

LAW ENFORCEMENT COMMITTEE
Meeting Summary
August 11, 2011

Members Present:

Carl Tappert, Chair
Ken Hoffine
Grant Davis
Sue Newstetter (excused absence)

Staff Present:

Mari Lopez
Jenn Gilbert
James R. (JR) Wilkinson
Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG
Charles Rowles, PE

A meeting of the Law Enforcement Committee (LEC) was called to order at 8:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Informal Conferences

2687

The LEC held a teleconference with the respondent, a PE, to discuss a Notice of Intent to Assess a \$1,000 Civil Penalty (NOI) for recreating records of his continuing professional development (CPD) activities rather than maintaining those records in violation of Oregon Administrative Rule (OAR) 820-010-0635(5) and OAR 820-020-0015(7). The respondent signed his renewal form certifying he completed the required Professional Development Hour (PDH) units in compliance with CPD requirements. When the respondent was requested to participate in the CPD audit, he failed to respond to the first notice. The respondent responded to the second request, but failed to submit supporting documentation. Once his file was transferred to the LEC, the respondent subsequently submitted records when requested to do so by a Board investigator.

The respondent explained that he was out of the state when the first letter arrived and had just returned when he received the second letter. He promptly responded to the inquiry by providing the information with an apology for the delay. When he was notified that his documentation was insufficient, he wanted clarification on the supporting documentation. He noted he had been audited before and had provided similar information, which was accepted, but this time it was not accepted, so he contacted the Board.

The respondent had not heard back until he received a respond to allegations letter from a Board investigator. Once he was able to discuss the matter with the investigator, the respondent submitted reconstructed records to demonstrate compliance with CPD requirements. However, he asserted that he had maintained his journal records, but was lacking proof of attendance because many of the in-house training sessions did not result in a certificate. Since this has happened, however, his company has begun to use sign-in sheets to ensure that documentation is generated. He reiterated that he submitted his journal records when requested, which were not accepted, and was at a loss thereafter to understand what was needed during the audit in the form of supporting documentation. He also informed the LEC that he has submitted a retirement form to relinquish his Oregon registration. Upon consideration, **the LEC recommended the Board approve withdrawing the NOI.**

2666

The LEC held a teleconference with the respondent, a PE, to discuss a Notice of Intent to Notice to Suspend Registration and to Assess a Civil Penalty of \$5,000 (NOI) for failing to cooperate with the Board regarding the audit of his CPD activities in violation of OAR 820-010-0605(1), OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and Oregon Revised Statute (ORS) 672.200(4). The respondent signed his renewal form certifying he completed the required PDH units in compliance with CPD requirements. When the respondent was requested to participate in the CPD audit, he failed to respond to three notices, including one that required his signed, return receipt. Furthermore, the respond to allegations letter sent by the Board investigator was returned as undeliverable. Once a corrected address was found and the letter resent, the respondent again failed to respond.

The respondent informed the LEC that he obtained the PDH units, but could not document what he had done during that period. He stated he retired from professional practice and moved into a small apartment. As a result, his records were packed and “buried.” He also informed the LEC that his employer is being held hostage in Libya and it consumes his time to negotiate his employer’s release. Given these factors, he offered no excuse for not being able to submit the records. After the LEC discussed with him the violations in the NOI, the respondent appealed that he is in a difficult position because he has no income other than social security. The respondent regretted that in the circumstances he would relinquish his registration. Upon consideration of retirement without reinstatement and a waiver of the penalties, **the LEC recommended that the Board approve the settlement agreement.**

2645

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$2,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1), OAR 820-020-0015(7), and ORS 672.200(4). The respondent was sent a letter informing him of an audit of the PDH units he claimed on his renewal form and when the respondent responded he submitted a list of the PDH units without providing documentation. After he failed to respond to a request for the supporting documentation, a law enforcement case was opened for failure to provide documentation of compliance with CPD requirements.

The respondent began by noting his written response wherein he stated he had fulfilled the PDH units, but had not documented his efforts. He admitted his documentation does not meet OAR requirements. He also stated he had personal health problems during the audit period and these extenuating circumstances were the primary factor for not keeping records straight. Regarding the sanction, he noted it was extreme and it got his attention, but he wanted to resolve the situation. He reiterated that he completed his CPD efforts and supports his staffs in their CPD trainings. His only admission was that of poor record keeping. Upon consideration, the LEC would waive the suspension and reduce the civil penalty to \$250 for failure to maintain CPD records. **The LEC recommended that the Board approve the settlement agreement.**

2663

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5) and OAR 820-020-0015(7). Scoggins responded to the audit by stating he was unable to provide PDH documentation showing compliance with CPD requirements for the audit period.

Scoggins expressed concern that after 45 years of professional practice he did not want to leave such a black mark on his professional career. He moved to Oregon from California to retire and received his Oregon registration a few years later. He admitted he was unfamiliar with Oregon rules, but believed he met the CPD requirements. He speculated his CPD documentation was lost during the move. To demonstrate compliance, he prepared a narrative of his CPD efforts to explain his recollection of what training he had obtained. He asked for LEC leniency and declared that he had not done any engineering since 2008, which at the time were small, non-constructed efforts like flood plain certificates. He was willing to permanently retire his registration in lieu of the civil penalty. Upon consideration, the LEC would waive the civil penalty in lieu of permanent retirement without reinstatement of his Oregon registration. **The LEC recommended that the Board approve the Scoggins settlement agreement.**

2681

The LEC met in an informal conference with the respondent, a PLS, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to change his address in violation of OAR 820-010-0605(1). An audit letter of the respondent's CPD activities was sent to the address he provided the Board, but he failed to respond. A second letter was also unanswered, so a third letter was sent to his employer who returned the letter. After further investigation, another address was found and the respondent was able to respond with the appropriate CPD documentation. However, his address had not been changed within 30-days as required.

