



# Oregon

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SPECIAL JOINT BOARD MEETING OF OSBEELS AND OSBGE  
Minutes of Meeting  
October 10, 2013

**CALL TO ORDER**

OSBEELS President Carl Tappert called the meeting to order at 6 p.m. at the Chemeketa Center for Business and Industry in Salem, OR.

**Members Present:**

**OSBEELS**

Carl Tappert  
Steven Burger  
James Doane  
Shelly Duquette  
Anne Hillyer  
Ken Hoffine  
Sue Newstetter  
Ron Singh

**OSBGE**

Richard Heinzkill  
Vicki S. McConnell  
Peter Stroud  
Kenneth Thiessen

**Members Excused:**

**OSBEELS**

William Boyd  
Tom Van Liew

**OSBGE**

Mark Yinger  
W. Todd Jarvis

**Others Present:**

Mari Lopez, OSBEELS Executive Secretary  
Jenn Gilbert, OSBEELS Executive Assistant  
Katharine Lozano, Assistant Attorney General for OSBEELS  
Joy Pariante, OSBEELS Social and Communications Media Specialist  
Christine Valentine, OSBGE Administrator  
Chris Humphrey, former OSBGE member

Gary Peterson, former OSBGE member

## **WELCOME/INTRODUCTIONS**

### **OPENING STATEMENTS BY BOARD CHAIRS**

President Tappert, on behalf of OSBEELS, told the audience that he was very happy both boards had the chance to communicate in this manner. He explained that, at some point in every engineer's career, they will work with geologists and need to understand the overlaps and limits of practice to avoid turf battles and keep the focus on protecting the public.

Vice Chair Stroud said OSBGE was excited to be a part of these discussions regarding engineering geology and geotechnical engineering and mentioned the importance of these discussions to both boards.

### **APPROVAL OF THE AGENDA**

There were no additions to or changes of the agenda.

## **BOARD ROLES, RESPONSIBILITIES AND PRACTICE OVERLAP**

### **Engineering Geology/Geotechnical Engineering**

The boards discussed the overlaps between engineering geology, which focuses on geologic hazards and data analysis, and geotechnical engineering, which is how geographic information applies to structures. Mr. Tappert asked if OSBGE is seeing cases of geotechnical engineers venturing into engineering geology. OSBGE said they do on occasion see this or engineers doing geology. Mr. Hoffine asked for further clarification on the difference between the two fields. The example given for clarification was regarding landslides: the boundaries of the slide would be determined by the engineering geologist and the determination on the potential effect to structures would be completed by the geotechnical engineer.

AAG Lozano asked OSBGE if the practice of engineering geology is defined in their rules as geotechnical engineering is in OSBEELS' rules. Ms. McConnell said the board's description of engineering geology is based on criteria set forth in statute and there is no corresponding rule. AAG Lozano pointed out that a rule, like a statute, has the force of law, and having a rule define something with specificity can sometimes make it easier to identify and enforce violations.

Mr. Doane redirected the conversation to determining which areas of overlap are causing the most issues. Mr. Tappert said determining boundaries between practices is mostly done on a case-by-case basis. Mr. Thiessen said his rule of thumb is, when it strays into structures, it's no longer geology. After reading the OSBEELS rule definition for geotechnical engineering and the OSBGE statutory definition for engineering geology, a number of tasks were determined to fall within the practice overlap. Ms. McConnell noted that the mitigation and risk analysis aspects of OSBEELS' definition also apply to engineering geology. She also said the required education, training and experience for both fields are very similar.

Mr. Tappert asked the group about earth dams or engineered fills being considered geotechnical engineering or engineering geology. Mr. Stroud said those would be considered as part of both fields. Mr. Peterson said this was a classic case of the type of overlap situations both boards deal

with. AAG Lozano said it is very possible tasks can legally overlap between the practices. Mr. Doane asked if the 1983 AAG advice regarding the overlaps could clarify anything. AAG Lozano said there has been a great deal of case law and rulemaking since 1983 and she would have to do a thorough analysis to be sure the 1983 advice would still be applicable.

### **Hydrogeology/Civil Engineering**

Mr. Tappert said he wasn't aware of any issues OSBEELS has come across regarding overlap in this area. Mr. Stroud explained that hydrogeology isn't a specialty area and can be performed by either a registered geologist or a certified engineering geologist and the area of practice pertains to ground water supply development, drainage control and other water resource issues.

However, hydrogeologists do not design water resource delivery systems. Mr. Tappert asked if hydrogeology is a protected term by OSBGE. Mr. Peterson explained that he thought hydrogeology is to geologists as hydrology is to engineers, i.e., it falls under the general practice definition. Ms. Lopez pointed out that OSBEELS began addressing the issue of if hydrology was considered under the practice of engineering approximately seven years ago, but the question was, ultimately, never answered.

