



# Oregon

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

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**LAW ENFORCEMENT COMMITTEE**

**Minutes of Meeting**

**December 13, 2012**

Members Present:

Carl Tappert, Chair

Ken Hoffine

Sue Newstetter

Staff Present:

Mari Lopez

Jenn Gilbert

Allen McCartt

Joy Pariente

Monika Peterson

James R. (JR) Wilkinson

Others Present:

Katharine Lozano, AAG

Dana Lattin

A meeting of the Law Enforcement Committee was called to order at 8:08 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 Conference**

2684

The Committee met in an informal conference and discussed that the respondent was requested to participate in the audit of documentation to support the professional development hour (PDH) units he claimed as a condition of the last biennial renewal period. During the audit process, the respondent responded with a Continuing Professional Development (CPD) Organizational Form listing three courses, yet he included documentation for only one course of 8 PDH units. The respondent explained he had completed the required 30 PDH units; however, his CPD records were left with his last employer in 2008. He would contact the sponsors in an effort to reconstruct his CPD records, but he also understood there would be consequences.

Subsequently, the respondent submitted a revised CPD Organizational Form showing documentation of 26 PDH units. The Examinations & Qualifications Committee granted him an extension to complete the remaining 4 PDH units.

Mr. McCartt informed that the respondent did not submit the remaining documentation and was, therefore, referred to the Regulation Department. Once notified of the open investigation, the respondent was able to submit compliant documentation for 31 PDH units.

The respondent discussed the letter he sent to Mr. McCartt. He explained that he lost his job and all computer access was suspended before he had even thought about getting a copy of his CPD documentation. After reconstructing the documentation, the respondent was in compliance with 31 documented PDH units. He requested the Committee consider eliminating or lowering his \$1,000 civil penalty due to the extenuating circumstances. The Committee offered the respondent a reduced penalty of \$250. The respondent agreed. **The Committee recommends the Board approve the settlement agreement with The respondent.**

### **Committee Meeting**

The Committee discussed that OSBEELS received a complaint from the complainant, PE, especially qualified as a geotechnical engineer, regarding the respondent, EIT, Certified Engineering Geologist (CEG). The respondent alleged that The respondent prepared a report titled, "Subsurface Exploration and Geotechnical Report, Portland Community College Satellite Campus, Newberg, Oregon," which provided engineering recommendations not done by a professional engineer. The report coversheet was signed as "CEG, Principal Engineering Geologist", and sealed with his CEG seal. His firm "prepared this geotechnical report for use in design and construction of the proposed Portland Community College educational facility." The respondent listed his "main geotechnical concerns" and offered "[g]eotechnical design and construction recommendations [that are] summarized and discussed in detail in the following report."

Former Board member John Seward, PE, especially qualified as a geotechnical engineer, reviewed the report to determine if the respondent was practicing engineering. He conveyed his conclusion on November 4, 2010, that "the substance and content of the report do not cross over into areas which constitute the exclusive practice of geotechnical engineering." He also offered it was understandable a reader would conclude that the report was the practice of engineering given the authors use of the terms geotechnical engineering analysis, analyses, and practice.

On March 7, 2012, a Notice of Intent to assess a \$2,000 Civil Penalty was sent to the respondent. He participated in an informal conference regarding the NOI. He indicated that he believed he was allowed to participate in these activities based on approval of his business by the Oregon Minority, Women and Emerging Small Businesses (OMWESB) office.

To address this matter further, investigators searched the OMWESB database, which showed a number of individuals and firms offering professional services for which it appeared they were not legally allowed to offer. A public records request was submitted to OMWESB for copies of those particular applications, including the respondent's. The applications were reviewed to prepare a memorandum for the Professional Practices Committee (PPC) regarding investigation outcomes for a PPC meeting with an OMWESB representative on August 10, 2012. The goal was to identify problems areas as a means to foster a working relationship between OSBEELS and OMWESB. The OMWESB representative told the PPC that applicants submit verification of requisite licensure for providing professional services when necessary. However, there was confusion from the differing authorities on the responsibilities of a geotechnical engineer and certified engineering geologist.

It was discovered that the respondent submitted an Application to OMWESB for Certification as an Emerging Small Business (ESB), which was received November 13, 2001. The respondent indicated his offering to provide civil engineering services, geological and environmental engineering, and using Oregon Department of Transportation commodity code 2-05-01. He also used North American Industry Classification System (NAICS) code 5413 to indicate engineering as his primary line of work.

The respondent submitted applications to OMWESB indicating on four occasions he can perform engineering services. Despite the LEC meeting with the respondent to discuss the issues, when his website was recently reviewed he had not modified his offering to engage in the practice of engineering (Exhibit 10). The Committee determined to withdraw the first Notice of Intent for The respondent and approve the issuing of a second NOI to assess a civil penalty of \$7,000 for unlicensed use of the title and for engaging in the unlicensed practice of engineering violating ORS 673.020(1), ORS 672.045(1), (2), and OAR 820-010-0720(1).

