

Meeting of the Professional Engineering Committee
of the Board of Licensure for Professional
Engineers & Professional Surveyors held 9:00 a.m.,
November 2, 2006 at Goddard Hall #200, S.
Horseshoe Dr., NMSU, Las Cruces, NM

Members Present: Subhas Shah, PE, PEC Chair
John Romero, Sr., PE, PEC Vice Chair
Dr. Rola Idriss, PE
Patricio Guerrerortiz, PEC chair

Members Absent: Stevan J Schoen, Public Member
Severiano Sisneros, PE

Others Present Elena Garcia, Executive Director
Candis Bourassa, Licensing Manager
Ed Ytuarte, Complaint Manager, PEPS
Mary Smith, Assistant Attorney General, Board Counsel
Aurora Acosta, PE applicant
Randy Traynor, NM home Builders Assoc
Dr. Richard Rose, NMED
Ana Marie Ortiz, NMED Division Director
Cindy Padilla, NMED
Chuck Noble, NMED
Ken Smith, NMED
Link Summers, Professional Outside Wastewater Assoc.
Adrian Stresow, case respondent
Wick Sellers, Professional Outside Wastewater Assoc.

1. CONVENE/ROLL CALL/INTRODUCTION OF GUESTS

Mr. Shah convened the meeting. A roll call was taken, and it was noted that a quorum of the Board was present. Guests introduced themselves.

2. APPROVAL OF THE AGENDA – Motion by Mr. Romero to approve agenda, second by Mr. Guerrerortiz and unanimously

VOTED: To approve the agenda as presented.

3. APPROVAL OF THE MINUTES

3.1 July 14, 2006 Minutes - Motion by Mr. Romero to approve the minutes with the following change: on page 2 “Approved by” should be Mr. Subhas Shah, second by Dr. Idriss and unanimously,

VOTED: To approve the minutes of the July 14, 2006 meeting as amended.

3.2 August 3, 2006 Minutes – Motion by Mr. Guerrerortiz to approve the minutes with the following changes: item 4.1 page 2, NMSPS should be NMSPE; “exception” should be “exemption”; and on page 5 Approved by should be “Mr. Subhas Shah”. Second by Mr. Romero and unanimously,

VOTED: To approve the minutes of the August 3, 2006 meeting as amended.

4. NEW BUSINESS

4.1 Appointments – Aurora Acosta – PE Applicant – 9:00 a.m. – Ms. Acosta addressed the board as a licensee of Mexico. She is currently working at Holloman AFB as an electrical engineer. She applied for comity on Oct. 2005 and the board found she needed five more months of experience. According to section 61.23.14.1 A 2 d, she resubmitted the application update with a masters degree, and six years of experience in order for the board to consider waiving the FE examination. Ms. Garcia indicated provided a copy of the professional evaluation of her foreign degree which indicated the degrees were equivalent to a masters degree in the United States. Ms. Acosta was advised that the Board will review her entire file with the other application later in the meeting. She will be notified by staff as to the result of the review.

4.2 Proposed Statement of Regulatory Intent with regard to 13.39.3.7 B and 16.39.3.8 E and F On-site Wastewater Treatment Engineering – Mr. Guerrerortiz explained it was brought to his attention that there was confusing language in the on-site wastewater sub-disciplines 16.39.3.8. F. The definition was moved at the request of State Records Center and Archives to 16.39.3.7 B. The published definition is being interpreted differently by its new location which is now different than when adopted during the Board’s rules hearing. Mrs. Ana Marie Ortiz, division director with NMED overseeing the liquid waste program introduces Mr. Chuck Noble their attorney. He pointed out the problem occurred when the on-site wastewater sub-discipline was moved to the definition section of the rule. This implied that anyone actually installing on-site wastewater systems could be practicing engineering. The original placement of the language within its rules was explained to him was to set up a sub-discipline for two reasons. First, it was to allow education for on-site wastewater engineers and second so that on-site wastewater engineers could hold themselves out as having this specialization. It was not to define what was or was not engineering. The NMED believes moving it to the definitions section of the rule had a substantive change. He also understands State Archives is willing to reverse this by having the Board re-file the rule with the language back to its original adopted location. Mr. Guerrerortiz’s proposal does this by removing the sentence from 16.29.3.7 and moving it to 16.29.3.8 where it originally was. The board intended to establish a specialty sub-discipline for on-site wastewater engineering. To the NMED being located in the definition section makes it engineering work and every design of one of the systems would have to include an engineer’s stamp. Mrs. Garcia indicated she will be able to amend the rule basically as approved during the public hearing without having to go through a rules hearing process. An explanation will be

