



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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LAW ENFORCEMENT COMMITTEE

Meeting Summary

December 8, 2011

Members Present:

Carl Tappert, Chair

Grant Davis

Sue Newstetter

Ken Hoffine, excused absence

Staff Present:

Mari Lopez

James R. (JR) Wilkinson

Allen McCartt

Others Present:

Joanna Tucker-Davis, AAG

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:

2733

The LEC met in an informal conference with the respondent to discuss a Notice of Intent to Void Examination Score, Suspend Admission to Future Examination, and Assess a \$1,000 civil penalty (NOI) for violating examination subversion rules under Oregon Revised Statute (ORS) 672.045(10), ORS 672.200(1),(4), and Oregon Administrative Rule (OAR) 820-020-0040(1)(e). The respondent was an April 2011 examinee whose examination results were withheld from release by the National Council of Examiners for Engineering and Surveying (NCEES) due to suspected exam irregularities. The LEC reviewed a preliminary evaluation on August 11, 2011, and determined that the respondent would undergo additional scrutiny due to the two statistical models that highlighted his exam and the proctor reports that documented the respondent was "looking around" during the exam. In addition, the LEC noted the respondent failed to show much of his work.

The respondent responded to the issues raised during the investigation. He began with the proctor reports and explained it was an eight-hour examination. When he got tired he stretched his neck by looking around. Furthermore, he was seated at the second table back from the proctors and could see them. If they had a problem during the exam, he added, they should have said something and he would have stopped. They did not. The respondent also addressed the question of copying by stating he is nearsighted and was not wearing glasses during the exam. Without glasses, he cannot see very far.

Regarding the lack of showing work, the respondent recounted his classroom experiences where multiple choice questions were used, such as in thermodynamics. He asserted it mattered not how he got the answer, only the right answer was important to show for full credit. He also could not recall exam instructions to show work in support of an answer. More important, he did not feel comfortable writing on the exam. Lastly, he addressed the difference between his morning and afternoon exam scores by describing his strategy to "chug and plug" answers. While he admitted to guesswork in the morning

session due to 120 questions as opposed to the 60 questions asked for the afternoon portion, he also pointed out that a single wrong answer in the afternoon session counted more than it did for the morning session. He concluded by observing that the exam subversion allegation was bad luck and the proposed penalty was too harsh.

Tappert informed the respondent that the significance of showing work, which was not part of exam scoring, came into play when NCEES looked at the statistical models. Had he shown more work, then there might have been less scrutiny. Nevertheless, the LEC listened as Assistant Attorney General (AAG) Joanna Tucker-Davis explained that the burden of proof is it more likely than not that the violation occurred. The evidence was the proctor reports and the statistical models, so the LEC expressed skepticism that the events were left to chance. The respondent expressed concern about the models and stated the proctors should have brought their concerns to his attention. He reiterated his difficulty at sitting still and was adamant that he did not copy. He informed the LEC that he was ready to start a job, but was waiting for the case to close.

The LEC discussed that NCEES reorders exam questions to generate different exam booklets. The investigation found that NCEES distributed to the respondent and his tablemate the same exam booklet, which increased the opportunity for exam subversion. Examinees would not have been aware of this oversight. More important, the LEC questioned if the statistical models would have flagged the exams had the respondent and his tablemate not been in proximity to each other. Upon consideration, **the LEC recommended the Board approve withdrawing the NOI.**

2703

The LEC held a teleconference with the respondent, a PLS, PE, and CWRE, to discuss a Notice of Intent to assess a \$3,000 civil penalty (NOI) for failing to cooperate with the Board regarding an audit of his continuing professional development (CPD) activities in violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), OAR 820-020-0015(7), and OAR 820-020-0025(1). The respondent was randomly requested to participate in an audit of documentation to support the claimed PDH units. In his response to the audit, the respondent stated he had not completed the required PDH units. Prior to the start of the conference, however, Newstetter announced she had a business relationship with the respondent's now-deceased brother, but her opinion would not be affected by that past relationship.

