

OREGON STATE BOARD OF GEOLOGIST EXAMINERS

WORK SESSION MINUTES

DECEMBER 2, 2011

THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONFERENCE 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, Administrator

Guests:

Todd Jarvis, PhD, RG, CEG (as noted in minutes)
Peter Stroud, CEG (as noted in minutes)

Chair Taylor called the work session to order at 8:39 AM. Noting that no visitors were present, he opened discussion of the first agenda item.

(1) Update/Discussion of Administrative Rules Development

Administrator Valentine explained the various documents included in the work session packet. She and Rules Committee Chair/Member Yinger briefly explained the status of review for the various documents by the Rules Committee. The Reinstatement rule is done and ready to go through formal rulemaking. It was held up to see if the Responsible Charge rules might be also ready to go forward soon, depending on the outcome of today's work session. If the Responsible Charge rules are going to take a longer period of time to prepare, then the Reinstatement rule can be taken through formal rulemaking as a stand-alone item. It is just extra work to go through the formal process multiple times. The Compliance rule draft is a first attempt at capturing Board discussions about the compliance process from the last several work sessions and to better match how cases are currently handled. This has not gone to the Rules Committee because the Board first needs to review and decide if it even wants to pursue this rulemaking. Administrator Valentine explained that she has asked Rules Committee Chair/Member Yinger and Compliance Chair/Member Heinzkill for input. She is hoping the Board can take a quick look at this today, at least to agree to schedule the Compliance rule for discussion at the next work session.

The Board focused on the "Responsible Charge" rulemaking, starting with the first document in the packet titled Defining Responsible Charge – Alternative Approach, Draft V3, November 2011, 2 pages. This document provides alternative language for defining terms associated with responsible charge. Administrator Valentine explained the genesis of the alternative approach, i.e. to define terms within the statutory definition of responsible charge as opposed to trying to further define the statutory definition of responsible charge in rule. She explained that the alternative approach resulted from brainstorming with the Board's AAG after they could not come to mutual agreement about changes to proposed definition of responsible charge. They instead focused on the intent of the rulemaking and looked for a streamlined way to address that intent through rule language. She stated that while at first reluctant to embrace an

alternative approach, she has come to prefer it as the language is less cumbersome and seems to reach the same goal. Rules Committee Chair Yinger noted that he has also come to prefer the alternative language.

The Board was asked to review the alternative language – definitions of “geological work” and “supervision of geological work” for **OAR 809-003-0000** compared to the proposed definition of “responsible charge” that was reviewed in September 2011. The Board considered whether the language was clear enough about defining the term “geological work” in the context of the statutory definition of responsible charge and not all possible geological work. It was noted that the definition of responsible charge is in law, and the alternative language is referring to the law. The Board also considered whether the language was potentially less confusing than the first approach. Chair Taylor then took a straw poll to see if members preferred the alternative approach or the first approach (define responsible charge).

Rules Committee Chair/Board Member Yinger stated that after reviewing the new definition against the rules, he likes the new approach. Board Member Weick prefers the new language as he thinks it is more clear and concise. Board Member Heinzkill prefers the new language for reasons similar to those stated by Weick. Board Member McConnell also prefers the new language. Chair Taylor noted the work done by Yinger in evaluating the new language and supports the new approach. Vice Chair Humphrey stated that he is not convinced that the new approach is sufficient. He thinks it is better to define the term “responsible charge” as in the first approach. He wants to be sure that future Board members are clear about what “responsible charge” means and is concerned that without directly defining the term in rule there could still be confusion.

The Board briefly discussed the use of the term “situation” in the draft definition for supervision of geological work in (d). Board Member Weick wanted to be sure this reference is about exemptions in the Board statute and no other “situations”. Administrator Valentine stated that the word was added in consultation with the AAG to address the exemptions. She can confirm that this wording is sufficient to address exemptions and only exemptions.

Chair Taylor noted that the Board would need a motion in the quarterly meeting to approve the alternative approach – definitions of “geological work” and “supervision of geological work” to be added to OAR 809-003-0000.

The Board proceeded to go through the rest of the updated rules packet, i.e. the document titled Responsible Charge Rulemaking Summary, Draft V.2, November 2011, 9 pages. Administrator Valentine quickly went over the document, explaining that changes requested by the Board in September 2011 have been incorporated. She also pointed out that the status of each rule is stated at the beginning of each rule section.

Amended language for **OAR 809-030-0005** was approved at Sept. meeting and not further discussed.

Amended language for **OAR 809-030-0015** includes all revisions requested by the Board per its September 2011 discussion. The Board reviewed the language and in the end decided on one revision as explained herein to 809-030-0015(1)(b). Board Member Weick asked whether the Board should have the restriction on full-time study. Chair Taylor stated that a part-time student still gets credit but, for example, a student at half-time then needs 2 years to show 1 year of full-time experience. The Board decided that the language should be revised to “full-time equivalent” to clarify that this is the intent.

Board Member Weick asked for a brief discussion of whether the language in OAR 809-030-0015(1)(d) on page 3 of 9 is clear enough that a geologist must be working under a geologist, not a geotechnical engineer. All Board members weighed in, and the clear consensus was that the language was fine and addresses Board concerns about who can be supervising the person trying to get credit for work under

supervision. This language says if working at a company without a geologist then a person cannot get credit for work under a geotechnical engineer. The Board discussed that this seems to cover most situations, but there will always be some outliers that need interpretation. Chair Taylor stated that he was neutral on this issue.

