

(Four newspaper "clippings" follow)

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Company's campaign against UO professor fails

By SHERRI BURI McDONALD

The Register-Guard

University of Oregon geology professor Mark Reed has proved more durable than the river rock that Eugene Sand & Gravel crushes at its pits.

An effort by Eugene Sand and state geologist regulators to penalize Reed for his outspoken public criticism of Eugene Sand's expansion plans north of Eugene has crumbled in the face of Reed's claim that the campaign against him violated his rights to free speech.

The state Board of Geologist Examiners has dismissed charges Eugene Sand had filed against Reed, the state Attorney General's Office said earlier this week.

Reed was a leading critic of Eugene Sand's controversial bid to open new gravel pits off River Road and had testified extensively against Eugene Sand's proposal.

Aside from dropping its investigation into Reed, the geology board at an emergency meeting last week also repealed a state regulation aimed at restricting the activities of geologists who are not registered with the state, said Kevin Neely, spokesman for the Oregon Attorney General's office. The regulation had barred unregistered geologists from giving public testimony.

Reed, in a lawsuit he filed in Lane County Circuit Court last week, had alleged that the state regulation was unconstitutional because it violated his right to free speech.

The state's speedy concessions end a

months-long dispute between Eugene Sand, the board and Reed, who had faced the threat of heavy fines or even imprisonment for allegedly failing to obey the state regulation and an accompanying state law restricting the activities of unlicensed geologists.

Reed said he was thrilled.

"Not only am I free, but others are free to testify in the way that I did," he said. "They were trying to stop public comment from a knowledgeable citizen and thereby depriving the public of the benefit of that knowledge."

Mike Alltucker, Eugene Sand's president, said his company complained to the state board about Reed because Reed's testimony damaged the company and its consultants' work. Alltucker said Monday that he won't continue to press the complaint with the board.

The Lane County Board of Commissioners in May denied Eugene Sand permission to dig new gravel pits off River Road. Eugene Sand has appealed to the state Land Use Board of Appeals. Alltucker said he hopes the appeals panel will reach a decision by the end of the year.

Eugene Sand launched its unusual, detailed attack on Reed with a complaint to the geologists board on Feb. 27, accusing Reed of willfully violating state law at least 49 times in written and spoken public testimony.

Reed, who lives with his wife, Karen, about a mile from the proposed expansion site,

testified numerous times against Eugene Sand's request to change the zoning of 575 acres of farm land to allow a gravel operation. He also wrote a guest commentary published in The Register-Guard.

Reed alleged in part that Eugene Sand had failed to adequately document how deep the gravel stratum is at the site. Under state gravel regulations, the gravel layer must be at least 60 feet thick to justify a zone change. Reed said Eugene Sand's own data revealed that the layer was not that thick.

Commissioners said the issue was a crucial one, and a majority ended up accepting some of Reed's arguments.

In its complaint to the geologists board, Eugene Sand alleged that Reed's testimony constituted the "public practice" of geology by someone who is not registered with the state to practice geology - a violation of state law and regulation. Eugene Sand also claimed that Reed tried to give the impression that he was a registered geologist. Registered geologists must pass a licensing exam and pay annual fees.

Reed has taught geology at the UO for 22 years. He said he has not registered with the state because, like most university professors, he teaches and conducts research, and does not perform professional geology services for the public. When giving public testimony, Reed said, he referred to himself as a professor of geology, specializing in mineral resource geology and economic geology, and not a "registered geologist."

Board members discussed the complaint with Reed and in May asked him to sign a "consent order" under which the board would drop all complaints and possible penalties against him if he agreed to apply to become a state-registered geologist.

Reed declined to sign the order or apply to

register.

The board never actually filed a complaint against Reed.

After trying over the past six months to get the board to drop Eugene Sand's complaint, Reed sued in Circuit Court last week.

In the lawsuit, Art Johnson, lead attorney, argued that the rule prohibiting Reed from giving public testimony violated free speech rights under the Oregon and U.S. constitutions.

"You don't have to get a license to exercise your right to free speech," Johnson said Monday.

The court set a hearing for Nov. 26 at which the state would have to show cause why the court should not issue an injunction against the state to prevent it from enforcing its regulations.

So the geologists board called an emergency meeting for last Friday to settle the matter.

Johnson said his firm is researching whether any other professional boards place similar restraints on free speech. So far, they haven't found others, he said.

"I don't know why this was adopted by the Oregon Board of Geologist Examiners," Johnson said. "But it's an incredibly inappropriate restraint."

December 1, 2002

No license required: Geologist can testify without registering

A Register-Guard Editorial

Look at it from Eugene Sand & Gravel's perspective: Here was Mark Reed, a University of Oregon professor of geology, popping up in every forum he could find to publicly slam the company's proposed gravel pit near River Road. Reed is not a state-registered geologist, so the company couldn't complain to a licensing board when it felt that his statements fell short of professional standards. Unlike Eugene Sand's licensed geologists, Reed had credibility without accountability.