The respondent began by not disputing the violations. He is phasing out his business because he wants to retire. He already has resigned as the county surveyor and has a replacement. In addition, his registrations expire at the end of next year and he has no plans to renew. He did not complete his continuing education and pled "guilty." Furthermore, he has not done any engineering in a number of years and has retired his CWRE certificate. He agreed to the noticed violations, but took issue with the \$3,000 civil penalty. The respondent offered as a sanction to retire his registrations in lieu of the penalty. Upon consideration, the LEC would agree for the respondent to retire his PLS and PE registration without reinstatement, to reduce the civil penalty to \$1,000, and to a close-out of any outstanding projects within two months. **The LEC recommended that the Board approve the settlement agreement.**

2695

The LEC held a teleconference with the respondent, a PLS and CWRE, to discuss a Notice of Intent to assess a \$3,000 civil penalty (NOI) for failing to cooperate with the Board regarding an audit of his CPD activities in violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-020-0015(7), and OAR 820-020-0025(1). The respondent was randomly requested to participate in an audit of documentation to support the claimed PDH units. The respondent responded to the audit by stating he had requested "inactive" status since he had moved to the Bahamas where there was no opportunity to obtain professional development hour (PDH) units and where he was not practicing. In response to investigator inquiries, the respondent stated he signed the renewal form in error.

The respondent noted his response to the allegations. He denied most violations in the NOI, but admitted to not providing CPD documentation. He reasoned he could dialogue with the Board about his situation rather than submitting partial records. He hoped the dialogue would resolve the matter. However, it has not. Nevertheless, The respondent lives in the Bahamas and has not practiced surveying since 2007. When he moved to the Bahamas, it was a temporary situation. During this time, the Board changed the rules to redefine inactive status. He contacted the Board and learned he was no longer eligible for inactive status, so he had no opportunity for a sabbatical. He believed he had to be active or lose his registration, neither of which he wanted. He likened his situation to a doctor who wanted to take a sabbatical. When he was ready to come back, he would fulfill his CPD requirements. However, the Bahamas has no colleges or other opportunities to get CPD training. He stated he had some PDH units, but not the required thirty because of extenuating circumstances.

When the respondent received his renewal form, he found no information about retired status so he signed it to renew. However, he was unaware that his signature was a certification regarding CPD compliance. He now has read the rules, but the renewal form offered no options other than renewal. He knows he has to have PDH units. If he came back to the States he would comply.

The respondent also claimed that some violations of statutes regarding PDH units were not relevant because they govern the Board's conduct and not the licensee. He explained he has no ability to violate those rules because they do not apply to him, other than the one that requires PDH units. Furthermore, when he read the rules he discovered he could carryover units from the previous renewal period. He had some CPD credits, but not the full amount, and even with the carryover he still questioned if he had enough. In the end, he could not provide documentation because his evidence is stored in Portland and he would have to fly back and go through his storage unit. He stated he was not practicing and has no plans to start at this time. He wants an inactive license like a doctor on sabbatical, but would accept retired status as long as it is not permanent.

The respondent stated there was no public harm since there were no practice issues. The statutes give the Board the ability to assess up to a maximum of \$1,000 per violation. He added there were a few PDH units that he didn't get and there was no harm. He compared his action to surveyors who have had practice problems. He thought the maximum was not right because there were multiple charges from one act of not getting the credits. No one was hurt. He admitted he should have had all the PDH units to comply, but he should not be assessed the maximum.

In response to a LEC question about not obtaining PDH units, he agreed that he had not fulfilled his responsibilities as an active surveyor. However, there were extenuating circumstances and he had a portion of the required thirty units. He does not want to continue to practice surveying and wants it placed into retired status. This would protect the public. Tappert asked the respondent if he was aware that he had five years to return to active status. The respondent was aware from reading the rules. However, he expressed shock that there was that restriction. It seemed crazy to him because the Board is requiring him like a doctor who does not practice for five years to return to medical school. Tappert disagree noting that the respondent only needed to reapply and take the examination. Upon consideration, the LEC reduced the civil penalty to \$1,000 on the condition that he retire his PLS registration and CWRE certificate. However, the LEC also agreed to leave it open for him to reinstate within five years. The respondent asked when it comes time to reinstate if this case would be an issue. Tappert responded a different committee will review reinstatement. Nevertheless, he added the Board typically accepts retirement without reinstatement in lieu of civil penalty from registrants who are nearing the end of their career with little chance of returning to practice. The LEC did not agree, however, to refund to him the balance of this year's renewal fees. **The LEC recommended that the Board approve the settlement agreement.**

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 unlicensed practice of engineering in violation of ORS 672.020(1) and ORS 672.045(1),(2). Prior to LEC discussion, however, Newstetter announced she filed the complaint against the respondent and would recuse herself. The respondent co-signed a December 3, 2007, proposal cover letter to develop a wastewater treatment facility for an Oregon city, by using "PE, Senior Engineer Associate." When contract questions later arose, Newstetter, who was the contract administrator for the City discovered that the respondent was not registered. The respondent responded to the allegations by noting his statement in the proposal that his Oregon comity application as "in process." He subsequently was granted a temporary permit to practice engineering in January 2010 with approval for professional practice granted on March 9, 2010.