### 2678

The Committee discussed that complainants, alleged that the respondent, committed “ongoing misconduct and conflict of interest” violations when acting as the City Engineer. The complainants were hired by an attorney to evaluate plans and specifications prepared by an engineering firm. They found several deficiencies that lead to a lawsuit against the respondent who, at various times, was an employee and owner of \*\*\* Engineering while also acting allegedly as the City Engineer. Included with the complaint was a letter from the complainant to the City outlining his concerns about a partition application and alleging that the respondent and the City Community Development Director had a conflict of interest. Also included was a Memorandum Opinion from a United States Bankruptcy Judge about The respondent and the closure of the engineering firm.

Further investigation clarified that at no time was there a conflict of interest because the respondent was not hired as the City Engineer, but as a contractor to provide engineering services. Furthermore, the private project that the respondent was hired to engineer was in a different city. Regarding “deficient” engineering, the former City Manager responded to the City Mayor on September 8, 2009, that “we are very happy with his work.” In conclusion, he stated he did not recall any issues regarding the respondent during his time as the City Manager.

The investigation also showed that the complainants failed to submit any evidence to support the alleged violations against the respondent as required by OAR 820-015-0010(1)<sup>1</sup>. Mr. McCartt sent the complainants a letter on November 2, 2012, requesting evidence to support the claims against the respondent. However, OSBEELS received no response. Mr. McCartt called the complainant on November 8, 2012. The complainant stated he has not received any letters regarding the case and requested that Mr. McCartt sent him an email with the letter attached. Mr. McCartt sent the complainant the requested email later that same day. However, OSBEELS has received no response.

**The Committee recommends that the Board close the case as allegations unfounded.**

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<sup>1</sup> 820-015-0010(1) Processing Complaints states, “*Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges.*”

2691

The Committee discussed that the respondent contacted OSBEELS in an email regarding his application for admission to take the Fundamentals of Engineering examination. The respondent used the title “Electrical Engineer” in his email signature block. In his response to an allegations letter sent by OSBEELS the respondent explained that the title given to him by PGE upon his hire. He said his work is only at PGE. PGE Human Resources contacted OSBEELS and said that the title was given to the respondent by PGE and that the respondent had been advised to no longer use the title outside the company. PGE also claimed that the titles and work performed by PGE are “internal to the company” and, therefore, under the industrial exemption of ORS 672.060. The respondent has ceased using the title engineer since notification of the violation.

**The Committee recommends that the Board close the case as compliance met.**

2692

The Committee discussed that on July 13, 2010, the Board voted to approve a Final Order Incorporating Settlement Agreement regarding case #2526 against the respondent, PE (Delinquent) for his failure to cooperate with the Board during an audit of his continuing professional development (CPD) records for his 2005-2007 biennial renewal period. The terms of the settlement agreement, which the respondent agreed required him to pay a \$250.00 civil penalty. However, OSBEELS received no payment from the respondent. On February 11, 2011, during their regularly scheduled meeting, the LEC reviewed the Collection list and determined to open a case against the respondent for failing to cooperate with the Board and for failing to make timely payment of an assessed civil penalty.

On March 8, 2011, a respond to the allegations letter was sent to the respondent. He replied that he made the payment to the Board. To support his claim, the respondent submitted a copy of his check register showing a check written to the Board on July 26, 2010, a copy of his August bank statement showing the check number and amount, and a copy of the cancelled check. The check showed the OSBEELS deposit stamp. In addition, when the case was opened, the respondent’s employer’s website was reviewed whereon the respondent was listed as an Oregon PE, however, he was in delinquent status.

A search of the OSBEELS accounting records revealed a \$250.00 payment was received from the respondent on or around August 10, 2010. However, the respondent’s payment contained no explanation for what it was intended. Staff reviewed the respondent’s registration record and although the payment was \$10.00 short of covering the required renewal fees, it was presumed the payment was for the renewal of his delinquent registration. Therefore, the payment was credited to his registration renewal. Proper notification was provided, but the respondent failed to indicate what the payment was for on the check.

Regarding the issue of the respondent listed as an Oregon PE on his employer’s website, the respondent stated the website was created when his Oregon PE registration was active. He also stated that he does not have any direct control over the company website. However, due to an oversight, the website was not accurately updated when his Oregon registration expired. Lastly, the respondent stated he would renew his Oregon registration in order to help resolve this matter.

