Joint Compliance Committee
Meeting Minutes
October 1, 2015

Location: Teleconference and Association Center, 707 13th St. SE, Conf. Rm. A, Salem, OR

OSBEELS Members Present:
Shelly Duquette, JCC Chair
Chris Aldridge, JCC Member
John Seward, JCC Member

OSBGE Members Present:
Peter Stroud, JCC Chair
Kenneth Thiessen, JCC Member
Bernard Kleustch, JCC Alternate

OSBEELS Staff Present:
Mari Lopez, Administrator
JR Wilkinson, Investigator

OSBGE Staff Present:
Christine Valentine, Administrator
Kyle Martin, AAG, DOJ

All participants engaged by teleconference.

Welcome/Introductions
Stroud called the meeting to order at 1:03 PM. He called the role for the record and thanked all for taking the time to participate.

Review of Agenda
Stroud asked if there were any comments or questions about the agenda. There were no questions, and no changes were made.

Unfinished Business
Stroud opened discussion on the meeting minutes for the May 7, 2015 JCC meeting. There were no requests for revisions so Stroud requested a motion to approve the minutes.

Duquette moved to adopt the May 7, 2015 minutes as presented. Seward seconded the motion.

Stroud asked if there was any discussion on the motion. Thiessen inquired with OSBEELS staff about the status of complaint review for the case addressed in the May 7, 2015 JCC minutes. Wilkinson stated that the case was scheduled to go before the OSBEELS Law Enforcement Committee (LEC) to close the loop. He noted that the OSBEELS Rules and Regulations committee would review other questions raised in the complaint as well. Stroud asked if the JCC would then further discuss what happens at the LEC or Rules and Regulations Committee. Wilkinson said the JCC already made a recommendation. Duquette noted that the motion to approve the meeting minutes was still on the table and required a vote.

Stroud returned to the motion and called the vote. All members approved.

Complaint Cases
Stroud asked Wilkinson if he would repeat what he was saying about the OSBEELS processing of the complaint last reviewed by the JCC. Wilkinson stated that the JCC recommendation

would be presented to the LEC and the Rules and Regulations Committee. Stroud said he was asking because the JCC should be interested in how OSBEELS treats the JCC recommendation.

Stroud asked Valentine about inquiries in the meeting packet and whether these were tied to a complaint. Valentine said there was not a new complaint for the JCC's consideration, and Wilkinson confirmed this.

Action Items

There were no action items.

New Business

OSBGE & OSBEELS Inquires from T. Hull, Professional Engineer (PE)

Stroud opened discussion on inquiries received by OSBGE and OSBEELS related to Certified Engineering Geologists (CEG). Each Board received an inquiry from the same individual, but there were differences in the inquiries, including but not limited to a CEG-prepared report being submitted to OSBEELS but not OSBGE. Valentine addressed her response provided on behalf of OSBGE to the individual's question about CEG scope of practice with regard to providing allowable soil bearing capacity and other foundation recommendations for buildings. She mentioned that in her response she asked the individual if he had specific work that was of concern and should be submitted to OSBGE via the complaint process. Valentine said that during preparation for the JCC meeting, she learned about an OSBEELS inquiry from the same individual that OSBEELS received and that did include a report. She deferred to Lopez to discuss that inquiry, including any response from OSBEELS.

Valentine offered that the question before the JCC was whether anything covered in these two inquiries rose to the level of needing or benefitting from JCC review. She stated that her response was based on OSBGE's established position on CEGs as design professionals and also based on precedent from a past complaint case that worked through the JCC process.[1] The OSBGE response was not informed by the report submitted to OSBEELS since the individual did not share this with OSBGE.

Duquette said she believed the report submitted to OSBEELS clearly reflected engineering practice and not engineering geology practice. She thought this was very clear and specifically referred to the report containing recommendations for bearing capacity for piles and related matters. Seward respectfully disagreed and felt that the work shown in the report was within the scope of practice for a CEG. He thought Valentine's response was appropriate.

Stroud asked about actions OSBEELS was planning with respect to the inquiry it received. Duquette said OSBEELS has not yet addressed due to the timing of the inquiry as related to OSBEELS meeting schedule. She recommended that the JCC address the inquiry first and make a recommendation about whether there is a compliance issue to be addressed. Stroud said that one challenge is that the JCC needs to see the full report. Seward agreed, noting that several pages appeared to be missing from the report sent to OSBEELS.