The respondent admitted he did not know of the 30-day requirement to notify the Board of any address change.¹ As a registrant, he should know the law. However, he had rented his house and the renter collected the letters and had not forwarded them. He did not dispute the violation.

1. OAR 820-010-0605, Address Changes; Service of Notice; and Name Changes

(1) It is the registrant's responsibility to inform the Board in writing, within 30-days, of any address change, including any change of an e-mail address. Notice by registered or certified mail to the registrant's last address on file with the Board shall constitute service; (2) It is the registrant's responsibility to inform the Board in writing, within 30-days, of any name change. Documentation showing current legal name must be submitted.

The respondent stated that he works for Bonneville Power Administration as a contract surveyor and is prohibited by Federal regulations to use his registration. As a result, he lost sight of staying in compliance with the CPD rules and, in the future, will make every effort to remain compliant. He reviewed the civil penalty mitigation factors available in the OAR and noted that his was an inadvertent mistake. Upon consideration of his failure to change his address, the LEC assessed a \$100 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2660

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$3,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7), OAR 820-020-0025(1), and ORS 672.200(4). When the respondent was sent a letter informing him of an audit of the PDH units he claimed on his renewal form, he replied with a list of his PDH units. However, the amount of PDH units claimed did not conform to the Board's requirements, such as the limitation that no more than 6 PDH units may be claimed for self-study.

After receiving the audit letter and reviewing the requirements, the respondent stated he was mistaken in his belief that he could use self-study to meet CPD requirements. Regardless, he reported what he had completed. In response to a question about whether he would retire his registration, he explained he does not engage in design work, but helps clients prepare permit applications and documentation. For example, air quality permits. The respondent interpreted he would not need his registration to offer such services.

Without knowing the specifics of his activities, however, the LEC commented that he could be in violation because the definition of engineering is not exclusive to only design work. ORS 672.005(1)(b) also defines engineering as "ensuring compliance with specifications and design," which work could include meeting regulatory requirements. Afterwards, the respondent remarked it would be better to remain a registrant. He also informed the LEC that he has had no complaints from clients or other engineers. Lastly, and due to economic times, he offered to accept more suspension time in exchange for a reduced civil penalty. Upon consideration of his failure to comply with CPD requirements, the LEC offered a \$500 civil penalty and a 90-day suspension. **The LEC recommended that the Board approve the Bisonett settlement agreement.**

2648

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR-010-0635(1),(5) and OAR 820-020-0015(7). When the respondent was sent a letter informing him of an audit of the PDH units he claimed on his renewal form, he replied that he was unable to provide the documentation due to his overseas assignment.

The respondent explained that he has been working in Saudi Arabia as an engineer since October 2009. Because the audit letters were sent to Japan, his wife informed him of the audit. However, he could not at the time send the CPD documentation. He explained further that he was very

busy with making arrangements prior to leaving because he was married the month before his assignment began. He packed the records, but was unsuccessful at locating them when he returned to Japan on break. He admitted it was his responsibility to maintain the records. To demonstrate his willingness to comply, he took 30 PDH units in May 2010 in the mistaken belief that it would retroactively apply. He has taken additional on-site training sessions to fulfill his current PDH requirements. Upon consideration of his failure to maintain his records, the LEC offered a \$250 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2665

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$3,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0605(1) and OAR 820-020-0015(8). The respondent failed to respond to two notices regarding an audit of the PDH units he claimed on his renewal form. Once a law enforcement case was opened and another address was discovered, the respondent responded to the allegations by providing CPD documentation that was found to be in compliance. However, his address had not been changed within 30-days as required.

The respondent reviewed his response to the NOI wherein he informed that he shut down his business of 27 years, which occurred just after the first audit letter was sent out. All of their mail was forwarded, but many pieces were not including the Board audit letters. Their effort to notify 37 states regarding registrant address changes worked except for three states including Oregon. He commented that the Board's Web site was difficult to negotiate in terms of notification of the address change. He stated the other two states have settled without penalty.

LEC Chair Tappert reminded him that the issue began as a failure to comply with CPD requirements. The respondent responded that he is now in a small consulting firm and has no interest in renewing his Oregon registration. He would prefer not to be suspended because he would have to report it to other states; however, he has no intention of renewing in December. The LEC informed him that if he did not want to renew he should retire his registration rather than being delinquent. The Board posted a Retirement Form on the Web site, which registrants should submit to properly retire their registration. Upon consideration of his failure to change his address, he would be assessed a \$100 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2667

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$4,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and ORS 672.200(4). The respondent was sent two audit letters. A third letter was sent by return, certified receipt, which he signed. However, he failed to respond. Once a law enforcement case was opened, the respondent responded that he had not acquired any PDH units during the audit period and does not have the records.

The respondent admitted he had not kept a log of his PDH activities. He informed the LEC that he is a lead estimator and project manager for Central Oregon projects and has found that CPD activities are related to civil engineering and not to his field of construction, for example, estimating, earthwork, and GPS systems. He did not retain documentation of his CPD activities. In response to a question about whether he had completed CPD courses, the respondent stated he had taken CPD courses germane to his specialty, but had been remiss in keeping the records. He continued that he was unsure about what kinds of courses are applicable and therefore defaulted to his courses as not acceptable. LEC members responded that he should have documented those efforts and submitted them for the audit and allowed the Board to review the evidence. Upon consideration, the respondent would admit to failing to cooperate with the Board and to meeting CPD requirements and the LEC would impose a \$1,000 civil penalty and suspend his registration for 90-days. **The LEC recommended that the Board approve the settlement agreement.**