The respondent's payment was processed by OSBEELS on April 12, 2011; however, the respondent did not to submit a CPD Organizational form listing the required PDH units to return to active status. As a result, the respondent's registration remains delinquent. A check of the Company Website on October 8, 2012, showed the respondent only as a mechanical engineer licensed in the state of Hawaii. Once notified of the violation, the respondent immediately took action to have his registration status updated on his company's website to reflect only his status as a Hawaii mechanical engineer.

**The Committee recommends that the Board close the case as compliance met.**

#### 2699

The Committee discussed that respondent, certified that he completed the required Professional Development Hours (PDH units). The respondent was selected to participate in an audit. He responded with three pages of records using the CPD Organizational Form for PDH units earned for the audit period totaling 79 PDH credits. Supporting documentation was not attached. A second notification was sent requesting supporting documentation. The respondent did not submit a response within the deadline and the audit file was transferred to the Regulation Department for further review. The respondent submitted a written response to the Regulation Department that included a spreadsheet and supporting documents. The courses with adequate supporting documentation exceeded the required 30 PDH units, and compliance was met.

Due to his non-compliance, but eventual compliance, the Committee determined to issue a NOI to assess a \$500 civil penalty for the violation of OAR 820-020-0015(8).

#### 2700

The Committee discussed the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit. The respondent submitted the CPD Organizational Form with 88 PDH units earned. Supporting documentation was not attached. OSBEELS sent a second notification requesting supporting documentation. The respondent did not submit a response within the deadline and the audit file was transferred to the Regulation Department on May 10, 2011 for further review.

A law enforcement case was opened and a respond to allegations letter was sent. The respondent responded with some supporting documentation; however the response did not include a CPD Organizational Form. Significant discrepancies regarding dates and content of reported trainings were identified when supporting documentation was compared to the CPD Organizational Form that was submitted to the auditor. An email was sent to the respondent to give him the opportunity to respond with a corrected CPD Organizational Form and supporting documentation for the audit period. The respondent submitted an email that mentioned changes to OSBEELS policies and that a notice should have been sent to registrants that OSBEELS was no longer allowing self-certifying. I called the respondent to discuss his reference to policy changes and to explain that the Board expects registrants to stay current on the rules. Day agreed and submitted a response on with corrections made to the CPD Organizational Form and supporting documentation. The respondent exceeded the required 30 PDH with other courses reported and compliance was met.

Due to his initial non-compliance, but eventual compliance, the Committee determined to issue a NOI to assess a \$250 civil penalty for the violation of OAR 820-020-0015(8).

#### 2701

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit. The respondent responded by submitting the CPD Organizational form with zero PDH units claimed. The audit file was transferred to the Regulation Department for further review. A law enforcement case was opened and a respond to allegations letter was sent. The respondent submitted a written response stating that his status has been semi-retired for a few years and when he signed his renewal, he hadn't checked his PDH log to ensure he had the required 30 PDH units.

Staff attempted to reach the respondent, however the phone number on record was disconnected so a letter was sent. The respondent responded by submitting verification for 24 PDH that was earned before the start of the audit period. He explained that at the time he had thought these had met the requirements for the audit period but then realized it was actually earned in the previous audit period. The respondent stated he was not intentionally untruthful when he signed the renewal statement.

The Committee discussed if the maximum penalty was necessary in this case. It was determined that it was because The respondent was untruthful when signing his renewal stating that he had completed his PDH requirements and because he hadn't attempted to complete any PDHs during his renewal cycle. Mr. McCart pointed out that the 90-day suspension is usually attached to offenses involving not getting PDH units and being noncompliant during an audit. Mr. Tappert said, in the case of not obtaining PDH units, a 90-day suspension is appropriate because it is a matter of public safety. However, if a person is just uncooperative, but has the appropriate CPD documentation, there is no public safety issue and a suspension isn't necessary.

As a result of this discussion, the Committee determined to issue a Notice of Intent to assess a civil penalty of \$2,000 and a 90 day suspension, for the violations of OAR 820-010-0635(1) and (5), and OAR 820-020-0015(7).

#### 2702

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was requested to participate in an audit. The respondent submitted a request via email that stated: *"I am currently working in Afghanistan building forward operating bases for the US Military in remote areas in South of Afghanistan. I have all the required PDH units necessary for my registration, however due to my current location and demanding workload, it will not be possible for me to pull the requested documents easily. I have been here over a year and will continue to stay in Afghanistan until at least the end of June."*

OSBEELS reviewed the Military Status Report from the Department of Defense Data Center and confirmed that the respondent does not have military status. The Examinations and Qualifications (E&Q) Committee determined that the respondent did not qualify for a grace period and the audit file was transferred to the Regulation Department for further review.

A law enforcement case was opened and a respond to allegations letter was sent via email. The respondent responded via email with an excel spreadsheet listing courses and certificates attached. This same date, the Regulation Department responded to the respondent's email and requested the required CPD Organizational Form, which was also submitted electronically by the respondent on the same date.