[1] Case referenced, OSBGE CC#04-02-003 and OSBEELS #2253 (Humphrey et.al.). JCC was engaged in these reviews, with decisions issued by both OSBGE and OSBEELS in 2006.

Lopez stated that OSBEELS received this inquiry in June. She did not route it directly to OSBEELS because the inquiry involved potential practice overlap, and per the MOU, she determined that the inquiry should be placed before the JCC. When sharing this in planning for the JCC meeting, Valentine informed her of a similar inquiry and shared the response sent on behalf of OSBGE. Lopez felt that all should have been on the same page before sending any responses to the individual.

JCC members focused on the report that had been submitted with the inquiry to OSBEELS. It was noted again that pages appeared to be missing and that parts of the report had not reproduced well. Stroud asked for clarification about the documents provided to the JCC, and Valentine clarified that a full copy of what was received by OSBEELS was distributed to JCC members. The inquiry to OSBGE and OSBGE response were also distributed.

Stroud asked Thiessen for his thoughts. Thiessen said he reviewed the partial report from the standpoint of his own training and experience. In his practice, he would be comfortable with making recommendations about soils bearing capacities but would likely have paused before making recommendations about column materials and diameters. He noted that this individual felt adequately trained and experienced to make those recommendations as a CEG.

Valentine described the inquiry to OSBGE as very general and again noted how she considered past precedents in preparing a response. She noted her consideration of a past complaint case against a CEG which involved a CEG-prepared report containing the same types of recommendations addressed in the recent inquiry to OSBGE. The complaint worked through the JCC and was ultimately dismissed by OSBGE and OSBEELS with determination that the recommendations in the report did not go beyond the CEG's scope of practice. While not directly involved in that case review, former OSBGE board members explained that a key part of the review was looking at whether the CEG had appropriate training and experience to provide the recommendations that were in the report. This variable was therefore addressed in her recent response. OSBGE has treated this past case involving report recommendations as precedent going forward.

Duquette recommended that the JCC consider what the process needs to be when these issues come in and mentioned that OSBEELS believes the MOU addresses this. She noted that at OSBEELS, staff does not respond to inquiries without a committee reviewing first. Valentine pointed out that she did not consider the question about CEG scope of practice as a compliance issue. Also, the question was one with an answer from previous experience and actions of OSBGE. She noted that staff at OSBGE routinely responds to questions on behalf of OSBGE; the Board does not use a committee process like OSBEELS. But Valentine agreed that it was important for the JCC process to be discussed. She suggested that the MOU is clear about process when a complaint comes in to either Board but is less clear about a general inquiry that may have some connection to practice overlap while not necessarily presenting a potential violation of laws or rules. Duquette read from part 3 of the MOU: "Through this MOU, the Boards agree to utilize the JCC to discuss and evaluate any complaints or information relating to potential violations of the respective Boards' statutes and rules, and to make recommendations to the Boards thereon."

Thiessen thought it should be noted that Valentine's response on behalf of OSBGE was based on a JCC and OSBGE/OSBEELS precedent. Duquette disagreed that precedents were relevant,

noting that committees and positions evolve. Duquette felt that the Boards should consult with each other before responding to such inquiries.

Kleutsch asked about the OSBGE professional practices guidance document and whether that covers some of this ground. He noted that this document was reviewed by both Boards. Stroud noted that CEGs are referred to as design professionals but qualified there is overlap between engineering geology and engineering.

Valentine said this discussion is exactly why staff ultimately decided to put this item on the agenda as a new business item. This provided the JCC opportunity to decide if it wanted to make a recommendation, such as should one board or the other open a complaint case. However, she suggested that the JCC probably did not have complete information to determine if the inquiries constituted a complaint or potential violation.

Duquette asked how many questions OSBGE receives like this. Valentine said Board staff routinely receives inquiries from the public about what Registered Geologists (RG) vs. CEGs do and how to find a qualified person. She said many scope of practice questions come directly from CEGs. Staff often refers people to OSBGE's professional practice guidance documents, which is similar to what was done in the most recent OSBGE response now before the JCC. Valentine said these documents contain some discussion about practice overlap and geotechnics but do not get into the specifics of types of recommendations CEGs might make in reports. Duquette offered that OSBGE staff should only respond to inquiries with statute citations or links to guidance documents. She said OSBEELS staff is not authorized to respond to scope of practice issues without consultation with the Board or an appropriate committee. She further suggested the JCC should collaborate on any responses to inquiries involving overlapping scope of practice.