2683

The LEC met in an informal conference with the respondent, a PLS, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$4,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and ORS 672.200(4). The respondent failed to respond to two letters that the Board sent him in regards to an audit of his PDH units. In his response to the third letter, the respondent wrote he was unable to locate any documentation of his CPD efforts other than his employment and professional practice. When he responded to an investigator, the respondent stated *“non-compliance is somewhat intentional because I do not agree with the underlying premise that it is necessary to demonstrate competency in any way other than engaging in the practice of land surveying within the hopefully expanding limits of my abilities.”*

The respondent currently resides in Washington and has been a surveyor for over 40 years. He has not practiced land surveying in Oregon for more than ten years. His Oregon registration expired and he does not want the burden of CPD compliance. He offered to not renew his registration, which should close the investigation with no further action. He disagreed with the statement in OAR 820-010-0635 that professional development demonstrates a continuing level of competency. The strict application of the rule overshadows real work experience. This is why he disagreed with the requirement. He also was aware that Washington State has requirements for a PLS to obtain CPD requirements. However, he has not been audited, but offered the impression that they are more lenient. He stated he did not read the CPD rules because he does not practice in Oregon. He clarified that his experience is more important than continuing education.

The respondent then asserted by this rule that a person who just passed the professional examination and has continuing education is qualified to practice and that a person who has thirty years of work experience without continuing education is not qualified to practice. He admitted that he has attended meetings and seminars, but has not kept records. It was pointed out, however, that he submitted a renewal form that is on hold because of the investigation. After discussion about his failure to meet the requirements of an Oregon registration, the LEC offered a \$500 civil penalty and retirement of his registration without reinstatement. **The LEC recommended that the Board approve the settlement agreement.**

2669

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$4,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and ORS 672.200(4). After not responding to three audit letters, the respondent responded to an investigator by telephone to state he was going to respond to the allegations. However, OSBEELS did not receive any letters or documentation from him. Three months later the respondent phoned OSBEELS and advised he wanted to check in and to say that he is gathering his PDH records and will respond shortly. However, OSBEELS received no response other than to the NOI.

The respondent began by noting that he paid his renewal fees and was audited. He admitted he should have responded over a year ago to keep it from getting serious. He stated he was not worried about the audit because he had taken the classes, but it took him a long time to gather the records because they were not easily accessible in his filing system. He offered no excuse for not responding more promptly given that he had an excess of PDH units. He is registered in several states and he did not understand the serious nature of the audit. He denied the allegations other than failing to cooperate with the Board by not responding to the audit letters. Upon consideration that he submitted compliant CPD documentation, the LEC offered a \$250 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2592

The LEC met in an informal conference with the respondent, a PE and PLS (retired), and his attorney Aaron Hessel to discuss a Notice to Assess a Civil Penalty of \$4,000 (NOI) for use of the PE title without registration in violation of OAR 820-010-0520, OAR 820-010-0720, OAR 820-020-0025(1), ORS 672.007(1)(a) and (c), ORS 672.020(1), ORS 672.045(1),(2), and ORS 672.200(4). The respondent gave a sworn deposition as part of a civil proceeding in which he stated he was a registered engineer in Oregon. However, his professional engineer registration was delinquent at the time. The statutory definition of the practice of engineering includes providing testimony. The use of the PE title is defined in ORS 672.007 as the practice of engineering. As a result, the respondent engaged in the practice of engineering.

Hessel noted that the respondent has been a professional engineer for 47 years and has had no past disciplinary actions. He continued that the allegations stem from actions by the respondent that were not meant to deceive the Department of Justice (DOJ), the Board, or the judge and jury. In addition, there was no damage or injury resulting from his inadvertent mistake. In response to a question about whether he changed the names of his businesses that also show the PE title, which were found during the investigation, he replied they were changed. However, the respondent stated he called the Secretary of State, Business Registry, and was informed that he could only change the names on-line. The respondent also wrote to retire the names, but Hessel added that the limited liability corporation name has been difficult to change because it is active. There has been on-going confusion in working with the Business Registry to get the names changed.

Why retire his engineering registration? The respondent replied that he does not do any engineering work. He is a building and construction consultant who performs “constructability reviews.” He reviews design plans and offers an opinion about whether it can be constructed, or

how it can be constructed. LEC Chair Tappert reminded Place that this line of work gets “dangerously” close to the professional practice of engineering. AAG Tucker-Davis emphasized that the respondent should consult with his attorney about the potential for practicing engineering when he conducts his review. His review work might meet the definition of engineering and create a violation. Hessel clarified that it is a review of schedule, materials, workers, and other non-design work.

Regarding the specifics of the case, the respondent commented that the process began when a firm filed a claim with the Oregon Department of Transportation (ODOT). He was hired while an active registrant and he completed his work. Sometime later, however, the DOJ wanted to take his deposition, which occurred after he had retired his registration. He added the case went to trial and while he was on the stand he testified that he was in retired status. The judge ruled that he was not qualified as an expert witness and dismissed him. He never testified. The respondent asserted the DOJ had to file the complaint to close the loop. He admitted to using the title in his facsimile, but there was no intent to deceive. Hessel clarified the respondent should have stated during the deposition that he was in retired status. He insisted further that the respondent used the PE title to only describe his education and experience. It was an inadvertent mistake. Upon consideration, the respondent would acknowledge the unintentional violations and would change his business names by the October Board meeting and the LEC would abate the civil penalty as long as there are no future violations. The LEC also suggested that the respondent reactivate his registration in order to avoid any future problems. **The LEC recommended that the Board approve the settlement agreement.**

2675

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$5,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and ORS 672.200(4). The respondent was sent two audit letters. A third letter was sent by return, certified receipt, which he signed. However, he failed to respond to any audit correspondence. Once a law enforcement case was opened, the respondent failed to respond to a Board investigator.