Chair Taylor suggested that the Board consider fixing the language in OAR 809-030-0015(f)(B)(ii) on page 3 of 9 regarding publication of work. Board Member McConnell stated that the Board needs to consider what the current language is trying to say. Chair Taylor thinks the intent is to capture peer reviewed work. He proposes that the language be changed to say peer review. Board Member Weick suggested combining (i) and (ii), but Board Member McConnell did not like combining. Vice Chair Humphrey felt that peer reviewed is too broad of a term and suggested that the work needs to be published. Chair Taylor pointed out that the Board needs to also remember that this is not a fully comprehensive list as the rule as “may include, but are not limited to...” and proposed that the Board either leave the language as is or change it to “peer reviewed research”. Since agreement on revised language could not be reached, the Board decided to leave the language alone.

On page 4 of 9, the Administrator clarified that ASBOG is defined in the rules so the Board decided that using the acronym in the rule is ok. There were no other comments on this page.

Chair Taylor noted that the Board would need a motion in the quarterly meeting to approve the rule with the one change regarding “full-time equivalent” as agreed to today.

Amended language for **OAR 809-030-0020** was next on the list. Administrator Valentine reminded the Board about its conversation in September 2011 about allowing mixing and matching of work experience types. The Board did not have sufficient time to develop language for this at that time. She has taken a first stab but clearly Board input is needed. The Board focused attention on the language at page 5 of 9. Chair Taylor thinks the Board should do what it can to help applicants get registered so philosophically he supports this. Board Member McConnell asked for clarification about what is required for regular geologist registration. Administrator Valentine referenced back to OAR 809-030-0015 that was just discussed. That rule is additive but does set minimum years of experience for each type of experience; i.e. supervised and responsible charge. Vice Chair Humphrey noted that this is not just a CEG issue and because of this suggested using the same ratio as used for regular geologist registration. Board Members Heinzkill and Weick reiterated their support for allowing mixing/matching in some manner. Board Member Yinger expressed some concern about diluting the Board’s registration standards but could support if the language is structured carefully. The Board then proceeded to discuss a variety of options but ultimately settled on the following approach as suggested by Board Member Weick: require 3 years under supervision, 5 years responsible charge or a combination of experience equaling 5 years. The following language was proposed as OAR 809-030-0020(1)(b)(C) “A minimum of 5 years’ experience from a combination of (A) and (B).” It was also noted that the Board needs to keep the last sentence about “Engineering geology experience uses to meet geologist qualifications may be used.”

Board Member Heinzkill asked for clarification about why the rule now refers to OR, WA, and CA in OAR 809-030-0020(1)(b)(A). The history of this and Board’s September 2011 decision to add the language was discussed, i.e. these states have CEG exams, the Board has formally recognized those exams, and engineering geology work is similar in the three states. No further changes were proposed.

Chair Taylor asked about other changes. The Board had no further comments on p. 5 or 6 of 9.

Chair Taylor noted that the Board would need a motion in the quarterly meeting to approve the rule with the one change regarding mixing/matching of experience types.

Before proceeding to the next rule, the Board briefly discussed the role of Rules Committee, asking the question should the revised rules go back to the Rules Committee for further review or just as an advisory about how their input was addressed. The Board decided that it would send a courtesy copy of the final draft rules to the committee but would not ask for second review and comment. The Board is not adopting final rules, just approving to go forward in the rulemaking process so anyone on the Rules Committee can still comment. Once the rulemaking process runs its course and the Board has considered public comments, then final rules would be adopted by the Board.

The Board proceeded next to the **OAR 809-050-0000**. This language was approved in September 2011. Chair Taylor asked all to take a few minutes to review the revised language. Board Member Heinzkill asked what the Board thinks registrants will believe “individually sealed” means as used in the rule. The Board discussed and decided the language is clear about the Board’s intent. This included a brief review of how the terms “seal” vs. “stamp” are used in the Board’s rules. Board Member McConnell noted that the Board may need to look in the future at fully electronic report and issues with GIS data/layers. This may come up in the future and need future refinement in the rules. At this juncture, the Board did not take this issue up and decided not to propose further revision to the rule language.

The last rule in the responsible charge packet was **OAR 809-050-0010** addressing Cooperative Registration and Temporary Permits. Administrator Valentine reminded the Board that it did not make it all the way through this rule at the September 2011 meeting. Chair Taylor opened discussion on the rule. Board Member Weick briefly reviewed what the draft language requires regarding CA CEGs wanting to apply, noting that the Board can accept the CA CEG exam but the candidates still need to have the ASBOG first. Vice Chair Humphrey noted that this is not holding registrants to a different standard than others in Oregon as ASBOG is required for all new registrants. Board Member Weick said he is OK with this and can support the language as drafted.

The Board proceeded to review the draft rule line by line. The Board decided on a few revisions as noted herein while approving all other language. The Board Chair noted that (3) needs to be revised to read “To qualify for a 60-day.....” as the “a” is missing in the current draft. The Board also discussed whether rule language about Temporary Permits should be placed in a separate rule.

{At 10:18 AM, the Board was joined by visitor Todd Jarvis, PhD, RG, CEG from Oregon State University and incoming as a Board member. Chair Taylor called for a break from the work session to allow for a round of introductions. Chair Taylor called the meeting back to order at 10:30 AM.}

The Board returned to its discussion about whether to separate out the rule language for temporary permits from that for cooperative registration. Board Member McConnell reminded the Board that it would need to obtain permission from the Secretary of State’s Office to create a new rule. After some discussion, the Board opted to leave the language together but change the rule title to Qualifications for Cooperative Registration or Temporary Permits. Administrator Valentine confirmed when language in the temporary permit section was directly tied to statute, as in OAR 809-050-0010(3)(c)-(d). The Board briefly discussed limitations in the statute regarding the 60 day limit for temporary permits, i.e. the Board cannot extend beyond 60 days but can only shift the dates of beginning and ending.

Chair Taylor noted that the Board would need a motion in the quarterly meeting to approve this rule with two changes – the addition of the word ‘a’ and change to the title.