The respondent began by stating he does not contest the allegations in the NOI. He signed the proposal with the title, but disagreed with the civil penalty. His use was an unfortunate mistake not done to misrepresent his qualifications. He was given the title by his first employer, which continued with other employers, including a firm in Corvallis, OR. At the time, he had no reason to suspect his job title would create problems. He added that he has been a professional engineer in Washington and Idaho since 1997 and has used the PE title as a commonplace occurrence. He emphasized that the proposal statement "in process" was meant to clarify his Oregon status. Lastly, he has taken steps to correct misused titles, including internal discussions about rate sheet updates for labor charges and fees for non-engineers. As a result of the case, he has paid both personal and professional costs and therefore proposed a letter of concern as an alternate disciplinary action.

Tappert responded by pointing out the two-year time frame between the proposal and the comity application. The respondent agreed that it should have done earlier, but insisted his primary project work was done about a year and half after signing the proposal. During this time, he lost track of his application and it became less of a priority.

Upon consideration, the LEC disagreed with his request for a letter of concern because it was not strong enough. The two-year time span between the proposal and application was too much time to overlook, so the LEC proposed to reduce the civil penalty to \$500. The respondent commented that he was not alone in his use of the title, including Oregon state agencies. Are they sanctioned in a similar manner?

Tappert answered that each case is reviewed on an individual basis and a sanction is based on case facts, but there is some consistency. LEC member Grant Davis added that this case was different because most people who use the term engineer without registration were found ignorant of the law. Education was warranted. In this case, however, there was harm because public financing for a public project was placed in jeopardy because of his use of PE. The respondent asked about harm. Board Investigator Wilkinson responded that the harm came from the Department of Environmental Quality (DEQ) holding back Community Development Block Grant funds. The DEQ questioned if there was a registrant in responsible charge, which placed the project funding in jeopardy. Tappert described the crux as the respondent knew going in that he needed to be registered to work in Oregon, or he should have known because of his registration status in Washington and Idaho. Whether through a mistake or carelessness, the respondent knew in 2007 that he needed to submit his comity application, but delayed it until two years later. Tappert reminded him that licensure is more important than that delay would show.

The respondent then commented that he sees significant violations across the Northwest. Wilkinson encouraged him to submit complaints because the Board takes this issue seriously. In fact, the Board recently sent a letter to the American Council of Engineering Companies of Oregon (ACEC) regarding their *2011 Salary and Benefits Survey*. The Board notified ACEC that the survey suggested the engineer title for unlicensed persons, which was contrary to the registration requirements of ORS 672. The Board received a favorable response from ACEC. Wilkinson concluded noting there is an undermining of the

public trust that occurs when unlicensed persons use the title and when the public relies on that representation.

Tappert emphasized that if the respondent had applied at the same time he submitted the proposal then the complaint might not have been investigated. The respondent insisted his proposal statement “in process” was meant to clarify his status. Tappert asserted the statement was not true. The respondent countered that he started the application process in 2002, so it was in process. Wilkinson disputed this by noting his comity application was “in process” for five years when the proposal was written and it took another two years to complete. His assertion of a seven year “in process” application was not defensible. Tappert refocused the discussion to the LEC offer to reduce the civil penalty from \$1,000 to \$500. If that was not acceptable, then the next step was to move forward to a hearing. The respondent agreed to the settlement terms. **The LEC recommended that the Board approve the settlement agreement.**

2614

The LEC met in an informal conference with the respondent, a PLS, to discuss a Notice of Intent to assess a \$2,000 civil penalty (NOI) for failing to file a map of survey within 45 days of setting monuments and to return a corrected map of survey within 30 days in violation of ORS 209.250(1), ORS 209.250(4)(b), and OAR 820-030-0060. The complainant a County Surveyor alleged that the respondent set monuments for a partition plat and for a limited partnership survey without submitting maps of survey for filing. The respondent did not dispute the allegations when he responded to the allegations.