The respondent began by reviewing a letter he submitted the day prior to the conference that explains his situation. The respondent recounted that he had a friend who moved his business to Oregon and he became registered for that project, but the project never materialized. He stated he completed his CPD efforts, but he downsized his office and did not keep the records for the audit period. He is letting go of all of his out-of-state registrations to concentrate on his California business. After asking for a grace period to complete the required PDH units, he also noted that his wife was very ill last year and he was distracted from his business. Upon consideration, the respondent would acknowledge that he failed to cooperate with the Board and CPD requirements and would retire his registration without reinstatement and would be assessed a \$500 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2671

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to cooperate with the Board regarding an audit of his

CPD activities in violation of OAR 820-010-0635(5) and OAR 820-020-0015(8). The respondent failed to respond to the first two audit letters. When the respondent responded to the third letter, he failed to provide documentation of the PDH units claimed. In response to a Board investigator, the respondent provided the documentation and was found in compliance. However, he failed to respond to Board requests during the audit.

The respondent explained that he was working for himself for a number of years and recently accepted a full-time position. He placed his records into storage and they were inaccessible. He also submitted the documentation the same way for a previous audit and did not understand what was required until he spoke to an investigator. He offered no excuse for his delay in responding and wanted to settle the matter. Upon consideration that he failed to respond to the audit, the respondent would be assessed a civil penalty of \$250. **The LEC recommended that the Board approve the settlement agreement.**

2638

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to cooperate with the Board regarding an audit of her CPD activities in violation of OAR 820-010-0635(5) and OAR 820-020-0015(7),(8). The respondent failed to respond to the first two audit letters. When the respondent responded to the third letter, she failed to provide documentation of the PDH units claimed. In response to a Board investigator, the respondent provided the documentation and was found in compliance. However, she failed to respond to Board requests during the audit.

The respondent began by stating she submitted the CPD form, but had not realized what supporting documentation was needed. As she was putting together her documentation, she found her records were lacking. In the midst of preparing her response, her husband unexpectedly died. She subsequently was unable to complete the documentation until a later date. She added that during this period she stayed in communication with the Board investigator due to requests for extensions to reply. She admitted to receiving the first two audit letters and could offer no excuses for not responding earlier. Regarding the proposed civil penalty, she noted the financial difficulties from her husband's passing and requested that the Board consider her situation. Upon consideration that she failed to respond to the audit, the respondent would be assessed a \$250 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2657

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$4,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), and ORS 672.200(4). The respondent was sent two audit letters, but failed to respond. When the respondent responded to the third letter, he wrote, "*In regards to continuing professional development or CPD, I have frankly never done anything about it, and after 55 years of working in engineering, I do not plan to start now.*" Thereafter, a law enforcement case was opened. The respondent responded to a Board investigator that he failed to obtain the required PDH units for the audit period.

The respondent noted that he did not disagree with the NOI conclusions, but would offer another opinion. LEC Chair Tappert reminded the respondent that Board rules require an Oregon registrant to maintain certain standards, including CPD, and there were outstanding violations that need to be addressed. He observed that the respondent is at the point in his career where it appears he is ready to retire his registration. The respondent replied that he is 77 years old and has been engineering for 55 years. He was in charge of designing and building bridges and has accumulated twelve licenses. All are inactive except for Washington and California. Now that continuing education has become a requirement in Oregon and not in California and Washington, he signed the form believing that all of his extracurricular activities met the requirements. He informed the LEC of examples of the various activities he engaged, but added that he was unsure if they would apply. He also stated that he is not willing to retire because he is in demand as a consultant and enjoys working. The last Oregon job he worked was in 1997 and it was a small job, so he anticipates that he would not have the contacts here to further develop projects. He wants to focus on California. Upon consideration of his acknowledgement of failing to cooperate with the Board, he would retire his registration without reinstatement and be assessed a \$1,000 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2679

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$3,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), and ORS 672.200(4). The respondent failed to respond to the first audit letter. In response to the second audit letter, the respondent submitted a list of his PDH units, but failed to provide supporting documentation. The respondent then failed to respond to a third audit letter, so a law enforcement case was opened. Rather than writing a response to the Board investigator, the respondent contacted OSBEELS and afterward failed to submit a written response. Once the NOI was issued, the respondent provided documentation of his CPD activities.

The respondent reviewed his correspondence to the LEC that was attached to his informal conference request. He admitted he should have been in contact sooner and kept better PDH records. His company offers in-house conferences to reduce costs. He kept his calendar current, but the company is now requiring sign-in sheets and distribution of certificates, which had not been done before. He does not practice in Oregon, but had pursued projects that did not materialize. He also reviewed the rules regarding CPD and has a better understanding of what is required. In addition, he has been in business for 51 years and the last year has been difficult. He is registered in ten states and each one is different. He relied on conferences for PDH units, but travel is difficult in the current economic climate. Upon consideration of his acknowledgement of failing to cooperate with the audit, the LEC would assess a \$250 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2674

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Assess a Civil Penalty of \$1,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(5) and OAR 820-020-0015(7),(8). The respondent failed to respond to the first audit letter. In response to the second audit letter, the respondent

wrote he was practicing in Florida and was trying to locate his archives, but he nevertheless failed to provide PDH documentation. Because the respondent failed to respond to the audit, a law enforcement case was opened. When he responded to a Board investigator, the respondent provided documentation found in compliance.

