

MEETING MINUTES

OREGON STATE BOARD OF GEOLOGIST EXAMINERS

JUNE 12, 2009

Members Present

Richard Heinzkill, Public Member
Chris Humphrey, RG, CEG, Board Vice-Chair
Dr. Vicki McConnell, RG, State Geologist
Dr. Stephen Taylor, RG, Board Chair
Rodney Weick, RG, CEG
Mark Yinger, RG

Staff Present

Susanna Knight, Administrator

Guests Present

Ron Singh, ODOT [8:30 AM to 9:50 AM]
Michael Dewey, RG [1:40 PM to 2:00 PM]

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The meeting was preceded by an 8:30 AM Work Session. The second agenda item, Administrative Rule Revision, was discussed first. Ron Singh, Oregon Department of Transportation joined the Board for a discussion of the draft Administrative Rule on digital and electronic signatures. *Weick* reported that the Rules Advisory Committee's (RAC) initial draft of **OAR 809-050-0005** on Signatures was based on OSBEELS rule on electronic signatures. That rule (OAR 820-010-0620) along with the OSBGE draft and ORS 84.001-84.004, authorization for government to go electronic, were presented to the RAC at its May 13, 2009 discussion of the draft rules. *Weick* presented background from ORS 84 about the definition of electronic, signature, security procedures, and stated that a PDF is the way most reports are being transferred via email. The email provides an opinion internally or to a client. That email qualifies as being an electronic record. The RAC decided to revise the draft rule to Plain Language and broaden the rule to cover any manner of electronic delivery. The draft rule is the product of the RAC and is a revision of the OSBEELS clone.

Singh introduced himself as the Chief of Surveying for ODOT, having been with ODOT for 32 years. He explained that, in working with engineering automation, he is concerned with digital signatures because they are part of the future. The final data "plugged in" *must* be correct, as the project will be built directly from the data. He directed the Board to the paper he authored which outlines the huge reasons why digital signatures are so important. He stated that he worked with OSBEELS for 3-4 years to capture the language for its Administrative Rule and that although the OSBGE draft language is okay, in the long run, it could cause problems. A digital signature can verify who signed and that nothing has changed since that signing. Electronic signatures are different and not verifiable. Although ORS 84 allows approval by email, it should go farther in its discussion to declare that a digital signature is required to make the document verifiable. Digital signatures are very important to ODOT and the future of roads in Oregon. Singh went on to explain that verifiable means more than spoken, it must be how it is!

Various members inquired about acquiring a verifiable signature and Singh explained that there are many third party companies that can issue such a certificate. *Taylor* asked if the 3rd party becomes liable for the work. Singh offered that the 3rd party if only verifying the person, not the work. *Weick*

inquired about the cost of the 3rd party verification. Singh stated that the cost of 3rd party (Certificate of Authority) verification is cost driven. A Certificate of Authority can be acquired today at \$200 with a 20% annual fee. Some companies are much higher.

McConnell observed that there is a big difference between electronic and digital. Singh offered that the Board must decide what is acceptable and certain “levels” could require a Certificate of Authority. *Humphrey* interjected that technology is moving toward greater verification than a rubber stamp. Singh’s question: WHY? For 30 years, the rubber stamp has been fine. But the paradigm has changed and will continue to change. *Taylor* stated that the Board must be flexible in how the rule is written; it must be broad in language and not tied to any product (VeriSign; Acrobat; etc.). Singh offered that today we are in a difficult transition from old days to new ways! Technology is moving away from the traditional delivery method. GPS and electronics are causing logic to rethink. Singh offered that within 10 years, everyone will have a “digital certificate”; a verifiable identity.

The digital/electronic discussion ended at 9:50 AM. The Board thanked Singh for his informative presentation. *Taylor* declared a 10 minute break.

