

Please note: Proposed new text is underlined; proposed deletions are in [brackets].

TITLE 22. Examining Boards

PART 39. Texas Board of Professional Geoscientists

CHAPTER 850. Texas Board of Professional Geoscientists

Subchapter A. Authority and Definitions [Responsibilities]

§850.1. Authority.

These rules are promulgated under the authority of the Texas Board of Professional Geoscientists, Texas Occupations Code, Chapter 1002.

§850.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:[.]

[(1) Address of record - In the case of a person licensed, certified, or registered by the Board, the address which is filed by the licensee or registrant with the Board.]

(1) Advisory opinion – An interpretation of the Act or an application of the Act to a person with respect to a specified existing or hypothetical factual situation prepared by the Board on its own initiative or at the request of any interested person.

(2) The Act – Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(3) APA - The Administrative Procedure Act (TEX. GOV'T. CODE, Chapter 2001).

[(4) Applicant - Any person seeking a license from the Board.]

(4) Board – The Texas Board of Professional Geoscientists

[(5) Chairman – The officer referred to in the Act as “presiding officer”.

(6) Vice-Chairman – The officer referred to in the Act as “assistant presiding officer”.]

(5) [(7)] Complainant - Any person who has filed a sworn, written complaint with the Secretary-Treasurer [secretary-treasurer] of the Board against any person whose activities are subject to the jurisdiction of the Board.

(6) [(8)] Contested case or proceeding - A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(7) [(9)] Executive Director – as used in any statute or rule assigned to the Texas Board of Professional Geoscientists, means the person appointed by the Board to be responsible for managing the day-to-day affairs of the Board.

(8) [(10)] Final decision maker - The Board, which is the sole body authorized by law to render the final decision in a contested case brought under the Act.

[(11) Hearings Examiner, Examiner, Administrative Law Judge - A person employed by the Board to conduct hearings in contested cases.]

(9) [(12)] License - The whole or part of any Board registration, license, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by the Act.

(10) Licensee – The holder of the whole or part of any Board registration, license, certificate of standing, approval, permit, endorsement, title or similar form of permission required or

permitted by the Act. A licensee may also be referred to as a registrant or certification holder, as applicable.

(11) [(13)] Party - A person admitted to participate in a case before the final decision maker.

(12) [(14)] Person - any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

[(15) Pleading - A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.]

[(16) Respondent - Any person, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Board.]

(13) (17)] Rule - Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board and is filed with the Texas Register, and found in the Texas Administrative Code, TITLE 22. Examining Boards; Part 39. Texas Board of Professional Geoscientists, Chapter 850. Texas Board of Professional Geoscientists and Chapter 851. Texas Board of Professional Geoscientists Licensing and Enforcement Rules.

(14) Sanction – a penalty imposed in a disciplinary process. An imposed disciplinary action is a sanction.

[(18) T.R.C.P. - Texas Rules of Civil Procedure

(19) U.S.P.S. - United States Postal Service.]

Subchapter B. Organization and Responsibilities.

§850.60. Organization and Responsibilities of the Board - General Provisions.

(a) The purpose of this chapter is to implement the provisions in the Texas Geoscience Practice Act (the Act), Occupations Code Chapter 1002, concerning the licensure of Professional Geoscientists and regulation of the public practice of geoscience.

(b) [(a)] The Board governs the Texas Board of Professional Geoscientists, which is the state agency responsible for oversight of the public practice of geoscience.

(c) [(b)] It is the intent of the Board that the rules of the Board be interpreted in the best interest of the public and the state.

(d) [(c)] Through these rules, the Board intends to establish procedures with which to receive public interest information and complaints from the general public and the Board's licensees, assure that access to Board programs is made available to all citizens, to set fees appropriately, and to establish practice and procedures for administering the Board's programs.

§850.61. Organization and Responsibilities of the Board - Meetings.

(a) Meetings will be conducted under Robert's Rules of Order [(Revised 1998)].

(b) When a quorum, that is, a majority of the members, is present, a motion before the Board is carried by an affirmative vote of the majority of the members of the Board present.

(c) Meetings will be conducted as public meetings under the Open Meetings Act, Government Code, Chapter 551.

(d) The Board will determine on a case by case basis, the number of and the location of cameras and recording devices in order to maintain order during Board meetings.

(e) The Board shall provide the public a reasonable opportunity to appear before the Board at its meetings and to speak on any issue under the jurisdiction of the Board. Subject to the statutory requirement of a "reasonable opportunity," the Board may limit the amount of time that each speaker may speak on a given subject under the jurisdiction of the Board.

§850.62. General Powers and Duties of the Board.

(a) Unless exempted by Texas Occupations Code, Chapter 1002, the Board ensures that a person may not engage in the public practice of geoscience unless the person holds a license issued under this chapter. Unless the person is licensed under this chapter, a person may not:

(1) use the term "Licensed Professional Geoscientist" or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) otherwise represent to the public that the person is qualified to:

(A) practice as a geoscientist; or

(B) engage in the public practice of geoscience.

(b) The Board ensures that a person does not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under this chapter.

(c) The Act and this chapter apply to every licensee.

(d) Unless an exemption applies, as outlined in §1002.351, the Board ensures that all firms offering to engage or engaging in the public practice of professional geoscience in Texas are registered as a Geoscience Firm.

(e) An individual meeting certain criteria who expresses an intent to become a licensed Professional Geoscientist may register with the Board as a Geoscientist-in-Training (GIT).

[(a) Complaints against a person or entity whose activities are regulated by the Board must be made in writing, sworn to by the person making the complaint, and filed with the secretary-treasurer of the Board at the office of the Board in Austin.

(b) A complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Board unless the complainant can show good cause to the Board for the late filing.]

(f) [(c)] Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the Board meetings and to the Board's programs.

(g) [(d)] The Board welcomes appropriate citizen input and communications at Board meetings and upon prior reasonable notice to the Board, the Board will provide interpreters and/or sign language specialists to assist the citizen in presenting their input to the Board.

§850.63. Responsibilities of the Board and Executive Director.

(a) The Board may take the disciplinary actions described in and set forth in the Act on the grounds described and set forth in the Act, and may issue orders accordingly.

(b) The Board may deny a license on the grounds described in and set forth in the Act.

(c) The Board may reinstate a license by the procedures and on the conditions set forth in the Act.

(d) The Board may impose an administrative penalty based on the factors and subject to the limitations set forth in the Act.

(e) The Board shall give notice of its order imposing a sanction or penalty to all parties.

The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
 - (2) the specific disciplinary action to be taken and the amount of any penalty assessed, if applicable;
 - (3) whether or not a motion for rehearing is required as a prerequisite for appeal; and
 - (4) the motion for rehearing time table.
- (f) Licensees will be notified at least 60 days in advance of impending expiration of the license and what the fee will be.
- (g) Special accommodation exams will be made available as required by the Americans [American] with Disabilities Act of 1990, Public Law 101-336. **[Upon request, exams may be offered in a foreign language at the expense of the requestor.]**
- (h) The Board shall require license holders to notify consumers and service recipients of the name, mailing address, and telephone numbers of the Board for purposes of directing complaints to the Board. The notification shall be included on:
- (1) the written contract for services of an individual or entity regulated by the Board; and
 - (2) a sign prominently displayed in the place of business of each individual or entity regulated by the Board if the consumers or service recipients must visit the place of business for said service or products.
- (i) The Board by rule may provide for prorating fees for the issuance of a license, registration, certificate, permit or title, so that a person regulated by the Board pays only that portion of the applicable fee that is allocable to the number of months during which the license, registration, certificate, permit or title is valid.

§850.65. Petition for Adoption of Rules.

Any interested party may request adoption of a rule(s) by submitting a letter of request to the Board with a draft of the rule(s) attached. As a minimum the request should contain:

- (1) items to be deleted should be bracketed or lined through;
- (2) items added should be underlined; and
- (3) the rationale for the requested rule change.

Subchapter C. Fees.

§850.80. Fees.

Fees set by the Board shall be published in the rules promulgated by the Board.

§850.81. Charges for Providing Copies of Public Information.

Cost for providing public information is that as promulgated by the Office of the Attorney General [Texas Building and Procurement Commission] under Title 1, Part 3, Texas Administrative Code, §§70.1 - 70.12 Cost of Copies of Public Information [§§111.61 - 111.70 (Cost of Public Information)].

§850.82. Insufficient Funds Fee.

If a payment, drawn to the Texas Board of Professional Geoscientists is dishonored by a payer, the Board shall charge a fee of \$25 to the drawer or endorser for processing the dishonored payment. The Board shall notify the drawer or endorser of the fee by sending a request for payment and the processing fee by certified mail to the last known business

address of the person as shown in the records of the Board. If the Board has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the Board has mailed the request is a violation of these rules.

The Executive Director shall determine the agency's position on disputes regarding issues with the processing of a drawn payment.

Subchapter D. Advisory Opinions.

§850.100. Subject of an Advisory Opinion

On its own initiative or at the request of any interested person, the Board shall prepare a written advisory opinion about:

- (1) an interpretation of the Act; or
- (2) the application of the Act to a person in regard to a specified existing or hypothetical factual situation.

§850.101. Request for an Advisory Opinion

(a) A request for an advisory opinion shall include, at a minimum, sufficient information in order for the Board to provide a complete response to the request. The requestor must provide the following, as applicable:

- (1) requestor contact information;
- (2) affected section(s) of the Act and/or Board rules;
- (3) description of the situation;
- (4) reason advisory opinion is requested;
- (5) parties or stakeholders that will be affected by the opinion, if known; and
- (6) any known, pending litigation involving the situation.

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, sent via electronic mail, hand-delivered, or faxed to the Board at the agency office.

§850.102. Board Initiated Opinion

When a majority of the Board determines that an opinion would be in the public interest or in the interest of any person or persons within the jurisdiction of the Board, the Board may on its own motion issue an advisory opinion.

§850.103. Receipt, Review, and Processing of a Request

(a) The Board, through the appropriate committee, shall review all requests for advisory opinions.

(b) Upon receipt of a request for an advisory opinion, the Executive Director will date stamp the request, issue an Advisory Opinion Request (AOR) tracking number, and make a preliminary determination on the Board's jurisdiction regarding the request.

(c) The Executive Director will review the request to determine if the request can be answered by reference to the plain language of a statute or a Board rule, or if the request has already been answered by the Board.

(d) If the Executive Director determines the Board has no jurisdiction or the request can be answered by reference to a statute, Board rule, or previous opinion, the Executive Director shall prepare a written response for the appropriate committee addressed to the person

making the request that cites the jurisdictional authority, the language of the statute or rule, or the prior determination.

- (e) The appropriate committee shall review all requests for advisory opinions and may:
 - (1) approve jurisdiction and reference responses, as applicable, and report a summary of these actions to the full Board for ratification; or
 - (2) determine the request warrants an advisory opinion and proceed with developing an advisory opinion.
- (f) If a request warrants an advisory opinion, the appropriate committee shall determine if further information is needed to draft an advisory opinion. If additional information is needed, the committee shall determine what information is needed and instruct the Executive Director to obtain expert resources, hold stakeholder meetings, or perform other research and investigation as necessary to provide the information required to draft an advisory opinion and report back to the committee.
- (g) If during the process, the committee determines that the request is one the Board cannot answer, then the committee shall have the Executive Director provide written notification to the person making the request of the reason the request will not be answered and this response shall be ratified by the full Board.
- (h) When sufficient information exists, the appropriate committee shall draft an advisory opinion and post the request and draft opinion on the agency website and in the *Texas Register* for comments.
- (i) Draft opinions shall be posted for at least 30 days and any interested person may submit written comments concerning an advisory opinion request. Comments submitted should reference the AOR number.
- (j) Upon completion of the comment period, the appropriate committee shall consider any comments made and draft a final opinion recommendation to be presented for review and adoption by the full Board.
- (k) The full Board shall review and adopt the advisory opinion or determine if further revisions are required and refer the request back to the appropriate committee with guidance on proceeding with completing the request.
- (l) Each final advisory opinion adopted by the full Board shall be published in summary form in the *Texas Register*.
- (m) To reconsider or revise an issued advisory opinion, the Board shall process the reconsideration or revision as a new request and follow the process as set forth in this section.

§850.104. Compilation of Advisory Opinions

The Board shall number and classify each final advisory opinion issued and shall annually compile a summary of advisory opinions in a single reference document made available on the Internet. The Executive Director may also publish and provide copies of advisory opinions in other formats as may be in the public interest.

§850.105. Time Period

The Board shall respond to requests for an advisory opinion within 180 days after the date the Board receives the written request unless the Board affirmatively states the Board's reason for not responding to the request within 180 days or for not responding to the request at all.

Chapter 851. Texas Board of Professional Geoscientists Licensing and Enforcement Rules

Subchapter A. Definitions [Licensing].