Review of the CPD Organizational form and supporting documents verified all courses with the exception of the CH2M Hill courses. The respondent had stated in previous correspondence with OSBEELS that he could provide a letter from his employer (CH2M Hill) attesting to his completion of these courses. An email request was sent to Moussan for course verification from CH2M Hill. Staff from CH2M Hill contacted OSBEELS and sent verification of the respondent's coursework. PDH verification was consistent with what the respondent reported on the CPD Organizational Form and compliance was met with 30.3 PDH units.

**The Committee recommends that the Board close the case as compliance met.**

2704

The Committee discussed that OSBEELS received a signed renewal form from the respondent, PE, certifying that he completed the required PDH. The respondent was selected to participate in an audit. The respondent responded by submitting the CPD Organizational Form with 36.5 PDH units claimed without supporting documentation. OSBEELS sent a second notification, to which the respondent did not respond. The audit file was transferred to the Regulation Department.

A law enforcement case was opened and a respond to allegations letter was sent. The respondent submitted a response and claimed that he attempted to reach the Board for clarification regarding the audit shortly after he received the second notification letter, however, he did not receive a return response. Regardless, he included supporting documentation for 24 PDH units. Supporting documentation for 12.5 PDH was missing for the time period. The Regulation Department sent a letter to the respondent requesting supporting documentation. The respondent responded that he had thought he had provided all requested documentation previously; however, he submitted the verification for the remaining PDH units and compliance was met.

In further Board correspondence with the respondent he stated *"I tried calling [the Board] a couple times but don't recall dates. I did leave a message. It was sometime between March 7, 2011 and March 21, 2011. When I did not get a reply I assumed the issue had been resolved or not that important (until I was contacted by JR Wilkinson)."*

The Committee inquired of Ms. Lopez and Ms. Gilbert if the respondent's complaint of no answers to phone calls could be legitimate. Ms. Lopez informed the Committee that OSBEELS Accounts Department has procedures in place for documenting phone calls. The procedure, she explained, is for each Accounts Specialist to keep a log of all calls and messages and details on how the calls were handled. **Following this discussion, the Committee recommends that the Board approve sending the respondent a Letter of Concern regarding not responding to audit requests in a timely manner.**

2707

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit. The respondent responded on with an email requesting an extension to allow him to obtain the required PDH units and maintain his registration in good standing. The respondent's request stated that due to a personal family health hardship he was not able to obtain all the required PDH units for the audit period, though he claimed he followed an extensive self-study regimen and tutored and coached young engineers in the office. Accounts Specialists sent a letter to the respondent requesting supporting documentation. The letter also offered the opportunity to request a grace period, because he was delinquent by 15 or fewer PDH units. The respondent did not respond. Accounts Specialists sent a letter in a final attempt to contact the respondent to submit the required CPD Organizational Form and supporting documentation. The respondent did not respond. A law enforcement case was opened and a respond to allegations letter was sent. The respondent provided a response discussing his difficulties in obtaining PDH units.

The respondent submitted verification for 31 PDH units obtained outside of the audit period. The respondent did not request nor was he approved by the Board for a grace period. The respondent also did not include the CPD Organizational Form as required. A letter was sent to the respondent requesting PDH units for the audit period as well as an explanation as to why he did not respond to previous attempts by staff to gain his compliance by submitting the required documentation. The respondent called and stated that his understanding was that he was granted a grace period. It was also his belief that he had notified the Board of an address change 4 years ago and there were communication issues because his mail was going to the wrong address. The address change was not reported until February 2012, which was a year after the requested participation in the audit and also after initial correspondence with the Regulation Department.

After sharing the information from his file, the respondent agreed that his previous understanding regarding the grace period and address change was in error. With some assistance from staff, the respondent eventually provided the CPD Organizational Form and supporting documentation for 33 PDH. Compliance was met; however, supporting documentation for some of the PDH claimed was recreated. When the respondent recreated the documentation he inadvertently noted the wrong year on the CPD Organization Form as 2012, rather than the year of the audit period. However, all supporting documentation verified the CPD was earned during the audit period. The Committee determined to issue a Notice of Intent to assess civil penalties totaling \$1250; \$250 for the violation of OAR 820-010-0605, \$500 for the violation of OAR 820-010-0635(5), and \$500 for the violation of OAR 820-020-0015(8).

2708

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required Professional Development Hours (PDH) units. The respondent was selected to participate in the audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. The respondent did not respond and a second notification was sent. The respondent did not respond to the second notification and a final notice was sent. The audit file was transferred to the Regulation Department for further review.