The Board returned at 10:00 AM to Work Session Agenda item one, an Engineering Geology practice question. A CEG requested assistance from the Board with the City of Brookings, as the city is interpreting the Brookings Municipal Code differently than the CEG. *Humphrey* reviewed the information on behalf of the Board. *Weick* noted that everything identified in the Municipal Code as Registered Geologist (RG) work is defined in ORS 672.505 (3) as Certified Engineering Geology (CEG) work and recommended that Brookings be informed about dropping RG from its ordinance. *McConnell* observed that the issue is that the ordinance is written so anyone can write geology reports. *Humphrey* added that the confusion exists because the GeoHazard report by a geologist is in the Geo Hazard section. He sees a need to communicate to local government on a statewide level. *Taylor* challenged *Humphrey* agreeing that Outreach is needed but what process would be used for delivery. The Board has no jurisdiction over Brookings’ Code but the Board needs to explicitly tell Brookings that the Code could be tightened up to address the laws. The Board has no jurisdiction over what the CEG is complaining about. *Taylor* offered that the Board needs to open a case over a CEG practicing engineering and forward it to the Joint Compliance Committee (JCC). The City of Brookings needs to be informed that it could be hiring Registered Geologists in violation of the law. *Weick* observed that the CEG work product has crossed over into engineering. *Humphrey* stated that he is plugging in software. *Taylor* directed *Humphrey* and *Weick* to craft a letter on OSBGE “Code” concerns to the City of Brookings. *Humphrey* and *Weick* agreed that OSBGE does not regulate portions of this CEG work product. *Taylor* directed that the CEG practice information submitted to OSBGE be forwarded to the JCC.

At 10:25 AM, the Board returned to agenda item two and continued the discussion of the draft rule on signatures. *Taylor* offered that the OSBGE draft rule does not preclude the “verifiable” piece that ODOT wishes to have happen. *Weick* suggested that we go back to “capable of verification”. *McConnell* suggested only having digital signatures. *Weick* offered that ORS 84 does allow the JPG (filename extension for files employing the JPEG compression; one of three most common image file formats used for printing, scanning and internet use). *McConnell* said that the JPG allows a stamp with signature. The discussion continued and concluded with the decision that an FAQ be developed and an article about the “signature” discussion linked to Singh’s document be included in the next newsletter. A draft FAQ will be prepared for the Board to review.

At 10:45 AM, *Taylor* stated that the Board would move into Executive Session and read the following statement:

“The Board will now meet in executive session for the purpose of reviewing documents that are exempt by law from public inspection under ORS 192.660(2)(f). Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision will be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.”

The Board returned from Executive Session at 10:57 AM.

The Board reviewed and discussed the changes to **OAR 809-030-0015**. *Taylor* offered that the use of the term “in-responsible-charge” should be changed to “having responsible charge of geological work”. The Board confirmed that “in-responsible-charge” should also be revised in **OAR 809-030-0020** and anywhere else that it is used in the Administrative Rules. The Board then offered additional revisions to **OAR 809-055-0000** to clarify how the Complaint Process functions.

During the working lunch, the Board reviewed the Compliance Flow Chart which was a work product of the January Retreat. Numerous revisions were advised.

The Board lunch time continued with a discussion of the GUIDELINES. *Taylor* suggested that these documents are merely best practices although the Hydrogeology Guidelines are more prescriptive. He offered that the GUIDELINES should be evaluated as suggested best practices. *Heinzkill* asked: What do Guidelines have to do with practice? And *Taylor* responded nothing! *Weick* offered that in a prior homework exercise, the Board discovered that no state had “standards of practice” spelled out. *McConnell* stated that guidelines are only guidelines; they hopefully serve as outreach. *Taylor* again stated that the GUIDELINES are suggested best practices.

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The quarterly meeting of the Oregon State Board of Geologist Examiners (OSBGE) was called to order by Chair *Stephen Taylor* at 1:12 PM on Friday, June 12, 2009, in the Conference Room of Sunset Center South.

1. **Agenda:** *Taylor* asked for any additions or revisions to the meeting agenda. *Humphrey* requested an agenda item addition under Committee Reports, g. Professional Practices. *Taylor* moved to approve the meeting agenda with the addition. *Seconded and passed unanimously. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*

2. **Meeting Minutes:**

a. *McConnell* moved to approve the December 5, 2008 quarterly Meeting Minutes as presented in the packet. *Seconded and passed unanimously. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*

b. *McConnell* handed in revisions to the March 5, 2009 quarterly Meeting Minutes which had previously been submitted to staff but not included in the draft meeting minutes. *Taylor* stated that approval of the minutes would be tabled; the edits will be made; and the revised minutes will be presented at the next meeting.

c. *Weick* moved to approved the March 18, 2009 Special Telephone Meeting Minutes. *Seconded and passed unanimously. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes. McConnell* stated that she was not present for that meeting.

