

**BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA**

IN THE MATTER OF:

**LEMAR INDUSTRIES CORP.
1425 E. Aurora Ave.
Des Moines, Iowa**

RESPONDENT

CASE NO. 96-25

**CEASE AND DESIST ORDER
BY STIPULATION**

The Iowa Engineering and Land Surveying Examining Board (Board) and LeMar Industries (Respondent) stipulate to the following Cease and Desist Order pursuant to Iowa Code § 542B.24 (1997):

1. Respondent is an Iowa corporation.
2. Respondent custom designs, fabricates and constructs grain conveyor systems for agricultural clients in Iowa and across the country. The conveyor systems typically involve bridge-type trusses with spans as long as 184 feet on two or more towers as high as 165 feet.
3. While many of Respondent's designs are similar, the conveyor systems are installed in a variety of locations and prior engineering calculations have all been tied to site-specific projects.
4. Respondent does not currently have a standard load table.
5. Respondent does retain professional engineers (or works with a professional engineer retained by the owner) to design foundations and, at times, hires a professional engineer to prepare engineering calculations (loads/reactions)

APR 09 1997

for custom projects, including trusses and vertical supports. Respondent has not secured engineering calculations for all projects and, at times, adapts the engineered design for on one site-specific project for another site-specific project.

6. Respondent is not owned or managed by and does not regularly employ a professional engineer licensed under Iowa Code chapter 542B (1997).

7. The requirements for the practice of professional engineering by firms is described in Board Rule 193C IAC 4.7, as follows:

A firm shall not directly or by implication offer professional engineering services to the public unless it is owned or managed by, or regularly employs, one or more licensed professional engineers who directly control and personally supervise all professional engineering work performed by the firm. . . . A firm may not satisfy these requirements by hiring a licensed professional engineer. . . on an as-needed, occasional, or consulting basis, whether an employee or independent contractor.

8. The Board is authorized by Iowa Code § 542B.24 to seek an injunction in district court enjoining any person who is not legally authorized to practice professional engineering in Iowa from engaging in such practice or advertising the availability of such services to the public. The Board is also authorized to impose a civil penalty upon nonlicensees for the same violations, pursuant to Iowa Code section 542B.27 (1997).

9. It appears to the Board that the Respondent has offered professional engineering services to the public in Iowa involving safeguarding life, health and property. The Board is concerned that non-engineers are adapting professional engineering calculations from one project to another project which may vary in

topography, soil, wind loads, snow loads, materials, span lengths, tower heights, and other site-specific features.

10. The Board and Respondent have agreed to informally resolve the pending dispute as it relates to future practices and the action currently pending for civil penalties. No civil penalties shall be assessed at this time given Respondent's cooperation in this investigation. In the event this Stipulation is violated, it may be used as evidence against the party violating the agreement, although all parties understand that violations must be enforced by filing a petition in district court seeking an injunction, or imposing civil penalties through administrative procedures.

11. Respondent has a right to a hearing on the Notice of Intent to Impose Civil Penalty, but waives its right to hearing and all attendant rights by freely and voluntarily entering into this Agreement.

12. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

13. Respondent agrees it will not in the future perform or offer to perform professional engineering services in Iowa unless it regularly employs, on other than an as-needed, occasional, or consulting basis, one or more professional engineers licensed in Iowa who directly control and personally supervise all professional engineering work performed by Respondent, its successors or assigns. In particular, Respondent will not provide custom design services or install conveyor

systems relying on engineering calculations completed for prior site-specific projects. Respondent will utilize the services of a professional engineer licensed in Iowa for engineering calculations on all Iowa projects, whether on staff or specifically retained on a per-project basis. Alternatively, Respondent may retain a professional engineer to create a standard load table, thereby "pre-engineering" projects which fall within applicable design criteria.

14. This Agreement is subject to approval of the Board. If the Board fails to approve this Agreement, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Agreement, it shall fully dispose of all issues in this case.

15. This Stipulation is a public record pursuant to Iowa Code chapter 22.

AGREED AND ACCEPTED:

**The Iowa Engineering and Land
Surveying Examining Board**


By: **Kenneth Brewer, Chair**

4-18-97
Date

LeMar Industries Corp.


By: **Robert Martin, President**

4-8-97
Date