§851.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Act – Texas Occupations Code, Chapter 1002, cited as the [The] Texas Geoscience Practice Act.
- (2) Accredited institutions or programs - An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Board.
- (3) Address of record - In the case of a person licensed, certified, or registered by the Board, the address which is filed by the licensee or registrant with the Board.
- (4) [(2)] Advertising or Advertisement - Any non-commercial or commercial message, including, but not limited to verbal statements, bids, web pages, signage, provider listings, and paid advertisement which promotes the services of a licensee.
- (5) [(3)] Agency or Board - Texas Board of Professional Geoscientists.
- (6) [(4)] Applicant - A person making application for a geoscience license; a firm and/or the authorized official of the firm; or a person making application for the Geoscientist-in-Training (GIT) certification.
- (7) [(5)] Application - The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist [professional geoscientist], the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).
- (8) Authorized official of a firm – The person designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the Board; ensuring that the firm maintains compliance with the requirements of registration with the Board; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides public geoscientific services; and communicating with the Board regarding any matter.
- (9) Certificant – An individual holding a certificate as a Geoscientist-in-Training.
- (10) [(6)] Cheating - Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.
- (11) Complainant – Any person who has filed a sworn, written complaint with the Secretary-Treasurer [secretary-treasurer] of the Board against any person whose activities are subject to the jurisdiction of the Board or the Executive Director, a staff member, or member of the Board who has filed a signed, written complaint after becoming aware of information that may indicate a violation.
- (12) Complaint: An allegation or allegations of wrongful activity related to the practice or offering of geoscience services in Texas. A complaint is within the Board's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (PG) or registration by an individual, firm, or other legal entity. The Board maintains

jurisdiction over a license, registration or certification it issues as long as the license, registration or certification is current or renewable.

(13) Default --the failure of the Respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(14) [(7)] Direct supervision - Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons.

(15) [(8)] Discipline – One of three recognized courses of study under which a person may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(16) [(9)] Executive Director – The Executive Director of the Texas Board of Professional Geoscientists.

(17) [(10)] Filed date – **[a document is deemed to have been filed with the Board on]** the date that the document has been received by the Board or, if the document has been mailed to the Board, the postmark date of the document.

[(11) Firm - Any entity that engages or offers to engage in the practice of professional geoscience in this state. This includes sole proprietorships, corporations, partnerships, or joint stock associations.]

(18) [(12)] Geology – The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, vulcanology, stratigraphic geology, engineering geology, and environmental geology.

(19) [(13)] Geophysics – Refers to that science which involves the study of the physical earth by means of measuring its natural and induced fields of force, including, but not limited to, electric, gravity and magnetic, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(20) [(14)] Geoscience - The science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth as [is] applied with professional

judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public [mankind].

(21) Geoscience Firm – a firm, corporation, or other business entity registered by the Board to engage in the public practice of geoscience. Firms are recognized by the Board in one of the following categories:

(a) an unincorporated sole proprietorship (a single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner) registered by the Board to engage in the public practice of geoscience; or

(b) any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity) or other business entity registered by the Board to engage in the public practice of geoscience.

(22) [(15)] License - The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and these rules. [Also, a certificate issued by the Board showing such authority.]

(23) License certificate - any certificate issued by the Board showing that a license, registration, or certificate has been granted by the Board. A certificate is not valid unless it is accompanied by a card issued by the Board which shows the expiration date of the license, registration or certification.

(24) License status - the status of a Professional Geoscientist license is one of the following:

(a) Current license - a license that has not expired.

(b) Expired license - a license that has been expired for less than three years and is therefore renewable.

(c) Permanently expired license - a license that has been expired for more than three years and is no longer renewable.

(25) [(16)] Licensee - An individual holding a current Professional Geoscientist license in a discipline appropriate to the work performed under the Act and these rules.

(26) [(17)] Person - Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(27) [(18)] Professional geoscience - Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of geoscience principles and the interpretation of geoscience data.

(28) [(19)] Professional geoscience services (also geoscientific services) - Services which must be performed by or under the direct supervision of a Professional Geoscientist [licensed geoscientist] and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist[professional geoscientist] by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service.

- (29) Professional Geoscientist – A person who holds a license issued by the Board.
- (30) [(20)] Protestant - Any party opposing an application or petition filed with the Board.
- (31) Practice for the public –
- (A) providing professional geoscience services:
 - (i) for a governmental entity in Texas;
 - (ii) to comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or,
 - (iii) for the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and
 - (B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.
- (32) The Public – Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by geoscientific work.
- (33) Registered firm - a firm that is currently registered with the Board.
- (34) Registrant – a person whose sole proprietorship is currently registered with the Board or a firm or the authorized official of a firm that is currently registered with the Board.
- (35) Respondent – Any person, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Board.
- (36) Responsible charge – the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.
- (37) [(21)] Soil Science - Soil science means the science of soils, their classification, origin and history, the investigation of physical, chemical, morphological, and biological characteristics of the soil including among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.
- (38) Sole proprietorship – a single owned Professional Geoscientist’s geoscience business that has no separate legal existence from its owner.

Subchapter B. PG Licensing, Firm Registration, and GIT Certification.

§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.

(a) Requirements for licensure:

- (1) Passing score on an examination or examinations required by the Board covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in 22 TAC §851.21;
- (2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscientific work documented as specified in 22 TAC §851.23 and TOC §1002.256;
- (3) Good moral character as demonstrated by the submission of a minimum of five reference letters submitted on behalf of the applicant attesting to the good moral and

ethical character of the applicant as specified in 22 TAC §851.24 of this chapter or as otherwise determined by the Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and 22 TAC §851.25; and

(5) Supporting documentation of any license requirement, as determined by TBPG staff or the Board, relating to criminal convictions as specified in 22 TAC §851.108; relating to substance abuse issues as specified in 22 TAC §851.109; and relating to issues surrounding reasons the Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and TOC §1002.402.

(b) The Board may accept qualifying work experience in lieu of the education requirement required by TOC §1002.255(a)(2).

(c) Examination requirements and examination procedure:

A qualified person who has not passed qualifying licensing examination(s) as specified in 22 TAC §851.21 may access one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) ASBOG Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in TOC §1002.255 and 22 TAC §851.25 or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit examination application form E and any required attachments to the Board, along with the appropriate fee by the deadline posted on the TBPG web site for the examination date desired by the applicant.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will mail an ASBOG examination application form to the applicant.

(iii) The applicant shall submit the ASBOG examination application form and send the form, along with the examination fee to ASBOG. A copy of the examination application form shall be provided to the Board.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination after the Board receives the results from ASBOG.

(2) ASBOG Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement.

(B) Procedure:

(i) The applicant shall complete and submit both Application for Professional Geoscientist (form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Application for Geology examination (form E) along with the appropriate fee and any required

attachments to the Board, by the deadline posted on the TBPG web site for the examination date desired by the applicant.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will mail an ASBOG examination application form to the applicant.

(iii) The applicant shall submit the ASBOG examination application form and send the form, along with the examination fee to ASBOG. A copy of the examination application form shall be provided to the Board.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination after the Board receives the results from ASBOG.

(3) Texas Geophysics Examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this Chapter with the exception of having passed the Texas Geophysics Examination.

(B) Procedure:

(i) The applicant shall complete and submit both Application for Professional Geoscientist (form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Application for Texas Geophysics Examination (form F) along with the appropriate fee and any required attachments to the Board.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will provide Texas Geophysics Examination scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination.

(4) Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant who chooses to apply for licensure as a Professional Geoscientist under the discipline of soil science must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the Board.

(d) Professional Geoscientist application procedure.

(1) To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the Board:

- (A) A completed, signed, notarized application for licensure as a Professional Geoscientist;
- (B) Documentation of having passed an examination as specified in 22 TAC §851.21;
- (C) Documentation of having met the experience requirements as specified in 22 TAC §851.23;
- (D) A minimum of five (5) reference letters as specified in 22 TAC §851.24;
- (E) Official transcript(s), as specified in 22 TAC §851.25, unless the applicant is applying for the license on the basis of subsection (b) of this section;
- (F) the application/first year licensing fee as specified in 22 TAC §851.80(b);
- (G) verification of every licensure, current or expired, in any regulated profession in any jurisdiction; and
- (H) any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(2) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, initial license expiration card, and an initial wallet license expiration card as provided in subsection (m) of this section.

(e) With the initial filing of an application or at anytime that the application remains open, an applicant may request, in writing, licensure by the waiver of one or more qualifications for licensure. Upon written request and a showing of good cause, if the Board determines that the applicant is otherwise qualified for a license, the Board may waive any licensure requirement except for the payment of required fees. An applicant's written request for a waiver of licensure requirements must include a detailed justification for why good cause exists to waive specific licensure requirements. An approval for a waiver request may be recommended to the full Board by an appropriate committee of the Board.

(f) An application is active for one year including the date that it is filed with the Board. After one year an application expires.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately 30 days after the receipt of the application and fee.

(i) An applicant should respond to a deficiency notice within 45 days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(j) An original license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. The fee for the first renewal period shall be prorated. The second timely renewal and every subsequent timely renewal period shall be the one year period following the expiration date of the license. A license that is renewed late (one day after the expiration date of the license through the end of

the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in 851.28 of this chapter.

[(a) An applicant shall submit a complete application and appropriate fees. An applicant must complete all requirements; including satisfying the examination requirement, within one year of the date the application is filed. Upon written request and a showing of good cause, if the Board determines that the applicant is otherwise qualified for a license, the Board may waive any licensure requirement except for the payment of required fees. An applicant's written request for a waiver of licensure requirements must include a detailed justification for why good cause exists to waive specific licensure requirements.]

(b) Obtaining a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(c) Applications shall be held for 45 days from the date of notification for applicants to correct deficiencies. Failure to correct the deficiencies may be cause for termination of the application.

(d) An original license is valid for a period of one year from the date it is issued. A renewed or reissued license is valid for a period of one year from the expiration date of the license being renewed.]

(j) [(e)] A license number is not transferable.

(k) [(f)] Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(l) [(g)] Altering a license certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(m) [(h)] The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and these rules. When a license is issued, a license certificate, the first license certificate expiration card, and the first wallet license card is provided to the new licensee. The license certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the person is licensed, and the date the license was originally issued. The license certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired. The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed. The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the date the license was originally issued, the discipline in which the person is licensed, and the date the license will expire, unless it is renewed. [The wallet card is the actual license. A wall certificate will be issued to a new licensee.]

(n) [(i)] An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the Board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(o) [(j)] All applications must be submitted on paper and on forms prescribed by the Board with original signatures, notaries, and seals.

- (p) [(k)] Any transcripts, reference statements, evaluations, experience records or other similar documents submitted to the Board in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.
- (q) [(l)] An application may be forwarded to the Board at the Executive Director's discretion.
- (r) [(m)] Once the requirements for licensure have been satisfied and the new license and license certificate has been issued, within 60 days of notification the **[applicant will be notified and]** new licensee must then:
- (1) obtain a seal and place the seal imprint on a form provided by the Board and return it to the Board office **[within 60 days of notification.], and**
 - (2) register as a sole proprietor, if the licensee plans to engage in the independent practice of geoscience as an unincorporated sole proprietor, as described in §851.30 of this chapter on a full or part time basis.
 - (3) provide to the Board the following information: the name of every firm, governmental agency, or other organization with which the licensee is employed on a full time or part time basis, if the employment includes the practice of geoscience. If the practice of geoscience includes the public practice of geoscience, the licensee shall report the employer's Geoscience Firm registration number, unless the employer is a governmental agency or otherwise exempt from the requirement of registration with the Board.

§851.21. Licensing Requirements-Examinations.

- (a) The examinations will be administered to applicants in a form and location determined by the Board.
- (b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act.
- (1) The request must be in writing on a form approved by the Board.
 - (2) Proof of disability may be required.
- (c) An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.
- (d) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.
- (e) An applicant who has passed an examination may not retake that type of examination.
- [(f) If an applicant is approved to take an examination in a language other than English, the applicant shall bear the translation costs.]**
- (f) [g] An applicant for the Geology discipline must pass both parts of the National Association of State Boards of Geology (ASBOG®) test. Applicants taking the ASBOG® test must also abide by the rules and regulations of ASBOG®.
- (g) [h] An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) test. Applicants taking the CSSE test must also abide by the rules and regulations of CSSE.
- (h) [i] An applicant for the Geophysics discipline must pass the Texas Geophysics Examination **[an examination administered or accepted by the Board that tests the applicant's knowledge basic to geophysics and his ability to apply that knowledge and to assume responsible charge in the professional practice of geophysics].**
- (i) [j] Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application.

§851.23. Experience.

Applicants shall submit an [a supplementary] experience record to the Board as a part of the application.

- (1) The **[supplementary]** experience record shall be written by the applicant, shall clearly describe the geoscience work that the applicant personally performed, and shall delineate the role of the applicant in any group geoscience activity.
- (2) The **[supplementary]** experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work personally performed by the applicant.
- (3) Professional geoscience references must be provided to verify enough of the **[supplementary]** experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license.
- (4) Parts of the **[supplementary]** experience record that are to be verified by references shall be written in sufficient detail to allow the Board reviewer to document the minimum amount of experience required and to allow the reference to recognize and verify the quality and quantity of the experience claimed.
- (5) The **[Board shall evaluate the supplementary]** experience record must demonstrate [for] evidence of the applicant's competency to be placed in responsible charge of geoscience work of a similar character.
- (6) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years.