(2) Review of Active Compliance Cases

Administrator Valentine distributed one additional handout, materials for CC#10-04-13. She noted that these materials were not in the initial work session packet but were e-mailed on 11/29/11.

CC#10-04-013: Compliance Chair/Member Heinzkill covered the history of case and the allegations against the respondent. He noted that in March 2011 it looked like the case could go to disciplinary action but then the Board received input from its AAG that needed to be considered. The Board heard a bit more about the case in June 2011, and asked the Administrator to do work analyzing the technical reviewer (TR) documents and the concerns from the AAG. The case came back to the Board for discussion in September 2011. The Board then decided based on all the above to ask for further clarification about standards of practice and findings from their reviewers. Board Members Humphrey and Yinger agreed to work with the Administrator on letters to the TRs. The supplemental responses from the TRs arrived very recently, with the second one coming in just this week and hence the late supplement to the packet. Heinzkill also reminded the Board that the case has been open since April 2010. He then handed out definitions for the different types of violations as identified in Board rule as a reminder for all.

Vice Chair Humphrey explained his review of the materials and work on deciding what to ask the TRs. He had some difficulty with AAG comments and initially was going to see if he could avoid asking the reviewers but ultimately decided to ask them for clarifications. He thinks the supplemental responses are good and help to clarify what standards of practice were not met. Board Member Yinger stated that he generally agreed with Humphrey's description of the process since the September 2011 Board meeting. The Board then proceeded to discuss the evidence in the case, concluding that disciplinary action was warranted. In the end, all board members agreed that negligence seems to be the appropriate violation among the options as defined in the rule. Negligence ties into not meeting standards of practice. Chair Taylor directed the Administrator to confirm with the Board's AAG that negligence is the best fit for this case and to work with him to get the legal process in motion. Board Member Weick reminded the Board that it has the burden of proof and stated that he thinks the Board has sufficient proof in this case.

The Board then discussed what specific action it should take, including no action, Letter of Concern, and Letter of Reprimand with civil penalties. The Board also discussed how many instances of negligent behavior equate to a penalty, i.e. at what point should the registrant have realized that there was a problem with the data collected. The Board could levy a fine for each instance of violation, potentially resulting in a considerable total fine. Vice Chair Humphrey proposed that the Board stay focused on this as an education opportunity with a Letter of Reprimand and one fine for one case. Board Member McConnell suggested that the Board could have letter of reprimand with an opportunity to come before the Board and have penalty fee lowered or removed. Board Member Heinzkill stated that he thinks there should be a fine to make sure the Board gets the RGs attention and was concerned about how readily the Board could oversee an education requirement as an alternative to the fine. Administrator Valentine asked for clarification about "inviting" the RG to the Board and heard that this was in addition to her rights to a hearing, to suggest that the Board would be willing to waive the fine if instead RG makes an investment in continuing education and provides documentation to the Board. An appearance in front of the Board would not be required however the Board would have to decide if it was going to require approval of the continuing education. In the end, there was some agreement to the idea of providing an opportunity to avoid the fine through continuing education but not a final decision. For the record, Compliance Chair/Member Heinzkill noted that Board has not heard from respondent since receiving the TR information. The Board determined this was not necessary. The Board's AAG will be asked to draw up the Notice of Intent associated with the Letter of Reprimand and the notice of intent/letter comes back to Board Chair and Administrator for review.

Chair Taylor noted that the Board would need a motion in the quarterly meeting to confirm this as its decision. Board Member McConnell agreed to craft a motion. Her proposal is to move for issuance of a notice of violation in 10-04-013 that will include a reprimand for negligence as defined in the OAR 809-003-0000(15).

CC#11-06-018: The Compliance Chair Heinzkill and Administrator Valentine briefly summarized the status of this case. Administrator Valentine stated that the one page update was included in the packet as a reminder to update the Board. Board Member Weick, also a member of the Joint Compliance Committee, went over the JCC action taken on this case at the Committee's November 30, 2011 meeting held just days prior. He went over the history of why it was referred to the JCC. He explained that OSBEELS also received a complaint filed by an engineer against the CEG and then how that board separately opened up a complaint against the Engineer in Training (EIT) that signed the subject report along with the CEG. He further stated that the OSBEELS representative to the JCC found only minor instances of what they deemed strictly engineering work (i.e., not in the overlap between professions) – concrete compressive strengths and rigidity of the pavement. The OSBEELS representatives agreed that everything else addressed in the report fell within the overlap. In the end, the JCC recommended parallel and independent investigations. OSBGE will investigate the quality of the engineering geology work through its review. OSBEELS will investigate the EIT and the possible engineering work by the CEG. The two boards will continue to communicate through their administrators as these compliance reviews move forward. Vice Chair Humphrey noted that OSBGE needs to clarify to any TRs that OSBEELS is looking at whether the CEG did any engineering. Administrator Valentine then clarified that Board wants to start with one TR, and this was confirmed. The next step is to secure the TR. No motion of the Board is needed.

CC#11-09-002: Chair Taylor asked that this case be addressed next and asked Compliance Chair/Member Heinzkill to summarize the case. Heinzkill proceed to do so, addressing the one line complaint and the response from the respondent (not an RG). He also clarified that the document of ASTM standards was not sent in with the response but instead pulled by him because of how the ASTM standards were referenced in the respondent's letter. Administrator Valentine explained her attempts to seek clarification from DEQ about its procedures for when a Phase II environmental report is required to be signed by a RG. Board Member Weick explained how he also was involved in looking into this. In the end, they did not find anything in writing but obtained verbal guidance from staff at DEQ.

The Board members discussed the case. They quickly agreed that the ASTM standards are irrelevant to the issue of the Board's jurisdiction under state law. Vice Chair Humphrey also pointed out that he has updated standards from what the Compliance Committee dug up, and it is clear that environmental professionals should not act outside of state licensing requirements.