A law enforcement case was opened and a respond to allegations letter was sent. The respondent did not respond. Ms. Peterson confirmed the respondent's address as his most current address since 1986 and left a voice message at a number located for him through "People Search." The respondent returned the call and stated that he had submitted his response with supporting documentation along with his renewal on June 25, 2012. The signed renewal was located along with CPD Organizational Forms for the renewal period as well as the audit period. There was no supporting documentation included. Upon contact, the respondent was informed that his CPD Organizational Form was located however, he needed to submit supporting documentation as well as an explanation as to why he did not respond to previous attempts by the Board to contact him. The respondent also stated that he retired in 1999 and he only kept his registration because Oregon is his home state.

The respondent submitted the CPD Organizational Form and verification for 25.5 hours on October 31, 2012, and the remaining hours on November 9, 2012. Compliance was met. Due to his initial noncompliance, but eventual compliance, the Committee determined to issue a Notice of Intent to assess a \$500 civil penalty for the violation of 820-020-0015(8).

#### 2709

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. The letter was returned as not deliverable from a Baker City, OR address. A second letter was sent to a different Baker City address and it was also returned as undeliverable. A final letter was sent by OSBEELS to the address on file notifying the respondent that his case was being transferred to the Regulation Department for further review. This letter was also returned as undeliverable.

OSBEELS found the respondent in Washington State and was able to reach him by phone. The respondent had moved. The respondent's registration with Washington was confirmed as "active." The respondent was informed he needed to report an address change. OSBEELS sent a respond to allegations letter to the updated address. The respondent submitted his address change to OSBEELS and OSBEELS received a response to the allegations later that week. The respondent admitted in his response that he did not comply with OAR 820-010-0605 to notify OSBEELS of his address change. The respondent's response included 65 PDH units reported on the required CPD Organizational Form and verified with supporting documentation for the audit period resulting in compliance met. Due to his initial noncompliance, but eventual compliance, the Committee determined to issue a Notice of Intent to issue a civil penalty in the amount of \$250.00 for violation of OAR 820-010-0605(1).

#### 2710

The Committee determined that OSBEELS received a signed renewal form from the respondent, certifying that she completed the required PDH units. The respondent was selected to participate in an audit of documentation to support the PDH units she claimed as a condition of the last biennial renewal period. The respondent did not respond. OSBEELS sent a second notification,

to which the respondent did not respond. OSBEELS sent final notification and the respondent did not respond. The audit file was transferred to the Regulation Department for further review.

A law enforcement case was opened and a respond to allegations letter was sent. The respondent did not respond. OSBEELS attempted to reach the respondent by her email addresses and phone number on record. The phone was disconnected and email was returned as undeliverable. The respondent's current employer was located through her LinkedIn profile and a message was left on her voicemail. After confirming her address of record was the same as the last known address on People Search, a letter was sent. The respondent called in response to the voicemail. When asked if she received all past correspondence from the Board, she confirmed that she did but chose not to respond because she believed she did not have the total required CPD to send in because she took 6 months off work during the audit period. The respondent stated that she did not have any current work in Oregon and was planning to just let her license lapse. It was explained that she was still required to comply with the rules and regulations as a registrant and it was in her best interests to submit a response. The respondent agreed to submit a response.

The Board received the respondent's written response. She submitted the CPD Organizational Form and supporting documentation for 36 PDH. OSBEELS requested that she submit additional supporting documentation for 18 hours claimed on the CPD form. The respondent provided adequate supporting documentation and compliance was met. Due to her initial noncompliance, but eventual compliance, the Committee determined to issue a Notice of Intent to assess a civil penalty in the amount of \$500 for violation of OAR 820-020-0015(8).

#### 2711

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. After no response, a second notification was sent. The respondent responded by submitting the CPD Organizational Form with no supporting documentation. The Board sent a letter to the respondent requesting supporting documentation and informing him there was a limit of 6 hours for self-study. The full 24 hours of self-study that he reported would not be accepted. The audit file was transferred to the Regulation Department for further review. A law enforcement case was opened and a respond to allegations letter was sent. The respondent submitted a response stating that he believes he adequately satisfied his PDH units by way of self-study and mentoring. During the audit period, he starting a highway construction company where he learned many engineering-related tasks via self-study and mentored a number of employees.

The Regulation Department responded and explained that the Board will not accept "unique circumstances" in satisfaction of CPD, nor will the Board allow the respondent to use current CPD efforts for compliance during the audit period. Staff suggested the respondent complete the CPD Organizational Form and use OAR 820-010-0635 to guide him. The respondent submitted a revised CPD Organizational form, but still remained 22.5 PDH units short. The Regulation Department offered another opportunity to submit supporting documentation with a CPD Form to verify additional hours earned during the audit period. The respondent provided verification for 6 hours of self-study; however that still left him short by 16.5 PDH. The respondent was

again offered another opportunity to provide more PDH and he responded that there was no way he would be able to come up with the full PDH requirements without being able to use more self-study and mentoring time. The Committee determined to issue a Notice of Intent to assess a \$500 civil penalty and a 90 day suspension for the violation of OAR 820-010-0635(1)(a).