§851.24. References.

- (a) Applicants for a license shall provide at least five letters of reference to the Board, of which not fewer than three are from Professional Geoscientists [geoscientists] or other professionals acceptable to the Board who have knowledge of the applicant's relevant work experience, unless more letters of reference are required to meet the requirements as stated in §851.21 of this title (relating to Licensing Requirements-Examinations) or §851.23 of this title (relating to Experience). One or more of the letters of reference shall verify geoscience experience claimed to meet the minimum years of experience required. Geoscientists who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may provide a letter of reference for geoscience; such review shall be noted in the reference letter. Individuals providing reference letters shall not be compensated.
- (b) All references shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. **[If possible,]** References [references] should include one or more individuals who have directly supervised or maintained responsible charge of the applicant.
- (c) Professional Geoscientists who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.
- (d) The Board members and staff may, at their discretion, consider any, all or none of the responses from references.
- (e) The applicant shall send the Board's reference statement form and a complete copy of the applicable portion(s) of the **[supplementary]** experience record to each reference.
- (f) For a reference statement to be considered complete, the reference shall:

- (1) Accurately complete the reference statement in detail;
 - (2) Review and evaluate all applicable portions of the supplementary experience record;
 - (3) Signify agreement or disagreement with the information written by the applicant and add any comments or concerns on the reference statement.
 - (4) Place the completed reference statement and signed supplementary experience record in an envelope. After sealing the envelope, the reference's signature shall be placed across the sealed flap of the envelope and covered with transparent tape. The reference shall return the sealed envelope to the applicant.
- (g) Applicants shall enclose all of the sealed reference envelopes with the application when submitted to the Board.
- (h) Additional references may be required of the applicant when the Executive Director finds it necessary to adequately verify the applicant's experience or character. The Board and/or staff may at their discretion communicate with any reference or seek additional information.

§851.25. Education.

(a) An applicant must have graduated from a course of study from an accredited university or program in one of the following disciplines of geoscience satisfactory to the Board that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline; or satisfactorily completed other equivalent educational requirements as determined by the Board.

- (1) Geology or sub discipline of geology including but not limited to engineering geology, petroleum geology, hydrogeology, and environmental geology.
- (2) Geophysics.
- (3) Soil science.

(b) An official transcript (including either grades or mark sheets and proof that the degree was conferred) shall be provided for the degree(s) utilized to meet the educational requirements for licensure. Official or notarized copies of transcripts shall be submitted to the Board. Official transcripts shall be forwarded directly to the Board office by the respective registrars. The applicant is responsible for ordering and paying for all such transcripts. Additional academic information including but not limited to grades and transfer credit shall be submitted to the Board at the request of the Executive Director.

(c) If transcripts cannot be transmitted directly to the Board from the issuing institution, the Executive Director may recommend alternatives to the Board for its approval. Such alternatives may include validating transcripts in the applicant's possession through a Board-approved commercial evaluation service.

(d) Degrees and coursework earned at foreign universities shall be acceptable if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. It is the applicant's responsibility to have degrees and coursework so evaluated. The commercial evaluation of a degree will not be accepted in lieu of an official transcript.

(e) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(f) The Board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(g) In evaluating two or more sets of transcripts from a single applicant, the Board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

§851.27. Replacement License Certificate or License Expiration Cards.

A new or duplicate license certificate, a new or duplicate license certificate expiration card, or a new wallet license expiration card to post in a secondary work location or to replace one lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, on payment of the established fee. A licensee **[may request a replacement license under this section and will]** need not destroy his or her current license certificate, but shall remain responsible for its care and custody, including any misuse of the certificate [and shall file a signed statement setting out the reasons for the request so that the Board records will reflect the reason for issuance of a new license].

§851.28. Professional Geoscientist License Renewal and Reinstatement.

(a) The Board will mail a renewal notice to the last recorded address of each license holder, at least 60 days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the license holder to pay the required renewal fee together with any applicable penalty at the time of payment. A licensee may renew a current license up to 60 days in advance of its expiration online by accessing the process from the Board's web site. A licensee may also renew by paper application for renewal (form B) by accessing the form on the agency website or calling for a copy of the form up to 90 days in advance of the expiration of the license through up to but not including three years after the expiration of the license.

(b) The first renewal period shall be set no more than 12 months from the first renewal date and the expiration of the first renewal term shall be set to coincide with the last day of the licensee's birth month. The first year renewal fee shall be prorated for the number of months in the first renewal period. Every subsequent expiration date shall be set for one year past the previous renewal date.

(c) [(b)] A late fee of \$50 will be charged for each renewal application received 61 days after the licensee's expiration date, unless the renewal is received by mail or courier and is postmarked on or before 60 days after the date of expiration.

(d) [(c)] The Board may refuse to renew a license if the license holder is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of Board laws or rules that would warrant such disciplinary action under §851.157 of this chapter.

(e) [(d)] A license that has been expired for 60 days or less may be renewed by submitting a renewal application and fee to the Board [**any increase in fees as required by §851.80 of this chapter,**] and the continuing education documentation as required in §851.32 of this chapter. The fee for a license that is renewed within the first 60 days of expiration is the fee that was or is in place at the time the license expired.

(f) [(e)] A license that has been expired for more than 60 days and less than three years from the original expiration date **[is considered lapsed. A license that has lapsed for less than one year]** may be renewed by submitting to the Board a renewal application and fee, the late penalty fee, any increase in fees as required by §851.80 of this chapter, and the continuing

education documentation as required in §851.32 of this chapter. The licensee must also submit a signed affirmation indicating whether the licensee practiced [that they did not practice] as a P.G. when their license was expired. The fee for a license that is renewed within the first year of expiration is the fee that was or is in place at the time the license expired.

(g) [(f)] A license that has expired[lapsed] for more than one year but less than three years after the original expiration date may be renewed by submitting to the Board an annual renewal application and fee, plus the annual renewal fee that was in place at each expiration/renewal that would have occurred if the license had been renewed on time each year since it expired, the late fee which would have applied after every scheduled license renewal was delinquent for 60 days [any applicable late penalty fees for every year the license has lapsed, any increase in fees as required by §851.80 of this chapter], and proof of having met the continuing education requirements as required in §851.32(o) [§851.32] of this chapter [for every year the license has lapsed]. The licensee must also submit a signed affirmation indicating whether the licensee practiced [that they did not practice] as a P.G. when the license was expired. If an applicant for renewal who has met the requirements for renewal has practiced as a P.G. with the license expired, unless certain allegations of misconduct are present, the license shall be renewed. Information regarding unlicensed practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board.

(h) [(g)] A license that is allowed to expire [lapse] for a period of three years after the original expiration date is permanently expired and may not be renewed. The former license holder may re-apply [apply] for a new license as provided by the Act and applicable Board rules and will have to meet all licensure requirements in said Act and rules [Rules] at the time of re-application.

(i) [(h)]As per §1002.403 of the Act, the Board may suspend or revoke a license as disciplinary action against a license holder who is found censurable for a violation of the Act or rules.

(1) A license that has been suspended can be reinstated by the Board[board] only if the suspended licensee complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in §1002.403 of the Act.

(2) A license that has been revoked can be re-instated only if by a majority vote the Board approves reinstatement, given the applicant:

(A) re-applies and submits all required application materials and fees;

(B) successfully completes an examination in the required discipline of geoscience being sought for reinstatement if the applicant has not previously passed said examination; and

(C) provides evidence to demonstrate competency and that future non-compliance with the statute [laws] and rules of the Board will not occur.

(j) [(i)] Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the Board that the license holder failed to renew in a timely manner because the license holder was serving on active duty in the United States armed forces outside of Texas.

(k) The application fee is non-refundable.

§851.29. Licensure by Endorsement, Licensure Under a Reciprocal Agreement, and Reciprocal Licensure by Similar Examination [(Reciprocal License)].

[(a) A person who is licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, the District of Columbia, or a foreign country may apply to the executive director for licensure without meeting the examination requirements of §851.21 of this title (relating to Licensing Requirements-Examinations).

(b) A person applying for licensure under this section must submit proof of passage of an examination or examinations that are substantially similar to the applicable §851.21 of this title examinations.]

(a) Licensure by Endorsement.

(1) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, or the District of Columbia may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.

(2) Licensure by Endorsement is the process whereby the Board issues a license based on review of evidence of an applicant's completion of all or part of the requirements for licensure in Texas based on documentation of having met the same or a similar requirement in another Professional Geoscientist licensing jurisdiction in the successful application for a license in that jurisdiction.

(3) The Board will only accept documentation provided to the Board directly from a licensing authority that has issued a license to the applicant. It is the responsibility of the applicant to ensure that the licensing authority provide information to the Board. Any cost associated with the transmission of information to the Board is the responsibility of the applicant.

(4) In order for the Board to consider evidence, the applicant must ensure that his or her licensing authority provide:

(A) Verification of the license acceptable to the Board; and

(B) Verification of the specific qualifications that were met in order to become licensed.

(5) Verification of the specific qualifications that were met in order to become licensed may be in the form of:

(A) a letter signed by an authorized agent of the authority indicating the specific qualifications that were met in order to become licensed, and/or

(B) copies of specific documents that were submitted to the licensing authority to document having met a specific requirement.

(6) The Board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Licensure by Reciprocity Agreement.

(1) Licensure by reciprocity agreement is the process whereby an applicant for licensure as a Professional Geoscientist in Texas who is currently licensed as a Professional Geoscientist (or equivalent license) in another United States jurisdiction (state,

commonwealth or territory) becomes licensed in Texas and the process whereby an applicant currently licensed as a Professional Geoscientist in Texas applying for licensure as a Professional Geoscientist (or equivalent license) in the other jurisdiction becomes licensed in the other jurisdiction under the terms of a formal reciprocity agreement between the two jurisdiction's Boards.

(2) An applicant who holds a current license in a jurisdiction with which the TBPG has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two Boards.

(3) The Board shall maintain a list of each state or foreign country in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

(c) [(a)] Reciprocal licensure by similar examination. A person who is licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, the District of Columbia, or a foreign country may apply to the Executive Director [**executive director**] for licensure without meeting the examination requirements of §851.21 of this title (relating to Licensing Requirements-Examinations).

[(b)] A person applying for licensure under this sub-section **[section]** must submit proof of passage of an examination or examinations that are substantially similar to the applicable §851.21 of this title examinations.

§851.30. Firm Registration.

(a) Registration Required: Unless an exemption applies, as outlined in §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the Board; and,

(1) the geoscientific work is performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) the business of the firm or corporation includes the public practice of geoscience as determined by Board rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscientific work performed in this state. **[The Texas Board of Professional**

Geoscientists shall receive, evaluate, and process all applications for a certificate of registration issued under the authority of the Texas Geoscience Practice Act (Act).

Applications for the certificate of registration shall be accepted and will be mandatory from all firms offering to engage or engaging in the practice of professional geoscience for the public in Texas that do not meet any exemptions in §1002.252.]

As provided in §851.10(11), the term firm includes corporations, sole-proprietorships, partnerships and/or joint stock associations. For the purposes of this section, the term public includes but is not limited to political subdivisions of the state, business entities, and individuals. The Board has the authority under the Act to issue an annual certificate of registration to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and Board rules. The Board has the authority under the Act to deny a certificate of registration to any applicant found not to have met all requirements of the Act and Board rules. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience. For the purpose of fees, Geoscience Firms are categorized as either:

A) an unincorporated sole proprietorship (a single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner) registered by the Board to engage in the public practice of geoscience; or

(B) any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity) or other business entity registered by the Board to engage in the public practice of geoscience.

(b) Unless registered by the Board or exempt from registration under §1002.351, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a Professional Geoscientist or able to perform geoscientific services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Section 1002.263(b).

[(b) The Board may issue a certificate of registration only to applicant firms that meet the requirements set forth in §1002.351(a)(1) and (2) of the Act and this section.]

(c) Registration requirements:

In order to be eligible to register as a Geoscience Firm with the Board, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an authorized official of the firm who shall be responsible for: the process of submitting the application for the initial registration of the firm with the Board; ensuring that the firm maintains compliance with the requirements of registration with the Board; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides public geoscientific services; and communicating with the Board regarding any matter.

(3) Operate under a business model such that:

(A) the geoscientific work is performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(B) the principal business of the firm or corporation is the public practice of geoscience as determined by Board rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscientific work performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in subsection (3) of this section;

(5) Unless the firm is an unincorporated sole proprietorship or an unincorporated partnership, a firm seeking registration with the Board must register the firm with the Office of Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the Secretary of State, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the Board upon initial application. If the firm is a sole proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk.