The respondent did not dispute the charges in the NOI. He admitted he was tardy in responding to the Board. He stated he is a supporter of continuing education. He observed that Florida has CPD requirements of 8 PDH units biennially as compared to Oregon's 30 PDH units. He has been employed as an engineer in Florida since 2005 and has met their requirements. He also was hired by a new firm after arriving in Florida and during the change the records were misplaced. Upon consideration of his acknowledgement of failing to cooperate with the audit, the LEC would assess a \$250 civil penalty. **The LEC recommended that the Board approve the settlement agreement.**

2672

The LEC met in an informal conference with the respondent, a PLS, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$5,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0605, OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0025(1), and ORS 672.200(4). The respondent was sent two audit letters, but he failed to respond. A third letter sent to his employer resulted in a response that he was no longer with the firm. A fourth letter was sent to a found home address by certified, return receipt, which the respondent signed. However, he did not respond to the request for documentation. Thereafter, a law enforcement case was opened and the respondent subsequently failed to submit a response to the allegations. Once an investigator was able to speak with the respondent, he admitted he had failed to comply with CPD requirements.

The respondent began by noting that he submitted a response to the NOI that summarizes what happened. He believes CPD is important because technology and market demands are rapidly changing in land surveying. He explained that he started a new firm and was quite busy getting it sustained. At each opportunity to attend a conference, his firm took priority especially during these difficult economic times. The firm grew to the point of hiring field crews, but the economy tanked and everything had to be cut back, including CPD conferences. He stated he ran out of time to get caught-up. He regretted his decisions, but emphasized he was able to meet the current CPD requirements. As a result of the case, he realized the need to set aside both money and time to stay current with CPD. In addition, if he was suspended it would cause hardship for himself and the firm since he is the sole registrant. Upon consideration, the respondent would acknowledge failing to comply with CPD requirements and change of address and the LEC would impose a \$1,100 civil penalty and a 30-day suspension. The LEC highlighted that his failure to respond to the Board was taken seriously and contributed to the suspension. **The LEC recommended that the Board approve the settlement agreement.** After the close of the informal conference, the respondent appeared before the LEC to apologize for the way he handled his affairs. He takes pride in his work and the way he mishandled this matter was not a reflection of how he conducts business.

2680

The LEC held a teleconference with the respondent, a PE, to discuss a Notice to Suspend Registration and to Assess a Civil Penalty of \$4,000 (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of OAR 820-010-0635(1),(5), OAR 820-020-0015(7),(8), OAR 820-020-0045(4), and ORS 672.200(4). The respondent failed to respond to the first audit notice, but responded to the second notice with a list of the PDH units he had obtained. However, he failed to provide documentation of the PDH units claimed for the audit period. As a result, a third letter was sent that he failed to respond. Furthermore, he failed to respond to allegations in a letter sent by the Board investigator. Lastly, the investigation revealed that the respondent had been disciplined by the California Board, but had failed to report it to OSBEELS as required.

The respondent began by reviewing the CPD documentation he submitted in response to the NOI. It was found compliant. He knew his Oregon registration required a more restrictive CPD requirement than other states, so he decided that if he remained compliant with Oregon he would also be compliant in the other states. With the downturn in housing and construction, however, he found he would not renew many of his registrations, including Oregon. He has no need for it and wanted to retire his registration. The LEC also inquired about the California disciplinary action that was not reported. While the respondent denied the allegation, the LEC noted that disciplinary action was taken and he failed to report it.

Upon consideration that he failed to cooperate with the audit, failed to report the California action, and would retire his registration without reinstatement, the LEC would reduce the civil penalty to \$500. The respondent responded he was cooperative with the Board because he had already provided the CPD information. Tappert stated it was only in response to the NOI that he provided the documentation. However, the respondent disagreed stating he would not agree to something that he had not done. Upon further consideration, the LEC withdrew the violation regarding cooperation with the audit. **The LEC recommended that the Board approve the settlement agreement.**

Status Update: The respondent was sent his settlement agreement, but he has not signed it because of some concerns. A copy of his settlement agreement showing his concerns is attached to the case summary for Board discussion and resolution.

Committee Meeting:

2564

The LEC discussed that the complainant alleged that the respondent, a PE, failed to follow accepted engineering standards when he prepared plans for an aircraft hangar. Upon investigation, it was found that the respondent designed plans in response to a number of local authorities who explored cost-saving alternatives to a water-based fire protection system for the hangar, but the City returned to the original foam-based fire protection system. The complainant alleged that no one would reasonably even suggest such an alternative system. Because there were lingering questions about such a decision, the LEC determined on April 8, 2010, to refer the case to a professional reviewer for evaluation. The evaluation was completed by a PE, especially qualified as a fire protection engineer, and his report was provided to the LEC for final disposition of the case.

Tappert recognized that the respondent was in the audience and invited him to respond to questions from the LEC. He was asked a question about the sequence of bidding and design changes and answered by explaining that he was hired by the City of Madras to design a hangar for unfueled aircraft, which are used for dropping fire retardant. He was hired to design the total structure and has 15 years of commercial building design experience. To design the project, he utilized consulting, specialty engineers and the design was at the 70-80% design level when the aircraft owner decided they would not defuel the planes. However, the design was nearly complete and he was at the point to issue bid plans. The decision was made to issue the plans as they were and to subsequently issue a rebid package. Had the initial design criteria been for fueled aircraft, the respondent emphasized, the building would have been at least 2/3 smaller to account for the costs of the foam based system. Other design considerations would have included drains and explosion proof sump pumps, for example.