#### 2713

The Committee discussed that OSBEELS received a signed renewal form from the respondent, certifying that he completed the required PDH units. The respondent was selected to participate in an audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. The respondent responded by submitting the CPD Organizational Form with 85 PDH Units claimed without supporting documentation. The respondent requested in his initial correspondence “...advise me whether or not any other documentation shall be required, although I have no supporting documents like the particular certification, because of my all claimed CPD units being done in-house...” OSBEELS sent a second notification and final notification requesting supporting documentation to which the respondent did not respond. The audit file was transferred on to the Regulation Department for further review.

A law enforcement case was opened and a respond to allegations letter was sent via email (due to the respondent being an international registrant) and hard copy by mail. OSBEELS received a response from the respondent, which included an apology for late submission of the documents and included verification of 78 out of 85 PDH units reported on the respondent’s CPD form. Compliance was met. OSBEELS verified with the respondent that his employer (Mitsubishi Heavy Industries) recreated the certificates for the courses in order to meet the audit request. The Committee determined to issue a Notice of Intent to assess civil penalties totaling \$1,000; \$500 for the violation of OAR 820-020-0015(8) and \$500 for the violation of OAR 820-010-0635 for a total of \$1000.

#### 2714

The Committee discussed that OSBEELS received a renewal request from the respondent, though the signed renewal statement could not be located. The respondent was selected to participate in an audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period. The respondent did not respond and a second notification was sent. The respondent did not respond and a final notice was sent. The audit file was transferred to the Regulation Department for further review after the respondent failed to respond to the final notice.

A law enforcement case was opened and a respond to allegations letter was sent. The respondent’s response included the CPD Organizational Form and documents to support 57.5 PDH. Compliance was met. Due to his initial noncompliance, but eventual compliance, the Committee determined to issue a Notice of Intent to assess a civil penalty in the amount of \$500 for the violation of OAR 820-020-0015(8).

#### 2716

The Committee discussed that the respondent was selected to participate in an audit of documentation to support the PDH units he claimed as a condition of the last biennial renewal period, though a signed renewal statement could not be located. The respondent did not respond.

A second notification was sent with no response. Final notification was sent to a different address in Mission Viejo, CA and it was returned with an insufficient address. Notification was sent to the respondent, to the address on file, that the audit file was being transferred to the Regulation Department for further review. The letter was returned for insufficient address.

A law enforcement case was opened and a respond to allegations letter was sent to an address found on People Search. The respondent submitted a response. The respondent stated in his response that he had been working out of the United States for much of the last 4 years and his mail is no longer forwarded and the earlier audit letters never reached him. He apologized and stated that he would be happy to respond to the request, however, his records were in storage and not readily accessible. The respondent suggested sending his current CPD information and taking additional courses to satisfy the requirement. The respondent was informed that PDH units must be submitted for the audit period. The respondent responded and stated that he attempted to complete the CPD Organizational Form for the audit period but had to admit that he could not reconstruct a reasonable record. He stated *“I don’t want to provide erroneous information and would rather just admit that I can’t produce the required PDH information.”* After further contact, the respondent submitted a letter to the Board that apologized for his mail handling system and that he is not able to reconstruct a complete and accurate history for the audit period. The Committee determined to issue a Notice of Intent to assess civil penalties totaling \$750 and a 90-day suspension; \$250 for the violation of OAR 820-010-0605(1) and \$500 for the violations of OAR 820-010-0635(1)&(5) and OAR 820-020-0015(7).

#### 2776

The Committee discussed that the respondent and her business partner, met with the Professional Practices Committee (PPC) in February 2012 to discuss their question regarding the supervision of survey field crews. During the PPC meeting, the discussion determined that a registered land surveyor would have to supervise non-boundary staking and layout services. The company website was also reviewed and found to offer survey and mapping services. A professional engineer on staff is allowable when offering land surveying services under ORS 672.005(1), however, a registered professional land surveyor is required to be on staff to provide any authoritative locations of boundaries. The PPC offered to hold additional discussion during the April meeting if the respondent and her associate submitted the contract that initiated the question for review.

Board staff emailed the respondent on March 21, 2012, reminding her about the PPC meeting and their willingness to review the contract in question. The respondent responded thereafter, “[The company] has decided not to proceed with survey services.” However, the company website still showed offerings for Land Subdivision and Surveying and Mapping. Although there is an professional engineer on staff, land subdivision work includes boundaries, which requires a professional land surveyor.