(6) Submit an application for registration of a firm (form C), in accordance to the procedures outlined in subsection (d) of this section.

(7) A firm that offers or performs professional geoscience services only on a part-time basis must ensure that the Professional Geoscientist who performs the geoscientific work or who directly supervises the geoscientific work while the firm is in operation has physical presence and is a regular full-time employee of the firm. An active licensee who is a sole proprietor shall satisfy the requirement of the regular full time employee.

(8) Upon initial application, a firm shall affirm that the licensed Professional Geoscientist performing or supervising the geoscientific work for a Geoscience Firm is a regular full time employee. A Geoscience Firm shall provide evidence of the full time employment status upon request of the Board. This subsection does not prohibit a licensed Professional Geoscientist from performing consulting geoscience services on a part-time basis as an individual. A Geoscience Firm shall provide that at least one regular full-time Professional Geoscientist employee directly supervise all geoscience work performed in branch, remote, or project offices. If such a branch, remote or project office is normally staffed full-time while performing geoscience work or is represented by the firm as a permanent full-time office, then at least one regular full-time Professional Geoscientist must be physically present in each such office.

(d) Firm Registration Application Process.

(1) [(c)] The authorized official of the firm shall complete and submit, along with the required application fee, the form furnished by the Board which includes but is not limited to the following information listed in paragraphs (A) – (F) [(1) - (6)] of this subsection:

(A) [(1)] the name, address, and communication number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) [(2)] the name, position, address, and communication numbers of each officer or director;

(C) [(3)] the name, address and current active Texas Professional Geoscientist license number of each regular, full-time geoscience employee performing geoscientific work for the public in Texas on behalf of the firm;

(D) [(4)] the name, location, and communication numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) [(5)] a signed statement attesting to the correctness and completeness of the application.; **and**

(F) (6) an application fee as established by the Board.]

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall be set to expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the Board. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within 45 days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

[(d) For a firm that offers or performs services only on a part-time basis, the professional has physical presence, is a full-time employee of the firm, and offers or performs the geoscientific work or who directly supervises the geoscientific work while the firm is in operation shall satisfy the requirement of the regular, full-time employee as set forth in §851.152 of this chapter.]

(e) The application fee will not be refunded.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration [or reissued license] is valid for a period of one year from the expiration date of the firm registration [license] being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice geoscience upon meeting the requirements as set out in the Act and these rules. When a firm registration is issued, a firm registration certificate, the first firm registration certificate expiration card, and the first portable firm registration card is provided to the new Geoscience Firm. The firm registration certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration certificate is not valid proof of current registration as a firm, unless the firm registration certificate expiration card is accompanying the firm registration certificate and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, the date the registration was originally issued, and the date the registration will expire, unless it is renewed.

(h) At least 60 days in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. [The renewal notice shall be mailed to the last address provided by the firm to the Board.] The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) [(g)] A certificate of registration which has been expired for less than one (1) year may be renewed by completing a firm registration renewal application; an affirmation signed by the authorized official of the firm and the licensed Professional Geoscientist who performs or supervises the geoscience work for the firm indicating whether geoscientific services were offered, pending, or performed for the public in Texas when the firm's registration was expired [the renewal statement sent by the Board] and payment of a \$50 late renewal fee. **[When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether geoscientific services were offered, pending, or performed for the public in Texas during the time the certificate of registration was**

expired]. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, unless certain allegations of misconduct are present, the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board.

(j) The application fee is non-refundable. [(h) The renewal fee will not be refunded.]

§851.31. Temporary License.

(a) The Board may issue a temporary license to an applicant as described in §1002.258(a) of the Act.

(b) A temporary license holder is subject to all **[other]** rules and legal requirements to which a standard license is subject. The Board may issue a temporary license to an applicant currently licensed in another jurisdiction who:

(1) has held such a license in good standing as a geoscientist for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this Board and has passed a national or other examination recognized by the Board relating to the discipline of geoscience for which licensure is being sought;

(2) submits all required forms and fees; and

(3) complies with and meets the requirements set forth in §1002.258 of the Act.

(c) Pursuant to §1002.258(c), a temporary license expires either on the 90th day after the date of issuance or on the date a reciprocal license is issued or denied, whichever event occurs first.

(d) The application fee is non-refundable.

§851.32. Continuing Education Program.

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists **[professional geoscientists]**, or review on-line of the Texas Geoscientist Practice Act and Board rules **[Rules]**.

- (e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.
- (f) PDH units may be earned as follows:
 - (1) Successful completion or auditing of college credit courses.
 - (2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.
 - (3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.
 - (4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.
 - (5) Teaching or instructing as listed in paragraphs (1) - (4) of this section.
 - (6) Authoring published papers, articles, books, or accepted licensing examination items.
 - (7) Active participation in professional or technical societies, associations, agencies, or organizations, including:
 - (A) Serving as an elected or appointed official;
 - (B) Serving on a committee of the organization;
 - (C) Serving in other official positions.
 - (8) Patents Issued.
 - (9) Engaging in self-directed course work.
 - (10) Software Programs Published.
- (g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.
- (h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section
 - (1) 1 College or unit semester hour--15 PDH
 - (2) 1 College or unit quarter hour--10 PDH
 - (3) 1 Continuing Education Unit--10 PDH
 - (4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH
 - (5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH
 - (6) Each published paper or article--10 PDH and book--45 PDH
 - (7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH
 - (8) Each patent issued--15 PDH
 - (9) Each software program published--15 PDH
 - (10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.
- (i) Determination of Credit
 - (1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The Board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the license holder and subject to review as required by the Board **[board]**.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the license holder and subject to review as required by the Board **[board]**.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, on a form provided by TBPG, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The license holder must submit CEP certification on the log form provided by TBPG and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the Board **[board]** or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience; the Board **[board]** may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A license holder employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) License holders experiencing long term physical disability or illness may be exempt. Supporting documentation must be furnished to the Board [board].

(o) A license holder may bring an expired [lapsed] license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

§851.40. Geoscientist-in-Training Designation

Individuals who meet the educational requirements of §1002.255(a)(2)(A) of the Act and have successfully passed an examination as specified in §851.41(a)(2) are eligible to apply for Geoscientist-In-Training (GIT) certification. This certification does not entitle an individual to practice as a licensed Professional Geoscientist.

§851.41. Geoscientist-in-Training Qualifications

(a) To be eligible for obtaining a Geoscientist-in-Training (GIT) certificate, an applicant must meet the following qualifications:

(1) Has met the educational requirements as established in §851.25(a) of this chapter.

(2) Has successfully passed the examination established by the Board designed to demonstrate that the applicant has mastered the basic knowledge needed within the geosciences profession. Applicable examinations are:

(A) the fundamentals examination of ASBOG for geologists

(B) the fundamentals examination of CSSE for soil scientists

(C) the Texas Geophysics Examination for geophysicists

(3) Has a supporting letter addressing the applicant's ethical character.

(4) Has paid the application fee as set by the Board and published in §851.80 of this chapter.

(b) If for any reason the Board is not satisfied that an applicant is eligible in all respects for certification, it may deny the individual's application or it may require additional information concerning the applicant's qualifications for certification.

§851.42. Geoscientist-in-Training Application and Certification

- (a) To be certified as a Geoscientist-in-Training (GIT), an individual must:
 - (1) submit a GIT application in a format prescribed by the Board;
 - (2) submit an official academic transcript in accordance with §851.25(b);
 - (3) submit one letter of support as directed by the Board addressing the individual's ethical character; and
 - (4) pay the fee as established by the Board.
- (b) A Geoscientist-in-Training certificate expires at the end of the month one year from the date of issuance, and can be renewed annually if the individual:
 - (1) accumulates eight or more Personal Development Hours (PDH) as described in §851.32 throughout the prior certification year to include one hour of ethics training;
 - (2) remains in good standing with the Board; and
 - (3) files for renewal of GIT certification and pays the fee established by the Board.
- (c) If an applicant for GIT certification does not submit all required documents within one year of the original application date, the application shall expire and the applicant must reapply and pay a new application fee.

§851.43. Renewal of a Geoscientist-in-Training Certification

A Geoscientist-in-Training (GIT) certification may be renewed annually for a period of up to eight years. Renewals after the eighth year of certification will be granted at the discretion of the Board.

§851.44. Use of the Title "Geoscientist-in-Training"

Individuals who are certified as a Geoscientist-in-Training may use "GIT" or "Geoscientist-in-Training" as a title after their name, providing these designations are not used in conjunction with or preceded by the work "licensed" or any other words that might lead one to believe they are licensed as a Professional Geoscientist.

§851.45. Relationship of Geoscientist-in-Training Certification to Licensure of Professional Geoscientists

The Geoscientist-in-Training (GIT) Certification is intended as a stepping stone toward licensure as individuals are gaining acceptable geoscience experience. Individuals who are GIT certified and in good standing with the Board will only need to supply letters of reference as detailed in §851.24 of this chapter, provide evidence of experience as described in §851.23, and successfully pass the appropriate practice exam of ASBOG and CSSE. The degree program, coursework and transcripts are evaluated during the application phase for GIT Certification, and shall not be re-evaluated upon application for licensure as a Professional Geoscientist.

§851.46. Revocation of Certification

The Board reserves the right to take appropriate disciplinary action including the revocation of certification granted pursuant to this chapter for failure to comply with the ethical standards found elsewhere in this chapter.

§851.80. Fees.

- (a) All fees are non-refundable.
- (b) Application and License fee \$255.

- (c) Examination processing fee of \$25 for all disciplines and examination fee:
 - (1) Geology--Fundamentals and Practice as determined by ASBOG.
 - (2) Geophysics--\$175.
 - (3) Soil Science--Fundamentals and Practice as determined by CSSE.
- (d) Issuance of a revised or duplicate license \$25.
- (e) Renewal fee \$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any person sixty-five (65) years of age or older as of the renewal date shall be half the current renewal fee.
- (f) Late Renewal fee \$50.
- (g) Fee for affidavit of licensure \$15.
- (h) Verification of licensure--\$15.
- (i) Temporary license--\$200.
- (j) Firm Registration--\$300.
- (k) Firm Registration Renewal--\$300.
- (l) Sole Proprietorship Registration--\$50.
- (m) Sole Proprietorship Renewal--\$50.
- (n) Insufficient funds fee--\$25.
- (o) Initial Application for Geoscientist-in-Training Certificate--\$25.
- (p) Annual Renewal of Geoscientist-in-Training Certificate--\$25.

Subchapter C [B]. Code of Professional Conduct.

§851.101. General.

- (a) These rules of professional conduct are promulgated pursuant to the Texas Geoscience Practice Act (the Act), Texas Occupations Code, §1002.153, which directs the Board to adopt a code of professional conduct that is binding on all license holders under the Act. Except as otherwise noted, these rules of professional conduct apply only to situations which are directly or indirectly related to the practice of geoscience.
- (b) Any person who holds a Professional Geoscientist license and/or is the authorized official of a Geoscience Firm, is a Geoscience Firm, or who holds a certificate as a Geoscientist-in-Training is responsible for understanding and complying with the Act, rules adopted by the Board and any other law or rule pertaining to the professional practice of geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Board is bound by the provisions of the Act and this chapter.
- (c) A Professional Geoscientist, an authorized official of a Geoscience Firm, or a person who holds a certificate as a Geoscientist-in-Training having knowledge of any alleged violation of the Act and/or Board rules shall cooperate with the Board in furnishing such information as may be required.
- (d) A Professional Geoscientist, an authorized official of a Geoscience Firm, or a person who holds a certificate as a Geoscientist-in-Training shall promptly answer all inquiries concerning matters under the jurisdiction of the Board, and shall fully comply with final decisions and orders of the Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act.
- (e) [(b)] The Board may revoke or suspend a Professional Geoscientist's license, place on probation a Professional Geoscientist whose license has been suspended, reprimand a Professional Geoscientist, or assess an administrative penalty against a Professional

Geoscientist for a violation of any provision of these rules of professional conduct or the Act. The Board also may take action against an Applicant pursuant to §851.110 of this title (relating to Effect of Enforcement Proceedings on Application).

(f) [(c)] Upon a finding of professional misconduct, the Board may **[shall]** consider but is not limited to the following factors in determining an appropriate sanction or sanctions:

- (1) the seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;
- (2) the economic or potential damage to property caused by the misconduct;
- (3) the respondent's history concerning previous grounds for sanction;
- (4) the sanction necessary to deter future misconduct;
- (5) efforts to correct the misconduct; and
- (6) any other matter justice may require.

(g) **[d]** These rules of professional conduct are not intended to suggest or define standards of care in civil actions against Professional Geoscientists, Geoscientists-in-Training, or Geoscience Firms involving their professional conduct.

(h) [(e)] A Professional Geoscientist, a Geoscientist-in-Training, or a Geoscience Firm may donate professional geoscience **[his/her]** services to charitable causes but must adhere to all provisions of the Act and the rules of the Board in the provision of all geoscientific services rendered, regardless of whether the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm is paid for the services.