Stroud agreed that communication between the Boards is valuable. He said it would be helpful for OSBEELS to share responses with OSBGE staff more timely. He also reiterated the helpfulness of obtaining full reports to read and how a lot of the time OSBGE gets questions about the RG vs. CEG roles. He noted that the recent inquiry to OSBEELS more clearly referred to a possible practice overlap issue than did the inquiry to OSBGE. For next steps, he asked if the JCC should obtain and review the full report by the CEG to ensure the committee is better informed. For example, he asked whether the JCC should have the applicable calculations that were completed in support of the recommendations. Thiessen noted that figures did not copy well and so cannot be reviewed by JCC members.

Valentine asked which Board would work to obtain the full report. Lopez said that Wilkinson could make a request to the individual that submitted the report to OSBEELS. Valentine said her concern was about contacting the CEG directly for the report as OSBGE would not normally ask a CEG to turn in a report or other work product unless tied to an open complaint investigation. Martin advised that OSBEELS would need to request the information since OSBEELS received the report. He said that OSBGE did not have a basis at this point to request the report. Thiessen noted that the JCC may need to obtain information on the CEG's training and expertise to consider as well. Stroud agreed that it is important to look at training and expertise but worried it was premature to request this information of the CEG. Duquette agreed that it would be best to focus on obtaining the full report and then decide on next steps. Ultimately, the JCC requested that OSBEELS staff contact the individual that submitted the report to see if a

complete and clean copy could be obtained. The JCC determined that it needed to review the full report, including all calculations made by the CEG, before making any recommendations about the matter.

Duquette reiterated her view that future response to inquiries related to practice overlap should get the benefit of consultation between the Boards via the JCC. Seward suggested that Valentine's response to the recent inquiry should be a starting point for future responses. He thought OSBGE should be able to provide generic responses like the recent one issued. Stroud and Thiessen also felt the response was fine.

Valentine offered as a lesson learned that, in hindsight, she should have copied Lopez on her response since the person inquiring with OSBGE was an OSBEELS registrant. She will be mindful of this going forward.

Duquette restated her opinion that future responses should refer only to a law or guideline and not to past JCC decisions. She advised against providing interpretation of what an OSBGE law or guideline means. She felt that such interpretive statements are essentially declaratory rulings that must come from one of the Boards and not staff. Martin said he did not see an issue with declaratory rulings in this case. Lopez and Duquette referred to past advice from OSBEELS counsel about these matters.

Stroud asked Martin to address how the JCC should treat past JCC decisions and precedents. Martin advised that the JCC is probably not bound by past JCC recommendations but does have to follow past decisions of the Boards. He also noted that OSBGE practice is to have its administrator respond to many inquiries on its behalf and looking to JCC precedent was not unreasonable. Duquette said she was not necessarily confident in past decisions by the Boards or committees on these matters and believes the JCC may need to reconsider issues.

In closing, it was noted that it can be challenging to determine if an inquiry about PE or CEG scope of practice rises to the level of a possible compliant or potential violation regarding practice overlap. Board staffs were encouraged to therefore be very sensitive about these matters and coordinate when there is some possibility of an overlap issue. With respect to the current matter, Stroud noted that the JCC may convene prior to the next regularly scheduled meeting in February 2015 to consider additional materials obtained via the efforts of OSBEELS staff. Wilkinson reported that he had already contacted Mr. Hull about the report.

Wilkinson wondered if Valentine was recalling the Rodine case that came before the JCC. He noted how this was a very unusual case, and issues were not sorted out until the very end. He wanted all to remember that every case is really very different, and investigations can turn based on fine nuances. Stroud recalled the case and how it was determined that an engineer and CEG were involved in the work together.

Seward said he did not want to belabor the discussion but pointed out that the CEG report now under discussion shows the CEG only took the soils bearing capacity times the pile diameter to develop recommendations. His view was that CEGs could do this basic kind of calculation. Stroud said Seward's perspective was appreciated as a PE with geotechnical engineering background.

2016 JCC Meetings

The regular meeting dates for 2016 were confirmed as:

- February 4, 2016 (OSBEELS hosts)
- May 5, 2016 (OSBGE hosts)
- Oct. 6, 2016 (OSBEELS hosts)

Public Comments

There were no public participants.

Adjournment

Stroud thanked all for participating in the meeting and adjourned the JCC at 2:04 PM.