Nevertheless, the bids came in over-budget and when combined with issues regarding contract matters the City determined to withdraw the request and to issue a rebid. Thereafter, a series of meetings between local decision makers were held to explore if alternatives could be found to match need to budget. The respondent designed alternatives for discussion, but it was still the contractor's responsibility to determine the final fire suppression method, which was required in the original bid request. Tappert asked if it was the group's decision that resulted in the disputed fire design. The respondent affirmed noting that the Alternatives Method and Materials Criteria in the code allowed local jurisdictions to accept the design if they believe it complied. He aided this policy process, but he was not contracted as a fire suppression design engineer and was not responsible for the final design. The general contractor eventually was chosen and they found that only the foam based system was acceptable. The City was set to walk away from the project, but additional money was found to pay for the foam-based system. Once funding was secured, the hangar was constructed with a fully integrated foam system that is state of art.

Tappert noted that the professional reviewer stated the respondent should have determined the water flow. The respondent replied that he tried, but the data was not available. The City does not own the water system. It is owned by a water district and the data was not available. In addition, the fire department had a broken flow meter. For a month and half he asked for the data. Furthermore, the City was extending the water main to the front of the building. As a result, he determined a theoretical flow at the site. Eventually, a flow was determined at a point well prior to the hangar and it was found to be insufficient for the water based system. The water district responded that they could modify their pumps to deliver the required amount of water. The respondent stated the commitment could not be modeled for engineering use. Lastly, the City was 30-days late in issuing the road and water main construction contract. The respondent explained that these complications frustrated determination of water delivery and flow pressure.

The other outstanding professional reviewer comment was that the water based system was inadequate. The respondent replied it was not his design responsibility because it was a bidder design. He noted that the professional reviewer did a good job in the report and was very knowledgeable. However, the respondent disagreed with him about the water flow problem because of the complications. The respondent also observed that the complainant was awarded a subcontract for the hangar. LEC member Grant Davis commented that there is leeway in the codes for local jurisdictions to make a decision. In this instance, it was to explore alternatives.

Furthermore, determination of the water flow was not within the respondent's control. **The LEC recommended that the Board close the case as allegations unfounded.**

2593

The LEC discussed that the complainant, a PE, alleged that the respondent, also a PE, was not competent to design building structures and had plagiarized his drawings and construction notes. The complainant wrote that the respondent designed a three bay, 2,500 sq. ft., pole building for the Oregon Department of Transportation (ODOT). He alleged over a dozen deficiencies on the plans, including no lateral analysis of the main building structure, no snow load analysis, and no analysis of the roof and wall diaphragms. In his response to the allegations, the respondent claimed the submitted documents were preliminary designs not intended for construction or for permitting. The respondent explained that he prepared the preliminary plans based on verbal design criteria given by the local building jurisdiction during a telephone conference call with the general contractor. Since a site address was not available, the information he was given was "generic." He added he was unaware that the contractor had submitted his preliminary plans for permitting. Once the contract had been awarded and construction had started, the respondent visited the site and found that local conditions were not comparable to the design criteria he was given, so he halted work and adjusted his designs. The Board also received a letter from the contractor confirming that the designs were meant to be preliminary, but ODOT required that the plans be sealed and signed and not preliminary. Apparently, ODOT wanted to review the plans prior to permitting. Nevertheless, ODOT released the contractor and the respondent was not retained for the project. The local building official confirmed that a permit was issued on the preliminary design, which was not "great" but buildable. He added, however, that ODOT had a problem with the contractor and the respondent had taken action to repair the negligent and/or incompetent acts of the contractor.

Board investigator McCartt informed the LEC that ODOT would not accept preliminary plans and required that the respondent seal and sign the plans. The LEC found the rules require that final plans be sealed and signed and that preliminary plans be marked as such. As a result, **the LEC determined to issue the respondent a letter of concern regarding plans marked as preliminary**, which should not be sealed and signed.

2594

The LEC discussed that the complainant alleged that the respondent, a PLS, and Director of Surveying Services for a design firm, had failed to give proper notice when a field crew under the respondent's responsible charge entered upon and set monuments on the complainant's property while conducting a survey of an adjoining property. The investigation found that the respondent sealed, signed, and submitted a Property Line Adjustment (PLA) to the Clackamas County Surveyor for filing on behalf of a neighboring property, which shares a common property line with the complainant's property.

The respondent responded to the allegations by noting that the project began under the supervision of another professional land surveyor and prior to his employment with the firm. The respondent assumed that the complainant was notified of survey work being performed since the original field notes indicate that her northwest corner was tied. As he reviewed the previous field work and determined additional field work was needed to resolve the boundary, he sent a crew to the property. Since the project had been ongoing, the respondent continued, he assumed

that notice had been given by the surveyor in charge of the project at its start. Nevertheless, he would accept responsibility for failing to give notice. The investigation also revealed that the respondent was no longer with the design firm and had not updated his contact information with OSBEELS.

The LEC found there was no record of whether notice was provided. The LEC also discussed how long right of entry notice should be “valid” since there is no statutory time limit set for personnel to perform surveying under a notice of entry. On the other hand, it seemed indefensible to have an “open-ended” notice of entry. The LEC discussed that the notice should bound the time for entry. Board Chair Linscheid observed that this is not the first case where a land surveying project was transferred to another surveyor and questions arise about right of entry notice. Upon further review, the LEC declared that a surveyor who takes on a project also assumes the responsibility to confirm that notice was given. In addition, the LEC was concerned about the passage of time for the notice. The LEC determined to issue a Notice of Intent to assess a \$2,000 civil penalty for failure to provide right of entry notice and failure to update address in violation of ORS 672.047 and OAR 820-010-0605(1).

2615

The LEC discussed that the respondent, a Registered Geologist (RG) and Certified Engineering Geologist (CEG), engaged in the unlicensed practice of engineering. The respondent offered through his firm and its Web site to provide his clients professional RG and CEG services with several activities that overlapped practices with a geo-technical engineer. Because of this, the Joint Compliance Committee (JCC), which was established by OSBEELS and the Oregon Board of Geologist Examiners (OSBGE) to discuss cases where there is an overlap in professional practices, had already reviewed a preliminary evaluation of the allegations. The OSBEELS members on the JCC found that the services offered were within the overlap area, but the respondent had used the term “engineering” in the company name without employing a professional engineer. He was in violation of OAR 820-010-0720. The OSBGE members agreed to refer the matter to the LEC for final disposition.