(i) [(f)] A Professional Geoscientist who is presenting geoscientific testimony, including geoscientific interpretation, analysis, or conclusions, or recommending geoscientific work before any public body or court of law, whether under sworn oath or not, must adhere to all provisions of the Act and the rules of the Board in the provision of all geoscientific services rendered regardless of whether the Professional Geoscientist is paid for the service or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost.

§851.102. Competence/Negligence.

(a) A Professional Geoscientist or a Geoscience Firm shall undertake to perform a professional service only when the Professional Geoscientist or Geoscience Firm, together with those whom the Professional Geoscientist or Geoscience Firm shall engage as consultants, are qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, a Professional Geoscientist or Geoscience Firm shall act with reasonable care and competence and shall apply the technical knowledge and skill, which is ordinarily applied by reasonably prudent Professional Geoscientists practicing under similar circumstances and conditions.

(b) A Professional Geoscientist shall not affix his/her signature or seal to any document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. A Professional Geoscientist may be found guilty of "Gross Incompetency" under any of the following circumstances:

- (1) the Professional Geoscientist or Geoscience Firm has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm;

(2) the Professional Geoscientist has engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent Professional Geoscientist or Geoscience Firm;

(3) the Professional Geoscientist has been adjudicated mentally incompetent by a court;
or

(4) pursuant to §851.109(b) of this title (relating to Substance Abuse).

§851.103. Recklessness.

(a) A Professional Geoscientist or Geoscience Firm shall not practice geoscience in any manner which, when measured by generally accepted geoscience standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public. Such practice is deemed to be "reckless."

(b) "Recklessness" shall be grounds for disciplinary action by the Board. "Recklessness" shall include the following practices:

(1) conduct that indicates that the Professional Geoscientist or Geoscience Firm is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent Professional Geoscientist or Geoscience Firm would exercise under the circumstances;

(2) knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Professional Geoscientist or Geoscience Firm and such failure jeopardizes public health, safety, or welfare; or

(3) action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes public health, safety, or welfare.

§851.104. Dishonest Practice.

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall **[may]** not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice in such a manner as [with the intent] to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall **[may]** not advertise publicly or individually to a client or prospective client in a manner that is false, misleading, or deceptive.

(c) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall **[may]** not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded geoscience work.

(d) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not make any false, misleading, deceptive, fraudulent or exaggerated claims or statements about the services of an organization or agency, including, but not limited to, the effectiveness of geoscientific services, qualifications, or products.

(e) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm learns that any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the geoscientific services, qualifications or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims. As appropriate, the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm may notify the Board in writing about these claims.

(f) Professional Geoscientists and [or] Geoscience Firms shall issue statements in an objective and truthful manner. Professional Geoscientists, Geoscientist-in-Training, and Geoscience Firms should strive to make affected parties aware of the concerns regarding particular actions or projects, and of the consequences of geoscientific decisions or judgments that are overruled or disregarded.

(g) All advertisements or announcements of professional services which a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm offers, including telephone directory listings, business cards, etc. shall clearly state the person's or firm's licensure, registration or certification designation.

(h) Information used by a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm in any advertisement or announcement shall not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, signage, business cards, commercial products, and billing statements.

(i) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(j) A Professional Geoscientist shall use the identification "Professional Geoscientist" or the initials, "PG":

(1) in the professional use of the license holder's name, whether PG is in an exempt or non-exempt professional geoscience setting; and

(2) in connection with any sign, directory, contract, document, pamphlet, stationery, advertisement, signature, or other means of written professional identification.

(k) A Geoscientist-in-Training shall use the identification "Geoscientist-in-Training" or the initials, "GIT":

(1) in the professional use of the license holder's name;

(2) in connection with any sign, directory, contract, document, pamphlet, stationery, advertisement, signature, or other means of written professional identification.

§851.105. Conflicts of Interest.

(a) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm has any business association or financial interest which might reasonably appear to influence the Professional Geoscientist's, Geoscientist's-in-Training, or Geoscience Firm's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Professional Geoscientist's, a Geoscientist's-in-Training, or Geoscience Firm's client or employer, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest,

the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall either terminate the business association or financial interest or forego the project or employment.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm is performing or has contracted to perform geoscience services.

(d) The phrase "benefit of any substantial nature" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its acceptance creates an obligation or the appearance of an obligation on the part of the Professional Geoscientist or Geoscience Firm or otherwise could adversely affect the Professional Geoscientist's, Geoscientist's-in-Training, or Geoscience Firm's ability to exercise [his/her own] judgment without regard to such benefit.

§851.106. Responsibility to the Regulation of the Geoscience Profession and Public Protection.

(a) Professional Geoscientists, Geoscientists-in-Training, and Geoscience Firms shall be entrusted to protect the health, safety, and welfare of the public in the practice of their profession.

(b)[(a)] A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not:

(1) knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or the rules of the Board;

(2) aid or abet, directly or indirectly:

(A) any unlicensed person in connection with the unauthorized practice of geoscience;

(B) any business entity in the practice of geoscience unless carried on in accordance with the Act and this chapter; or

(C) any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of geoscience by any person or any business entity;

(3) fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct which, if done by a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm [him/her], would violate any provision of the Act or the rules of the Board.

(c)[(b)] A Professional Geoscientist or a Geoscientist-in-Training possessing knowledge of an Applicant's qualifications for licensure shall cooperate with the Board by responding in writing to the Board regarding those qualifications when requested to do so by the Board.

(d)[(c)] A Professional Geoscientist shall be responsible and accountable for the care, custody, control, and use of his/her Professional Geoscientist [geoscientist] seal, professional

signature, and other professional identification. A Professional Geoscientist whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the Board immediately upon discovery of the loss, theft, or misuse. The Board may invalidate the license number of the lost, stolen, or misused seal upon the request of the Professional Geoscientist if the Board deems it necessary.

(e)[(d)] A Professional Geoscientist, a Geoscientist-in-Training, or an authorized official of a firm shall remain mindful of his/her obligation to the profession and to protect public health, safety, and welfare and shall report to the Board known or suspected violations of the Act or the Rules of the Board.

(f) A Professional Geoscientist or Geoscience Firm shall keep adequate records of geoscientific services provided to the public for no less than five (5) years following the completion and final delivery of the service. Adequate records shall include, but not be limited to:

- (1) documents that have been signed and sealed or would require a signature and a seal;
- (2) relevant documentation that supports geoscientific interpretations, conclusions, and recommendations;
- (3) descriptions of offered services;
- (4) billing, payment, and financial communications; and
- (5) other relevant records.

(g) Professional Geoscientists, a Geoscientists-in-Training, and Geoscience Firms should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

§851.107. Prevention of Unauthorized Practice.

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not practice or offer to practice geoscience in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of geoscience in that jurisdiction.

(b) The revocation, suspension, or denial of a license or firm registration to practice geoscience in another jurisdiction shall be sufficient cause for the revocation, suspension, or denial of a license or firm registration to practice geoscience in the State of Texas.

(c) A Professional Geoscientist who fails to renew his/her license prior to its annual expiration date shall not use the title "geoscientist" and shall not engage in the ["**public practice of geoscience**"] public practice of geoscience as defined by the Texas Occupations Code §1002.002 until after the Professional Geoscientist's license has been properly renewed.

(d) A Geoscience Firm that fails to renew its Geoscience Firm registration prior to its annual expiration date shall not use the title "Geoscience Firm" and shall not engage in the public practice of geoscience as defined by the Texas Occupations Code §1002.002 until after the Geoscience Firm's registration has been properly renewed.

(e) A Geoscientist-in-Training who fails to renew his/her certification prior to its annual expiration date shall not use the title "Geoscientist-in-Training" until after the Geoscientist-in-Training's certification has been properly renewed.

§851.110. Effect of Enforcement Proceedings on Application.

(a) The application of an Applicant against whom the Board has initiated an enforcement proceeding may be held at the Board's discretion, without approval, disapproval, or rejection until:

- (1) all enforcement proceedings have been terminated by a final judgment or order and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated;
- (2) the Applicant is in full compliance with all orders and judgments of the court, all orders and rules of the Board, and all provisions of the Act; and
- (3) the Applicant has complied with all requests of the Board for information related to such compliance, upon which the Board shall complete the consideration of the application in the regular order of business.

(b) An "enforcement proceeding" is initiated by the commencement of an investigation that is based either on a formal complaint filed with the Board or on information presented to the Board that establishes probable cause for a belief in the existence of facts that would constitute a violation of the Act or the rules of the Board.

(c) The following sanctions may be imposed against an Applicant who is found to have falsified information provided to the Board, violated any of the practice or title restrictions of the Act, violated any similar practice or title restriction of another jurisdiction, or otherwise violated any of the statutory provisions or rules enforced by the Board:

- (1) reprimand;
- (2) the imposition of an administrative penalty;
- (3) suspension of the license upon its effective date;
- (4) rejection of the application; or
- (5) denial of the right to reapply for licensure for a period not to exceed five years.

(d) The Board may take action against an Applicant for any act or omission if the same conduct would be a ground for disciplinary action against a Professional Geoscientist.

§851.111 Professional Geoscientists Shall Maintain Confidentiality of Clients

(a) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law, rule or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(c) A Professional Geoscientist or Geoscience Firm shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the Professional Geoscientist's or Geoscience firm's, employees and associates.

§851.112 Required Reports to the Board.

(a) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall make written reports to the Board office within thirty (30) days of the following, as applicable:

- (1) a change of mailing address;
- (2) a change or additional place of full or part time employment;
- (3) the initiation of independent practice as an unincorporated sole proprietorship (a single owned Professional Geoscientist's geoscience business that has no separate legal

existence from its owner) registered by the Board to engage in the public practice of geoscience;

(4) the initiation of practice as any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity) or other business entity registered by the Board to engage in the public practice of geoscience;

(5) The notification in subsections (1)-(4) of this subsection shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business office, effective date of this change; and reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.) and information regarding areas of practice within each employment or independent sole practitioner practice setting;

(6) a change of business phone number, an additional business phone number, or a change in the home phone number;

(7) a criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee, Geoscientist-in-Training, or authorized official;

(8) the settlement of or judgment rendered in a civil lawsuit filed against the licensee or firm and relating to the Professional Geoscientist's or Geoscience Firm's professional practice; or

(9) final actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm done by a licensing or certification body related to the practice of geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the Board to determine whether disciplinary action should be taken against a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Board.

§851.113. Assumed Names.

(a) An independent practice by a Professional Geoscientist may be incorporated in accordance with the Professional Corporation Act, or other applicable law.

(b) When an assumed name is used in any practice of geoscience, the name of the Professional Geoscientist must be listed in conjunction with the assumed name. An assumed name used by a Professional Geoscientist must not be false, deceptive, or misleading.

§851.114. Display of License Certificate.

A Professional Geoscientist:

(a) Shall display the license certificate, issued by the Board, in a prominent place at each location of practice.

(b) Shall display only an original of the license certificate issued by the Board.

(c) Shall not make any alteration on a license certificate issued by the Board.

(d) Or any person shall not display a license certificate issued by the Board, which has been reproduced or is expired, suspended, or revoked.

(e) Who elects to copy or allow to be copied a license certificate issued by the Board takes full responsibility for the use or misuse of the reproduced license.

Subchapter D [C]. Compliance and Enforcement.

§851.151. General.

(a) The Board [board] will conduct inquiries into situations which allegedly violate the requirements of the Texas Geoscience Practice Act and Board [board] rules concerning the practice of geoscience, representations which imply the legal capacity to offer or perform geoscience services for the public, and situations which are considered by the Board [board] to pose or have caused harm to the public. Situations that represent a repeat offense, a danger or nuisance to the public or cannot be reasonably resolved through voluntary compliance will be disposed of by administrative proceedings as authorized by law.

(b) The Board may impose appropriate sanctions against a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm for:

- (1) the practice of fraud or deceit in obtaining a Professional Geoscientist license, Geoscientist-in-Training certification, or Geoscience Firm registration;
- (2) incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;
- (3) conviction of a license holder or authorized official of a crime involving moral turpitude or a felony;
- (4) the imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;
- (5) the issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;
- (6) using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;
- (7) aiding or abetting a person or firm in a violation of this chapter;
- (8) the revocation or suspension of a license or firm registration, the denial of renewal of a license or registration, or other disciplinary action taken by a state agency, Board of registration, or similar licensing agency for Professional Geoscientists, Geoscientists-in-Training, Geoscience Firms, or a profession or occupation related to the public practice of geoscience;
- (9) practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or registered or qualified to practice geoscience if the person or firm is not licensed or registered under this chapter or the person's firm or corporation does not employ a Professional Geoscientist as required under this chapter; or
- (10) violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

§851.152. Firm Compliance.

[(a) A firm, partnership, association, corporation, sole proprietorship or other business entity may engage in the public practice of geoscience only if it complies with §1002.351 of the Texas Geoscience Practice Act (Act). This section does not apply to a licensed

professional engineer or engineering firm that performs service or work that is both engineering and geoscience.