3. Administrator Report

a. **Administrator Report AR 2009-02:** Knight reported on the SUMMARY OF STAFF ACTIVITIES since 3/05/2009 [Addendum I]. In particular, she directed the Board to the ASBOG pass rate for the March 2009 exams. Although acceptable, she did inform the Board that this is a lower pass rate than the Board has previously experienced. She also informed the Board that former Board Member Bill Orr has offered to serve as a proxy delegate to the national ASBOG meeting November 7, 2009 in Birmingham, Alabama. The Board concurred with the offer if funding does not allow *Yinger* to participate as the Board's representative. Knight also publicly thanked Board Member *Humphrey* for all his assistance with the Engineering Geology Exam Development process over the past six months. The project is now complete and staff is waiting for the final new test forms.

b. **Updated Revenue/Expense Report for Current Biennium:** The Board reviewed the spreadsheet of the Revenues and Expenses for the biennium to date. Staff also distributed the Revenue & Expense Report for Year 2 of the biennium and the Balance Sheet, both current as of 5/31/2009.

c. **Approve Check log:** *Weick* moved to approve the check log as presented of #2942 to #2994; and #9099 to #9101; #9108 to #9111. *Seconded and passed unanimously. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes*

d. **3-Year Comparison of Changes in Monthly Renewals:** The Board reviewed the monthly renewals over the past three years. It was noted that a substantial non-renewal is outstanding for the May 31, 2009 date, but late renewals are still arriving.

e. **Edward Jones Update on CD Purchase Agreement (AC 09 05 113):** The Board noted that interest rates are dropping on CD renewals.

f. **Follow-up on March Check log:** Knight referred the Board to the information from ADP which explained why numerous check numbers were missing. These checks were shredded by ADP due to errors in the payroll run. The information included an explanation for those check missing in the check log presented in the Board packet. The Board asked staff to make sure the ADP documentation was preserved for the next audit.

g. **Examination application review:** Knight asked the Board to discuss two examination applications:

i. **RG Verification of Experience (VOE):** The applicant is not able to provide a VOE from his supervisor for one-year. The Board reviewed both the current VOE form and an alternate model inquiring if the Board would be interested in revising the current form. The Board concluded that the applicant is required to provide a VOE for each work period for purposes of validating practical experience. The applicant must meet the criteria of the Rules so one year of additional work experience would be required. *Humphrey* recused himself from the discussion. *Taylor, Weick, Heinzkill & Yeager* agreed that the Rules must be followed.

ii. **CEG VOE:** The IRC work experience for this applicant has been validated. Knight informed the Board that the candidate has met the experience component based on the current evaluation method. *Humphrey* would not approve the candidate but requested that the information go before the Board. *Humphrey* noted that when working under a PE, a candidate is practicing Engineering Geology without registration and thereby breaking the law. This concern has been articulated over time. *Weick* stated that the precedent has been set. The candidate is qualified based on the current method of applying the Rules. The Board

agreed that the candidate has validated enough experience to sit for the engineering geology examination.

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Public Comment:

Knight introduced the guest who arrived during the discussion. Dewey requested the opportunity to provide Public Comment. *Taylor* acknowledged Dewey for public comment. Dewey stated that he understood *Humphrey's* concern about the restraint of the law. Six years ago, Dewey was advised by the then Board Chair to work under a CEG. He went to work under a CEG but left due to contract issues. The EXPERIENCE RECORD was a problem, as the Board would not allow the combining of supervised and in-responsible-charge experience for purposes of meeting the experience component to sit for the examination. Subsequent experience gained was based on the advice of the then Board. Knight stated that the Administrative Rules do not allow combining supervised and unsupervised experience for purposes of meeting the examination experience requirement. *Taylor* stated that the Board is advancing forward and is sorry about the past.

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h. Action List: *Taylor* noted that the following item should be on the ACTION LIST: Outreach to the Teacher's Standards and Practices Commission. He would like an invite extended to this Commission to come to a Board Work Session.

i. Payroll Scale for PEMD: *Taylor* distributed a DAS Human Resource Services Division Classification and Compensation spreadsheet of the salary schedule for PEMD. Knight had provided the document to *Taylor* along with the annual review form. Knight explained that her current step is Rate 7, but her current gross salary amount of \$5772 does not reflect the actual Rate 7 as posted in the spreadsheet. The current spreadsheet amount of \$6249 per month was used in developing the budget for the 2009-11 biennium. Pay scale revisions were made since June of 2008 which was when the Board made changes to the Administrator salary. Subsequent change have not been reflected in staff salary but are incorporated into the personnel budget for the 2009-11 biennium.