What's missing from this perspective is the fact that Reed has rights as a citizen, rights that can't be hemmed in by invoking the obligations the state imposes on professional geologists. Eugene Sand's attempt to get the state Board of Geologist Examiners to subject Reed to some form of professional discipline has backfired. The board rule that opened the door to such an attempt has been rescinded, and properly so.

Geologists who engage in the "public practice" of their science must be licensed by the board. The licensing requirement is intended to ensure that people who tell homebuilders that their construction sites won't be hit by landslides, for instance, have adequate qualifications. The same concept applies to licensing requirements found in dozens of professions; the idea is to maintain professional standards and protect the public.

The licensing requirement is not meant to keep geologists from speaking their minds. Yet Eugene Sand complained to the board in February that on no fewer than 49 occasions, Reed had engaged in the unlicensed "public practice" of geology.

It's true that at Lane County hearings Reed had offered detailed testimony opposing Eugene Sand's application for a zone change that would have allowed the company to mine gravel on 575 acres near River Road, and had argued against the application in other venues as well - including the pages of this newspaper. He drew heavily on his background in geology in making his case against the gravel pit, and played a role in the county Board of Commissioners' ultimate decision to reject the application.

But that doesn't amount to the "public practice" of geology. Reed wasn't paid by anyone. He never represented himself as being something he's not. Other geologists, and members of the general public, were free to challenge his facts and opinions. Geologists' professional standards would not be strengthened, nor would the public be protected, if Reed were punished for publicly stating his point of view.

The Board of Geologist examiners offered Reed a deal in the form of a "consent order": Register with the state, the board said, and all complaints would be dropped.

Reed rejected the offer, and it's a good thing he did. His acceptance would have implied that only licensed geologists have a right to speak on such issues as Eugene Sand's application. It's as though the state Electrical and Elevator Board had said it would permit a professor of electrical engineering to offer an opinion on building codes only after he agreed to be licensed as an electrician.

Reed filed a lawsuit, claiming that the state board was unconstitutionally limiting his First Amendment right to free speech. The board, acting on the advice of the state attorney general's office, beat a hasty retreat and dropped Eugene Sand's complaint. It also rescinded the rule that could have been construed to limit public testimony by geologists who have not registered with the state.

People need a license to fill prescriptions, work as a real estate agent or practice geology. But self-government depends on the universal right to free expression - not just on matters of public policy, but surely on those matters above all. The First Amendment is all the license anyone needs.

River Road geologist put state board in retreat

By MIKE THOELE

Of the News

JUNCTION CITY – While a final resolution of the long-running battle over the plan to create a gravel mine on River Road may be years away, there's no longer a doubt that Mark Reed, a University of Oregon geology professor, can be one of the combatants.

Eugene Sand & Gravel, which seeks to create a gravel pit in the River Road farm belt, had attempted to squelch Reed's testimony at public hearings by invoking a seldom-used regulation to contend that he was illegally engaged in the public practice of geology.

Initially, the state Board of Geologist Examiners, holding the threat of heavy fines or imprisonment over Reed, attempted to force him to agree that he would stop speaking on the River Road issue or that he would submit to licensing requirements.

Last week, faced with a free-speech lawsuit and some heavy legal artillery, the board beat a retreat. Meeting in a hastily called emergency session just two days after the suit was filed, the board not only withdrew the charges. It scrapped the rule.

"We're still considering the implications of the whole process," Reed said Friday from his home. "To me the most important part of the decision was the repeal of the rule on testimony. That's really fundamental. Citizens should be able to testify before their government."

The geologist board, much like licensing boards in other professions, issues certifications that are required for geologists serving clients in a salary or fee-based geological business. But also like other boards, it does not require licenses for those who teach the profession at the college level.

At that intersection of professional-versus-academic practice, Reed became the object of charges filed by Eugene Sand soon after he showed up at public hearings and testified against the company as an unpaid private citizen. In the hearings, he argued against the findings of licensed professional geologists hired by the company and stiffly criticized their findings.

The state board accepted Eugene Sand's complaint and began taking steps to penalize Reed, who had always stated that his testimony was offered as an unpaid, concerned citizen.

The geologist board listed 49 separate violations that it said Reed had committed when he testified or wrote on the Eugene Sand issue. Each of the charges carried the potential of a \$1,000 fine and a one-year prison term.

The board offered to let Reed off the hook if he would sign a "consent order" and apply for a

professional geologist's license. Reed refused to sign the order or apply for the license.

The professor, who lives on East Beacon Drive about a mile from the 550-acre site where Eugene Sand proposed to develop its gravel mine and asphalt plant, found allies almost without seeking them. Some of them had only a passing interest in the gravel issue, but were angered by the First Amendment implications of the rule and of Eugene Sand's action against Reed.

