



Oregon Geologist Examiner

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Next Board Meeting:

June 7, 2004
10:00 AM

Baker City, Oregon

Preceded by a Work Session on
June 6, 2004
4:00 PM

Public Testimony and the Practice of Geology

Many of you are aware of a somewhat controversial compliance case concerning public testimony and geology that the Board processed during 2002.

Many of you may be unclear on where this issue stands today. Several articles in prior Board newsletters were precipitated by this particular case or the public testimony topic (July 2003, 72nd Legislative Assembly Changes Geologist Examiners' Statute; January 2003, Board Closes Case Against Unregistered Professor; September 2001, Public Testimony Process Addressed by Board's Attorney). Any of these newsletter articles may be accessed through the Board's web site.

The original compliance case involved a complaint against a non-registered geology professor for preparing and submitting geologic reports into the public record of a public proceeding (land use hearing). During the Board review of the case, the professor filed a lawsuit against the Board. Concerns arose during subsequent attorney consultations that resulted in the Board dropping the case and rescinding its Administrative Rule concerning public testimony. The lawsuit raised the issue of whether the professor's rights had been violated under the First Amendment of the U.S. Constitution and/or the Oregon Constitution. The Oregon Constitution specifically disallows any statute from restricting the right to free speech.

Legislation (HB 2893) passed during the 2003 Legislative Assembly was recently codified. That legislation changed the definition of "public practice of geology". The change added the idea of working "for another" to the definition and deleted the reference to performing work for "the general public". The new definition of the public practice of geology is as follows:

ORS 672.505 (7) "Public practice of geology" means the performance for another of geological service or work, such as consultation, investigation, surveys, evaluation, planning, mapping and inspection of geological work, that is related to public welfare or safeguarding of life, health, property and the environment, except as specifically exempted by ORS 672.505 to 672.705.

An additional statute change occurring in the same House Bill added ORS 672.525(9). This addition clearly states that public testimony and preparation for public testimony are not the public practice of geology. The new statute is worded as follows:

ORS 672.525 (9) A person does not publicly practice or offer to publicly practice geology solely because the person testifies or prepares to testify in a public proceeding. [1977 c.612 §3; 1995 c.32 §1; 2001 c.232 §1; 2003 c.379 §2]

In signing the bill, Governor Kulongoski requested that the Board promulgate rules. Following discussions at the March 11, 2004, Board meeting,

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Knight's Notes

As noted in the article "Board Loses Public Member," Chuck Hester recently resigned from the Board. I must make a few personal comments about Charles Hester's tenure as the Public Member. Chuck was always one of those no nonsense kind of guys. Probably because his professional training was in numbers, Chuck always stayed focused on what was revealed by the evidence. But in addition to his ability to stay focused on the issue at hand, he always brought his sense of humor with him. No matter how tense or abrasive a Compliance Committee meeting became, Chuck was always able to lighten up the environment with his comic relief. Although his consulting work often found him in third-world countries, he stayed in touch as best he could. He was faithful in presenting summary information about compliance cases at each Board meeting. He was also active in other regulatory Board positions, seeing service as an important piece of personal responsibility and recognizing that much of government functions with volunteers. So, THANK YOU, CHUCK! I am sure you will find some other "pot to stir" as you make a new life in California.

I recently completed five years of service with the Board. There is an old cliché that "time flies when one is having fun!" Whether it has been fun or not, the time has really flown! I appreciate the commitment made by the volunteer Board members over my tenure. It is always sad to see their appointment tenure end, and it is always amazing that those professionals coming on the Board hardly miss a beat. I would be remiss if I failed to also thank those of you who have served in many various volunteer committee opportunities. Staff and Board members alone do not do the work of the Board, so THANK YOU, VOLUNTEERS!

Volunteers! That is exactly what the Board needs. Each newsletter attempts to rally some of you to help out with Board projects. The Board had a good response from registrants interested in assisting with the HYDROGEOLOGY REPORT GUIDELINES. But the ENGINEERING GEOLOGY REPORT GUIDELINES are also in need of revision and updating. Only two Engineering Geologists have stepped up to assist with this project. Are you one of those that gave a passive thought to volunteering? Now is the time to turn that passive thought into action. Email the Board office that you would like to serve. This project involves email reviews, no drives to Salem or meetings during work time. Please give some serious thought to helping out.

The Rules and Regulations Committee could also use additional assistance. Again, this committee functions via email. Your responsibility would be to read a rule or statute change and give input and suggestions. This volunteer activity takes relatively little time but adds a

great deal to the process of government. Email Board Member Eileen Webb (eileen.webb@amec.com) if you are willing to assist with the Rules Committee.

Susanna Knight
Administrator

Board Loses Public Member

With 9 months remaining in his term of appointment, Public Member Charles W. Hester submitted his resignation from the Board to the Governor. Hester stated that his son requested that he move closer and Hester agreed that it is time to do so. He will be returning to California, his home before moving to Oregon seven years ago.