{At approximately 11:40, Chair Taylor called for a brief break to welcome visitor Pete Stroud, RG, CEG and future board member. After a round of introductions, the Board resumed its discussion of the case at 11:43 AM.}

The Board focused next on whether the work in question involved the public practice of geology. Compliance Chair/Member Heinzkill explained that the Compliance Committee did not get a TR because this seemed to be a matter of determining is or isn't this public practice of geology. If the Board can make that call, then a TR is of little value. Board Member Yinger noted that the report includes a boring log; he thinks this is evidence of the public practice of geology. Board Member Weick agrees, noting that the project involved development of a conceptual model about where to drill which he believes is practice of geology. Board Member McConnell agreed that is public practice of geology. The Board further discussed concerns that this may have been happening for some time as this company has been around for a while. A question posed was should the Board investigate the company? Contacting the business could be done as a Board initiated complaint into the company records to see if this has been a recurring activity.

Board Member Weick commented that for Phase II environmental reports, there are those licensed not with OSBGE but trained as environmental professionals that can do some of the work. They may do work with private clients not related to anything that is in the regulatory world. This is likely not the only company out there doing this kind of work without an RG involved. There are undoubtedly others doing the same things but not crossing into the regulatory radar screen. Chair Taylor said he understands the issue of this possibly being a bigger compliance issue for this and other companies. But he stressed that the Board must decide today what do we do with this case, i.e., do we take action on this case today? Board Member Weick responded that he agrees the Board should take action today.

The Board briefly discussed whether it should contact the private party, i.e. the bank, about the Board review and any decisions. The Board ultimately decided that it cannot be responsible for tracking down all potentially affected parties.

Board Member Yinger raised a question about whether the Board needs to address both parties that signed the report. After review of the report and how the roles of the two signers are described therein, the Board decided that it needs to contact the other party that signed the report also. Administrator Valentine pointed out that the Board has not asked this other party for a response, and the Board agreed that this needs to occur. The response from the reviewer will be brought back to the Board. Board needs to hear from this person before it can say whether to take action or assess penalties against one, the other, or both.

In terms of future direction for where the Board may head, the Board discussed whether this would be a Letter of Concern or involve assessment of a civil penalty. The Administrator was asked to clarify with the AAG whether a civil penalty can be assessed against a non-registrant.

The Board has officially opened a second complaint, and the numbering will be revised as follows: 11-09-002A is the original and 11-09-002B is the new one against the other report signatory.

The Board then returned to discussion of how it would investigate whether there are other instances involving this company. The Board determined that the place to start would be to submit a public records request to DEQ headquarters via that agency's public records coordinator. The records request will ask for Phase II environmental reports prepared by the company that prepared the report in question and submitted to DEQ over the last 5 calendar years.

This concluded discussion of this case, and Chair Taylor called for a break at 12:04 PM.

Chair Taylor re-convened the work session at 12:40 PM

CC#11-08-001A and CC#11-08-001B: Compliance Chair/Member Heinzkill summarized the complaint and noted that this is the first time the Board has considered this case. The complaint is against two companies regarding a Phase I environmental report. He also reminded all that the Board sent a Letter of Concern to the respondent in 001B regarding his works that were the subject of an earlier compliance case. Administrator Valentine explained the list of documentation, including why there is more than one response from each person. She also pointed out that in the last response from the RG he has now said he accepted responsibility through a signing/sealing statement. Does the Board need to look for past decisions regarding retroactive signing? Or does the Board need to just determine if there was practice of geology in this case?

Board Member Weick stated the he believes a soil matrix professional can decide on how far to go in a defined excavation area without it involving the public practice of geology. But if that professional starts to do drilling outside that excavation area to look at extent of contamination, then he believes this involves the practice of geology. Board Member Yinger responded that he was thinking that this case did

not involve the practice of geology and thus the Board could dismiss it. But he asked to hear more about the DEQ viewpoint of when work does/doesn't involve the practice of geology and needs to better understand what these individuals/companies did outside the area of excavation. Board Member McConnell asked if they just pulled samples and analyzed but did not do a boring log, is that the public practice of geology? Vice Chair Humphrey suggested that determining where you should place the sampling holes might be viewed as rudimentary geology. Board Member Yinger noted that the borings were all done horizontal, not vertical in the cleanup excavation. In light of that information, Board Member Weick offered that he agrees this case did not involve the public practice of geology.

Chair Taylor asked the Board to consider if the groundwater statements/assumptions equate to the practice of geology. He also noted that the Board has never said that soil matrix work is all outside of practice of geology. Board Member Weick offered that when work under a soil matrix licenses is limited to competency to meet DEQ requirements about how to sample/analyze soils, then that is not the public practice of geology but if work goes beyond that it can readily involve the public practice of geology. Board Member Yinger noted that the Board needs to inform both individuals that soil matrix licensing does not exempt them from statutes/rules regarding public practice of geology. Chair Taylor suggested a careful examination of what the Board has said before about this individual's work and of the new case materials to be certain about whether there was some practice of geology here. Vice Chair Humphrey agreed that this is not a clear cut violation, and he is not yet sure if it involves the practice of geology.

Chair Taylor suggested that a Board member volunteer to more carefully review the case, plus look at related records from past cases. Based on this review, the Board member would indicate if it is public practice. If it is, then the Board needs to look at details of the work. If it is not, then the Board does not need to dig further into the subject report. The rest of the Board agreed to this approach. Board Member Yinger volunteered to take the lead, and Board Member Weick offered to assist.

The Board also discussed that, regardless of the outcomes of the review described above, the Board needs to address the RG's signing statement. He appears to have said he did not have responsibility for the work yet provided his seal/signature. This may be a matter of misusing his stamp.

