

WORK SESSION MINUTES

OREGON STATE BOARD OF GEOLOGIST EXAMINERS SEPTEMBER 9, 2011

LOCATION: THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONF. ROOM A, SALEM, OR

Members Present:

Richard Heinzkill, Public Member
Christopher C. Humphrey, RG, CEG, Vice Chair
Vicki S. McConnell, PhD, RG, State Geologist
Stephen B. Taylor, PhD, RG, Board Chair
Rodney J. Weick, RG, CEG
Mark Yinger, RG

Staff Present:

Christine Valentine, Board Administrator

Guests Present:

Kyle Martin, AAG, DOJ for agenda item (2)
Denise Fjordbeck, AAG DOJ for agenda item (2)

Chair Taylor called the work session to order at 8:40 AM

Chair Taylor discussed how the work session would proceed and asked Administrator Valentine whether there were any additional handouts. The Administrator distributed additional handouts for two agenda items: updated rules (in 2 documents) incorporating feedback from a Rules Advisory Committee (RAC) meeting on Sept. 7, 2011 for Agenda Item (1) and a 2008 Memo from Chair Taylor to the Board related to Agenda Item (2). The Board then proceeded into the agenda.

(1) Update/Discussion of Rules Development (Compliance, In Responsible Charge, Procedural, Reissuance Revoked Registration)**

**During the course of the day, the Board addressed proposed rule revisions for Reissuance of Revoked Registration and In Responsible Charge. The Board did not have sufficient time to address Compliance or Procedural rules.

Reissuance of Revoked Registration, proposed OAR 809-015-0020: A primary topic of discussion was whether a person applying to have his/her license reissued should be required to retake the ASBOG exams. Current requirements for registration require a candidate to provide proof of passing the ASBOG exams. Options discussed were (a) not requiring retake if ASBOG exams already passed, (b) requiring retake regardless of whether ASBOG exams already passed, (c) limiting retake requirement to the ASBOG practice exam.

The Board talked about whether the reason for the license revocation should be considered in determining whether a retake is required. After discussion about what is the appropriate bar for someone to prove they are competent to be re-licensed, the majority landed at requiring a retake of the ASBOG practice exam as the requirement.

The Board decided also on the following revisions:

- switch the order of 809-015-0020 (3) and (4) from the 9/7/11 draft rule language,
- add specific rule citations to (4),
- do not pursue the proposed definition for reissuance

The Chair noted that in the afternoon meeting the board needs to take action to approve this rule with the changes agreed to in the work session. No further AAG review was requested by the Board since the AAG reviewed the previous draft and his input has been considered in the development of the rule revisions.

Rules Related to “In Responsible Charge”/Registration Requirements:

Board Member/RAC Chair Yinger introduced the proposed rules and summarized the RAC discussion on 9/7/11.

The Board then started with proposed **809-003-0000 (24)** – definition of “responsible charge.” Board Member/RAC Chair Yinger explained that he has carefully reviewed the proposed definition of “responsible charge” and has come to the conclusion that it is sound. He noted that one has to keep coming back to the definition while reading through the other proposed rule revisions in the packet. He further addressed the RAC comments, including the discussion the RAC members had about the use of the word supervision in the definition. The Board then discussed the proposed definition as revised through the RAC and covered topics including whether the definition should be for “in responsible charge” or “responsible charge” (as proposed), the concerns raised about not allowing “responsible charge” credit to someone supervising RGs but not practicing geology, and various grammatical changes to the text. Revised rule text was proposed as follows:

- (24) – third line, change the word “when” to “where”
- (24) - remove the word “answerable”, as it is not needed. “Responsible, accountable, and liable” as proposed in the draft definition is enough.
- (24) - change “liable for the work results” to “liable for the work products” (Note the Board concluded that work products covers services and verbal products.)
- (24) - change “supervision experience” to “the responsible charge or supervisory experience”
- 24(a) - change “while registered as geologist” to “as a registered geologist or certified engineering geologist with the Board”
- 24(c) - remove “duly” and just say while registered

With these changes the Board decided that 809-003-0000(24) is ready to go to AAG for review. Administrator Valentine expressed that she would prefer to send this with the complete packet of proposed rules revisions if feasible.

The Board next reviewed **809-030-0005** - Experience Standards. The RAC did not propose any additional changes to this rule. All Board members were in agreement with the proposed change to 809-030-0005(3), i.e. the only change made was in relation to responsible charge. But in looking at the rule, issues arose as to whether the rest of the existing text needs review and revision to increase clarity. The Board concluded that the responsible charge rule can be approved as proposed in the afternoon meeting. However, the Board also determined that while other changes would not be pursued immediately, this rule should be put on the medium priority list for future review.

The Board suspended its discussion about rules to allow for an on-time start for Agenda Item (2).

(2) Lessons Learned: Application of Supreme Court Case S057511 (Coffey) (Start Time Certain) Invited Guests: Denise Fjordbeck & Kyle Martin, AAGs, DOJ

The guests were welcomed to the work session. Administrator Valentine provided opening remarks about the materials provided to the Board members in relation to this work session agenda item and the purpose for the agenda item.