It appeared to the PPC that part of the confusion with the company may be that the Office of Minority, Women and Emerging Small Business (OMWESB) granted a certification to DL Design Group. OMWESB administers programs that are designed to promote economic opportunities for small businesses. One of their certification programs, the Disadvantaged Business Enterprise (DBE), was granted to the company. This was a point of contention during

the February discussion in which the PPC briefly discussed the North American Industry Classification System (NAICS) code that OMWESB designated to the company. The certification from OMWESB contained the statement, "The following description table indicates the areas (in form of NAIC codes) in which your firm has been approved to perform work; this included NAICS 237210 and NAICS 541370 which relate to Land Subdivision and Surveying and Mapping (except Geophysical) services respectively."

After discussion, staff was directed to invite representatives from the OMWESB office to the June meeting for additional education regarding the registration requirements in Oregon for professional engineering and land surveying services. Additionally, the PPC determined to refer the company to the Regulation Department for further investigation.

As a result, a law enforcement case was opened and a company questionnaire was sent. The respondent replied to the inquiry. She included a print of the company website showing they had removed the survey offerings. However, the company was still offering surveying services on their website when checked by OSBEELS on May 1, 2012. Therefore, from the February 10, 2012, PPC meeting until the respondent responded on May 4, 2012, the company continued to offer professional land surveying services without registration despite being personally notified of the violation.

Mr. Wilkinson said he feels the respondent's partner is also responsible for these offenses since, as a registrant, he should be aware of OSBEELS rules. AAG Lozano agreed and said since the Secretary of State's site lists the business partner as a registered agent of the business, he should be the respondent in this case because he is the culpable party as a registrant who should be familiar with the rules. Ms. Lopez clarified that the company's appearance at PPC didn't cause the law enforcement file. Rather, they were given guidance by the PPC and refused to comply with removing the land surveying offerings. During the May 2012 Board meeting, while reviewing the website and discussing the PPC, a Board member discovered that the changes hadn't been made. The Board then directed the Regulation Department to open a case.

As a result, a new case with the business partner was opened. It will contain all evidence currently contained in the respondent's file. The respondent's case will remain open until both cases are ready to proceed.

#### 2781

The Committee discussed that the respondent was to receive a NOI, but further investigation was needed. The respondent's case was discussed again because investigators had received his CPD records and found him to be compliant. Investigators also reviewed a list of nearly 460 projects completed by the respondent in the past two years and selected building officials had noted concerns in how casual he is in his documentation of projects.

Mr. Wilkinson noted that the key issue in the respondent's case is he certified at least 8 fire escapes as safe, despite never load testing them as required by the City of Eugene fire department. The Committee then focused the discussion around whether the respondent should be considered negligent or incompetent. Mr. Tappert said there's a distinction between determining if the fire escape is safe and determining if the fire escape is safe using the

procedures contained in fire safety codes. AAG Lozano said that negligence must be proven through a pattern of established negligent work. AAG Lozano also pointed out that the respondent was untruthful in signing and sealing paperwork which stated he did load testing when he did not. Mr. Tappert said that the public was fiscally harmed by the respondent's actions. Mr. McCartt reminded the Committee that actual or potential harm to the public raises the violation to a level of suspension or revocation of a registrant's license. The respondent's work has been evaluated by other engineers who talked with investigators about their concerns. Ms. Lopez asked if the Board could revoke the respondent's structural registration, but leave his civil intact. AAG Lozano said, according to ORS 672.200, if the two are included under the same license number, both civil and structural are revoked.

Mr. Tappert said it appears that this case deals with 8 instances of negligent work and 8 instances of lack of truthfulness. Mr. Tappert, Mr. Hoffine, and Ms. Newstetter all agreed that the respondent should receive the maximum penalties on all counts because of the harm done to the public. The Committee agreed to combine all instances of misuse of seal and signature together for a total civil penalty of \$17,000. The Committee determined to issue a Notice of Intent to revoke registration and assess a \$17,000 civil penalty.

During the course of this discussion, Mr. Wilkinson found that Florida is using an examination on rules and regulations to close cases and he suggested adding an exam option as part of the OSBEELS sanction process. Violating registrant could take an online exam to reinforce their knowledge of rules and statutes. Ms. Lopez said a new examination would have to be developed for this purpose. Ms. Newstetter suggested the examination reference law enforcement cases and scenarios. **The Committee agreed it should be put on the Board agenda for discussion.**

## **New Business**

### **Preliminary Evaluation**

The Committee discussed a preliminary evaluation wherein the respondent notified OSBEELS of disciplinary action from the Louisiana Professional Engineering and Land Surveying Board (LA Board). His engineering firm did not have a Certificate of Authorization to offer or practice engineering in Louisiana. As Oregon does not have rules requiring firms to register for a Certificate of Authorization with OSBEELS or the Oregon Secretary of State, OSBEELS cannot hold the respondent responsible for this offense. In addition, the respondent successfully met the terms of the LA Board's order and the case was closed. He also provided timely notification to OSBEELS of his disciplinary action from the LA Board. The Committee determined to not open a case against the respondent.

