



Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

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JOINT COMPLIANCE COMMITTEE
Meeting Minutes
May 7, 2015

OSBEELS members present:

Shelly Duquette, OSBEELS Ad hoc Chair
John Seward

OSBEELS members absent:

Jason Kent (excused)

OSBGE members present:

Peter Stroud, OSBGE Chair
Kenneth Thiessen

OSBEELS Staff present:

Mari Lopez, Administrator
Jenn Gilbert, Executive Assistant
Addy Floyd, Social and Communications Media Specialist
James R. (JR) Wilkinson, Investigator

OSBGE Staff present:

Christine Valentine, Administrator

Others present:

Katharine Lozano, Assistant Attorney General
Kyle Martin, Assistant Attorney General
Bernard Kleutsch, OSBGE JCC Alternate Member (observer)

Shelly Duquette called to order the meeting of the Joint Compliance Committee (JCC) at 1:05 p.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Review of Agenda

There were no additions, subtractions, or changes to the presented agenda.

Unfinished Business

Approval of the JCC Meeting Minutes – February 5, 2015

Mr. Thiessen noted minor revisions on page 5 of the February 5, 2015, meeting minutes draft; the members concurred. It was moved and seconded (Stroud/Seward) to accept the February 5, 2015 meeting minutes as revised. The motion passed unanimously. There was no further discussion.

Complaint Cases

Complaints filed by Jon Proud, PLS

In response to a question about updates to the complaints filed by Mr. Proud, Mr. Wilkinson replied that there were none because no investigations have been done. The OSBEELS has received responses to the allegations, but nothing further as the cases are queued.

Case #15-03-004 – OSBGE

Ms. Valentine added that OSBEELS forwarded to OSBGE the particular complaint from Proud that involved Geoffrey Garcia, RG. In December, the OSBGE Board initially looked at the complaint and determined to not open a case, but requested additional information from him. When Mr. Garcia responded, the OSBGE Board considered it at their March meeting and found it lacking. As a result, they opened a case against Mr. Garcia. She added that there are currently two unrelated cases open and further discussions will occur toward the end of May 2015. There was no further discussion.

Joint Board Action Items (Updates)

MOU Revisions

OSBEELS Ad hoc Chair Duquette noted minor typographical revisions on page 2 of the MOU draft. OSBGE Chair Stroud also provided minor revisions for consistency purposes. The members concurred with both revisions. It was moved and seconded (Thiessen/Stroud) to recommend OSBEELS and OSBGE accept the MOU as revised. The motion passed unanimously. OSBGE Chair Stroud thanked those involved in the MOU drafting process.

New Business

Complaint Filed by Leonard Rydell, PE

After Ms. Duquette summarized the case, OSBEELS Investigator Wilkinson filled in the detail. He explained that Rydell alleged a “permit engineer,” who worked for the Oregon Department of Environmental Quality (DEQ) in the Solid Waste Division, was engaged in the review and design approvals for the Riverbend Landfill in Yamhill County. Rydell was employed at the Riverbend Landfill when he raised concerns about their operations that lead him to eventually write a letter of resignation wherein he identified specific concerns. Rydell alleged that a 40-foot high mechanically stabilized earth (MSE) retaining wall was constructed not in compliance with Oregon Department of Geology and Mining Industries (DOGAMI) seismic requirements. DOGAMI recommended a 9.0 seismic standard for earthquake stability design. Through negotiations between DOGAMI and DEQ, in which the permit engineer was involved, the seismic standard was reduced to 8.5 for the landfill. Rydell was concerned about the reduced value affecting public safety, so he filed a complaint along with a series of letters from others who also expressed concern about the seismic standard. The OSBEELS LEC directed that the case be referred to the JCC because there is subject matter overlap.

AAG Lozano asked the members if the permit engineer was doing engineering. Ms. Duquette also had a number of questions and wondered if there was a case. She noted that plan review is the practice of engineering. In addition, a number of plan reviewers were grandfathered in as structural engineers. Ms. Lopez informed the members that staff did not review applications. Rather, the Board convened a panel that reviewed and approved applications. AAG Lozano observed that is not the process utilized today.

Ms. Duquette pointed out that the complaint is not against the design professional. Mr. Seward agreed. He stated that the permit engineer is reviewing the application and design for meeting established agency criteria. While some engineering judgment is involved, he thought there was a strong element of administration. It's hard to say on what end of the spectrum a permit engineer would fall. Ms. Duquette has experience with MSE walls stating there are design criteria, and there is a standard of care. However, earthquake design criteria are evolving as new information comes to light. The design could have been done under different criteria, including the seismic value.

Mr. Stroud explained that there was a difference of opinion between two experts on earthquake design standards. Disagreements fell into one of two camps. One felt that 9.0 was the acceptable standard, while another thought 8.5 was appropriate. Ms. Duquette noted that a number of people in the engineering and geology fields have been involved in the dispute. After further discussion, AAG Lozano questioned if the permit engineer was making decisions as a design professional or as a permit administrator. Mr. Stroud responded that the permit engineer, who is the permit administrator, necessarily relies on engineering judgment to decide whether the design and application meet current requirements.