filed with the amendment. The amended rule would go into effect 30 days after being filed. For the record, Mr. Guerrerortiz would like to note the concerns brought up by the interested parties are valid and could create problems and changing it back would be the solution. Mr. Wick Sellers commended the board's action and asked that in the future if further changes are addressed the Professional Outside Wastewater Association be notified. Mr. Randy Traynor, NM Home Builders Association lobbyist, indicated he supports the Board's action and encourages review of the language used. Ms. Ana Marie Ortiz, NMED Division Director, appreciates the board's action and support. Ms. Smith points out this is a technical change. Mr. Traynor and Ms. Ortiz thanked Mr. Guerrerortiz and Ms. Garcia for their assistance in this effort. It was moved by Dr. Idriss, seconded by Mr. Guerrerortiz and unanimously,

VOTED: to adopt the Statement of Regulatory Intent that will move 16.39.3.7 B to 16.39.3.8. F as approved during the 3/2/06 Administrative Rules Hearing.

5. **OLD BUSINESS** – None presented

6. **COMMUNICATIONS**

6.1 Gary Hoe – Clarification of Advisory Opinion RE: Reviewing Engineering Plans/Sealing Requirements – Mrs. Garcia stated Mr. Hoe questioned the sealing of documents electronically. The Board policy was sent to him stating both the sender and receiver need to insure the authentication of the documents (provide for a safe process). This is the responsibility of the licensee. The second question is on the review of engineering plans. Mr. Guerrerortiz stated his concern was brought up by NCEES as a national issue. The engineer of record does not always do field changes. The City of Santa Fe requires that every improvement done in the city have stamped/sealed design drawings by a licensed engineer, however there is no requirement that the construction be under an engineers' supervision. Contractors are making the changes. Mr. Romero stated that as an engineer with DOT he did stamp the agency as-builts. He had to trust the inspectors and contractors. Mr. Guerrerortiz believes making the municipality stamp them instead of a private engineer may have to be addressed in the future. Additional language may need to be developed to address these issues in the policy.

6.2 John Tinsley – RE: Question on sealing – Mrs. Garcia indicated Mr. Tinsley is questioning why the City of Albuquerque is requiring him to have the mechanical discipline after his name in the roster when he is licensed as a PE with the discipline of electrical. However, he indicated he is competent to stamp M/P drawings for simple buildings despite his electrical discipline. The City cited the City of Albuquerque Amendments to the NM Building Code, as adopted by the Construction Industries Division. These rules include a requirement for a mechanical seal on projects exceeding \$50,000 in valuation or on two-story buildings. She has informed him the board licenses professional engineers and requires they stay within their competency. Disciplines in the Board roster indicate an engineer has demonstrated competency in different areas. Different agencies may have their own discipline requirements. Mr. Guerrerortiz

suggested the recommendation be that the city does not have the authority to verify expertise, but can require competence. They can file a complaint if this is not the case.

- 7.2 Case 05-04-15 – Mr. Stresow addressed the board to present considerations for the reopening of his case. He stated he did not understand the process and neglected to respond. This led to his license being revoked. He would like the opportunity to respond and have them consider the case on its merits and not on his lack of knowledge of board procedures.