Hester began his first three-year term January 25, 1999 and accepted reappointment on January 25, 2002. As the Public Member of the Board, Hester chaired the Compliance Committee. During his tenure, the Board set a precedent for following through on complaints. Many environmental scientists became aware of the regulation of the practice of geology. An informal meeting with the respondent in a case became the standard of operation. The LETTER OF CONCERN and the AGREEMENT were educational tools designed and implemented during his tenure. Also, during his tenure, one registrant lost his CEG specialty and another registrant's license was revoked. Civil penalties were also issued for poor report writing and for working under a lapsed registration. Hester was a strong voice representing the public position.

At the March 11, 2004, Board meeting, Hester received a standing ovation from the Board in appreciation of his service. He stated to the Board: "You are more than colleagues, you are my friends." He was honored with an appreciation gift.

Welcome New Registrants

The following registrants have recently been added to the Board roster:

By Cooperative Registration:

Shane M. Beach, G2022
Robert P. Nystrom, G2021

By Board Examination:

Clifford A. Baines, G2004
William J. Burns, E1901
John H. Gray, E1216
Thomas S. Horning, E1131

Congratulations and welcome to the practice of geology in Oregon.

Public Testimony

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and in consultation with the Board's Assistant Attorney General, the Board voted to add the definition of "public proceeding" to their Administrative Rule Chapter 809. "Public proceeding" will be defined as a public forum where members of the public are invited to comment or testify or are permitted to comment or testify. When legislation changes a statute, reviewing and revising Administrative Rules as needed is typically the final step.

Because the new statutory language is written so clearly, the Board determined that no additional rule writing would be necessary. The Board hopes that its registrants can understand the limitations of our statutes in relation to First Amendment rights and accept the situation, regardless of previous positions and feelings about the subject and its outcome. This issue has been thoroughly reviewed by the Oregon Department of Justice and all Board members. Board discussions related to this issue were illuminating and expanded the Board members views of the issue. Any additional inquiries are welcome.

Task Analysis Survey Underway Soon

The national office of ASBOG (Association of State Boards of Geology) conducts a Task Analysis Survey (TAS) every five years. ASBOG will be mailing its 2005 survey to Member Board registrants in Spring or early Summer of 2004. Registrant names will be pulled at random from each of the Member Board databases. Should you be a recipient of one of these surveys, PLEASE DO NOT TREAT IT AS JUNK MAIL. It is essential that you complete the survey and return it in the envelope provided.

The TAS information will be compiled and will be used as the basis for future examinations. ASBOG is seeking good representation nationwide and, of course, want each of their Member Board states to be well represented individually. Since the ASBOG examination is a national test, it must include all varieties of geology practice being conducted across America.

So please do your part should a TAS arrive in your mailbox. Follow the directions, complete the survey, and return it in the accompanying envelope. The national examination format relies on the practicing community for its content. Although you may never work on question composition, completing this survey is a huge contribution to the examination process. Thank you from ASBOG and from the Oregon Board for your assistance in this project.

The Ten Commandments for Hydrogeologists

The following "Ten Hydrogeologic Commandments" originally from the Directorate of Hydrogeology, Department of Water Affairs and Forestry, Republic of South Africa, Newsletter, Vol. 2, No. 1, January, 1998, has been forwarded by numerous individuals for publication in the Geologist Examiner.

1. Thou shall not assume isotropy, homogeneity, or uniform gradient without field evidence.
2. Thou shall not assume wells or streams to penetrate fully or flow systems to be two-dimensional.
3. Thou shall not use regional data to make site-specific judgements.
4. Thou shall not use color graphics to enhance lousy science.
5. Thou shall not employ geostatistics to obfuscate poor interpretations or weak conclusions.
6. Thou shall not rely on stochastic methods to disguise insufficient field data.
7. Thou shall not place geochemical interpretations above hydraulic interpretations.
8. Thou shall **never** regard geophysics as the truth.
9. Thou shall **never** use a contouring program to make a water table map.
10. Thou shall **never** use more than three significant digits.



VOLUNTEERS REQUESTED!

The Board is in need of volunteers for the following committees:

CEG Report Guideline Updates Committee
Rules and Regulations Committee

Email the Board Staff at
osbge@osbge.org to volunteer!

See **Knight's Notes** for additional information.

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Lapsed Registration

The following registrations have lapsed during January and February of 2004. If your name is listed below and you *did* renew, please contact the office immediately. There may be a database entry error in which your registration was not properly updated. Your assistance in correcting the information is appreciated.

Lamadrid, David	G1905	1/31/2004
Noble, Roger A.	G1031	2/28/2004
Pollock, James M.	G1620	1/31/2004
Schymanietz, Jeff R.	G1954	1/31/2004
Weiss, Garrett D.	G1955	1/31/2004

To practice in Oregon, a registration must be in an active status.

2004 Calendar of Upcoming Events

June 4:	Oregon Geology Exam, Salem Cutoff Postmark for October National Exam
June 6:	Work Session beginning at 4:00 PM Baker City, Oregon
June 7:	Quarterly Board Meeting, 10:00 AM Baker City, Oregon
Sept. 8:	Quarterly Board Meeting Salem, Oregon
Oct. 8:	ASBOG, CEG, and Oregon Geology exams, Chemeketa Community College Salem, Oregon