The LEC identified the issue as the use of the name. While the LEC recognized that he is a certified engineering geologist, he cannot lawfully use the term because “engineer” is a protected title. If the name of the respondent’s firm was changed in some way to clearly show “engineering geology”, it would not be an issue because the name is accurate to his profession. The LEC determined further investigation with a report due at the next LEC meeting.

The LEC discussed the following four respondents as individuals who will receive Default Final Orders because they failed to respond to Board inquiries in one manner or another regarding CPD compliance. Board Investigator McCartt informed the LEC that he called each person the day prior to the close of the 21-day response deadline to remind them of the cutoff date. They did not reply. AAG Tucker-Davis emphasized that the respondents did not take advantage of the benefit of appearing before the LEC. As a result, the LEC can issue Default Final Orders set at the noticed sanction level, which typically is at the maximum allowed under statute, or they can set a lower sanction level due to mitigating circumstances. She continued there is a benefit to a respondent when they meet with the LEC and take responsibility for their actions. However, the respondents in the following cases did not respond to their NOI and the LEC reviewed each case to determine the sanction.

2632

The LEC discussed that the respondent, a PE, responded to the allegations regarding CPD compliance with no documentation. Subsequently, the respondent submitted documentation that did not fully respond to the request. Upon consideration that he failed to comply with CPD requirements, the LEC determined to issue a Default Final Order with a civil penalty of \$1,000 and a 90-day suspension.

2668

The LEC discussed that the respondent, a PE, responded to the second audit notice and asked for more time. However, there was a misunderstanding because he did not have the CPDs. He was sent a respond to the allegations letter to which he replied he was not going to renew in Oregon. Upon consideration that he failed to comply with CPD requirements, the LEC determined to issue a Default Final Order with a civil penalty of \$1,000 and a 90-day suspension.

2682

The LEC discussed that the respondent, a PE, has not submitted any qualified CPD documentation. McCartt explained that the respondent communicated through his secretary and submitted CPD records that are work products. He added he told the respondent's secretary that the end result of the investigation might be a suspension and that she should not be held responsible if that becomes the outcome. Thereafter, the respondent called McCartt but hung-up. LEC member Davis commented that the respondent reported 165 PDH units. However, the LEC agreed it was work product. Upon consideration that he failed to cooperate with the audit and investigation, the LEC determined to issue a Default Final Order with a civil penalty of \$3,000 and a 90-day suspension.

2686

The LEC discussed that the respondent, a PE, responded with no supporting documentation. However, the respondent was diligent about subsequent responses, but again lacked qualifying documentation. His submitted records showed only 6.5 qualified PDH units for the audit period. McCartt also informed the LEC of the difficulty of communicating with the respondent. Upon consideration that he failed to cooperate with the audit, but made an effort to show compliance, the LEC determined to issue a Default Final Order with a civil penalty of \$1,000.

New Business:

Preliminary Evaluations: April 2011 exam irregularities

Board Investigator Wilkinson informed the LEC that Matthew Heitstuman and Examinee 1 were tablemates as were Peter Wirtz and Examinee 2. Therefore, the preliminary evaluations should be discussed as pairs because of the data that was created. Wilkinson also clarified that the National Council of Examiners for Engineering and Surveying (NCEES) applied five different statistical models to the April 2011 examinations. The models were employed to identify examinees who may have engaged in unauthorized behavior, including copying or collusion. The analysis began by examining the answer sheets for pairs of examinees seated in proximity to each other and continued when response patterns showed an unusual commonality of answer responses, particularly incorrect answers.

NCEES notified the Board that the examination scores for Heitstuman, Examinee 1, Wirtz, and Examinee 2 would not be released because of exam irregularities. Thereafter, the Board has responsibilities to conduct investigations and to notify NCEES of the results. Wilkinson initiated preliminary evaluations for each examinee so the LEC could determine whether to open investigations or find no evidence supports the allegation. Wilkinson also characterized the statistical models as “heavily suggestive” of copying and/or collusion that the courts have upheld. AAG Tucker-Davis reminded the LEC that the Board’s burden of proof is whether it is more likely than not that copying and/or collusion occurred. To help determine if copying and/or collusion occurred, Wilkinson interviewed the examinees with questions meant to reveal if there was any connection between examinee pairs as far as schools, family, friends, workplace, or other means where they might have an opportunity to become familiar enough to engage in collusion. However, he found no direct connections between the paired individuals.

In response to a question about the NCEES data, Wilkinson noted that Heitstuman and Wirtz had fairly consistent exam scores for both the morning and afternoon sessions. However, both Examinee 1 and Examinee 2 had remarkably lower scores for the afternoon session than they did for the morning session. He explained that during the morning session the examinees were seated as two to a table. For reasons unknown, both pairs of examinees received the same exam booklets with questions in the same order thus increasing the opportunity for exam subversion. For the afternoon session, however, they are seated separately. Furthermore, the afternoon examination is on their chosen discipline. As a result, one would expect that their afternoon examination scores to be fairly consistent with the morning scores. However, both Examinee 1 and Examinee 2 showed much lower afternoon scores while Heitstuman and Wirtz did not.