4. Compliance Report: *Heinzkill* referred the Board to the printed report provided in the meeting packet and discussed the following cases:

a. CC#07-04-002: Two reviewers concurred that the allegations in this complaint were unfounded. *Taylor* inquired about the reviews and *Humphrey* stated that the reviewers' reports are needed. *Heinzkill* reminded the Board Members that the documents in the packet become a public record and inquired if the Board wished for the Technical Reviews (TR) to be public documents. *Taylor* stated that the purpose is to protect the documents during the investigation, but once the case reaches a conclusion, all records will become public. *Heinzkill* stated that he is hearing the Board and asked which documents the Board would wish to see. *Taylor* responded that the Board needs to see the full set of reviewers' comments. The Board concurred that the TR must be distributed to all Board Members so that each might review and establish their position about the case. Action on this case was postponed to the next meeting.

b. CC#07-10-004: *Taylor* moved to accept the recommendation of the reviewer to issue a LETTER OF ADVICE. *Seconded*. Additional discussion ensued. *Yinger* inquired as to what that advice would be. *McConnell* pointed out the items in her review that would be shared with the respondent and apologized that it took so long to complete the review. The Board concurred that the closing letter should be cc'd to the complainant. *Passed unanimously*. *Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes*

c. CC#08-03-006: An ORDER BY DEFAULT was sent to Montreal, Quebec, Canada this week to be served on the respondent. The respondent has 60 days to request a hearing. When that opportunity has expired, staff will post the final document on the Board's web page.

- d. **CC#08-04-008:** This is an ongoing investigation regarding an Oregon RG stamping a geology report in another state with the Oregon stamp.
- e. **CC#08-11-009:** The Board inquired as to why a penalty would not be recommended if an RG is doing CEG work. The Compliance Committee will provide information to the Board so that action can be taken at the next meeting.
- f. **CC#09-03-010:** This is a 46-page complaint. The Compliance Committee is working to develop instructions for the Technical Reviewers in assessing charges.
- g. **CC#06-03-011:** This appears to be a stamping issue where an RG who did not do the work stamped for the RG who did the work. The case is in the investigation stage.
- h. **CC#09-03-012:** An RG may be doing CEG work with the RG registration. Investigation of this case is just beginning.
- i. **CC#09-03-013:** An investigation underway to determine if a company can offer the services requiring an Engineering Geologist when no staff is registered in Oregon.
- j. **CC#09-04-014:** An investigation is underway. An employee's work description on the web site includes geology but he is not registered in Oregon as a geologist.
- k. **CC#09-05-015:** This is a new complaint and the complainant has requested to be party to the case per OAR 809-055-0000(2)(b). *Heinzkill* moved to deny the request of the complainant to be a party to the complaint. *Seconded*. Discussion: *Weick* stated that it is not wise to have a complainant as party to an investigation. The same Administrative Rule states clearly that the complaint process is not a "plaintiff/defendant process. *Humphrey* inquired as to how the Board responds. *McConnell* stated: "You just say no." *Passed unanimously*. *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes

Taylor announced a 5-minute break to convene back at 3:00 PM.

5. Committee Reports

- a. **Administrative Rules:** *Weick* stated that no rule action would be taken today. The edits offered during the Work Session will be made and the draft rule revisions will be forward to the AAG for review. Final action can occur at the next Board Meeting. Also, the term "in-responsible-charge" must be located throughout the Rules and revised to "having responsible charge of geological work" as discussed during the Work Session.
- b. **ASBOG COE:** *Taylor* participated with the ASBOG COE convened on April 2 & 3, 2009 in Seattle, Washington. He distributed the April 4, 2009 agenda of the ASBOG TASK ANALYSIS STUDY 2010. This meeting was held in conjunction with the COE. Task Analysis information was shared with the Board. He informed ASBOG that OSBGE would not be attending the Birmingham meeting unless the budget projections are better than anticipated. Former Board Member Bill Orr will serve as a proxy delegate if no funds are available.
- c. **Joint Compliance Committee:** The November 14, 2007, draft minutes of the Joint Compliance Committee were distributed. *Weick* stated that he and *Humphrey* will go over the minutes.
- d. **Legislative:** *McConnell* commiserated with *Knight* about the frustration of a Legislative Committee not working to move legislation. She suggested that next session the Board find a Legislator willing to introduce the bill. She also suggested contacting the ACLU counsel that opposed the bill and inviting counsel in to clarify concerns with the current draft language. The Board may have to hire someone to work with the bill. *McConnell* offered the following timetable: September 2009, meet with ACLU; December 2009, decision to pursue; March 2010, finalize the language.
- e. **Outreach:** *Taylor*