Art Johnson and Marilyn Heiken, Eugene attorneys, took the case on a pro bono basis. Among the legal experts who helped prepare the brief for the suit was Garrett Epps, a prominent University of Oregon Law School faculty member.

"The people who pitched in just saw it from the outset as a serious breach of constitutional rights," Reed said. "They saw it as a matter of prohibiting citizens from testifying before their government."

Reed said the danger in the rule is that licensed professional geologists almost always work for industry. Debate is stifled when others who have expert knowledge are barred from speaking, he said, with the effect that a whole realm of expert testimony from a non-industrial perspective would not get consideration.

The resolution of the charges against Reed may have implications for other state licensing agencies. The professor said that Johnson has begun research on the rules of other Oregon licensing boards.

"He's just now getting started doing that," Reed said. "It's because he and others see this as a crucial First Amendment issue."

In the main event of the gravel debate, Eugene Sand has an appeal pending before the state Land Use Board of Appeals. The company wants the board to overturn a Lane County rejection of the proposal to create the River Road gravel mine. Reed's argument that the site lacked enough gravel to meet state standards was a key component in the debate that preceded that decision.

The company had sought to create a 240-acre gravel pit, a concrete and asphalt plant, and a truck shop on the west side of the Willamette River, near the foot of Lone Pine Drive. The site is about a mile north of Beacon Drive, the road where the built-up area of unincorporated Santa Clara ends.

Officially, the application covered 550 acres of land. The company said that it would run mining operations on only half that land, and on only about 100 acres at any one time. It estimated that, at peak periods, the operation would generate up to 90 gravel truck trips per hour on River Road. The Eugene Sand case is the largest and most expensive land-use issue ever processed in Lane County. Eugene Sand says it has spent over a million dollars. The record in the case runs to over 20,000 pages.

Opinion

Casting stones

"If the geology board takes up this ill-advised complaint, its members are going to learn more than they ever wanted to know about free speech and First Amendment protections."

-News editorial
March 28, 2002

If you're looking for members of the state Board of Geologist Examiners, they're probably hiding under a rock.

And well they should. They beat an inglorious retreat last week after threatening to slap a University of Oregon geology professor with penalties of up to \$49,000 and 49 years in prison.

Mark Reed's crime? As a citizen, he testified at hearings on Eugene Sand & Gravel's River Road mining proposal. In the process, he spoke and wrote against the findings of licensed professional geologists, those who charge for their services and operate on the legal leash of the state board.

The agency earlier this year interpreted one of its rules to mean that any unlicensed person who had geologic qualifications would break the law by testifying in a public session. Spurred by a complaint from Eugene Sand, the board arbitrarily chose to see such conduct as practicing geology without a license.

Even when the person – in this case Reed, who lives about a mile from the proposed mine – is speaking as an unpaid private citizen. By the logic of the board and the action it seemed only too happy to take, any citizen could testify at Lane County's hearings on the gravel mine, except a citizen with a geology degree.

When the board attempted to cow Reed into signing a consent order governing his future public remarks and into applying for one of its licenses, he refused. Even geology professors are attuned to principles of free speech and First Amendment protections.

So are Eugene attorneys Art Johnson and Marilyn Heiken and UO law professor Garrett Epps. They were so incensed over the board's conduct that they offered Reed their talents for free.

The blistering 20-page brief they put together hit the geologist examiners like a, pardon the expression, landslide. Two days after Reed's lawsuit was filed, the examiners raced into an emergency meeting, presumably for some re-examination. They dropped the charges against Reed. And they rescinded their rule.

Parts of this scenario hark to one of the unpleasant traditions of American democracy: Regulatory boards formed to protect the public interest too often operate as lapdogs of the industry they're supposed to regulate. The majority of Oregon's licensed geologists and the majority of members on the board of geologist examiners are identified with industry. They're members of the club.

Eugene Sand, another member of the club, doesn't like what an upstart professor has to say. The company complains to its pals on the board of examiners, who are quickly incensed about the very idea of a geologist publicly disagreeing with some of their licensees. And with about a

nickel's worth of reflection on what it might be stepping into, the board sets off to drop the hammer on a professor who clearly is not a member of the club.

In the main, Eugene Sand has conducted itself well during more than two fractious years of debate on its River Road proposal. A big part of its pitch has been to cast itself as open, neighborly and willing to work with those who live near its proposed site.

Apparently that doesn't include any neighbor who might know something about geology. Such folks, it seems, should be squelched and subjected to a few vexing months of battling an obscure rule applied in a questionable fashion.

Eugene Sand and the geologist examiners owe Mark Reed more than dropping their flimsy charges. They owe him an apology.

MT

("MT" refers to Mike Thoele, Editor.)