The discussion started with a quick overview of the Supreme Court Case. AAG Fjordbeck summarized the key issues from the case as follows:

Issue 1: Did the Board need to do prior rulemaking about what sanction would be imposed for particular types of misconduct? The Court said no, the Board can determine on a case-by-case basis.

Issue 2: Did the Board sufficiently define negligence and gross negligence in the context of a disciplinary action? The Court said the definitions in the Board's rules were sufficient and additional rulemaking was not required to support the disciplinary action taken by the Board. (AAG Fjordbeck noted that the Board rules do use fairly standard legal definitions.)

Issue 3: How is "community" of practice defined as used by OSBGE? AAGs Fjordbeck and Martin explained that the "community" is increasingly statewide for other regulated professions. In the Coffey case, the Board defined the community as Marion County and had witnesses address standards of practice in the county. The AAGs noted that the Board may want to define community in rule or take other action to clarify the community.

The group's discussion then turned to the issue of establishing standards of practice. (Note: the AAGs confirmed during the course of the work session that the terms "standards of practice" and "standards of care" are used interchangeably in the legal profession. Standards of care are perhaps more applicable for medical boards and standards of practice for other professions.) The Board Chair noted that the Board has discussed this issue in the past. The Court reconfirmed that the Board can establish standards of practice via expert testimony. The group then discussed what this approach can entail. Key points of the discussion are summarized herein.

If the standards of practice are not clear, the Board may face a battle of competing experts. A lack of clarity within the profession itself adds complexity to the Board compliance process. In these situations, rules addressing standards of practice could provide an avenue to help define Board expectations. A related issue is that the Board cannot bring up a new standard of practice in the contested case process as a person must be given fair notice about what standards or practice are. If using expert testimony, that testimony needs to be tied to standards of practice in the community.

If the Board continues with the practice of using technical reviewers, then the following issues should be considered. The Board needs to be sure the reviewers are commenting based on acceptable standards of practice, and this may require more effort to specifically inform reviewers about this point. The Board briefly discussed and did not reach consensus on how specific it should get in terms of what to request in a technical reviewer report. The group also discussed whether the Board should advise reviewers upfront of the potential for becoming expert witnesses. This topic generated some lively discussion and differing views, including some concerns about not wanting to unnecessarily scare reviewers from volunteering. The group discussed whether the Board would be overreacting by upfront advising reviewers to be prepared for serving as a witness in court. AAG Martin said while he appreciates that only a small percentage of OSBGE cases go to court, the challenge for the Board is that it isn't going to know at the outset of a case if it is the one going to court. This is why he encourages the Board to always make sure technical reviewers know that there is the potential for them to get called in to testify as expert witnesses.

The group discussed how rule language is often very general because we cannot pre-determine all scenarios. All agreed that it is hard to define all standards of practice for all situations. Related to this, the group discussed the impact of having regional differences in geology and thus also in some practices. In some cases, expertise needs to be different depending on region of work. The group discussed whether standards of practice for the profession are generally the same statewide or vary by region. Several Board members noted that there are some place based issues and approaches in geology, with variation in the expertise needed and practices used based on where you are working. The community of practice is generally statewide but specific expertise may be needed by region. However, Board members also discussed during the course of the work session that a lot of a geologist's work is about interpreting the geology of a site based on basic knowledge of geology and, to some extent, well accepted standards of practice related to interpreting what you are seeing at and around the site.

Chair Taylor noted that Board has discussed doing rulemaking for standards of practice but ultimately viewed the Coffey case as justifying reliance on expert testimony. The AAGs confirmed that the Board has the authority to do rulemaking related to standards and suggested that even in light of the Supreme Court decision there may be places where it makes sense for the Board to say here is what we expect the RG to do. Various options were discussed, and the Board also inquired about the use of guidance documents. AAG Martin noted that guidance documents are not the law. If someone violates the guidance, this does not equate to violating Board statute and rules. The AAGs did suggest that guidance

documents could be helpful to reviewers and link to an expert's testimony, i.e., that expert could cite the guidance and say that this represents standards in the community. The Board could point to guidelines addressing standards of practice as the outreach providing registrants information about Board expectations. However, the guidance documents alone would not remove the need for the Board to obtain expert testimony.

AAG Martin encouraged the Board to consider whether there is more it could put out there to clarify what is meant by standards of practice. Are there standard procedures or other things that a geologist needs to be doing in his/her practice, i.e. things that that do not require significant judgment to determine if standards have been followed or not? For example, he gave an example from the medical profession about how doctors and nurses must take notes and chart these. If a doctor or nurse fails to chart, it is a violation of this standard of practice. Essentially, if the information is not in the chart, then it didn't happen/wasn't discussed. The standard to chart helps to show what the person did and said and has evolved into a well understood standard of practice. Determining compliance with the standard does not require a judgment call; it is just a standard of practice that either is completed or not.

Board members discussed this "charting" concept and felt that there might be some basic procedures that would fit into this category of fundamental standards of practice. One example discussed was whether the proper development of a geological report fits into this category. Board members talked about the idea of setting standards for what must be included in a geological report or simply saying that work must be concluded with a geologic report or at least some type of written record. Several challenges to setting such standards were discussed, most notably that the scope of work can vary a lot. This variation means that a registrant may give verbal advice, a letter report, or prepare a substantially detailed report depending on the scope of work. Is there some minimum standard for a written record of some sort that would be similar to the well known standard of stamping/signing work products? The Board discussed that this is an area for further study.