Ms. McConnell said the line between hydrogeology and hydrology seems to be more defined than other areas of overlap. Mr. Thiessen explained that the water supply delivery system design, pipe size and water treatment options should be determined by a civil engineer. Rock types involved, recommended drill depth, well design, aquifer yield test and analysis would be completed by a geologist and used to guide the engineer's design.

Mr. Tappert said this distinction seems to be fairly clear, but he was curious whether engineers can do core samples and hydrogeology work under the definition provided for the practice of engineering. AAG Lozano said she thought yes, if there are structures involved.

### **Other**

The boards discussed reviewing the 1983 AAG advice regarding the separation between engineering geology and geotechnical engineering. Mr. Tappert was prepared to discuss the advice in an Executive Session, but Ms. Valentine said it was discussed openly at a previous board meeting and is now part of the public record. Both boards were interested in an update to the 1983 AAG advice using recent case law and rulemaking.

Ms. Valentine mentioned that, when statutes of two agencies are involved, a request for legal advice is automatically subject to a higher level of review by the Department of Justice (DOJ). The boards split the associated costs for preparation of any such DOJ response, and DOJ's ruling is final, regardless of the boards' opinion on the result. Ms. McConnell suggested that the boards utilize their AAGs to get questions answered and issues solved where possible before asking for this level of DOJ review. AAG Lozano said refining the focus of questions will lower costs and ensure only questions needing answers are addressed, thus limiting the scope of DOJ's determinations. AAG Lozano said both boards' AAGs will review case laws, AAG opinion and current and recent cases to help the JCC draft questions for DOJ. She said some of this is already occurring in order to answer current OSBEELS and OSBGE enforcement case questions. She said she will bring the questions to the JCC for discussion.

## **MEMORANDUM OF UNDERSTANDING (MOU) AND JOINT COMPLIANCE COMMITTEE (JCC)**

### **Review of the MOU/Roles of JCC**

There were a number of topics regarding the MOU and JCC which needed to be discussed. Both boards committed to making the JCC process work.

Ms. McConnell asked if the JCC will make recommendations jointly to the Boards or separate recommendations to each individual board. AAG Lozano said the JCC should make recommendations to the board whose rules or statutes are being violated, as they have the statutory authority to sanction.

The boards discussed the concepts of “recipient” and “lead” board as found in the existing MOU. Mr. Tappert said it wasn’t clear from the MOU which board is the “recipient” board and which is the “lead” board. Mr. Heinzkill asked if the license holding board would be the “lead.” Ms. Lopez said the board with the authority to discipline should be the “lead” board. The boards agreed that the “recipient” board is the board that receives the complaint and the “lead” board is the board whose rules or statutes were violated and has the authority to sanction the individual.

### **Commitments to JCC or Similar Processes**

Mr. Stroud was concerned about the timeline for getting cases through the JCC. Mr. Tappert said cases can take a year or more to make their way through the investigation and determination process at OSBEELS. OSBGE expressed concern regarding cases at OSBEELS of engineers delving into geology, which never result in sanctions. AAG Lozano explained that, while many boards have professional conduct rules which prohibit individuals from practice outside their area of expertise, OSBEELS does not. For example, an aesthetician who injects clients with fillers could be sanctioned by the cosmetology board, despite the offense not being cosmetology-related. This is because that board has professional conduct rules that cover practicing in any field outside one’s licensure. OSBEELS can sanction for practicing outside one’s area of competency, but only as it relates to the engineering profession. Ms. McConnell said OSBGE has some similar limitations.

However, OSBEELS assured OSBGE that a properly functioning JCC would streamline case sharing between boards. AAG Lozano said another benefit of the JCC is access to witnesses from the other practice to support the accusation of practicing outside of one’s area of licensure. AAG Lozano also reminded the board members that all JCC cases will go to the full boards for final determination. The JCC cannot make any final determinations, particularly as some JCC members are not appointed board members.

Ms. McConnell said a big concern of OSBGE is cases languishing at the JCC because OSBEELS has a busier caseload. She explained that OSBGE doesn’t have nearly as many registrants, which means just a few cases at JCC represent a substantial portion of OSBGE active enforcement cases. Mr. Heinzkill added that OSBGE does not have any investigators on staff, instead, volunteers write the preliminary reports. If OSBEELS requires preliminary investigations to be completed before recommendation to the JCC, this can negatively impact the flow of cases from OSBGE to JCC because they are only reviewed quarterly. Ms. Newstetter recommended determining a way to identify JCC cases and raise their priority in the OSBEELS

Regulation Department. Ms. Lopez explained that some cases are not obviously JCC cases upfront and need to be investigated and discussed by the Law Enforcement Committee first to make that determination. Mr. Humphries asked if it would be possible to send all cases regarding practice overlap or violations to the JCC immediately. AAG Lozano said the issue with that is that not all complaints are valid and unsubstantiated complaints should not be sent forward to the JCC. She explained that investigations are necessary to determine the validity of cases.