The respondent informed the LEC that he forgot to turn in the map of survey for the limited partnership and has nothing to add. In regards to not filing the partition plat, which was a property line adjustment involving ODOT and a private group, there was a disagreement between the purchaser and seller about payment. In fact, the client has not paid him for the project, but he would not argue the violation.

The respondent explained that the Mylar’s for the partition plat were turned in to the, but monuments were not set. The County Surveyor’s office subsequently had questions about the partition. By that time the City planner and surveyor already had signed the Mylar. When the County raised concerns about the surveyor’s certificate and the description of the property they wanted changed, he talked with the City about how to modify the Mylar they had signed. The City authorized him to change the Mylar and to get it filed. However, he felt uncomfortable changing the Mylar given the difficulties of getting it signed in the first place. He did not want questions raised about the signatures and his changes. Nevertheless, the monuments were not set until a later date. He also clarified that he does not set monuments until Mylar’s are submitted because they can sit there for a year waiting for approval. The pins were past the 45 days and he was not disputing the allegation.

Tappert clarified for the partition plat that the allegation was a 30 day violation for failing to return a corrected map of survey. The respondent stated the difficulty with the City’s signatures caused problems when the County wanted changes. Why not reprint the map? The respondent responded that since it was already signed he was informed to go ahead and make the changes directly on the Mylar. There were difficulties with that option, but it was still past the 30 days.

Is failing to file maps a common problem? Baker responded there have been instances of going back and forth with the County Surveyor about changes. He speculated that Jackson filed the complaint because of frustration with the partition plat and then added the ACTA Limited Partnership. He did not think there was a pattern, however. Tappert noted other examples of found, unrecorded monuments and he wanted to ensure this does not happen again. He explained that the goal was to reach a settlement agreement on the violations. The respondent offered no argument about the violations other than to say he was busy, adding it was not an excuse.

Upon consideration, the LEC offered to settle wherein the respondent would admit to the two violations and pay \$500 per violation, or a \$1,000 civil penalty. Tappert reminded the respondent that when surveyors come across unfiled monuments it creates confusion and problems in the profession. The respondent commented that most surveyors will call the surveyor when they find unfiled monuments. He added that does not make it right. He agreed to the settlement. **The LEC recommended that the Board approve the settlement agreement.**

2685

The LEC met in an informal conference with the respondent, a PE, to discuss a Notice of Intent to assess a \$2,000 civil penalty (NOI) for failure to maintain records, to submit the information when requested by the Board, and to cooperate with the audit in violation of OAR 820-010-0635(5) and OAR 820-020-0015(7)(8). The respondent signed his renewal form certifying that he had completed the required PDH units. When the respondent was randomly requested to subsequently participate in an audit of documentation to support the claimed PDH units, he replied to a second notice with a CPD Organizational Form wherein he claimed 1,215 PDH units. He asserted he is a full-time Professor of Mechanical Engineering at an Oregon university and his teaching activities should give him enough PDH for continuation of his PE registration. The Board informed him that repetitive teaching of college courses as part of regular employment do not qualify as PDH units and requested he submit a CPD Organizational Form with 30 qualifying PDH units and supporting documentation. The respondent provided no further documentation, so he was notified that his case was referred to the LEC for further review.

The respondent disagreed that he failed to cooperate. He met his professional responsibilities, but admitted he was mistaken in believing that the courses he taught would qualify as PDH units. He attended conferences and presented papers for workshops. The delays in responding came from not realizing the serious nature of the requirements. The respondent also explained that he is in India for the summer months and during the winter break and this can account for delays. Once he was able to work with an investigator who explained what was needed, he was able to reconstruct records to demonstrate compliance. Wilkinson confirmed that the respondent was able to submit the required documentation, which was found in compliance; however, that was not the reason for issuing the NOI.

Tappert replied the NOI was issued because of the effort it took to get the information from him and the timeframe to respond. The initial letter was sent in July 2010, but he failed to respond. A second letter was sent in September 2010 and he responded with 1,215 PDH units. Auditors sent a third letter to inform him that full time teaching does not qualify and to request qualified documentation. After that, he offered no response. By the end of December, a law enforcement case was opened and the respondent was sent a respond to allegations letter. There was communication in February, but there still was no information so the investigation proceeded. It was not until September 2011 that the respondent finally submitted the documentation to verify CPD compliance. Tappert reminded the respondent of his obligation to submit documentation when requested by auditors.