The Board asked the AAGs about whether other boards, e.g. OSBEELS, have any standards like those being discussed by the group. Board Member Weick and AAG Martin said they didn't think so. The AAGs explained that many boards use an investigatory team usually lead by an employ of the board. By taking this approach, these boards do not need to solely rely on the review and testimony of outside experts. The board employee or contractor becomes the expert and is the one knowledgeable of standards of practice. This helps to ensure consistency in process and decisions. AAG Martin noted that boards without a staff or contract investigator (i.e., like OSBGE) face more challenges doing compliance work.

AAG Martin also cautioned the Board to consider how many people are used as experts in a case. The more experts used the greater the potential for differences in the opinions, and he stressed the difficulty of working a case with dueling experts. Board members asked about bringing a reviewer on for an initial/early review and then bringing in another expert later such as when it is clear that the case is going to a hearing. AAG Martin suggested that such an approach is not necessarily going to work as there is no guarantee that these reviewers will be in agreement. He further stressed that the lawyers for the opposing side will find both the Board's witnesses and use any differences in their testimonies against the Board.

The group discussed the challenge of making sure technical reviewers back up any statements made with supporting information from the case and address how purported violations relate to standards of practice. The AAGs suggested that the Board needs reviewers to specifically say what standards of practice apply and how exactly a person violated those standards. For example, if a reviewer says there is a problem with the data collected by the registrant but doesn't explain what the problem is in relation to standards of practice, then the reviewer's statement isn't all that useful to the Board. AAG Fjordbeck pointed out that the technical reviewer form does not currently ask the reviewer to address the standards of practice. The Board concluded that it might need to add questions or a new section to the technical reviewer form that simply asks them to describe the relevant standards of practice. If this type of information can be obtained, this gives a starting point and likely some greater clarity to understand what the reviewer is saying. The Board also discussed the idea of going back to reviewers involved in open cases and asking them to further elaborate about standards of practice. However, the Board deferred further discussion on this to when it would be discussing compliance cases.

The Board discussed whether it has been giving technical reviewers enough information about what it takes to go through the necessary evidentiary steps. If the Board is going to ask for substantially more time/effort by reviewers, then it needs to consider whether reviewers need to be compensated for this additional work. Chair Taylor noted that this is an issue of business practices and budget. All Board members and Administrator Valentine agreed that the Board has made great strides forward with the form and guidance it now gives reviewers but that further revisions may be prudent.

The Board returned to discussion about community of practice. AAG Martin provided information on how other boards have defined community – most define as statewide but not necessarily through rules. AAG Fjordbeck offered her recommendation for the Board to also define community of practice as statewide and again referred to healthcare boards that have said it is statewide and discuss as such in contested case orders. The OSBGE rule currently refers to community of practice and this historically did mean the specific community, not statewide. OSBGE could keep the term in the rule but add a definition for the term. OSBGE could also just take the language out of the rule and define as statewide through its cases.

In closing of the discussion with the AAGs, Chair Taylor proposed the following action items, and the Board members generally agreed with these:

- The Board evaluates community of care and standards of practices addressing what do these mean and where should they be defined (e.g., rules vs. guidance vs. expert testimony vs. combination)
- The Board and staff work to create a model technical review, e.g. an example of good review documentation that is made available to reviewers. This would be made available to reviewers along with an enhanced guidance document.

- The Board and staff work to modify the technical reviewer form to include questions that address standards of practice and community of practice
- The Board obtains AAG review/advice of the revised technical reviewer form
- The Board continues to think about is there a “charting” equivalent rule that could work for OSBGE

In closing discussion of Agenda Item(2), the Board thanked AAGs Martin and Fjordbeck for participating in the work session, and Chair Taylor called for a break at approximately 11:05 AM

Chair Taylor reconvened the work session at 11:13 AM. He determined that the Board would go back to Agenda Item (1) until 11:30, then move to Agenda Item (3) (compliance).

(1) Update/Discussion of Rules Development (Continued)

The Board started with **809-030-0015**. Board Member/RAC Chair Yinger explained the minor changes made by RAC, and the Board discussed these. One change was to always refer to the exam as the ASBOG exam. Another was to clarify 809-030-0015(d) further to be clear that a person can be supervised by a RG, CEG, or other geologist falling under the definition of responsible charge. The RAC removed the language referring to supervision since this is clear in the definition. He also stressed that this rule needs to read in concert with the new definition for responsible charge.

The Board then discussed 809-030-0015(1)(a), specifically whether the rule needs to repeat 45 quarter hours for two parts, whether the conversion to semester hours should be included, and making sure the requirement for 36 upper division hours is clarified to be quarter hours as well. The repeating of 45 quarter hours was explained. The Administrator found an existing definition addressing the quarter hours to semester hours conversion, and all agreed that this was sufficient to address the concern raised. The only change moved forward was to add in clarification about quarter hours in the section on graduate study.