Chair Taylor noted this was the end of agenda item 2. He asked the Administrator to address agenda item 4 regarding updating policies as part of her Administrator's report. He also moved discussion of agenda item 3 regarding strategy and work plan for board guidelines to Old Business on the Quarterly Meeting agenda. He expressed that the Board should consider discussion of the draft Compliance rule and related follow-ups from the September 2011 work session as a key item for the March 2012 work session.

Chair Taylor adjourned the work session at 1:06 PM

OREGON STATE BOARD OF GEOLOGIST EXAMINERS

QUARTERLY MEETING MINUTES

DECEMBER 2, 2011

THE ASSOCIATION CENTER, 707 13TH ST. SE, 2ND FLOOR, CONFERENCE 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, Administrator

Guests:

Todd Jarvis, PhD, RG, CEG
Peter Stroud, CEG

Chair Taylor called the meeting to order at 1:06 PM.

Agenda Review

Chair Taylor guided the Board through a review of the meeting agenda. Per discussion in the work session, he proposed the following changes to the agenda: Add item 4.f. – update on the financial review. Add item 10.e. – Committee Memberships. Add item 11.d – next steps in guidelines development since not covered in the work session today. He also previously asked the Administrator to address updating Board Contracting, Purchasing and Personnel Policies under the Administrator Report. He then asked if there were any objections, other additions, or comments. *Hearing none, Chair Taylor made a motion to approve the agenda with the additions as noted. Vice Chair Humphrey seconded. All approved.*

Minutes

Chair Taylor asked for any further changes or edits to the September 9, 2011 meeting minutes. Hearing none, the Chair asked for motion. *Board Member McConnell moved to accept the meeting minutes for the Sept. 9, 2011 work session and quarterly meeting. Board Member Heinzkill seconded. The Chair called for a vote. All approved.*

Board Member McConnell asked the Administrator to include notes on future drafts indicating which members have reviewed and responded to her about the minutes. She says she does this on her working draft but removed before copying for the packet. She will leave the notes on the draft next time.

Administrator Report

a. Administrator Report (including ASBOG meeting report)

The Board reviewed the report included in the meeting package page by page, noting where they had comments or questions for the Administrator. The Administrator addressed these questions and comments as appropriate.

◀Page 1 - Questions and Comments ▶

The Board is supportive of electronic funds transfers where this will streamline recurring payments of Board expenses, noting the payments still show up on the banking statement. However, the Board would like to see the transfers reflected in some manner on the check logs since the Board has to approve the check logs. The Administrator will look into how this can be best accomplished.

◀Page 2 – Questions and Comments ▶

Regarding online payment by registrants, Chair Taylor thinks the Board will need to adopt a convenience fee. Other Board members agree. All continue to support moving towards online payment.

Air travel/Azumano. Chair Taylor, in his experience, does not necessarily find that airfare booked through Azumano is always the cheaper option. The Board decided that it should change its rule. The Board does not want to sign up for a CTS account with Azumano.

Chair Taylor noted that the State Contract Update will be addressed later under New Business.

◀Page 3 – Questions and Comments ▶

Purchase of a color printer. The Board said staff should do whatever works best.

◀Page 4. – Questions and Comments ▶

The Board did not have comments, only an observation by one member about how SIBA has been evolving with the changes in board administrators.

Chair Taylor noted the Administrator's ASBOG report and asked Vice Chair Humphrey for his report on ASBOG as the Council of Examiners (COE) representative. Humphrey reported that overall it was pretty quiet this year. The COE ended up doing some of the work formally done by the one psychometrician who passed away. This resulted from ASBOG now having only one person doing all the statistics for the exam. He expressed to the COE/ASBOG a concern about not having backup person.

◀ Page 5 – The Board did not have questions or comments on this page. ▶

Chair Taylor opened the floor to the Administrator, asking her to highlight any other issues in her report not yet discussed but that she believed warranted discussion. She focused on the need to work on updating the Board's contracting, purchasing, and personnel policies while briefly explaining the challenges presented by the existing policies (i.e., incomplete in some cases, outdated, adopted by rule thus not flexible, etc.). She asked if Board Member McConnell might be willing to volunteer to review drafts from the Administrator as this work develops. This was confirmed.

b. Updated Revenue/Expense Report for Current Biennium

Administrator Valentine handed out the materials, which could not be prepared in time for the mailed packet due to staff medical leave. Chair Taylor stated that he believes the Board is in good financial health considering its budget and investments. Administrator Valentine was asked by Chair Taylor to research what all is covered under Professional Services line item. She will do so and report back.

c. Approve Check logs - Pioneer Trust and ADP

The Board reviewed the check log. *Board Member Weick moved to approve the check log covering checks 3354-3389 and 9147-9152. Board Member Yinger seconded. Hearing no comments, the Chair called for a vote. All approved.*

d. 3-Year Comparison of Changes in Monthly Renewals and Examinations

Administrator Valentine handed out the materials for review, as they could not be prepared in time for inclusion in the meeting packet due to staff medical leave. Chair Taylor stated that over the last several years there has been a noticeable drop in registrations. However, he also noted that the Board revenue is in good shape. Vice Chair Humphrey asked if the Board knows why these people in October are not renewing. Is there something else going on – retirements? Other? Is WA registration having an impact? People now may only go for WA registration instead of both OR and WA registration due to the economic climate.