Wilkinson noted further that proctor irregularity reports were filed against Examinee 1 for his tendency during the examination to be “looking around.” In addition, two of the five NCEES statistical models highlighted the Heitstuman/Examinee 1 pairing. With regards to Wirtz/Examinee 2, there were no proctor irregularity reports filed and only one of the five statistical methods highlighted the pair. In response to a question about exam score differences, Wilkinson pointed out that there was an 11% drop in score for Heitstuman between the morning and afternoon sessions whereas Examinee 1 showed a 20% drop in scores. Meanwhile, Wirtz dropped nearly 2% while Examinee 2 sank 17.5%.

As another comparison between the examinees, there was discussion about the number of questions answered correctly and incorrectly. For example, of the 120 questions on the morning examination, Heitstuman and Examinee 1 had the same responses on 96 questions. They had 72 correct and 24 incorrect, but similar answers. One of the two statistical models found a probability of $1.61E+15$ correlations between the Heitstuman/Examinee 1 exams. Wilkinson compared that to the odds of winning the Oregon lottery at $6.14E+6$. Furthermore, Heitstuman showed work on 48 questions while Examinee 1 showed work on only three questions. Lastly, Examinee 1 showed 24 erasures with 19 matching Heitstuman. However, Heitstuman only had five erasures with 3 matching Examinee 1.

Wirtz and Examinee 2 answered 80 questions with similar answers and among those were 54 correct and 26 incorrect responses. The singular statistical method that highlighted their exams did not generate probability, but stated the pairing had a value of 624, which stood far outside the threshold limit of 573. In addition, Wirtz showed his work on 54 questions while Examinee 2

showed work on only three questions. Wirtz had six erasures with two matching Examinee 2, but Examinee 2 had 18 erasures with nine matching Wirtz. A footnote to the NCEES report also stated that on the last 66 questions Examinee 2 showed work for only one question, which concerned LEC members. Given the evidence that NCEES provided and the results of the preliminary evaluation, Wilkinson conveyed that the evidence suggests that Examinee 1 and Examinee 2 engaged in copying and that Heitstuman and Wirtz were not involved. Wilkinson reminded the LEC they were discussing preliminary evaluations. The next step is to open law enforcement cases and allow them to respond. The LEC determined to open law enforcement cases against Examinee 1 and Examinee 2 for examination subversion. The LEC determined to not open cases against Heitstuman and Wirtz and to authorize NCEES to issue examination scores.

Preliminary Evaluation:

The LEC discussed that the complainant submitted allegations against the respondent, a PLS, regarding concerns about forged or altered survey and deed documents. However, he did not provide any evidence of the allegations. Wilkinson updated the LEC by stating that the complainant's attorney had called and asked that the LEC set aside the complaint so his client can assemble and submit the evidence at a later date. The LEC agreed to set the matter aside.

Preliminary Evaluation:

The LEC discussed that the complainant alleged that the respondent, a PE, advertised on Craigslist for a surveyor, or for someone who would be able to obtain licensure within 8 months of employment. The complainant responded and was hired, but after working two days for 2.5 hours and 8 hours, respectively, the respondent had not paid the complainant. The complainant requested that the Board assist him in getting paid. The LEC determined that the matter is outside the jurisdiction of the Board.

Memorandum Review:

The LEC discussed that Scott Mills, PE, especially qualified as a geotechnical engineer, sent letters to each Board member regarding the Board's investigation into allegations against the respondent in case #2512, a PE, especially qualified as a geotechnical engineer and another PE, especially qualified as a geotechnical engineer. Mills was the complainant in case #2512 and he took exception to the Board closing case #2512 as allegations unfounded. In addition, Mills reiterated his earlier allegation that the respondent falsified test pit logs by representing them as being done for each proposed lot. Since the Board closed the case as allegations unfounded² on January 12, 2010, he also believed the allegations were "frivolous or the alleged infractions were not serious enough to be actionable." Lastly, he requested that the Board close case #2589, which was opened to investigate role of the respondent in that case in the 2006 Street of Dreams.

Wilkinson informed the LEC that the allegation about the test pit logs was evaluated during the #2512 investigation, but other factors complicated the ability to issue a sanction and to sustain it in a court challenge, including actions by the developer. Also, there was substantial litigation involving the development, but no hard evidence was submitted to support the allegation

² While the phrase "allegations unfounded" might lead someone to conclude the allegations were frivolous or not serious, there are many reasons for the phrase to indicate a closed case. For example, the Board uses lack of evidence or Board lacks jurisdiction to close cases when the findings fall within those definitions. However, a case is closed as "allegations unfounded" when the Board for any other reason is unlikely to prevail at a hearing.

regarding the test pits. The Board is not in a financial or legal position as part of an investigation to independently conduct soils tests. Board rules require that a complainant submit evidence to document all charges. Regarding his concerns about case #2589 was closed as allegations unfounded on January 11, 2011.

Preliminary Evaluation:

The LEC discussed that Dennis Jarrell, Administrator for the West Virginia Board of Professional Surveyors, sent an email to the Board regarding the Web site of an LLC. He alleged that the firm was “brokering” land surveying services out of Atlanta, GA, and was offering unlicensed land surveying services in West Virginia. Wilkinson informed the LEC that he found the Web site to be offering land surveying services in Oregon as well as in all 50 states. When he contacted the Web site’s owner, a PLS in Georgia, it was discovered that the respondent was removing any mention of surveying in other states. The respondent explained that he wanted his Web site to return at the top of search engine results. The Web developer made that happen by targeting all 50 states with a report template that included each state’s name. When the Web site was later checked, it had been modified for Georgia-only clientele with an Atlanta focus, so the LEC determined to not open a case.

Settlement Agreements:

The LEC quickly reviewed the list of Cases Subject to Collections, Cases Subject to Monitoring, and Case Status Report. Wilkinson informed the LEC that he cleaned his inbox and the Board has 106 open cases. No other comments were offered.

The meeting adjourned at approximately 5:00 p.m.