The Board also discussed 809-030-0015(1)(b) with respect to whether any clarifications were needed. The Board concluded that the rule should be revised to specify that the Board is looking for full-time graduate study. No other changes were proposed as the Board decided the rule already has safeguards about how much credit a person can get for graduate studies

Board Member/RAC Chair Yinger and Administrator Valentine summarized the proposed changes in the rest of the rule. The Board asked for the following additional changes to 809-030-015:

- (1)(d) – change to say “Oregon certified engineering geologist” instead of “Oregon registered certified engineering geologist”
- (3)(c) - change to “submit applicable fees as per OAR 809 (insert # for fee rule)”
- (3)(b), (c), (d) – also add as per OAR 809 (insert correct #s for applicable rules)
- (2)(e) - strike this as it potentially creates a “do loop” and is not needed.

The Board concluded that this rule is not yet ready to be approved. The rule needs to be revised and brought back to the next meeting (December 2011) for further review.

The Board continued next with review of **OAR 809-030-0020**. The Board noted similarities with some of the language in OAR 809-030-015 and thus the need to make some of the same revisions. The Board agreed to the following revisions:

- Rule Title - change to say “Qualifications for Engineering Geologist Examination and Certification as an Engineering Geologist”
- 809-030-0020(1)(b)(A) - change to say “Oregon certified engineering geologist” instead of “Oregon registered certified engineering geologist”
- 809-030-0020 (2) - take away word registration and change to “qualify for certification as an engineering geologist”
- 809-030-0020(2)(b),(c), and (d) - change as per the comments on OAR 809-030-0015, i.e. adding the specific references to the applicable rules
- 809-030-0020(2)(e) - strike this as it potentially creates a “do loop” and is not needed
- 809-030-0020(1)(b)(A) – tentatively – possible change is to say “Oregon, California, or Washington certified engineering geologist”

Administrator Valentine brought up the issue of the Board potentially allowing for a combination of supervised and “responsible charge” work experience requirements instead of the status quo either/or requirement. She explained that this issue came up recently in relation to a request to sit for the CEG exam. Board Members Weick and Humphrey suggested that allowing a combination of supervised work experience and “responsible charge” work might be appropriate and agreed this should be discussed with the Board. Administrator Valentine noted that if the rule is going to be updated as part of the “responsible charge” work, this would be a good time to make this change if the Board is in agreement. The provisions in question are 809-030-0020(1)(b)(A) and (B). The Board discussed whether it wants to allow mixing and matching and whether minimums for supervised work experience or “responsible charge” work would need to be determined for combined experience. Ultimately, Chair Taylor determined there was general agreement on allowing some form of mixing and matching but not yet agreement on how exactly to allow this combining.

Chair Taylor then tabled further discussion on rules and called for a break at 12:00 PM.

(3) Review of Active Compliance Cases

Chair Taylor reconvened the meeting at 12:03 PM and noted that the Board was starting into the next agenda item. The Chair asked for clarification about whether the cases included information not subject to disclosure. The Administrator and Board Member/Compliance Chair Heinzkill confirmed that several cases involved advice from the AAG and possibly other documents not subject to disclosure. The Board Chair determined that Executive

Session was necessary. The Board entered Executive Session at approximately 12:05 PM. The Board discussed the following compliance cases in Executive Session (CC#10-04-013, CC#10-10-014, and CC#11-02-017) Chair Taylor ended the Executive Session at approximately 12:52 PM. The following summary was made of the proposed outcomes of the Executive Session to be taken up in the afternoon quarterly meeting:

10-04-013: Motion Needed: Continue with investigation

10-10-014: Motion Needed: Letter of Concern with specific language about stamping/sealing work of another RG.

11-02-017: Motion Needed: Close the case with no further action, allegations unfounded. Administrator needs to refer to ORS on testimony in the letter but should otherwise stick to standard form letter.

11-06-018: The Board did not discuss this case in Executive Session but noted that the case is going to the JCC later in September.

After ending the Executive Session, Chair Taylor re-opened Board discussion under (1) **Update/Discussion of Rules Development** to continue discussion of the Responsible Charge rules. The Board discussed **809-050-0000**. Board Member/RAC Chair Yinger explained the changes made as a result of the RAC meeting. The Board discussed and ultimately requested the following revisions:

- Within the introductory statement, the Board wants the rule reworded to state that final products are created in the public practice of geology.
- The Board discussed the language in 809-050-0000(4) and whether final would be more appropriate than bound. A number of options were considered and ultimately the Board settled on revising to say: “If a stand alone report is sealed by a registrant, then individual products prepared by the registrant that are compiled in the report, for example figures, maps, and logs, do not need to be individually sealed. The products in a stand alone report not prepared by the registrant that seals the report shall be sealed by the registrant who prepared that product.”
- The Board then also needed to discuss the language in 809-050-0000(5) which addresses unbound items. Final language for (5) was developed as follows: “Final work products not included in a compiled report, such as boring logs, shall be individually sealed and signed.”

Chair Taylor noted that the Board will need to make a motion to approve the revised rule language for 809-050-0000. He further determined that the Board would need to put 809-050-0010 (the last piece of the responsible charge rules packet) aside and move on to the quarterly meeting.

At 1:15 PM, Chair Taylor adjourned the work session.