✓ distributed a copy of the final March 18, 2009 OSBGE letter which was issued to the Association of Engineering Geologists in response to the JTFAP draft document titled JOINT TASK FORCE ON AREAS OF PRACTICE. *Humphrey* stated that the comment period was extended. No response has been received from AEG;

✓ referred the Board to his April 8, 2009 email in the Board packet which identified to two ASBOG colleagues a forum session that *Taylor* thought this might be the forum at GSA Portland for a discussion about state regulation of the geology profession. He received no response. *Taylor* inquired if anyone from the Board was interested in discussing registration but no volunteers came forward. The forum is described as an opportunity to discuss

“the reliance of the academic and applied geoscience communities on one another, describing the successes and shortcomings of academic/applied geoscience interfaces, and detailing effective mechanisms for positive change.”

✓ shared his idea of identifying each Board Member’s work affiliation on the front of the newsletter;

✓ recommended that the Board’s two graphic posters used for outreach be posted on the web where individuals can download and use; and

✓ reminded staff to invite the Teacher’s Standards and Practices to meet for discussion with the Board.

f. Task Analysis, EG: *Humphrey* reported that since the March Board meeting, the following three additional joint meetings with registrants of the Washington Board and the psychometricians convened: March 9 & 10; May 14 & 15; and June 2. *Humphrey* shared about the cut-score process occurred on June 2 and he noted that the cut-score for one of the tests is quite high. The Board will need to determine if this is acceptable or not before using it. Delivery of the final two new test forms to the Board is anticipated before the end of the biennium.

g. Professional Practice: *Humphrey* distributed a copy of the Oregon Section, Geotechnical Engineering Technical Group, ASCE draft letter to The Geo-Institute of the ASCE. He commented that the letter discusses nothing about what an engineer can or cannot do, but everything about what an engineering geologist can and cannot do.

6. Correspondence

a. AC 09 04 111: The Board rejected the request to reduce annual fee for an out of state registrant. The Board suggested notifying the registrant that upon reaching age 70, fees are automatically reduced.

b. AC 09 05 123: The Board directed that a letter be prepared for the City of Brookings suggesting corrections to the Code so that registrants of OSBGE are properly labeled. The Board directed staff to submit the work product submitted by a CEG with scope of practice questions to the Joint Compliance Committee. There was a concern that the work product reflected work outside the scope of practice of a CEG.

c. AC 09 05 130: Knight inquired if the July OSBGE newsletter should include something about the National GSA meeting to convene in Portland, Oregon this coming October. An email from an RG currently working in New Zealand but planning to be at GSA suggested some ideas for the newsletter. The Board concurred that the upcoming events should be published in the newsletter.

7. Old Business

Marion County Follow-up: Contact was made with Marion County as a follow-up to the Sensitive Groundwater process. Knight indicated that after a conversation with county participants in the SGSO process, it appears as though the public is passed on charges when the county requires additional information in a report. This causes an increase cost to be passed on to the consumer

requesting the report. *Humphrey* offered that the standards are complicated and because of this, costs could increase with additional work required in the review process. He suggested that perhaps the county needs to find another way to meet the need of the SGSOP. *McConnell* inquired as to why the county isn't developing a standard. *Weick* offered that the county's suggestion about a "fact sheet" for the consumer with information about basic steps to hiring a geologist is a good idea and stated that it is reasonable for consumer protection to assist in locating a geologist. *McConnell* suggested that a FAQ be prepared. *Heinzkill* offered to draft the document with assistance from Knight.

8. New Business

Knight suggested that the Board might consider adding an office of Treasurer to the current Chair and Vice Chair position. With discussion, the Board determined that the Vice Chair could assume any duties that the Chair deemed. A Slate of Officers will be presented for the next meeting.

9. Public Comment: No public was present at this time. No comment was taken.

10. Announcements

- a. Knight reported that the Board office would move to the new location on Monday & Tuesday, June 29 & 30, 2009.
- b. The Annual Board Picnic will be held on Saturday, July 11, 2009, at the Orr Farm in Scotts Mill.
- c. The next quarterly Board Meeting will convene on Friday, September 18, 2009 at The Association Center, Conference room to be announced.
- d. The ASBOG examinations are scheduled next on Friday, October 2, 2009.

11. Adjournment: *Taylor* adjourned the meeting at 4:15 PM.

Respectfully submitted,

Susanna R. Knight
Administrator

The minutes of the June 12, 2009 Board Meeting were approved as presented at the September 18, 2009 Board Meeting.

Respectfully submitted,
Susanna R. Knight
Administrator