The members discussed the details of a MSE wall and relevant design criteria. Mr. Kleutsch observed that seismic design is more art than science. He consulted the USGS Web site and different outcomes were reached using the 9.0 and 8.5 criteria. AAG Martin reminded the group that the permit engineer made a determination on whether it met agency standards. He was acting as a permit administrator. The difficulty is linking the action of an administrator to the specifics of engineering judgment of MSE design and earthquake standards. The first question is, "did he do something that should be looked at?"

Ms. Duquette noted there are design criteria for landfills. She offered three options: 1) Open a case, which refers it back to the OSBEELS because he is a registered engineer; 2) JCC wants more information; or, 3) Not open a case. AAG Lozano asked under the first scenario what the violation was, negligent permit review? MSE walls are unique, stated Ms. Duquette. She thought the wall was designed by another professional likely associated with the contractor.

AAG Lozano then pointed out that neither DEQ nor that person used the title of permit engineer, only people outside the agency. He was the agent who approved the permit, but he also sought other professionals' input in a plan reviewing capacity. AAG Martin added that the application and supporting documents were reviewed and a determination was made on whether it met DEQ standards. He approved it under those standards. Any consultants and review of reports would assist his role to review and approve permits. No evidence showed that he set design standards.

Mr. Seward pointed out that it appeared DEQ sought a third party review. However, no information was provided as to its outcome. Ms. Duquette replied that someone made the decision to accept the reduced value. She expressed interest about clarifying whether it was an engineering decision or a policy decision.

Mr. Stroud informed the members that the design would fall under the Resource Conservation and Recovery Act (RCRA). He offered to examine DEQ records for the standards. Mr. Seward noted that it probably would not reference a firm number, but rather a requirement that “it not fail” or some other similar phrase. Mr. Stroud agreed that credible calculations would demonstrate safety. Mr. Thiessen noted that Oregon relies more on the federal standards. DOGAMI also publishes maps to identify soils and areas that may require additional permit requirements. Ms. Duquette reminded the members that in the grand scheme there were no clear violations of any OSBEELS Board statutes or rules. Mr. Thiessen expressed there might be reasons to ask for more information, but not enough to warrant opening a case. Mr. Stroud did not see evidence of a clear case. More information could be sought.

AAG Lozano asked what information would help clarify whether the permit engineer engaged in engineering or acted as a permit administrator. Mr. Stroud suggested the information packet that supported the reduced value would aid the review. Did he take a conservative course? Mr. Thiessen noted that his response to the allegations would also assist. AAG Martin clarified that the question is whether to open a case or not. The discussion is not about evidence of a violation, but about whether Rydell provided the evidentiary basis for either board to open an investigation. Based on comments, no evidence supported opening. AAG Lozano added that for OSBEELS a request for response to allegations can occur only after a case is opened. And a case is opened because the complainant provided evidence of the violation with their complaint.

Ms. Duquette observed that Rydell did not state the permit engineer was the one who set the reduced standard. It was moved and seconded (Duquette/Thiessen) to decline opening a case on the basis that the complaint does not fall within OSBEELS or OSBGE jurisdiction. The motion passed unanimously.

Ms. Duquette asked if there was enough information to investigate the design professional. Mr. Thiessen noted there was no complaint against that person. Ms. Duquette replied that their evaluation can include looking at other involved parties. Mr. Seward observed that it’s not clear what would be gained because additional information will be required to determine if there is evidence to open a case against the design professional. Ms. Duquette was concerned that design criteria were provided, but by whom. However, she did not see any violations. Mr. Thiessen thought that the MSE wall was completed. AAG Lozano stated that these are technical issues with experts in the room to review the issues.

AAG Lozano then summed the conversation by stating that nothing in the complaint demonstrates that the permit engineer was engaged in engineering practices, as opposed to acting as a permit administrator. She observed that Mr. Rydell may have legitimate public health and safety concerns. None of the discussion dismisses that potential. Nonetheless, it did not appear to her that the design criteria nexus rested with the permit engineer. He was relying on the judgment of other professionals to make the decision, but it was not his engineering work. She

added that consultants were involved who also engaged in practices that may be more appropriate to investigate. Had Rydell submitted a design stamped by the permit engineer or the design professional, then there might be different decisions. She asked, is there enough concern and information to open investigations into the design professional and consultants.

Ms. Valentine questioned how a case against third parties would occur given that the complainant does not provide that information. Ms. Duquette replied that the investigation would start with the design professional. They were in responsible charge. After further discussion about Rydell providing evidence, it was moved and seconded (Duquette/Thiessen) to not open an investigations into the design professional or third party consultants. The motion passed. Mr. Stroud abstained.

Next Meeting

Thursday, October 1 – OSBGE to host

The meeting adjourned at 2:10 p.m.