7. **CLOSED SESSION (Complaints and Violations)** – It was moved by Mr. Romero, seconded by Dr. Idriss and unanimously,

VOTED: To convene in closed or executive session pursuant to NMSA 1978, Section 10-15-1 (H) (1) to discuss only those cases listed on the agenda as 7.1 through 7.7 of the agenda. A roll call vote was taken. Voting yes: Mr. Guerrerortiz, Dr. Idriss, Mr. Shah, and Mr. Romero. Motion carried unanimously.

7. A. **OPEN SESSION** – Action on the Above Cases – Mr. Shah reconvened the meeting in open session and further stated that the discussions in closed session were limited to those cases listed as items 7.1 through 7.7 on the agenda.
[...All charges, unless dismissed as unfounded, trivial, resolved by reprimand, or settled informally shall be heard in accordance with the provisions of the ULA, 61-23-24(E), NMSA 1978]

7.1 Case 05-05-08 – Mr. Guerrerortiz and Mr. Sisneros recused themselves. It was moved by Mr. Romero, seconded by Dr. Idriss and unanimously,

VOTED: to defer this case until the February 1, 2007 meeting due to a lack of quorum for this case.

7.2 Case 25-04-15– In the matter of Adrian Stresow – Request to reopen case – It was moved by Mr. Guerrerortiz, seconded by Mr. Romero and,

VOTED: to deny the request to reopen the case due to Mr. Stresow showing no sufficient cause as required under the Uniform Licensing Act for not responding to the board's NCA. Voting Yes: three members Voting No: one. Motion passes.

7.3 Case 05-04-20 - It was moved by Dr. Idriss, seconded by Mr. Romero and unanimously,

VOTED: to dismiss since case has been settled informally under the condition that the agency work with NMSPE and comply with NM Practice Act 61.23.27 requiring a licensed engineer.

7.4 Case 05-05-41 – It was moved by Mr. Guerrerortiz, seconded by Dr. Idriss and unanimously,

VOTED: To issue an NCA for alleged violation of NMSA 61.23.21 and 61.23.21C

7.5 Case 06-05-50 – It was moved by Mr. Guerrerortiz, seconded by Dr. Idriss and unanimously,

VOTED: To have Ms. Garcia write a letter to the company since the individual left the company apprising them of section NMSA 61.23.22 B and 61.23.23.1 and 61.23.3D and caution them of any further violations. Company needs trained engineers in order to be exempt.

7.6 Case 07-06-01 – It was moved by Mr. Romero, seconded by Mr. Guerrerortiz and unanimously,

VOTED: To dismiss since case has been settled informally.

7.7 Case 06-05-55 [previously noted incorrectly as 06-05-53]– It was moved by Mr. Guerrerortiz, seconded by Mr. Romero and unanimously,

VOTED: To accept the stipulated agreement from applicant to withdraw his application.

Appointment of hearing officers

Case 05-05-41 - Motion by Mr. Guerrerortiz for the entire committee to hear the case, second by Dr. Idriss and motion passed unanimously.

8. REVIEW OF APPLICATIONS

8.1 Applications for Retired Status and Inactive Status – 2 retired and 1 inactive - Motion by Mr. Romero to approve applicants, second by Dr. Idriss and unanimously,

VOTED: To approve Thomas W. Brooks and Jack D. Newman for retired status and Andrew T. Norris for Inactive Status.

8.2 Application with “MLE Council Records and “Substantial Equivalency” – 71 applications as listed on list – It was moved by Dr. Idriss, seconded by Mr. Romero and unanimously,

VOTED: To approve/ratify the list of professional engineers approved for licensure who hold Council Records and were noted as Model Law Engineer or who hold credentials of substantial equivalency to MLEs.

8.3 Review of New Comity and Examination Applications - The Board considered the applications for licensure by comity and by examination. A copy of the Board's action are noted in the individual applicants' files

9. ADJOURNMENT – Having no further business Mr. Shah adjourned the meeting

Submitted by:

Elena Garcia, Executive Director

Approved by:

Mr. Subhas Shah, PEC Chair

Approval Date