The respondent recounted an email from former Board investigator Andy Johnson regarding the respondent submitting his class schedule. Johnson mistakenly informed the respondent that his class schedule would suffice as evidence of CPD compliance. When the mistake was discovered, the respondent was told of the requirements for proper documentation. Wilkinson added there was an education component in working with the respondent. He recounted a discussion where the respondent was describing his conference papers and Wilkinson pointed out that his work would count towards CPD compliance. The respondent agreed and apologized for the delay and stated no disrespect was meant. He accepted it was his responsibility and if it was not done correctly, then he should be in front of the Board. He reminded the LEC that he was gone during the summer months, but immediately called upon his return to get an extension to reply to the allegations. Wilkinson confirmed the events.

LEC member Grant Davis emphasized to the respondent that as a PE he can design anything in the state. And part of licensure is to stay current with technology and changes to design requirements. He added that the respondent probably does that, but the Board monitors CPD compliance because it is a licensure requirement. However, it appeared to him from the communications that the respondent did not take his licensure important. It appeared he took it too casually. Davis stated the Board asked him to complete the CPD form in the manner that was required, but the respondent submitted a form showing 1,215 units without documentation. Staff had to lead him through the process to compliance when the rules are quite clear about the requirements, which took a year. He concluded with hope that the respondent learned there are registration requirements that must be met and they must be taken seriously.

The respondent apologized for the impression and clarified that he takes this issue seriously. He will be documenting his activities. He acknowledged this was an education process and in Oregon to claim the title of engineer he must be registered. His registration adds to his professorial duties. He had not realized the seriousness nature of the requirement, but does now, and offered that he did not deserve the fine.

Upon consideration, Tappert reinforced the importance for a professor of engineering as a mentor of students to be a registered PE. This is encouraged by the Board and, at the same time, it creates a greater obligation on the part of a mentor to comply with the rules. The primary issue is that the respondent did not maintain his records for continuing education. For a certain period of time, he failed to cooperate with the Board after being informed that teaching does not apply. The LEC offered a settlement in that the respondent would acknowledge the violations with a civil penalty for \$250 per violation for a total of \$500.

The respondent responded with sadness that he has to pay a civil penalty. He offered to retire his registration because he has not really benefitted from it. Tappert noted that the respondent has the option to retire his registration, but that does not mitigate what has happened. As an option, if he retired he has no obligation for continuing education. However, Tappert suggested that the respondent keep his licensure because of the work he is doing. It took a year to tease the information out, but it did not appear there was any difficulty in meeting the requirement. The problem is that it took the Board's investigators to get the information. Tappert then explained his option was to accept the offer of a civil penalty or not, otherwise there would be a formal hearing. AAG Tucker-Davis explained that a hearing is held in front of an Administrative Law Judge and that the respondent may want to get an attorney. However, this is an informal process to reach a mutual agreement about the violations and the sanction. The Board would make the final decision.

Wilkinson asked if the respondent was making a counter-offer to retire his registration without reinstatement in lieu of the civil penalty. The respondent agreed stating he would like to retire in light of professional compliance with the rules. Davis informed the respondent that retirement would allow him to return to active status within five years. After five years he would have to retake the exam. In a law enforcement case, however, the Board typically accepts retirement without reinstatement. The respondent replied that he did not deserve this, but admitted he could not afford the civil penalty. He added that the cost of registration has not yielded a benefit. In fact, two years ago he missed a renewal payment date and had to pay the delinquency fee. Tappert informed the respondent that the Board will extend payments on penalties. The respondent declined and wanted to retire his registration.

Upon consideration, the LEC offered to accept his retirement without reinstatement in lieu of the civil penalty. However, the LEC expressed disappointment that he had chosen to give up his registration in view of a \$500 civil penalty, especially given his position as a professor of mechanical engineering. Tappert added that the LEC would take the unusual step to leave open the settlement agreement offer for Murty to accept the \$500 civil penalty. The LEC gave the respondent two-weeks to reconsider his decision before accepting his retirement without registration.

Update: On December 18, 2011, the respondent emailed the Board with his withdraw of request for retirement and his acceptance of the \$500 civil penalty settlement. A revised settlement agreement was emailed to him December 20, 2011. He accepted the agreement by email and reminded that he will not return to the States until January 20, 2012, at which time he will sign the agreement.