QUARTERLY MEETING MINUTES

OREGON STATE BOARD OF GEOLOGIST EXAMINERS SEPTEMBER 9, 2011

LOCATION: THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONF. ROOM A, SALEM, OR

Members Present:

Richard Heinzkill, Public Member
Christopher C. Humphrey, RG, CEG, Vice Chair
Vicki S. McConnell, PhD, RG, State Geologist
Stephen B. Taylor, PhD, RG, Board Chair
Rodney J. Weick, RG, CEG
Mark Yinger, RG

Staff Present:

Christine Valentine, Board Administrator

Guests Present:

None

Chair Taylor called the quarterly meeting to order at 1:15 PM.

Agenda Review:

Board Member Heinzkill indicated that he had a concern about the work session/meeting minutes for discussion. Chair Taylor acknowledged and said this would be address under Agenda Item 3. No other requests or comments were offered by Board members.

Chair Taylor motioned to approve the agenda with no further changes. Board Member Yinger seconded. The Chair called for a vote, and all agreed.

Minutes:

The Board was asked to approve meeting minutes for June 3, 2011. Chair Taylor asked for any further changes or edits. Hearing none, the Chair asked for motion.

Board Member Weick moved to accept the meeting minutes for the June 3, 2011 work session and quarterly meeting. Board Member Humphrey seconded. The Chair called for a vote. Board Member Yinger abstained from voting since he was not present in June. All others agreed.

Board Member Heinzkill then asked for discussion about whether the minutes should be one document or kept as two separate documents as drafted. He noted that the Board has combined the minutes in the past. He also noted that the minutes are very detailed and perhaps this is too much work to ask of the Administrator. Administrator Valentine stated that the minutes could be combined, and she will do whatever the Board prefers. The Administrator was tasked with working on finding a comfortable level of detail to meet public

meetings requirement and address related needs. She was encouraged to keep evolving the minutes as she settles in to the job.

Administrator Report

Administrator Written Report

Chair Taylor commented that he appreciates the format with sections and bullets.

Administrator Valentine stated that she is still trying to determine the types of information and level of detail that is most helpful to the Board. Her intent is to cover highlights and address topics that are of particular interest to Board members. Chair Taylor suggested that the Board go over the report page by page, highlighting areas where there are questions for the Administrator or for Board discussion.

◀Page 1 – Questions and Comments▶

DOJ Model Rules of Administrative Procedure Implementing ORS 183.341(1)/OAR 137: The Administrator was asked to briefly explain what the DOJ rule revisions for contested cases address. Board Member McConnell also weighed in with what she has learned about these changes.

DAS Risk Management Division Annual Risk Report: The Administrator was asked if the Risk Report is something new or a regular requirement. She explained that this is required each year and what it covers.

Under State Contract Update, the Board Chair asked whether we know what is going to happen with Executive Service/Management for benefits. The Administrator and Board Member McConnell stated that so far there has been only silence on what the state will grant to those employees. The only thing finalized that applies to Executive Service/Management is the furlough requirements. The Board reiterated that it is not following furloughs for 2011-2013.

On-line Credit Card Payment for Fees: The Board indicated its interest in seeing this pursued. Board members wondered if the Administrator received feedback from the newsletter article. The Administrator stated that she has been on vacation and not yet determined if many comments have come in on the newsletter article.

◀Page 2 – Questions and Comments▶

The Administrator was asked to report on the status of discussions with computer system maintenance. She indicated that there have been some bumps but things are progressing. She hopes to have a contract in place soon for the rest of the biennium. She explained her desire to have a contract in place instead of operating based on a verbal agreement with the contractor.

◀Page 3 – Questions and Comments▶

The Chair offered that the Board needs to purchase a new computer with Windows 7 operating system. The Administrator was asked to report on the status of other computer and equipment upgrades. The Board also directed the Administrator to get a new color printer for the office to facilitate Board review of meeting materials.

◀Page 4 – Questions and Comments▶

The Board noted that the ASBOG membership rate is lower than anticipated.

◀Attachments▶

The Board quickly reviewed the attachments to the Administrator Report and did not have specific questions for the Administrator.

Updated Revenue/Expense Report for Current Biennium

The Board reviewed the report. Chair Taylor noted that Board did a good job keeping within available revenues within the last budget period by assuming a decrease in revenue of ~5%. This conservation approach was built into the 11-13 budget, and all agreed this approach is best.

Check log # 3308-3353 (Pioneer Trust) and #9141-9146 (ADP)

Chair Taylor noted that he likes the memo column and asked the Administrator pass this along to staff.

Board members asked about the entries reflecting payments to the Oregon Savings Growth Plan. Administrator Valentine explained that staff has money voluntarily deducted from paychecks and transferred into their deferred compensation accounts with the Plan. The Board questioned why this could not be done by direct deposit and also about how to properly show this on the books so it is not confused as revenue to the Board. The Administrator was asked to follow up with the Registration Specialist on this.

Board Member McConnell motioned to accept the Check Log dated 5/20 – 8/19 for Checks 3308-3353 and 9141-9146. Chair Taylor seconded. The Chair called for a vote, and all agreed.