Ultimately, both boards agreed to perform a preliminary inquiry prior to recommendation to the JCC. This will give the respondent the opportunity to respond to the complaint against them and present evidence. During review, the JCC will determine which board has statutory authority to address the practice overlap issue. Then, the appropriate board will take action according to internal investigating policies.

Mr. Humphries and Mr. Peterson, both former OSBGE and JCC members reminded the boards of the history associated with the JCC. There was a time period when geotechnical engineers and engineering geologists were battling over practice areas and the boards continuously found themselves in the middle of these arguments.

The boards next discussed scheduling of the JCC. Mr. Doane said it should be as “user-friendly” as possible for the accused and there should be a solid timeline for addressing complaints. Ms. Lopez and Ms. Valentine said it’s very difficult to match the schedules of individuals from both boards. Ms. Newstetter said the administrators need to set the dates and notify the board members because it assists in blocking out time for the commitment. Mr. Heinzkill requested that JCC meetings fall before OSBGE quarterly meetings so that recommendations can timely inform OSBGE deliberations. Mr. Tappert suggested matching the semi-annual meetings to coordinate with the OSBGE board meetings by scheduling the JCC for February and October. The JCC meetings would then fall before OSBGE’s December and March meetings. The boards tentatively agreed to this arrangement, with details to be refined at the JCC. The boards determined, if there were no cases on the JCC agenda, the meeting would be cancelled. The boards also agreed to identify alternate JCC members to ensure a quorum and balanced representation of each board in case of primary member absences. Mr. Thiessen asked if a teleconference would be an option for JCC meetings. AAG Lozano said yes, as long as the teleconference follows standard public meetings law. Mr. Tappert agreed that this would be a good option for members living a considerable distance from Salem.

The boards decided to request staff development of a JCC policy and procedures following the first JCC meeting, with this work to be coordinated through the JCC. The first meeting will allow Staff and members to gain perspective on what needs must be addressed in the policy and procedures documents. AAG Lozano also recommended waiting until after a few meetings to renew the MOU in order to determine if any changes are necessary. Ms. Valentine said she would definitely want an updated MOU in the future, as it serves as direction from the boards to Staff and helps determine Staff-level JCC tasks to include in day-to-day board operations.

### **Current JCC/Overlap Issues**

Current JCC/overlap issues will be addressed at the first JCC meeting.

## **BOARD UPDATES**

### **Guidance Documents**

Mr. Stroud said OSBGE has drafted an Engineering Geology Report Guidelines, Hydrogeology Report Guidelines, Geology Report Guidelines and Professional Practice Guidelines and would like OSBEELS input on these documents, particularly the Professional Practice Guidelines. Ms. Valentine pointed out that these are meant to be guidance documents, not standards of practice. Mr. Tappert said OSBEELS is willing to provide input, especially considering issues regarding professional practice that have arose in the past. AAG Lozano cautioned the board members to be mindful of the line between valid policies and illegal rulemaking. Ms. McConnell clarified that the purpose of these documents is to inform registrants and the public of what to look for when hiring a registered professional and about the importance of licensure.

### **Manual for Building Officials**

OSBGE has met with the Architect Board and the Landscape Architect Board about information to be included in the manual. OSBGE would still like to be involved with the OSBEELS revision of the manual. Ms. Newstetter said she believes the more information included, the better. AAG Lozano, who also works with Building Codes Division, agreed.

## **PUBLIC COMMENT**

Mr. Humphries said engineering geology, geotechnical engineering, and soils engineering and the like were all developed together, and the fields are woven together. This produces a lot of practice issues which are difficult to pull apart. He also said practitioners are very protective of overlap areas. He said the JCC can assist in this area by training and educating practitioners regarding the limits to the overlaps. He also said case-by-case determinations seem to produce better results and conversations than trying to make a bright-line determination regarding the limits of each practice. He suggested a policy of “who is qualified to do what,” instead of “who can do what.”

## **WRAP UP/NEXT STEPS**

The next JCC is scheduled for October 24, 2013 at 1 p.m. at the OSBEELS office.

The meeting adjourned at 7:59 p.m.