(b) The geoscientist performing or supervising the geoscientific work for such geoscience firm shall provide to the Board evidence of such employment upon its request. This section does not prohibit a licensed professional geoscientist from performing consulting geoscience services on a part-time basis as an individual. A geoscience firm shall provide that at least one full-time geoscientist employee directly supervise all geoscience work performed in branch, remote, or project offices. If such a branch, remote or project office is normally staffed full-time while performing geoscience work or is represented by the firm as a permanent full-time office, then at least one full-time geoscientist must be physically present in each such office.]

(a) [(c)] A business entity that offers or is engaged in the practice of geoscience in Texas and is found to not be registered with the Board shall register with the Board pursuant to the requirements of §851.30 of this title within 30 days of written notice from the Board.

(b) [(d)] A business entity that offers or is engaged in the practice of geoscience in Texas and that fails to comply with subsection (a) of this section or that has previously been registered with the Board and whose registration has expired shall be considered to be in violation of Board rules and will be subject to administrative penalties as set forth in §§1002.451 - 1002.457 of the Act.

(c) [(e)] The Board may revoke a certificate of registration that was obtained in violation of the Act and/or Board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated Professional Geoscientist **[professional geoscientist]** for the firm.

(d) [(f)] a business entity that is not registered with the Board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of geoscience by using the terms:

- (1) "geoscientist,"
- (2) "geoscience,"
- (3) "geoscience services,"
- (4) "geoscience company,"
- (5) "geoscience, inc.,"
- (6) "Professional Geoscientists **[professional geoscientists]**,"
- (7) "licensed geoscientists,"
- (8) "registered geoscientists,"
- (9) "licensed Professional Geoscientists **[professional geoscientist]**,"
- (10) "registered Professional Geoscientist **[professional geoscientist]**," or
- (11) any abbreviation or variation of those terms listed in paragraphs (1) - (10) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(e) [(g)] in addition to reporting requirements in §851.112, each Geoscience Firm **[registered firm]** shall notify the Board in writing no later than 30 days after a change in the business entity's:

- (1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;

- (2) officers or directors if they are the sole Professional Geoscientists [P.G.s] of the firm;
- (3) employment status of the Professional Geoscientists [professional geoscientists] of the firm;
- (4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing geoscientific services to the public in Texas; or
- (5) operation including addition or dissolution of branch and/or subsidiary offices.
- (f) [(h)] notice as provided in subsection (g) of this section shall include, as applicable, the:
 - (1) full legal trade or business name entity,
 - (2) the firm registration number,
 - (3) telephone number of the business office,
 - (4) name and license number of the license holder employed by or leaving the entity,
 - (5) description of the change, and
 - (6) effective date of this change.
- (g) A Geoscience Firm shall ensure that all geoscience work is done by or under the supervision of a Professional Geoscientist.
- (h) A Geoscience Firm that obtains a new certificate of authority Office of Secretary of State (SOS) or files a new Assumed Name Certificate with the County Clerk must provide the new instrument number to the Board within 30 days of the action.
- (i) All geoscience documents released, issued, or submitted by or for a Geoscience Firm, including preliminary documents, must clearly indicate the firm name and registration number.
- (j) The Board may revoke or suspend a Geoscience Firm's registration, place on probation a firm whose registration has been suspended, reprimand a Geoscience Firm, or assess an administrative penalty against a Geoscience Firm for a violation of any provision of these rules or the Act by the firm or any employee of the firm. The Board also may take action against an Applicant pursuant to §851.110 of this title (relating to Effect of Enforcement Proceedings on Application).
- (k) Upon a finding of professional misconduct, the Board may consider but is not limited to the following factors in determining an appropriate sanction or sanctions against a Geoscience Firm:
 - (1) the seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;
 - (2) the economic damage or potential damage to property caused by the misconduct;
 - (3) the respondent's history concerning previous grounds for sanction;
 - (4) the sanction necessary to deter future misconduct;
 - (5) efforts to correct the misconduct; and
 - (6) any other matter justice may require.

§851.153. Professional Geoscientist Compliance.

Any Professional Geoscientist [geoscientist] who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §851.152 of this title (relating to Firm Compliance) shall be subject to legal and disciplinary actions available to the Board [board]. Professional Geoscientists shall perform or directly

supervise the geoscience work of any subordinates. Under no circumstances shall Professional Geoscientists [**geoscientists**] work in a part-time arrangement with a firm not otherwise in full compliance with §851.152 of this title in a manner that could enable such firm to offer or perform professional geoscience services.

[§851.154. Business Names.

License holders shall immediately notify the board of each change in their professional geoscience association or employment. The notification shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business office, effective date of this change; and reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).]

[§851.155. A License Holder's Responsibility to the Board.

A license holder whose license is current or is expired but renewable under the Texas Geoscience Practice Act (Act) is subject to all provisions of the Act and board rules including those governing license holders. The license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under the Act.]

§851.156. Professional Geoscientist's Seals.

(a) The purpose of the Professional Geoscientist's [**geoscientist's**] seal is to assure the user of the geoscience product that the work has been performed by the Professional Geoscientist [**professional geoscientist**] named and to identify [**delineate the scope of**] the Professional Geoscientist's [**geoscientist's**] work.

(b) The Professional Geoscientist [**geoscientist**] shall utilize the designation "P.G." or the titles set forth in the Texas Geoscience Practice Act (Act), §1002.251. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown in this subsection. Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's [**geoscientist's**] name and number are clearly legible. All seals obtained and used by license holders must contain any given name or initial combination except for nicknames, provided the surname currently listed with the Board [**board**] appears on the seal and in the usual written signature.

(picture of P.G. seal)

(c) Professional Geoscientists shall only seal work done by them or performed under their direct supervision. Upon sealing, Professional Geoscientists [**geoscientists**] take full professional responsibility for that work.

(d) It shall be misconduct to knowingly sign or seal any geoscience document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(e) It shall be misconduct or an unlawful act for a license holder whose license has been revoked, suspended, or has expired, to sign or affix a seal on any document or product.

(f) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the geoscience work, or shall be capable of placing a computer-generated representation in a computer file containing the geoscience work.

(1) Electronically conveyed geoscience work that would require a seal as per subsection (j) of this section must contain an electronic seal and electronic signature if hard copies with the licensee's ink or embossed seal and original signature will not be submitted. Such seals should conform to the design requirements set forth in subsection (b) of this section.

(2) Geoscience work transmitted in an electronic format that contains a computer generated seal shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.G. 0112) on (date).", unless accompanied by an electronic signature as described in this section. A license holder may use a computer-generated representation of his or her seal on electronically conveyed work; however, the final hard copy documents of such geoscience work must contain an original signature of the license holder(s) and date or the documents must be accompanied by an electronic signature as described in this section.

(3) A scanned image of an original signature shall not be used in lieu of an original signature or electronic signature. An electronic signature is a digital authentication process attached to or logically associated with an electronic document and shall carry the same weight, authority, and effects as an original signature. The electronic signature, which can be generated by using either public key infrastructure or signature dynamics technology, must be as follows:

(A) unique to the person using it.

(B) capable of verification.

(C) under the sole control of the person using it.

(D) linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.

(g) Preprinting of blank forms with a Professional Geoscientist's **[geoscientist's]** seal, or the use of decal or other seal replicas is prohibited. Signature reproductions, including but not limited to rubber stamps or computer-generated signatures, shall not be used in lieu of the Professional Geoscientist's **[geoscientist's]** actual signature.

(h) Professional Geoscientists shall take reasonable steps to insure the security of their physical or computer-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist **[geoscientist]** will immediately give written notification of the facts concerning the loss to the Executive Director **[executive director]**.

(i) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience work as outlined in subsection (j) of this section before such work is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) **[geoscientist(s)]** of record and the Professional Geoscientist **[geoscientist]** license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H.

Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(j) The Professional Geoscientist [geoscientist] shall sign, seal and date the original title sheet of bound geoscience reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding if the plans or drawings are intended to be or are removed from the report. All other geoscience work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and geoscience software shall bear the Professional Geoscientist's [geoscientist's] printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act. A seal must be added on such work if required by the entity receiving the work; otherwise it may be added at the Professional Geoscientist's [geoscientist's] discretion. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's [geoscientist's] printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(k) Work performed by more than one Professional Geoscientist [geoscientist] shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist [geoscientist] or Professional Geoscientists [geoscientists]. When sealing plans or documents on which two or more Professional Geoscientists [geoscientists] have worked, the seal of each Professional Geoscientist [geoscientist] shall be placed on the plan or document with a notation describing the work done under each Professional Geoscientist's [geoscientist's] responsible charge.

(l) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of geoscience work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(m) When a Professional Geoscientist [geoscientist] elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) individually sealed by the Professional Geoscientist [geoscientist]; or
- (2) specified on an integral design/title/contents sheet that bears the Professional Geoscientist's [geoscientist's] seal, signature, and date with a statement authorizing its use.

(n) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist [geoscientist] is misconduct or an offense under the Act.

(o) A license holder is not required to use a seal for a work product for which the license holder is not required to hold a license under Occupations Code, Chapter 1002.

(p) All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency shall be required.

§851.157. Complaints and Disciplinary Actions.

- (a) A complaint may be filed with the Board by a member of the public, a member of the Board or by agency staff. Complaints against a person or entity whose activities are regulated by the Board must be made in writing, sworn to by the person making the complaint, and filed with the Secretary-Treasurer of the Board at the office of the Board in Austin. A complaint may be filed against any person who: holds a Professional Geoscientist license issued by the Board and/or is the authorized official of a Geoscience Firm registered by the Board, is a registered Geoscience Firm, or holds a certificate as a Geoscientist-in-Training issued by the Board. A complaint may also be filed against a person or firm that is not licensed or registered with the Board alleging that the person or firm has engaged in the unlicensed or unregistered public practice or offering of geoscientific services in Texas.
- (b) A complaint must be filed within two (2) years of the event giving rise to the complaint. The event giving rise to the complaint is an event from which a concern with geoscience work completed becomes apparent. Complaints filed after the above stated period will not be accepted by the Board unless the Complainant can show good cause to the Board for the late filing.
- (c) Complaints and investigations under this chapter are of two types:
- (1) complaints received from a member of the public; and
 - (2) complaints and investigations that are initiated by the Board as a result of information that becomes known to the Board or agency staff and that may indicate a violation.
- (d) The agency provides a complaint form which should be used to file a complaint.
- (1) A complaint from a member of the public must be:
 - (A) in writing;
 - (B) sworn to by the person making the complaint; and
 - (C) filed with the Secretary-Treasurer.
 - (2) A complaint that is initiated by a member of the Board or agency staff must be:
 - (A) made in writing; and
 - (B) signed by the person who became aware of information that may indicate a violation.
- (e) The Board shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed.
- (f) If a complaint is determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the Executive Director and investigator, with Board approval, determine that the complaint:
- (1) was made for the likely purpose of harassment; and
 - (2) does not demonstrate apparent harm to any person.
- (g)[(a)] Under the authority and provisions of the Texas Geoscience Practice Act (Act), the Board [board] shall take disciplinary action against an applicant for a license, registration or certification or a license, registration, or certification holder who is found censurable for a violation of law or rules. A disciplinary action may be composed of any one or combination of the following listed in paragraphs (1)-(11) [(7)] of this subsection:

- (1) refuse to issue or renew a license, registration or certification;
- (2) permanently revoke a license, registration or certification;
- (3) suspend a license, registration or certification for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;
- (4) issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience or using a title authorized by the Texas geoscience Practice Act or rules of the Board;
- (5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience using a title authorized by the Texas geoscience Practice Act or rules of the Board;
- (6) require that a license, or certificate holder participate in a peer review program under rules adopted by the board;
- (7) require that a license or certificate holder obtain remedial education and training prescribed by the board;
- (8) impose probation on a license, registration or certificate holder requiring regular reporting to the board;
- (9) require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under this chapter;
- (10) impose an appropriate administrative penalty as provided by Subchapter J of the Texas Geoscience Practice Act for a violation of the Act or a rule adopted by the Board on a license, registration or certificate holder or a person or firm who is not licensed and is not exempt from licensure under this chapter; or
- (11) issue a cease and desist order.

[(1) revocation of a license;

(2) suspension of a license;

(3) probation of a suspended license;

(4) refusal to renew a license;

(5) issuance of a formal or informal reprimand;

(6) require the license holder to participate in a peer review program;

(7) assessment of an administrative penalty under the Act]

(h)[(b)] All disciplinary actions shall be permanently recorded and made available upon request as public information.

(i)[(c)] A license holder whose license has expired for nonpayment of renewal fees continues to be subject to all provisions of the Act and Board **[board]** rules governing license holders until the license is revoked by the Board **[board]** or becomes non-renewable under the Board's rules or the Act.

[(d) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the license holder, hereafter referred to in this section as "respondent," by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.