### **Preliminary Evaluation**

The Committee discussed a preliminary evaluation wherein the respondent notified OSBEELS of disciplinary actions taken against him by the Florida Board of Professional Engineers (FL Board). The violation was regarding negligence in the practice of engineering. He and his company were hired by the architect of record to provide Steel Stadiums with structural engineering services for the Pacso High School Press Box in Hudson, FL. The Manager of Codes and Standards for the Florida Department of Community Affairs alleged that the respondent's design contained errors and omissions. The respondent signed a Final Order that required him to pay a \$1,000 administrative fine and costs of \$1,112. He was reprimanded and

ordered to appear in front of the FL Board to discuss how the situation occurred, what improvements he planned to implement to improve his work product, and how he planned to prevent future occurrences.

The respondent received a reprimand, which does not rise to the level required under OAR 820-020-0015(6). In addition, the Board might have jurisdiction over the faulty electrical engineering design, which the respondent acknowledged, but the facts pointing to the culprit are muddied by the occupancy change, the role of the architect of record and contract specifications, and vendor, Steel Stadiums. Furthermore, the events precipitating the Final Order occurred prior to his registration with OSBEELS, so, at the time of the violations and sanctions, the respondent was a not a registrant and subject to the Rules of Professional Conduct. The Committee determined to not open a case against the respondent.

#### Preliminary Evaluation

The Committee discussed a preliminary evaluation wherein the complainant asserted to OSBEELS that the respondent, a City Public Works Director, was negligent or incompetent in the practice of engineering when he apparently failed to implement certain erosion control measures. The Board does not have authority of the statutes and violations cited by the Department of Environmental Quality (DEQ), therefore, the Board lacks jurisdiction. The complainant offered no evidence that the violations occurred under the engineering supervision of the respondent. The violations appear to be lacking City administrative functions due to the DEQ corrective actions that require site erosion control measures and a description and implementation of enforcement procedures for erosion sites. The Committee determined to not open a case against the respondent.

#### Preliminary Evaluation

The Committee discussed a preliminary evaluation wherein OSBEELS received an anonymous complaint regarding the respondent and his firm located in Phoenix, AZ, were conducting themselves as an architectural and engineering firm. There were also allegations of the respondent having outside engineers and architects rubber stamping plans without being present to oversee projects. The complainant submitted no evidence that the respondent or the firm was engaged in engineering activities in Oregon. The Committee determined to not open a case against the respondent.

#### Preliminary Evaluation

The Committee discussed a preliminary evaluation wherein the complainants wrote OSBEELS requesting an investigation into the professional practice of the respondent. Attached to their complaint was a \*\*\* Engineering, Inc. work order itemizing costs to prepare lateral loads, foundations, and framing designs for proposed one- and two-story apartment buildings. They alleged the respondent would not continue working on plans that were marked-up by Clackamas County. The respondent informed them it was not within his scope of work. After reviewing the work order, investigators determined that it does not contract him to provide further engineering services, either by meeting with Clackamas County or by continued revisions to the plans. The Board also does not have jurisdiction over contractual matters and, since they were alleging a failure to perform under contract, the Board would not have jurisdiction. The Committee determined to not open a case against the respondent.

### Preliminary Evaluation

The Committee discussed a preliminary evaluation wherein an anonymous complaint was received by OSBEELS regarding a photograph and caption in *The Oregonian*, which identified the respondent as an engineer. When contacted by investigators, the photographer said that the respondent had an extremely long title which would not have fit in the space allotted for the caption. The photographer made the determination to shorten it to “engineer,” which is what most people would consider his position. The Committee determined to not open a case against the respondent.

### Unfinished Business

The Committee discussed a housekeeping matter pertaining to the closure of Case No. 2733. **The Committee recommends the Board approve the Final Order to Withdraw the NOI.**

### Attorney General Updates

#### 2618: OAH referral

AAG Lozano reported that the respondent will have a hearing with the Office of Administrative Hearings (OAH) on April 9, 2013.

#### 2778: OAH referral

AAG Lozano reported that the respondent will have a hearing with (OAH) on June 25, 2013.

#### 2601: OAH referral

AAG Lozano reported that she and legal counsel have been exchanging paperwork and arguments and they have motions and responses going back and forth. No further discussion was held.

### Settlement Agreements

The LEC offered no comments on Settlement Agreements, on Cases subject to Collections (10), or on Cases subject to Monitoring (10).

Case Status Report, total cases open: 121

The meeting adjourned at 11:01 a.m.