3-Year Comparison of Changes in Monthly Renewals and Examinations

The Board reviewed the data. Chair Taylor offered that it will be interesting to see what happens with October renewals as this has been the month with most notable reductions in the past few years. He noted that the rest of the year looks relatively stable.

Update on Edward Jones Investments

Chair Taylor summarized the work he and the Administrator completed with respect to these investments as follow-up to the Board's discussion at the June 3, 2011 meeting. Three CDs were purchased – using \$50,000 out of checking plus cash in the Edward Jones account from a previous CD that matured. One additional CD one will roll over in September and be reinvested. Administrator Valentine explained that the recently purchases were selected to get the Board back on an investment ladder where there is a regular progression to when CDs mature. The Board noted the low interest rates and asked Administrator Valentine about the limitations on type of investments the Board can pursue.

Chair Taylor called for a break at approximately 2:05 PM. He reconvened the meeting at 2:13 PM.

Compliance Report

Board Member/Compliance Chair Heinzkill read the committee report as included in the Board packet. The cases discussed, along with Board directions and decisions, were as follows:

10-01-03: The administrator was asked to update the Board on attempts to serve notice. She explained the process to track down another address after service failed at the P.O. Box and stated that the notice was recently sent to the address obtained. No motion required.

10-04-13: The Board directed that the investigation continue; no motion required. Board Members Humphrey and Yinger were tasked to work with Administrator Valentine on defining questions to ask the technical reviewers regarding standard of practices.

10-10-14: The Board directed that the case be closed with a Letter of Concern. Board Member/Compliance Chair Heinzkill made the motion to close with a Letter of Concern. Board Member Weick seconded. Chair Taylor called for a vote, and all agreed. Board Member Humphrey will prepare a first draft of letter of concern and send to the Administrator.

11-02-17: The Board discussed this case related to providing and preparing for public testimony. Board Member/Compliance Chair Heinzkill motioned to close the case with no further action, allegation unfounded. Board Member Weick seconded. Chair Taylor called for a vote, and all agreed. The Administrator was advised to refer to the ORS on testimony within the letter but to otherwise stick to the Board's standard form letter.

11-06-018: The Board directed that the investigation continue; no motion required. The Board had limited discussion about the JCC process. The Administrator summarized what she has learned about the JCC process and stated that the JCC meets on Sept. 22. The Board confirmed that the JCC will meet first, and then based on outcomes OSBGE can look at finding technical reviewers. The Administrator also explained how she has addressed the direction given by the Board on this case during the June 3, 2011 meeting and the challenges presented by meshing the OSBGE and JCC processes.

11-08-001A & 11-08-001B: The Board was informed about these new cases, which are not ready for Board review. Board Member/Compliance Chair Heinzkill discussed the general nature of the cases and indicated that responses to the complaints were just received this week. The next step is to find technical reviewers.

Note: at approximately 2:40 PM, Board Member Weick needed to temporarily leave the meeting.

Committee Reports

Administrative Rules

Yinger

809-015-0020/Reissuance of Revoked Registration: Board Member Yinger motioned to approve the Reissuance of Revoked Registration Rule, as revised by RAC and discussed and further amended by the Board in the work session. Chair Taylor seconded. The Board

discussed. The Chair called for a vote, and all agreed. (Board Member Weick was absent from this vote; the Board still had a quorum.)

809-030-0005/Experience Standards: *Board Member Yinger motioned to approve this rule as revised by the RAC and discussed and further amended by the Board in the work session. Board Member Humphrey seconded. Chair Taylor, hearing no discussion, called for a vote, and all agreed. (Board Member Weick was absent from this vote; the Board still had a quorum.)*

809-050-0000/Use of Seal: *Board Member Yinger motioned to approve the rule as revised by the RAC and discussed and further amended by the Board in the work session. Board Member McConnell seconded. Chair Taylor, hearing no discussion, called for a vote, and all agreed. (Board Member Weick was absent from this vote; the Board still had a quorum.)*

Joint Compliance Committee (JCC)

Weick

The JCC was discussed under the compliance report. No further discussion occurred.

Legislative

McConnell

Board Member McConnell noted that the next session is in Feb. 2012, however, there is nothing for OSBGE to do in the short, budget-focused 2012 session. She noted that the Board will eventually need to discuss and develop a legislative strategy for the 2013 session.

Outreach

Taylor

Chair Taylor reminded the Board that they decided not to go on an outreach event in December considering the outreach at Western Oregon University in March of this year. Administrative Valentine mentioned that the Summer 2011 edition of the newsletter is out.

Professional Practice

Humphrey

Board Members McConnell and Humphrey stated that the City of Newport had followed-up on how the local ordinance was ultimately revised. The city has incorporated some standards for science based information. Board Member McConnell suggested a newsletter story about this and agreed to take a first stab at writing this. She also informed the Board that there may be a similar situation coming up with Lincoln city and its ordinances; DOGAMI has been approached by the city for technical assistance.

Board Member Humphrey recalled seeing something from Tillamook County recently related to coastal hazards. Board Member McConnell suggested that this may have been related to a county strategic planning process looking at natural hazards issues. Board Members McConnell and Humphrey will review what they have received on this to determine if there is anything of potential interest to the Board.