(e) If, after evaluation of the respondent's response a violation appears evident, the executive director shall initiate disciplinary action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.

(1) The license holder may request an informal conference to present additional evidence and discuss particulars of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member, the executive director or his designated representative, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the particulars of the allegations, and shall recommend:

(A) dismissal by the executive director;

(B) a proposal for an agreed board order for disciplinary actions that will be presented to the board for acceptance or rejection; or

(C) scheduling of a formal hearing.

(2) The executive director may also offer the respondent a consent order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (1) or (3) of this subsection will be followed.

(3) Any board action under this subsection which is not informally disposed by agreed or consent order, will be considered a contested case and will be handled in accordance with applicable law and board rules.]

~~(j)~~[(f)] Criminal convictions shall be handled as shown in paragraphs (1)-(3) of this subsection:

(1) The Board [**board**] shall follow the requirements of Administrative Procedure Act, Texas Government Code Chapter 2001, and shall revoke the license of any license holder incarcerated as a result of a felony conviction, or violation of felony probation or parole, or revocation of mandatory supervision subsequent to being licensed as a Professional Geoscientist [**professional geoscientist**].

(2) The Board [**board**] may take any of the actions set out in subsection ~~(p)~~[(a)] of this section when a license holder is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the license holder's duties and responsibilities as a Professional Geoscientist [**professional geoscientist**].

(3) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration.

~~(k)~~[(g)] The Board [**board**], the Executive Director [**executive director**], an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. Allegations and disciplinary actions will be set forth in the final Board Order [**board order**] and the severity of the disciplinary action will be based on the factors listed in paragraphs (1)-(9) of this subsection:

(1) the seriousness of the acts or omissions;

(2) the number of prior disciplinary actions taken against the respondent;

(3) the severity of penalty necessary to deter future violations;

- (4) efforts or resistance to correct the violations;
- (5) any hazard to the health, safety, property or welfare of the public;
- (6) any actual damage, physical or otherwise, caused by the violations;
- (7) any economic benefit gained through the violations;
- (8) the economic harm to property or the environment caused by the violation;
- (9) any other matters impacting justice and public welfare.

§851.158. Actions Against Non-License Holders.

A non-license holder who is assessed an administrative penalty may exercise due process rights under Occupations Code, Subchapter J. The Board may also seek an injunction as provided under Occupations Code, Subchapter K.

[Under the authority and provisions of the Texas Geoscience Practice Act, the board shall investigate complaints and take action against non-license holders or firms who are found to be censurable for a violation of the law. The following investigative process and resulting action listed in paragraphs (1)-(3) of this section will be followed by the board to ensure affected individuals and/or firms are afforded due process of law.

- (1) Upon receipt of a formal or staff initiated complaint, the information will be evaluated to determine if the evidence provides sufficient probable cause that a violation may have occurred.**
- (2) If sufficient probable cause does not exist, an investigation will not be initiated.**
- (3) If sufficient probable cause is found, then an investigation will be initiated by the board staff to determine if a violation of law has occurred. The board's investigative process will be as follows.**
 - (A) The individual or firm will be advised of the complaint and the specific section of the Act which appears to be violated. If the initial evidence is sufficiently strong, the executive director may offer the respondent a consent order that, if accepted, will be presented to the board for acceptance or rejection. The consent order shall include an administrative penalty not inconsistent with §851.157 of this title (relating to Disciplinary Actions) and a compliance requirement. The respondent shall be fully informed of the range of penalties allowed under criminal, civil and administrative proceedings.**
 - (B) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act, or to accept the consent order.**
 - (C) If, after evaluation of the respondent's response a violation appears evident, the respondent will be afforded the opportunity to resolve the allegations informally in the same manner prescribed for license holders in §851.157 of this title (relating to Disciplinary Actions).**
 - (D) Any board action under this paragraph which is not informally disposed by agreed or consent order, will be considered a contested case and will be handled in accordance with applicable law and board rules.]**

Subchapter E. [D.] Hearings - Contested Cases.

§851.201. State Office of Administrative Hearings.

(a) Formal contested case hearings will be conducted for the Board [board] by the State Office of Administrative Hearings (SOAH), as authorized by Texas Government Code, Chapter 2003. Hearings will be conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001), the rules and regulations of the SOAH, and the Texas Geoscience Practice Act and Board [board] rules.

(b) An administrative law judge (judge) assigned to the SOAH will perform the duties and responsibilities as described in this section and §§851.202-851.243 of this title (relating to Hearings--Contested Cases).

(c) The judge shall consider any applicable Board [board] rules and policies in conducting the hearing. If there is any conflict between the rules of the SOAH and these Board [board] rules, these rules will control unless otherwise specifically stated in the SOAH rules. This subsection does not apply if the rules of the Board [board] are contrary to or are otherwise precluded by statutory or other controlling law.

§851.202. Board Responsibilities.

The Board [board] will conduct sufficient investigation of complaint matters within its jurisdiction and attempt to resolve cases through authorized informal disposition. However, when agreements are not reached or approved, the Board [board] must refer contested cases to the State Office of Administrative Hearings for formal hearings. The Board [board] shall not attempt to influence the findings of facts or the judge's application of the law in any contested case other than by proper evidence and legal argument. The Board [board] may, however, change a finding of fact or conclusion of law made by the judge, or vacate or modify an order issued by the judge, only for reasons of policy and must state in writing the reason and legal basis for the change.

§851.203. Jurisdiction; Request for Hearing or Law Judge.

(a) The State Office of Administrative Hearings (SOAH) acquires jurisdiction over a case when the Board [board] files a written request for setting of hearing form or request for assignment of an administrative law judge form. A request for setting of hearing or for assignment of an administrative law judge shall be considered filed on the date the request form is received by the SOAH.

(b) The Board [board] shall submit to the SOAH one of the following accompanied by copies of all pertinent documents (including, but not limited to, the complaint, petition, application, or other document describing Board [board] action giving rise to a contested case), along with a written statement of applicable rules and policies: request for setting of hearing; or request for assignment of a judge. If the Board [board] requests a setting for hearing, the SOAH will provide the Board [board] with the date, time, and place of such setting. If the Board [board] requests an assignment of a judge, the SOAH will assign a judge to consider motions and other pre-hearing matters. After a cause has been set for hearing pursuant to a request for setting of hearing or has been assigned a judge pursuant to a proper request, any party may move for appropriate relief, including, but not limited to, discovery and evidentiary rulings, continuances, and settings, which will be ruled on by the SOAH.

§851.204. Filings.

(a) Originals or duplicate originals of all notices, pleadings, motions, answers, affidavits, and all other filings in a contested case, made in accordance with the Administrative Procedure Act, the Texas Rules of Civil Evidence, or other applicable law, shall be filed with the State Office of Administrative Hearings (SOAH) at the time the SOAH acquires jurisdiction or at the time the instrument is issued and delivered if that time is later than the time the SOAH acquires jurisdiction.

(b) Pursuant to the SOAH rules, a copy of all filings shall be sent by mail or otherwise delivered to all parties or their representative of record.

(c) A certificate of service, signed by the person making the filing, showing the manner of service, stating that the filing has been served on all other parties and identifying those parties shall be contained in or attached to all filings. The certificate is prima facie evidence of service. The following form of certificate will be sufficient in this connection: I hereby certify that I have this ____ day of _____, 20____, served copies of the foregoing pleading, upon all other parties to this proceeding, by (here state the manner of service).
Signature.

(d) If a filing does not contain a required certificate of service, or otherwise show service on all other parties:

(1) the SOAH may return the filing to the filing party; or

(2) the SOAH may send a notice to all parties stating that the filing does not show service on all parties and will not be considered unless and until SOAH is notified that all parties have been served with the filing; or

(3) the SOAH may, in the interest of economy of effort, send a copy of the filing to all parties.

(e) In computing any period of time prescribed or allowed by Board [board] rules, by order of the Board [board], or by any applicable statute, the period shall begin on the day after the act or event considered, and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal state holiday.

§851.205 Stipulations, Agreements.

(a) The parties, by stipulation, may agree to any substantive or procedural matter.

(b) A stipulation may be filed in writing or entered on the record at the hearing.

(c) The judge may require additional development of stipulated matters.

(d) No stipulation or agreement between the parties and their attorneys or representatives with regard to any matter involved in any proceeding before the Board [board] or the State Office of Administrative Hearings shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This subsection does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

§851.206. Service.

Unless otherwise required by law, service of the following documents shall be made by personal delivery to the party or to the party's representative by certified mail, return receipt requested, hand delivery or via facsimile to the party's address of record:

- (1) notices of hearing;
- (2) default orders;
- (3) pre-hearing orders;
- (4) proposal for decisions; and
- (5) decisions and orders of the Board [board].

§851.207. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board [board], the administrative law judge, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

(b) Unless otherwise prohibited by federal or state law, all proceedings before the Board [board] or conducted by the State Office of Administrative Hearings are open to the public. The judge may remove persons whose conduct impedes the orderly progress of the hearing, and restrict attendance because of the physical limitations of the hearing facility.

§851.208. Classification of Parties.

Parties to proceedings before the Board [board] and the State Office of Administrative Hearings are applicants, protestants, petitioners, complainants, respondents, and interveners. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

§851.209. Appearances in Person or by Representative; Waivers; Default.

- (a) An individual may represent himself or herself.
- (b) A party may be represented by an attorney authorized to practice law in the State of Texas, or other representative when authorized by law.
- (c) A party's representative shall enter his or her appearance with the State Office of Administrative Hearings (SOAH).
- (d) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.
- (e) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal and an order approving such withdrawal is issued by a judge.
- (f) A hearing before the judge is not necessary if all parties agree to the admission of the evidence and waive their right to appear.
- (g) A party may waive the right to appear at the hearing unless prohibited by law.
- (h) A waiver shall be in writing and filed with the SOAH.
- (i) If, after receiving notice of a hearing, a party fails to attend a hearing, the judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against the defaulting party.
- (j) A waiver may be withdrawn by a party on written notice received by the SOAH no later than seven days before the scheduled hearing. The judge may permit withdrawal of a waiver subsequent to that time on a showing of good cause or in the interest of justice. When a waiver is permitted by law, failure of a party to appear personally or by representation after filing written notice of waiver may not result in a finding of default.

§851.210. Classification of Pleadings.

Pleadings filed in contested cases shall be protests, petitions, complaints, answers, replies, motions for rehearing, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§851.211. Form and Content of Pleadings.

(a) Pleadings shall be typewritten or printed upon paper 8 ½ inches wide and 11 inches long with an inside margin at least one inch wide, and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) All pleadings for which no official form is prescribed shall contain:

- (1) the name of the party seeking to bring about or prevent action by the Board [board];
- (2) a concise statement of the facts relied upon by the pleader;
- (3) a prayer stating the type of relief, action, or order desired by the pleader;
- (4) any other matter required by statute; and
- (5) a certificate of service, as required by §851.204(c) of this title (relating to Filings).

(c) Each application, petition, or complaint which is intended to institute a proceeding before the Board [board] shall be accompanied by any filing fee prescribed by law and these sections.

§851.212. Discovery.

(a) Parties to an administrative hearing before the State Office of Administrative Hearings (SOAH) shall have the discovery rights provided in the Administrative Procedure Act, the Texas Geoscience Practice Act, and Board [board] rules.

(b) Requests for issuances of subpoenas or commissions should be directed to the Board [board].

(c) All discovery requests should be initially directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with and resolved by the SOAH.

(e) All parties will be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.

(f) Copies of discovery requests and documents filed in response thereto shall be filed with all parties, but should not be filed with the SOAH unless directed by the judge or when in support of a motion to compel, motion for protective order, or motion to quash.

§851.213. Motions; Amendments.

(a) Unless otherwise provided by these sections:

- (1) a party may move for appropriate relief before or during a hearing;
- (2) a party shall submit all motions in writing or orally at a hearing;
- (3) written motions shall:
 - (A) be filed no later than 15 days before the date of the hearing, provided, for good cause stated in the motion the judge may permit a written motion subsequent to that time;
 - (B) state concisely the question to be determined;
 - (C) be accompanied by any necessary supporting documentation, and if based on matters which do not appear of record, they shall be supported by affidavit; and

- (D) be served on each party;
- (4) an answer to a written motion shall be filed on the earlier of:
 - (A) seven days after receipt of the motion; or
 - (B) on the date of the hearing;
- (5) on written notice to all parties or with telephone consent of all parties, the judge may schedule a conference to consider a written motion; or
- (6) the judge may reserve ruling on a motion until after the hearing; or
- (7) the judge may issue a written decision or state the decision on the record; or
- (8) if a ruling on a motion is reserved, the ruling shall be in writing and may be included in the judge's proposed decision; and
- (9) the filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.
- (b) Continuances may be granted by the State Office of Administrative Hearings in accordance with the Administrative Procedure Act, the Texas Geoscience Practice Act and Board [board] rules, and applicable case law. Motions for continuance shall be in writing or stated in record, and shall set forth the specific grounds upon which the party seeks the continuance.
- (c) Unless made during a pre-hearing or hearing, for all motions for continuance, cancellation of a scheduled proceeding, or extension of an established deadline filed fewer than 10 days before the date or deadline in question, the mover must contact the other party(ies) and must indicate in the motion whether it is opposed by any party(ies). Further, if a continuance to a date certain is sought, the motion must include a proposed date or dates (preferably a range of dates) and must indicate whether the party(ies) contacted agree on the proposed new date(s).
- (d) Any pleading may be amended at any time up to seven days prior to hearing and thereafter with approval of the judge; provided, that the complaint or petition upon which notice has been issued shall not be amended so as to broaden the scope.