The LEC recommended that the Board accept the settlement agreement.

Committee Meeting:

2598

The LEC discussed that the complainant, a GE, alleged that the respondent, a PE, was identified in a Statement of Qualifications (SOQ) as a Senior Geotechnical Engineer without registration. The complainant wrote that the respondent's company submitted a SOQ to an Oregon city water board and that it was signed by another PE. In addition, the respondent was listed as a "Senior Geotechnical Engineer" for preparation of the Geotechnical Investigation Report. In addition, the SOQ contained a copy of the respondent's resume. Although the resume clearly delineated the respondent's status as a geotechnical engineer in the State of California and a PE in Oregon, it also contained a list of "Representative Projects" that listed him as a Geotechnical Engineer on Oregon projects for former employers.

The investigation found that the respondent was not directly involved in preparing the SOQ. He was therefore unaware he was incorrectly identified as a geotechnical engineer. More important, it was found that the respondent was an Oregon PE and was well qualified by education and experience to practice as a geotechnical engineer under OAR 820-020-0020(1). The LEC accepted that the respondent had not reviewed the SOQ, but they also believed he should have been aware of the proposal. If his qualifications were being used as part of a bid submission, then he needed to review the proposal to ensure that any statements regarding his qualifications were correct. **The LEC recommended closing the case with a letter of concern regarding his responsibility to review proposals where his qualifications are listed.**

2649

The LEC discussed that the respondent, a PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. The respondent was randomly requested to participate in an audit of documentation to support the PDH units he claimed as a condition of renewal. However, the respondent did not respond to the audit until the second notice when the Board received a CPD Organizational Form claiming 60 PDH units. However, no supporting documentation was included. A letter was sent to the respondent requesting documentation; however, nothing was received and his file was transferred to the Regulation Department for investigation.

The LEC was informed that the respondent has not responded to the allegations. Wilkinson asked about certification requirements for overseas mailing of a Notice of Intent and the requirement that they respond within 21-days. At this time, investigators sign a certification statement for mailing of a NOI. AAG Tucker-Davis responded that the statute does not contemplate legal service happening overseas. She suggested that email is a viable alternative. If the Board has evidence that the NOI was received by the respondent, such as in an email, then there are no issues. However, if the Board issues a Default Final Order then the Board will need to have the certificate of service. As long as they get it and respond then no issue. If an issue about the amount of time to respond comes up, the Board can make an adjustment. The LEC determined to issue the respondent a NOI to suspend registration for 90 days and to assess a \$3,000 civil penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), and OAR 820-020-0015(7),(8).

2650

The LEC discussed that the respondent, a PE, is a South Korea resident who signed a renewal form certifying that he completed the required PDH units. The respondent was randomly requested to participate in the audit of documentation to support the PDH units he claimed as a condition of renewal. However, the respondent did not respond to the audit until after his file was transferred to the Regulation Department for investigation. When the respondent responded to the investigator, he wrote that he had not received any of the audit letters until August 2010 due to problems with his address. The respondent explained that his company KEPCO-E&C leases from the Korea Atomic Energy Research Institute (KAERI). KAERI also leases to several other companies at the same location and there was a mix-up with mail.

The LEC discussed that the respondent eventually provided PDH records to show compliance with CPD requirements. However, he was not receiving Board letters, which makes it an address violation. The LEC determined that the issue was one of failure to maintain his address rather than being one of failure to cooperate with the audit. Wilkinson added that this case shows how important it is that the Board has updated contact information for its registrants. The respondent contacted the Board once he received the letter, but he should have received his Board mailings sooner. Davis observed that it looked like he cooperated. McCartt confirmed stating that the respondent responded promptly to his emailed request for supporting documentation. **The LEC recommended closing the case with a letter of concern regarding the respondent's responsibility to keep current his Board contact information.**

2673

The LEC discussed that the respondent, a PE, is a South Korea resident who signed a renewal form certifying he completed the required PDH units. The respondent was randomly requested to participate in the audit of documentation to support the PDH units claimed as a condition of renewal. The respondent failed to respond to audit letters. When a letter sent by FedEx was delivered, the Board did not receive any documentation. A separate attempt was made by email. The respondent responded noting he had moved twice and provided updated contact information. Wilkinson informed the respondent of the steps necessary to gain compliance, including updated contact information. However, he has not responded to letters sent to his updated address. The LEC noticed that the respondent has not cooperated with the audit despite apparent contact. The LEC determined to issue him a Notice of Intent to Suspend Registration for 90 days and assess a \$3,000 civil penalty for violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), and OAR 820-020-0015(7),(8).