Correspondence

AC 11 06 035 (ASBOG/Canadian National Instrument 43-101)

Chair Taylor and Administrator Valentine went over the request from ASBOG and how the Administrator has responded. The Administrator and Board Member Yinger both received calls recently from a registrant whose employer wanted him to get the NI 43-101. This may have been the first time a registrant has inquired about the certification. The Board discussed

whether to invest resources into further researching this. The Board decided to not get further involved at this point.

AC 11 06 036 (Comment re: DEQ 1200-Z, 1200-COLS General Permits)

The Board reviewed and determined no further Board action was required. If DEQ asks for information, then the Board would look further at whether/how to respond. The Administrator was encouraged to send an e-mail to DEQ to find out if/how they replied to this comment.

DEQ Rulemaking – Repeal UST Soil Matrix Cleanup Licensing Requirements

The Board reviewed and noted that this is a welcome change from its perspective.

AC 11 07 041 (Geology descriptions in Heating Oil Cleanup Reports for DEQ)

The Board discussed the e-mail and supporting documentation submitted for its consideration. (Several board members noted that the issue was similar to one raised in the past related to soil matrix cleanup reports and suggested to the Administrator that she look about 5 years back for Board discussion on those reports.) The Board made no conclusions about whether report preparation did or did not involve the public practice of geology. The Board asked what else is in these reports and determined that other elements of these risk based decision making reports need to be examined to make a determination. The Board also wants to have a better understanding of what DEQ is or isn't requiring of those preparing the reports. The Board suggested the following approach: (a) look at this issue from a broader perspective, not just on the shoulders of this one firm, (b) obtain an example risk based management report from DEQ, and (c) consider needs for outreach with DEQ. Board Member Weick was assigned to assist the Administrator with these tasks.

AC 11 07 038 (Request for Reinstatement – Failure to Pay Renewal Fees)

The Board discussed whether it could issue a variance and allow him to pay his back fees. The Chair took a straw poll and found general agreement with granting a variance. The Administrator was directed to contact this individual, letting him know how much he owes in back fees (using retiree rates). The letter sent by staff also will state that since he was not registered from 2002-current, use of his Oregon stamp during that time would have been in violation.

AC 11 08 044 (Comments on ASBOG/Cooperative Registration)

This letter takes issue with the Board's requirement for all seeking cooperative registration to pass the ASBOG exams. The Board noted the concern, discussed the history of this issue, and determined that the policy would not be changed. The Administrator was charged with notifying the individual of the Board's decision.

AC 11 08 047 (Comments on ASBOG/Cooperative Registration)

This letter takes issue with the Board's requirement for all seeking cooperative registration to pass the ASBOG exams. The Board noted the concern, discussed the history of this issue, and determined that the policy would not be changed. The Administrator was charged with notifying the individual of the Board's decision. The Board wants this notification to state

that the individual's CA CEG exam would be accepted if he first meets the registration requirements for RG, including passing the ASBOG exams.

Note: At approximately 3:25 PM, Board Member Weick rejoined the meeting.

Board Member Weick expressed his concerns about the Board's requirement for ASBOG, especially for geologist that passed the CA pre-ASBOG exams. He would like to see the Board change its policy on ASBOG, at least where a credible state-alternate exam existed and the geologist has proof of passing such an exam.

AC 11 09 0051 (Statement of Interest – Board Membership)

Administrator Valentine handed out this correspondence which came in after the packets were distributed. This pertains to interest by an OSU professor in applying to serve on the Board. The Board members reviewed the individual's e-mail statement and resume, concluding that they all would support seeing an application to the Governor's Office by this individual. Chair Taylor asked Administrator Valentine to get in touch with this individual to inform him of the Board's support.

Old Business

Action List

The Board reviewed the August 15, 2011 version of the action list. The Administrator provided clarifications about the status of several items. The Board instructed the Administrator to keep "DONE" items in the master list but to not include any older than 1 year in the list updates sent to the Board. The "DONE" items would be retained in the master spreadsheet.

The Board spent some time going over "Shelved Items" on the action list. The Board decided it was time to revisit the previous agreed to strategy for updating guidelines. The Administrator was asked to locate this (from 2010). The Board will discuss at the December meeting, addressing questions such as:

- Should the Board revisit the guidelines as a way to help define standards of practice?
- Should the existing guidelines still be on the website?
- If the Board will revisit the guidelines, then what should the Board's next steps be?
- What are options for having someone dedicated to working on this? Contractual services?
- How can the Board move the "White Paper" forward as no one member has the time to work on this?

The Administrator was advised that the following actions can be removed from the list:

- Corps of Engineers
- Stamping article
- LIDAR
- How to Locate Geologist
- Marion County maps

OSLAB-OSBGE Contract Renewal for 2011-2013

Chair Taylor noted that this topic was discussed as part of the Administrators Report.

By-Laws/Policies-Procedures Development

Administrator Valentine was instructed to change the name from bylaws to policies/procedures. The AAG has said that the Board can have a policy manual as a method of organizing and tracking Board policies. Board members did not offer any specific comments on the revised bylaws.

Board Membership – Status of New Candidates/Appointments Process

Chair Taylor noted that this topic was discussed under correspondence.