The Board next looked at the stability of ASBOG exams by looking at how many exam candidates are coming in. The Board discussed the ongoing importance of trying to track what is happening with the profession – from university programs to practice.

e. Update on Edward Jones Investments

Administrator Valentine handed out the last report from Edward Jones and apologized for forgetting to include this in the mailed packet. She stated that there is nothing new to report. Chair Taylor explained for the Board's visitors why the Board opted to have financial investments separate from the operating budget, i.e., to cover the costs of future, unanticipated costs such as extended legal battles, new administrative challenges, etc.

f. Update on 09-11 Financial Review

The Administrator provided a status update: documentation provided to auditor in October, with follow-up throughout November, auditor is wrapping up in-office review of files/data/processes, draft findings have been discussed with staff, no major critical flaws or shortcomings in financials. She addressed how the auditor's recommendations focus primarily on processes and Board policies addressing including: bank account reconciliations by Administrator instead of current practice, daily deposit of checks using a check scanner (do not currently have one), updating contracting, purchasing, personnel, and records retention policies, using timesheets (do not currently), not using shared passwords for databases, and developing a policy for management of investment accounts. The final report is expected by the end of December.

Compliance Report

Compliance Chair/Coordinator Heinzkill read from the Compliance Report into the record for each case.

10-01-003:

Complaint is that person indicated he is an RG on an Employment Verification Form (EVF) completed on behalf of an application to take the ASBOG practice examination; but his RG registration had expired. Staff attempts to serve the notice were explained. Staff will document in file that this case technically remains on the books in the event a new address for the respondent becomes available. Staff is charged with figuring out a way to track this case so that the Board could periodically check for a new address.

Board Member Weick moved that the Board deem the case open but inactive, and Chair Taylor seconded. As a point of further discussion, Board Member Weick offered that his agency (DEQ) has also tried to contact the individual and cannot find him. Hearing no additional discussion, the Chair called for a vote. All approved.

11-06-018:

The Board did not make a motion; continued investigation including securing a technical reviewer and continued coordination with OSBEELS via Joint Compliance Committee (JCC).

11-08-001A:

Complaint is against two companies who conducted a Phase I Environmental Site Assessment. Among concerns expressed by the complainant are: 1) report contained “several internal inconsistencies and contradictions;” 2) respondents “encouraged” onsite remediation which was done and which the client says he later discovered would have not been necessary; 3) there is not a clear statement of a firm’s involvement in the project. (This complaint is against company one.) The Board did not make a motion; continued investigation.

11-08-001B:

This complaint is against the second of the two companies mentioned in CC #11-08-001A. The Board did not make a motion; continued investigation.

11-09-002A:

Complaint is that Phase II Environmental Site Assessment was submitted without the requisite RG stamp and signature. Recent activity: this case regarded as procedural involving ASTM standards and the public practice of geology in Oregon. The Board did not make a motion; continued investigation. However, the Board did assign this case #11-09-002A instead of 11-09-002.

11-09-002B:

See discussion under 11-09-002A. The Board opened a compliance case against a second individual associated with case 11-09-002B and instructed staff to contact the respondent.

10-04-013:

Complaint is that RG is guilty of negligence because care, skill and diligence not shown as RG has been billing client for unnecessary work in monitoring groundwater for several years. Recent activity: Questions for technical reviewers were suggested by AAG and reviewed by Board Member Yinger and Vice Chair Humphrey. The Board was waiting to hear from reviewers, receiving the final response just before the Board meeting and hence the late addition to the agenda. The Board found that the respondent RG is guilty of negligence. The Chair called for a motion. *Board Member McConnell motioned that the Board issue a notice of violation in case 10-04-013 that will include a letter of reprimand based on a finding of negligence as defined by OAR 809-003-0000(15). Chair Taylor seconded. Hearing no further discussion, the Chair called for a vote. All Approved.*

This concluded the Compliance Report on open cases. Compliance Chair/Member Heinzkill and Administrator Valentine next addressed the additional documents included in the Board meeting packet following the Compliance Report. Administrator Valentine explained that letters have gone out to those TR on the current board list. So far, response has not been that good (about 6 of 38) suggesting that one-on-one follow-up with the RG/CEGs is likely going to be required. She further thanked Heinzkill for agreeing to let her include the examples from OSBEELS and the Massage Board about how they secure TRs. This was included in relation to a question asked at the September 2011 work session and is included just for the Board’s information.

Committee Reports

Administrative Rules Committee

Rules Advisory Chair/Member Yinger summarized by saying all the relevant rules updates were discussed in the AM work session. He indicated that he has four motions to propose regarding proposed revisions to administrative rules. Chair Taylor asked him to proceed with the motions.

The first motion by Yinger was to add definitions to 809-030-0000 for the terms “geological work” and “supervision of geological work” as discussed in the AM work session, with the terms to be placed in correct numerical order within the definitions rule, as taken from page 1 of the Alternative Approach, Draft V3, November 2011. Board Member McConnell seconded. The Chair then confirmed that the first draft (definition of responsible charge) was not approved by the Board so there was no need to address that. Vice Chair Humphrey again stated for the record that he would prefer the original proposal to define the term “responsible charge.” The Board briefly revisited an earlier discussion about whether to further clarify the term “situation” as used in the definition. Hearing no additional comments, Chair Taylor then called for a vote. All members except Vice Chair Humphrey approved. Vice Chair Humphrey abstained from voting.

The second motion by Yinger was to approve OAR 809-030-0015 as revised and with the addition proposed today of the word “equivalent” in 1(b), as found on page 3 of 9 of the document Responsible Charge Rulemaking Summary, Draft V.2, November 2011. Vice Chair Humphrey seconded. Chair Taylor called for discussion and hearing none called for a vote. All approved.

The third motion by Yinger was to approve OAR 809-030-0020 as revised and with the addition proposed today of language allowing for mixing and matching of work experience types, to be included in a new (1)(b)(C) stating that work experience can be combined with a minimum of 5 years supervised and responsible charge work experience, as found on page 5 of 9, Responsible Charge Rulemaking Summary, Draft V.2, November 2011. Board Member McConnell seconded. Chair Taylor called for discussion and hearing none called for a vote. All approved.