New Business:

Preliminary Evaluations:

The LEC reviewed a preliminary evaluation of a complaint received from a Washington state PE regarding the respondent and his representations that he was a registered professional engineer when he was not. The complainant stated the respondent held himself out to be a professional engineer in a deposition about shooting range issues at a Washington state rifle and revolver club. The complainant also included a link to the respondent's Web site where a copy of his *curriculum vitae* (CV) is posted showing use of the title of "professional engineer." The evaluation found that the respondent has a Hawaii address and the only Oregon reference is his telephone number with the "503" area code. In addition, there are at least two separate locations on the CV that refer to him as a professional engineer, but neither directly tags his Oregon registration. Due to the violation occurring in Washington State, the LEC determined to not open a law enforcement case.

Preliminary Evaluation:

The LEC reviewed a preliminary evaluation documenting a telephone call from the complainant, a Safety Coordinator for the Las Vegas Convention and Visitors Authority, regarding the digital signature of the respondent, a PE. The respondent lives in Vancouver, WA, and works for a California based company that creates vendor exhibits. The respondent prepared plans for an exhibit during the Las Vegas meeting

of the National Business Aviation Association (NBAA) held October 10-12, 2011. The complainant called to inquire if it was acceptable that the seal and signature looked as if it was cut-and-paste. Wilkinson explained it was not and requested that the complainant submit the plans for examination.

The evaluation found that the respondent prepared five sheets and used a scanned version of his seal and signature. This was not compliant with Oregon's digital signature rules. The complainant expressed an interest in only receiving properly sealed and signed documents. Wilkinson contacted the respondent and explained the rules regarding digital signatures. The respondent submitted revised designs to the complainant and wrote the Board an apology stating he has reviewed the digital signature rules and understands now how to comply. The LEC determined to not open a law enforcement case.

Preliminary Evaluation:

The LEC reviewed a preliminary evaluation of correspondence from Becky Papke, Enforcement Officer for the Civil Enforcement Division, Department of Justice (DOJ), regarding the respondent, a PLS. Papke forwarded a Consumer Compliant Form submitted by the complainant. The referral included copies of an invoice from the respondent to the complainant, a collection notice and response to dispute charges, series of deed documents, respondent letters to the complainant, respondent response to DOJ, and associated documents. While most of the allegations dealt with business matters outside the Board's jurisdiction, such as billing disputes, the LEC found the remaining allegations appeared to be a client disgruntled with the respondent's surveying services, perhaps made more so because of billing conflict. The LEC found that the issues were outside the Board's jurisdiction and determined to not open a law enforcement case.

Preliminary Evaluation:

The LEC reviewed a preliminary evaluation of a complaint received from Carl Tappert, PE, CWRE, and OSBEELS Board member, regarding the respondent, an Oregon city plumbing inspector. Tappert, as a representative for the Rogue Valley Sewer Services (RVSS), alleged that the respondent assumed the role of an engineer when he informed a contractor to replace a proposed grease interceptor with another model since the cited version did not exist. According to Tappert, this alternative model was not specified anywhere on the plans, was not approved for use by RVSS, and does not meet RVSS design standards. Tappert continued that the respondent made no effort to contact either the project architect or the project engineer for clarification. He asserted the respondent had engaged in the unlicensed practice of engineering.

The evaluation found that an architect, sealed and signed a set of plans for a restaurant rebuild showing the detail for the Oldcastle Precast 5160-GA-CWS, "Grease Interceptor." RVSS listed the 5106-GA-CWS as an approved gravity grease interceptor. However, Oldcastle did not label the 5160-GA-CWS model as a grease interceptor, but as a storm water vault. Other than the respondent's directive to use the alternative model, no evidence was submitted to investigators that showed the respondent "applied special knowledge" of the engineering sciences to direct the contractor to use the replacement model.