Summer Newsletter

Chair Taylor reiterated that the Summer 2011 letter has been issued.

Reference Manual for Building Officials

The Board recapped past discussions about the manual and the idea of getting information about the public practice of geology into the manual. This was initially brought up in the JCC. The Board formed an ad hoc committee (Board Member Humphrey and Weick are the designated committee members) to address the Reference Manual for Building Officials. The Committee will work on developing a proposed vision and specific language. The Board did not reach final consensus on how in –depth this language should be, but the Board did discuss the idea of starting simple. Administrator Valentine explained that a letter outlining OSBGE’s vision needs to be delivered to OBAE in about a month. Specific language will probably be needed in early 2012.

Administrator’s 6 Month Performance Review

The Board Chair asked Administrator Valentine to pass out his memo addressing the 6 month performance evaluation for the Administrator. He addressed the review criteria and procedures used. He stated that all input received was unanimous, and he recommends a promotion to PM D Rate 6 as was envisioned in the hiring letter/contract. Chair Taylor further explained that this salary adjustment was accounted for in the 2011-2013 budget.

Board Member Weick motioned to approve the salary adjustment to PM D Rate 6. Board Member Humphrey seconded. The Chair asked for comments. Hearing none, he called for a vote, and all agreed. The Board Chair then clarified that this change is made effect today, not at six month date.

New Business

OSBGE Representation at ASBOG Annual Meeting, November 3-5:

Chair Taylor reminded the board that the 2011-2013 budget covers sending the Administrator and one board member to the fall conference. The Chair asked for confirmation that all agree this is still the desired strategy. Board members generally agreed as long as the Administrator first gets the meeting program and can determine what parts of the meeting are open to administrator participation.

Administrator Valentine will work with Board Members Weick, Humphrey, and Yinger to determine if one of them can attend the meeting. Board members McConnell and Taylor have conflicts. Board member Heinzkill cannot represent the Board as he is not a geologist.

ASBOG Matrix/Summary Report:

Administrator Valentine asked the Board for input on this ASBOG document. She referred them to a copy handed out that showed her suggested edits. The Board commented on these and asked the Administrator to follow-up with ASBOG staff.

Return to Rules/Responsible Charge

At this juncture, Chair Taylor announced that the Board had made it through the Quarterly Meeting agenda and would finish up review of the Responsible Charges Rules. He noted that only one rule in the “responsible charge” packet was left to discuss - **809-050-0010** – and that the Board would try to get through this before adjourning. Board Member/RAC Chair Yinger and Administrator Valentine explained the intent of the rule revisions. The Board members discussed and requested the following revisions:

- 809-050-0010(1)(a) - say either current or valid, not both as this is not necessary
- 809-050-0010(1)(a) - take out engineering geologist since that is now covered below in newly proposed section (2).
- 809-050-0010(1)(a) – also take out national and just say ASBOG
- 809-050-0010(1)(a) – only say registration, do not include certification, since now taking engineering geologist out of this section and covering in newly proposed section (2)
- 809-050-0010(1)(a) and 809-050-0010(3)(d) - make sure language about U.S. state, territory, possession or the District of Columbia matches the statutory language (also double check language in new definition for responsible charge)
- 809-050-0010(1)(b) – no changes, but the Board did revisit the issue of whether OSBGE should allow for cooperative registration for those passing the CA pre-ASBOG exam. Board Member Weick proposed specific language be added that would allow for the Board to approve the CA pre-ASBOG exam in lieu of the ASBOG practice exam. Deciding that this was a philosophical debate that is beyond the current rules revision proposal, the Chair tabled this issue for possible future discussion.
- 809-050-0010(2) – change to “qualify for cooperation certification as a engineering geologist”
- 809-050-0010(2)(b) – change to “provide evidence of passing a certifying examination approved by the Board for engineering geologist, as per OAR 809-030-0020”
- 809-050-0010(2)(c) and (d) – change to similar language as was requested for 809-030-0015(3) and 809-030-0020(2), as discussed in the work session
- 809-050-0010(3)(a) – include specific reference to the applicable rule
- 809-050-0010(3)(b) – include a specific reference to the applicable rule
- 809-050-0010(3)(e) – does the Board need to add language about extensions (when work hasn’t started yet)? Decision was to not add any language about this. This is just an administrative issue.

At approximately 5:12 PM, Chair Taylor announced that the rule is tabled for now. The Board will have to revisit this rule at the December meeting. Board Member Weick also noted that he withdrew his language to allow other exams instead of ASBOG. He still questions the Board policy but does not want to hold up the Board's work on the responsible charge rules project.

Public Comment

No members of the public were present at the meeting.

Announcements

Sept. 30, 2011 – next ASBOG National Exam & CEG Exam
Next Quarterly Board Meeting – December 2, 2011 in Salem
OSBEELS Symposium – Sept. 29, 2011 in Salem

No additional announcements were made.

Chair Taylor Adjourned the quarterly meeting at 5:15 PM

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Respectfully Submitted,
Christine Valentine, Administrator

<p>The minutes of the Sept. 9, 2011 quarterly work session and meeting were approved as presented at the December 2, 2011 quarterly meeting of OSBGE.</p> <p>Christine Valentine, Administrator, 12/7/11</p>
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