§851.214. Pre-hearing Conferences and Orders.

- (a) When appropriate, the judge may hold a pre-hearing conference to resolve matters preliminary to the hearing.
- (b) A pre-hearing conference may be convened to address the following matters:
 - (1) issuance of subpoenas;
 - (2) factual and legal issues;
 - (3) stipulations;
 - (4) requests for official notice;
 - (5) identification and exchange of documentary evidence;
 - (6) admissibility of evidence;
 - (7) identification and qualification of witnesses;
 - (8) motions;
 - (9) discovery disputes;
 - (10) order of presentation;
 - (11) scheduling;
 - (12) settlement conferences; and
 - (13) such other matters as will promote the orderly and prompt conduct of the hearing.

(c) Among other matters, as stated in subsection (b) of this section, an administrative law judge may order:

- (1) that the parties discuss the prospects of settlement or stipulations and be prepared to report thereon at the pre-hearing conference;
- (2) that the parties file and be prepared to argue preliminary motions at the pre-hearing conference;
- (3) that the parties be prepared to specify the controlling factual and legal issues in the case at the pre-hearing conference; and
- (4) that the parties make a plain and concise statement of undisputed facts and issues at the pre-hearing conference.

(d) At the discretion of the judge, all or part of the pre-hearing conference may be recorded or transcribed.

(e) The judge may, after the office acquires jurisdiction, issue an order requiring a pre-hearing statement of the case. The parties shall, within 14 days of service, file a statement specifying the parties present position on any or all of the following as required by the judge:

- (1) the disputed issues or matters to be resolved;
- (2) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;
- (3) a list of facts or exhibits to which a party will stipulate; and
- (4) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery. Parties shall supplement this statement on a timely basis.

(f) The judge may issue a pre-hearing order reciting the actions taken or to be taken with regard to any matter addressed at the pre-hearing conference. The pre-hearing order shall be a part of the case record. If a pre-hearing conference is not held, the judge may issue a pre-hearing order to regulate the conduct of the proceedings.

§851.215. Notice of Hearing.

(a) The Board [board] shall be responsible for providing notice to all parties as required under the Administrative Procedure Act, and other applicable law.

(b) A judge may issue notice of date, time, and place for hearings.

§851.216. Certificates of Registration.

When the grant, denial, renewal, revocation, probation, reprimand, or suspension of a certificate of registration is required by statute to be preceded by notice and opportunity for hearing, the provisions of these sections concerning contested cases apply.

§851.217. Conduct of Hearings.

(a) On a genuine issue in a contested case, each party is entitled to:

- (1) call witnesses;
- (2) offer evidence;
- (3) cross-examine any witness called by a party; and
- (4) make opening and closing statements.

(b) Once the hearing is begun the parties may be off the record only when the judge permits. If the discussion off the record is pertinent, then the judge will summarize the discussion for the record.

- (c) Objections shall be timely noted in the record. See Texas Rules of Civil Evidence, §103.
- (d) The judge may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of hearing.
- (e) The judge may question witnesses and/or direct the submission of supplemental data.
- (f) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

§851.218. Formal Exceptions.

Formal exceptions to rulings of the judge during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the judge the action he desires.

§851.219. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters before the Board.

Motions for postponement, continuance, withdrawal, or dismissal of matters which have been duly set for hearing shall be in writing, shall be filed with the judge and distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the judge may result in the dismissal of the matter in issue, with prejudice to re-filing. Depending on the circumstances, motions for withdrawal or dismissal may be ruled on by the judge or, at his discretion, by the Board [board].

§851.220. Place and Nature of Hearings.

All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, unless for good and sufficient cause the Board [board] or the State Office of Administrative Hearings shall designate another place of hearing in accordance with applicable law.

§851.221. Administrative Law Judge.

- (a) The judge shall have the authority and duty to:
 - (1) conduct a full, fair, and impartial hearing;
 - (2) take action to avoid unnecessary delay in the disposition of the proceeding; and
 - (3) maintain order.
- (b) The judge shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative, including the power to:
 - (1) administer oaths;
 - (2) take testimony;
 - (3) rule on questions of evidence;
 - (4) rule on discovery issues;
 - (5) issue orders relating to hearing and pre-hearing matters, including orders imposing sanctions that the Board [board] may impose;

- (6) admit or deny party status;
 - (7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;
 - (8) grant a continuance;
 - (9) request parties to submit legal memoranda, proposed findings of fact, and conclusions of law; and
 - (10) issue proposals for decision pursuant to the Administrative Procedure Act, §15.
- (c) A judge shall disqualify himself or herself or shall recuse himself or herself on the same grounds and under the same circumstances as specified in Texas Rules of Civil Procedure, §18b.
- (d) A substitute judge may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.

§851.222. Order of Proceedings.

- (a) A case shall be called to order by the judge.
- (b) The judge shall explain briefly the purpose and nature of the hearing.
- (c) The judge may allow the parties to present preliminary matters.
- (d) The judge shall state the order of presentation of evidence.
- (e) Witnesses shall be sworn or put under affirmation to tell the truth.

§851.223. Reporters and Transcript.

- (a) The proceedings, or any part of them, must be transcribed on written request of any party. Such written request must be received by the State Office of Administrative Hearings (SOAH) not less than 10 calendar days before the scheduled date of the hearing. The cost of the original transcript shall be assessed one-half to the party requesting the transcription, the remaining one-half to the other parties equally. The original transcript shall be delivered to the SOAH. The cost of copies of the transcript will be paid by the requesting party.
- (b) Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the SOAH shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the SOAH. If suggested corrections are not objected to, the judge will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the judge, who shall then determine the manner in which the record shall be changed, if at all.

§851.224. Telephone Hearings.

- (a) The judge may, with consent of the parties, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.
- (b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.
- (c) Documentary evidence. For a telephone hearing documentary evidence to be offered shall be mailed by the proponent to all parties and the office at least five days before the hearing.

(d) Default. For a telephone hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than 10 minutes after the scheduled time for hearing:

- (1) failure to answer the telephone; or
- (2) failure to free the telephone for a hearing; or
- (3) failure to be ready to proceed with the hearing as scheduled.

§851.225. Dismissal, Settlement without Hearing.

(a) The State Office of Administrative Hearings may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or res adjudicata; withdrawal; moot questions or stale petitions; or lack of jurisdiction.

(b) Upon request of any party and approval by the judge, or in the judge's discretion, a conference may be held to address settlement possibilities. Settlement discussions shall not be made a part of the case record.

§851.226. Rules of Evidence.

(a) The judge may limit testimony or any evidence which is irrelevant, immaterial, or unduly repetitious. In accordance with the Administrative Procedure Act, the rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law. Objections in evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Exclusion of witnesses.

- (1) Upon request by any party, the judge shall exclude witnesses other than parties from the hearing room, except when testifying.
- (2) The judge may order the witness, parties, attorneys, and all other persons present in the hearing room not to disclose to any witness excluded under this subsection the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness' absence.
- (3) A party that is not a natural person may designate an individual to remain in the hearing room, even though the individual may be a witness.

§851.227. Documentary Evidence.

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the judge may limit those admitted to a number which are typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the judge shall require that all parties of record or their representative be given the right to examine the documents from which such abstracts were made.

§851.228. Official Notice.

(a) The judge may take official notice of a fact that is judicially noticeable in accordance with the Administrative Procedure Act.

(b) In addition, notice may be taken of generally recognized facts within the area of the Board's [board's] specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills of knowledge of the Board [board] and its staff may be utilized in evaluating the evidence.

§851.229. Prepared [Prepaid] or Prefiled Testimony.

In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the judge, the prepared, written testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

§851.230. Limitations on Number of Witnesses.

The judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§851.231. Exhibits.

Exhibits of documentary character shall be of such size as described in §851.211 of this title (relating to Form and Content of Pleadings), as not unduly to encumber the files and records of the Board [board]. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(1) Tender and service. The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the judge, and one copy to each other party of record or his attorney or representative.

(2) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the judge shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the judge with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(3) After hearing. Unless specifically directed by the judge, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the judge allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

§851.232. Offer of Proof.

When testimony is excluded by ruling of the judge, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the

proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for the record. The judge may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§851.233. Depositions.

The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure Act.

§851.234. Subpoenas.

Under the Administrative Procedure Act, following written request by a party or on its own motion:

- (1) subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a proceeding may be issued by the Board **[board]**, any member thereof, the Executive Director **[executive director]**, or, during the course of a hearing, by the judge;
- (2) motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to the Board **[board]**, shall be verified and shall specify as nearly as may be the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the Board **[board]**, any member thereof, or the judge may issue a subpoena, compelling production of books, papers, accounts, or documents as deemed necessary; and
- (3) such subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure Act, except that the mileage and per diem fees for nonparty deponents and witnesses shall be in the amount by law for employees of the State of Texas for intrastate mileage and per diem.

§851.235. Proposals for Decision.

- (a) The judge shall prepare a proposal for decision which shall contain:
 - (1) findings of fact and conclusions of law, separately stated; and
 - (2) if appropriate, a proposed order.
- (b) The judge may amend the proposal for decision pursuant to exceptions, briefs, and replies to exceptions and briefs without the proposal for decision again being served on the parties.
- (c) The judge shall submit the proposal for decision to the Board **[board]** with a copy to each party and his attorney of record.
- (d) Upon the expiration of the 20th day following the time provided for the filing of exceptions and briefs as described in §851.236 of this title (relating to Filing of Exceptions, Briefs, and Replies), the proposal for decision may be adopted by written order of the Board **[board]**, unless exceptions and briefs shall have been filed in the manner required.
- (e) If deemed warranted, the judge may direct a party to draft and submit a proposal for decision which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings developed from the record.

§851.236. Filing of Exceptions, Briefs, and Replies.

Any party of record may, within 20 days after the date of service of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the Board's Executive Director [**board's executive director**] and the judge, and a copy thereof shall be served on all other parties of record by the party making such request. The judge shall promptly notify the parties of his action upon the same and allow additional time only in extraordinary circumstances where the interests of justice so require.

§851.237. Form and Content of Briefs, Exceptions, and Replies.

Briefs, exceptions, and replies shall conform as nearly as may be possible to the size and form of pleadings as described in §851.211 of this title (relating to Form and Content of Pleadings). The points involved shall be concisely stated. The evidence in support of each point shall be abstracted or summarized and/or briefly stated in the form of proposed findings of fact. Complete citations to the page number of the record or exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Briefs, prior to the issuance of a proposal for decision, may be filed only when requested or permitted by the judge.

§851.238. Oral Argument.

Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only at the sound discretion of the Board [**board**]. A request for oral argument shall be stated in a separate pleading filed with the Board [**board**].

§851.239. Final Decisions and Orders.

All final decisions and orders of the Board [**board**] shall be in writing and shall be signed by a majority of the Board [**board**] members. A final decision shall include findings of fact and conclusions of law, separately stated. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

§851.240. Administrative Finality.

(a) A decision is final, in the absence of a timely motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the Board [**board**] includes a member who:

- (1) receives no salary for his work as a Board [**board**] member; and
- (2) resides outside Travis County, the Board [**board**] may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication.

(b) If the Board [**board**] finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and

effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

§851.241. Motions for Rehearing.

Except as provided in §851.240 of this title (relating to Administrative Finality), a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 20 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the Board [board] within 30 days after the date of rendition of the final decision or order, and Board [board] action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If Board [board] action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The Board [board] may by written order extend the period of time for filing the motions and replies and taking Board [board] action, except that an extension may not extend the period for Board [board] action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement, with the approval of the Board [board], provide for a modification of the times provided in this section.

§851.242. Rendering of Final Decision or Order.

The final decision or order must be rendered within 60 days after the date the hearing is finally closed. Because a contested case is heard by a judge with the State Office of Administrative Hearings, the Board [board] may prescribe a longer period of time within which the final order or decision of the Board [board] shall be issued, normally in keeping with the scheduled quarterly meetings of the Board [board]. The extension, if so prescribed, shall be announced at the conclusion of the hearing by the judge after consultation with the Board's Executive Director [board's executive director].

§851.243. The Record.

- (a) The record in a contested case shall include:
- (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on them;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the judge presiding at the hearing; and
 - (7) all staff memoranda or data submitted to or considered by the judge or members of the Board [board] who are involved in making the decision.
- (b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.