The fourth and final motion by Yinger was to approve OAR 809-050-0010 as revised and with the addition changes as discussed in the AM, specifically adding “a” to the phrase “To Qualify for 60 day...” and changing the rule title to read “Qualifications for Cooperative Registration or Temporary Permits.” Board Member Weick seconded. Chair Taylor called for discussion and hearing none called for a vote. All approved.

Board Member Heinzkill asked to address a question to the Rules Committee, with reference back to the work session discussion with AAGs in September 2011. At that time and as captured in the minutes, there were numerous action items proposed. Should and can the Rules Committee handle these action items? Chair Taylor suggested that this is not work for the Rules Committee, as first there needs to be policy guidance from the Board. Board Member McConnell stated that she agrees with the Chair.

Joint Compliance Committee (JCC)

Board Member Weick provided an overview of the 11/30/11 meeting of the JCC, noting that several cases were discussed.

For CC#10-01-004, OSBGE issued letter of concern, and we learned that OSBEELS has also closed with letter of concern. (This was the Brookings “gazebo/retaining wall” project.)

For CC#10-11-016, OSBGE found insufficient information and took no action. The JCC recommended that OSBEELS address the case, as it involved advertisement by a RG as an engineering company on the web. OSBEELS found that the website was in violation of its requirements and sent a letter of concern as the person no longer had the website and has new employment.

For CC#11-06-018, OSBGE opened this case with a Board-initiated complaint and referred it to the JCC. This involves a CEG registrant and PCC campus project. We have been waiting on a JCC recommendation. The JCC concluded that majority of work is in the area of overlap between engineering and engineering geology and thus within the purview of the CEG. OSBEELS representatives found a few

instances where the CEG appears to have stepped out of bounds, specifically regarding recommendations for rigid asphalt and concrete compressive strengths. OSBEELS also opened a compliance case against the engineer-in-training who signed the CEG's report. The JCC decided that both Boards should pursue parallel but independent evaluations.

OSBEELS also referred a new case to the JCC for discussion with OSBGE. Board Member Weick noted that after hearing about the case, he believes the Board needs to also open a case and start the review process including obtaining the respondent RG/CEG's input. The Board will need to track the OSBEELS case, including what they find regarding the practice of engineering. In March 2012, OSBGE should have the Licensure Review Committee report from OSBEELS about this case. Weick explained that an engineer filed a complaint against another engineer and a CEG, the same CEG as in CC#10-01-004. He shared pictures of the project site and the OSBEELS preliminary investigation report with the Board. The Board then decided that it will proceed with a board initiated complaint. Weick will write up a complaint based on existing information.

Administrator Valentine explained that JCC also agreed to update its process flow chart after discussion about several items that were not clear or in hindsight not useful procedures. She will be working with OSBEELS investigator on this. She also reported that the JCC agreed to set quarterly meeting dates, and this should greatly facilitate timely review by the JCC. Months were agreed to and now she must work with the OSBEELS administrator on actual dates.

Legislative

Board Member McConnell provided a brief update on pending 2012 session and reminded the Board of the budget focus of this session. This is not the time for any Board-related statutory changes to be submitted. The Board will need to start thinking about 2013 session, probably starting with discussion at the March 2012 meeting.

Administrator Valentine directed the Board's attention to the ACLU staffing update in the meeting packet. This was submitted by Member Heinzkill for the Board's information.

Outreach

The only item reported was the new newsletter format.

Professional Practice

Administrator Valentine handed out materials related to Lincoln City's ongoing work to revise its natural hazards ordinance and explained that this information was also distributed electronically at the request of Vice Chair Humphrey. Board Member McConnell noted that the Department of Geology and Mineral Industries (DOGAMI) has also been involved with the city's process. Vice Chair Humphrey noted that they are updating reporting section and while using the terms geotechnical report/analysis requiring that engineering geologists must do this. He is pleased to see that they are identifying need for engineering geologists. Administrator Valentine noted that city staff left a message about the ordinance work at the office while she was at ASBOG. She returned the call and indicated that she was available to discuss and could engage the Board at the December meeting but then did not hear back from city staff.

Correspondence

Follow-up: AC 11 06 036 (Re: DEQ 1200-Z, 1200-COLS General Permits)

Administrator Valentine shared that she followed up on how DEQ addressed the RGs comments, as requested at the Sept. 9, 2011 meeting. DEQ is not changing its requirement to allow RGs. Weick added that DEQ does authorize CEGs to design and stamp passive in-ground treatment systems.

Follow-up: AC 11 07 041 (Geology descriptions in Heating Oil Tank Cleanup Reports for DEQ)

Administrator Valentine explained her follow-up with DEQ. DEQ seems to base decision on whether to require an RG stamp/signature on whether the work involves hydrology. At her request, DEQ sent two example reports which are included in the meeting packet. She asked for one example of a project report that did not require an RG and one that did require an RG, from the perspective of DEQ. Board Member Weick also followed up and thinks it can be more than hydrology that triggers the need for an RG. The Board discussed briefly, concluding that it may need to have a work session item on looking at and defining when public practice of geology kicks in for various types of projects involving reporting to DEQ. The Board also noted that it would be a good idea to revisit this issue after several open compliance cases get further along, as they involve site cleanup reports. The Board feels that there is a longer-term outreach issue here.

New Business

Election of New Chair/Vice Chair

Board Members Yinger and Weick have agreed to serve one-year terms as Chair and Vice Chair, respectively. *Chair Taylor formally nominated the above members to one-year terms. Board Member McConnell seconded. Chair Taylor called for discussion and hearing none called for a vote. All approved. Effective December 3, 2011, Yinger is the new Chair and Weick the new Vice Chair.*

Transition of Board Members/Welcome to Incoming Members

Administrator Valentine explained that she is busy preparing packets of orientation materials and will help the new members get signed up for the Board and Commission training, plus possibly additional trainings on Executive Sessions and Ethics.