The LEC discussed that the inspector should have consulted with the design professional about options to replace the approved model. Members acknowledged that inspectors making substitutions at construction projects is somewhat commonplace, such as occurred here, but the LEC expressed concern that this places the inspector in a design role. AAG Tucker-Davis framed the question as to whether making the substitution was the practice of engineering. Newstetter described her experiences where communication occurs between the inspector and design professional for modifications to the approved plans. In this case, the replacement differed from what the architect specified and what RVSS approved. The replacement was done without consultation of the design professional and placed the inspector in a designer position.

Setting aside the authorization issues, which are not within the Board's jurisdiction, the LEC focused their attention on what role the Board might have in resolving the issue. After deciding to not open a law enforcement case due to the policy questions, the LEC determined to refer this issue to the Professional Practices Committee (PPC). The LEC questioned if the act of substitution is the practice of engineering, under what authority do building officials have to make field changes to approved construction documents, and is there a limit to that authority.

Preliminary Evaluation:

The LEC reviewed a preliminary evaluation of a complaint received from Molly O'Leary, an attorney from Boise, ID, representing Limited Liability Company (LLC) and Idaho Public Television (IPTV), regarding the respondent, an Oregon-based engineering firm. She alleged that in 2002, the LLC and IPTV engaged the respondent to conduct a study of a broadcast tower that the parties co-own and operate in Idaho. Since that time, it has come to their attention that the tower may or may not meet the governing standard at the time of the 2002 study by the respondent. In attempting to resolve this question, the parties contacted the respondent in March of 2011 and requested a bid to review their 2002 structural study to verify that the tower, as constructed, met the standard.

The evaluation found that O'Leary reached an agreement with the respondent to complete the study. However, her clients have not received the requested work product nor received any explanation from the respondent for its unprofessional conduct. While she alleged violations of the Rules of Professional Conduct, she provided no evidence of negligence or incompetence. Rather, the allegations appear contract related. In addition, the evaluation revealed the Idaho Board of Professional Engineers and Professional Land Surveyors are looking into the matter. The LEC determined to not open a law enforcement case.

Preliminary Evaluation:

The LEC reviewed a preliminary evaluation of an anonymous complaint regarding the respondent. The complainant wrote that the respondent "continually passes herself off as an engineer in an attempt to lend credibility to her positions and statements." The complainant offered three examples that included an on-line profile, an introduction someone gave her at a conference a "few years ago," and a business forum. The evaluation found that the respondent's profile page was no longer posted, that the date of the conference was unknown so there was no way to request evidence, and that there was no documentation provided for the business forum. The Board requires that evidence be provided by a complainant to document all charges (OAR 820-015-0010(1)). None was received. The evaluation also found that in her press releases the respondent is reporting her Bachelor of Science degree in Civil and Environmental Engineering from University of Wisconsin, Madison and two Portland State University Master's degrees, one in Civil and Environmental Engineering and another in Urban and Regional Planning. In an interview with the respondent, she reported that she refers to her past work experience with the Wisconsin Department of Transportation as an engineer, which was her title. The LEC determined to not open a law enforcement case.

Unfinished Business:

2630 – Watson: update information

Newstetter informed the LEC that she has gathered additional information regarding the Bureau of Land Management (BLM) dependent resurvey and subdivision of sections 7 and 8, Township 18 South, Range 28 East, W.M. She suggested the Board write a Freedom of Information Act request for the resurvey project file to Mary Hartel, Chief Cadastral Surveyor, Oregon & Washington Branch of Geographic Sciences, Oregon State Office Bureau of Land Management. She noted the project file would contain the BLM background on the resurvey. Newstetter recounted that she had taken a BLM class with Hartel at the Oregon Institute of Technology and realized the project file might assist the LEC. In addition, she updated the Board on her efforts to gather deed information for the investigation.

2605

Wilkinson informed the LEC that a PLS was retained as a professional reviewer for this case. His review is a work in progress and should be ready for the February LEC meeting. The professional reviewer visited the property and learned there may be right of entry violations. Wilkinson stated those allegations are outside the scope of work for a reviewer, but will be investigated. Wilkinson added that the professional reviewer will also be reviewing the property deeds.

Settlement Agreements: The LEC briefly reviewed the Cases Subject to Collections, Cases Subject to Monitoring, and Case Status Report. Total cases open: 95. No comments were offered.

Lopez updated the LEC on interviews for the investigator position. She informed that several interviews have been conducted with applicants; however, further interviews are pending.

The meeting adjourned at 1:47 p.m.