as my license or certificate has been reinstated by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design; and
5. I have not performed or offered to perform architectural, professional engineering, land surveying, landscape architectural, professional geological, professional soil scientific, or certified interior designer services, without proper licensure or certification in the State of Minnesota, nor will I do so until such time as my license or certificate has been issued by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design.

\_\_\_\_\_  
Signature of Applicant

SUBSCRIBED and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

MAR -3 2011



Your Partner for Building & Shelter Solutions

February 28, 2011

Minnesota Board of AELSAGID  
Attn: Lynette DuFresne  
85 E. 7<sup>th</sup> Place, Suite 160  
St. Paul, MN 55101

RE: File 2011-0065

Dear Ms. Dufresne:

Please accept the following as a response to the allegation that I practiced professional engineering in the state of Minnesota during a lapse in my license from July 1, 2010 until February 1, 2011.

I have self reported this violation, and offered the following explanation in my request for reinstatement.

The lapse of my license was inadvertent, and the work I performed was done with the honest belief that my license was current. I take full responsibility for this lapse, and am offering the following only so that the Board will have a better understanding of what has happened. It appears that I had a complete breakdown in the system I was using to maintain my license renewals. The main reason for the breakdown was my change in employment. I used my electronic calendar on my desktop computer to maintain my license renewals. I had it set up to give advanced warning of a license renewal. In my attempt to use my smart phone to transfer my electronic calendar data from my desktop computer at my old employer to my new employer some of the calendar information got changed. At the time of the transfer, I was concerned that this might happen, so I reviewed the transferred information. Unfortunately, I didn't catch that there was an error in the renewal date for my Minnesota license. My back-up system for renewals was the reminder card that was sent out by the Board. It was my belief that all of my renewals were being sent to my home address, but I have recently learned that my Minnesota renewal was sent to my former employer. This will be corrected as soon as my license is reinstated. I have taken two additional steps to insure that this never happens again. First, I have set up a spread sheet with all of my renewal dates.

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(608) 835-5707 fax (608) 835-7279 \* [www.trachteusa.com](http://www.trachteusa.com)

*More than 90 years of metal building experience*

**EXHIBIT B**

This document has been electronically shared with the individual responsible for mailing all engineering documents to customers. Prior to stamping any documents, I verify that my license is current and record in a database of sealed jobs that this verification has taken place. The individual mailing the documents out also verifies that my license is current.

Below is a list of all Minnesota projects in which I signed and certified plans from July 1, 2011 until February 1, 2011.

Trachte Job #11020  
August 13, 2010  
Cooperative Mineral Resources  
c/o Barr Engineering  
14'-0" x 30'-0" 10'-6"  
Emily, MN

Trachte Job #11130  
August 24, 2010  
Knutson Construction Services  
Ammonia Production Building  
15'-0" x 28'-0" 10'-6"  
Morris, MN

Trachte Job #11190  
July 27, 2010  
Consulting Engineers Group  
Ridge Wind Substation  
13'-0" x 21'-0" 10'-6"  
Woodstock, MN

Trachte Job #11208  
August 25, 2010  
Minnesota Power - Genco  
MCC Enclosure  
Boswell Energy Center  
15'-0" x 40'-0" 10'-6"  
Cohasset, MN

Trachte Job #11213  
August 19, 2010  
Knutson Const. Services  
U of M Ammonia Project  
7'-2" x 7'-2" 8'-6"  
Morris, MN

Trachte Job #11221  
October 8, 2010  
Steel Structures  
Hawkins Gate House  
10'-0" x 20'-0" 8'-6"  
St. Paul, MN

Trachte Job #11222  
November 3, 2010  
Consulting Engineers Group  
Community Wind North – Control House  
14'-0" x 30'-0" 10'-6"  
Lake Benton, MN

Trachte Job #11246  
January 13, 2011  
L & S Electric, Inc.  
Main Substation Modifications – Le Sueur  
14'-0" x 14'-0" 10'-6"  
Le Sueur, MN

Trachte, Inc. is a manufacture of modular prefabricated buildings and structures. Plans for these buildings are approved by the Interstate Industrialized Buildings Commission. As an employee of Trachte, Inc. the only engineering services I provide are for the structures we design and manufacture. Therefore there are no external correspondences relating to these projects. Trachte, Inc. does not charge an engineering fee for the services that I provide. Therefore, there are no invoices for engineering services issued under my signature. Upon your request, a copy of an invoice relating to the projects listed could be provided to demonstrate this fact.

Trachte, Inc. does not advertise professional engineering services or solicit professional engineering services. Therefore these materials are not available. Please refer to our website [www.trachteusa.com](http://www.trachteusa.com) for advertisement and solicitation material relating to our modular prefabricated buildings and structures. This letter is written our standard company letterhead. Enclosed please find one of my business cards. You will notice that I use the professional engineer designation. I am currently licensed in multiple states so I feel this designation is appropriate. To my knowledge, none of these business cards were distributed in Minnesota between July 1, 2010 and February 1, 2011.

I did not author any professional articles between July 1, 2010 and February 1, 2011.

It is my hope that it is determined that my actions were not intentional and there was no intent to misrepresent myself as a professional engineer in the state of Minnesota will my license was not current. I deeply regret that this has happened, and regret that my actions have inconvenienced the Board.

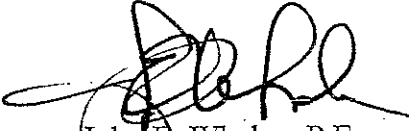
Page 4 of 4  
February 28, 2011

File No. 2011-0065

I am embarrassed and truly sorry for this oversight. I pride myself as being detailed in my engineering work and this situation is not characteristic of my work. I intend to cooperate fully with the Board to resolve this issue as quickly as possible.

Should you need any additional information or should clarification be required to resolve this complaint, please contact me at 608-835-5707 x259.

Sincerely,



John E. Whalen, P.E.  
Director of Engineering

Enclosures:



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**Pre-assembled, design  
flexible steel buildings  
for control and automation**

**John E. Whalen, P.E.**

*Director of Engineering*

422 N. Burr Oak Ave., Oregon WI 53575

Phone: 608-835-5707 Ext. 259

Fax: 608-835-7279

JohnW@TrachteUSA.com

www.TrachteUSA.com

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