Updated Personnel Budget Projections – Decision About Employee Benefits

Administrator Valentine explained that the Board has to make several decisions related to employee benefits and referred the Board to the budget documents included in the packet. These documents show the impact of implementing the following decisions along with other adjustments where new and improved information about costs is available. She noted that the Board may elect to implement a different set of options:

- ◆ **Health Insurance Costs:** The Board pays health insurance premiums for one employee. Continuing to pay 100% of the premiums for this employee results in a small increase over the biennium compared to the initial premium coverage amount in the approved budget. The budget documents assume continuation of premium coverage, but the Board needs to decide if it supports paying 100% of the premium for 2012. The State of Oregon is requiring represented and management employees to pay 5% of premiums in 2012. The decision will be memorialized in OSBGE's 2012 contract with PEBB. This contract needs to be signed today.
- ◆ **Furloughs:** The Board stated at the September meeting and during development of the 11-13 budget that it did not intend to have staff take furlough leave for the 11-13 biennium, similar to the Board decision for the 09-11 biennium. Thus, no reductions in personnel costs are shown in the revised budget for furloughs. If the Board wants to change this approach, the budget will be readjusted.
- ◆ **Cost of Living Adjustments (COLAs):** The revised budget includes costs of the COLAs approved for represented state employees and by DAS for management/executive service, i.e., 1.5% effective 12/2011 and 1.45% effective 12/2012.

◆ **Phased Step Increase:** The revised budget includes costs of the phased step increase (1 step split over the biennium based on eligibility dates) approved for represented state employees and by DAS for management/executive service. The two parts of the phased step increase would go into play at different times for the Boards two employees, based on eligibility dates. These differences are summarized in the notes section of the Personal Services detail sheet and reflected in the updated budget.

◆ **OSLAB Contract:** The revenue section has been updated to reflect the actual monthly amount (\$7,200) being paid by OSLAB under the 11-13 contract. The initial budget used a monthly amount of \$6700. This results in a \$12,000 increase in the projected revenue, with all other revenues kept as initially projected as there is not enough information at this point in the biennium to make any adjustments in those estimates. The increase in this revenue line item offsets the increases associated with the insurance, COLAs, and phased step increase.

Chair Taylor reiterated that the Board's finances are in good shape. He recommended the Board continue to pay 100% of the one employee's insurance premiums. Board Member McConnell reminded Board that it does have the authority to make decisions separate from state as a semi-independent agency. She agrees with the Chair that the Board should cover the premium fully. Board Members Weick, Yinger, and Humphrey supported the recommendation. However, Vice Chair Humphrey noted that 100% premium coverage is unheard of in the private sector or even with the federal government.

Chair Taylor recommends the Board stick with its decision to not implement furloughs, as a continuation of practice from last biennium. He noted that the Board does not have a budgetary reason to require furloughs. Board Member McConnell noted that furloughing OSBGE employees has absolutely no impact on the state budget, i.e. doesn't address the reason for state furloughs as defined by DAS. The Board is not tied to the general fund. Board Members Heinzkill and Weick also noted that furloughs create administrative work and challenges ensuring compliance with state and federal labor laws. This would be a challenge for the staff to deal with. Board Members Yinger and Humphrey also agreed to not implement furloughs.

Chair Taylor recommends that COLAs and the phased step increase be granted per state management agreement. All other members agreed. There was some discussion about what was or wasn't calculated into the original budget with respect to a step increase. The Administrator explained that the revised personnel expenses include the phased step increase and that she recalls the original budget to have incorporated only the reclassification for the registration specialist and six-month step for the Administrator.

Chair Taylor confirmed that there were no objections from the Board to his proposal for staff to implement these decisions impacting the personnel services budget. This was confirmed.

2012 Meeting Schedule – Review/Finalize Dates

The Board decided on the following schedule but noted June, September and December dates may need further discussion once the two new board members are on board. Vice Chair Humphrey also reminded the Board of the need to decide on an outreach meeting at a local university. Dates: **March 9, June 1, Sept. 14, Dec. 7**

Old Business

Updated Action List

The Board did not have comments on the action list, nor did the Board opt to go through the list in detail as this was done at the September 2011 meeting.

By-Laws/Policies-Procedures Status

The Board asked the Administrator to take option B out under Compliance Committee, take out the reference to bylaws in the amendments section, add a version along with date on footer, then remove the draft identification and post on the website. The Board will further discuss the Compliance Committee and compliance process at the next work session.

Reference Manual for Building Officials (Submittal to Board of Architects)

Administrator Valentine explained the status of this effort. Vice Chair Humphrey explained his draft language and offered that he would like to stay involved in this conversation after he is off the Board.

Guidelines

Chair Taylor summarized the history of the Board’s discussion on guidelines, including at the September 2011 work session with the AAGs. He felt that discussion helped clarify for the Board that there is good reason to revisit work on the guidelines so that they could be helpful as outreach and possibly also help to create a framework for issues related to standards of practice. The Board discussed how each piece of this project is a huge chore for any Board member to take on. The Board talked about scalability – guidelines need to address all sizes of projects. The Board also acknowledged that the focus has changed slightly to address the issues discussed in September 2011 with the AAGs.

The Board discussed whether the existing documents should come off the website? Vice Chair Humphrey and Board Members Yinger, Weick, and Heinzkill vote to remove the documents from the website. Board Member McConnell thinks they should stay until the Board has documents to replace them with. Chair Taylor stated that he did not have an opinion on this. The majority decision was to remove the documents and post a note saying the documents are under review/revision until further notice.

Adjournment

Chair Taylor adjourned the quarterly meeting at 4:40 PM.

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Respectfully submitted,

Christine Valentine, Administrator

The minutes of the December 2, 2011 quarterly work session and meeting were approved with revisions made herein at the March 9, 2012 Board meeting.

Christine Valentine, Administrator