



# Texas Geoscience Today

## Texas Board of Professional Geoscientists

VOLUME X ISSUE I

SUMMER 2015

### SPECIAL POINTS OF INTEREST:

- ASBOG® Exam
- Upcoming TBPG Meetings
- Enforcement Activities

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## The Chairman's Column

This is my first newsletter column since becoming the Chairman of our Board. As a licensee and as a Board Member, I am proud of our agency, what it has accomplished, and the course that we have charted. By no means are we perfect, but we do strive to listen to suggestions and solicit input to improve the agency. You are encouraged to contact any Board Member and staff with suggestions and comments to strengthen our service and protect the health, safety and welfare of the public.

In this newsletter our Executive Director summarizes the assessment by the Sunset Commission that the Texas Board of Professional Geoscientists (TBPG) will receive in the next four years. As our agency readies for the review, it is instructive to remember our roots, purpose, and the changing policy views of our legislative and executive leaders.

Our agency was created in the Texas Geoscience Practice Act of 2001 in the 77th Legislative Session as a result of efforts by geologists, geophysicists, and soil scientists who saw a need to work together for licensure of geoscientists. Prior to that legislation, work of geoscientists in public practice in Texas was required to be under the supervision of Professional Engineers (PEs) who accepted the work product of the geoscientists and signed and sealed the work products. This potentially exposed PEs to liability should the geoscience work be inadequate or faulty, and without licensure, geoscientists

were limited in opportunities to work independently and be recognized as professionals. While establishing licensure of geoscientists engaged in public practice in Texas, specific exemptions to licensure were made, the most notable being federal employees, teachers and researchers, and geoscientists engaged exclusively in exploring for and developing oil, gas, or mining resources (see Section 1002.252 for complete listing). Many who were exempt elected to obtain licensure as Professional Geoscientists (Geologists, Geophysicists, Soil Scientists) as this was a statement of their professional qualifications and behavior, and licensure provided options for future opportunities.



The Geoscience Practice Act established the Board, defined the requirements of applicants for licensure, provided rulemaking authority, and stated disciplinary procedures and administrative penalties. As with all professional licensure in Texas, the fundamental purpose is to ensure the health, safety, and welfare of the public. Our Rules were written under the authority of the Geoscience Practice Act and adhere to this fundamental purpose of licensure. Each licensee has been carefully measured against the requirements for licensure and must follow a carefully crafted "Code of Professional Conduct" (Chapter 851, Subchapter C). Judging

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## Enforcement Statistics

TBPG Enforcement data for the fiscal year 2015, ending August 31, 2015:

- 53 new cases opened
- 43 complaints resolved
- 18 disciplinary actions were taken

The total number of open complaints at time of publication is 37. Of the complaints

currently being processed, there are 26 complaints related to the Continuing Education requirements; 10 complaints are instances of unlicensed/unregistered practice; and one complaint is related to fraud.

For more information on disciplinary actions issued by TBPG, please see the Disciplinary Actions page of the TBPG website.

# Notes from the Executive Director

## ANNOUNCEMENTS

The next ASBOG® examinations will be held on **October 2, 2015**. The application deadline for this exam has passed.

**Congratulations** to the **26** who passed the ASBOG® Fundamentals of Geology examination and the **17** who passed the ASBOG® Practice of Geology examination on March 6, 2015!

The Spring ASBOG® examination will be held on March 4, 2016.

### Upcoming Meetings

General Issues Committee

**October 15, 2015**

Compliance and Enforcement Committee

**October 15, 2015**

Application Review / Continuing Education Committee

**October 15, 2015**

Financial Review/Strategic Planning Committee

**October 16, 2015**

TBPG Board Meeting

**October 16, 2015**

It is not too early to begin thinking and planning for the TBPG's first review under the Texas Sunset Act. Texas Occupation Code, Chapter 1002 (the Texas Geoscience Practice Act) at §1002.003 states, "The Texas Board of Professional Geoscientists is subject to Chapter 325 Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires **September 1, 2019**."

The Sunset Review process for the TBPG is scheduled to begin in summer 2017 and will end at the completion the 86<sup>th</sup> Texas Regular Legislative Session (approximately June, 2019). The Sunset Commission provides a wealth of information regarding what Sunset is, the Sunset Commission Members and staff, and the Sunset Review process on its website at [www.sunset.texas.gov](http://www.sunset.texas.gov). Information I provide or reference below is from a publication entitled, "Sunset in Texas 2013-2015," "Sunset Occupational Licensing/Regulation Model," or on various pages on the Sunset Commission website.

The Sunset Review process is essentially a two-year process. The following is a general outline of expected key timeframes for the agencies that, like the TBPG, have Sunset dates of September 1, 2019, based on past Sunset Review processes. The Sunset Review process is based on the Texas Sunset Act, so elements of the process are subject to change based on changes to the Texas Sunset Act, rules of the Sunset Commission, or changes in procedures for a particular biennium.

September 2017	Agencies submit Self-Evaluation Reports
October 2017-January 2019	Sunset staff conducts evaluations and prepares reports; Sunset Commission holds public hearings and makes decisions.
February 2019	Sunset Commission submits its Report to the 86 <sup>th</sup> Legislature with recommendations on each of the agencies under review.
January 2015 - May 2015	86 <sup>th</sup> Legislature considers Sunset bills on agencies under review.

Currently the Sunset Commission provides a set of 13 questions for all agencies. Currently there is an additional set of 4 questions for Occupational Licensing Agencies. Each and every question is important in the review process. As an Occupational Licensing Agency, the questions for Occupational Licensing Agencies are, of

course, of particular importance to the TBPG. These are the questions that are currently in the "Guide to the Sunset Process" available on the Sunset Commission website:

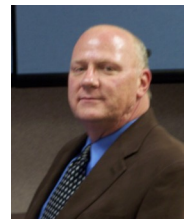
- Does the agency's occupational licensing program serve a meaningful public interest and provide the least restrictive form of regulation needed to protect the public interest?
- Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
- Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
- What is the impact of the regulation on competition, consumer choice, and the cost of services?

Another important resource is the "Sunset Licensing Model," (current version as amended January 18, 2014).

The Sunset Commission describes the *Licensing Model* as a "collection of evolving standards based on past Sunset experience reviewing licensing agencies and programs, as well as published authorities." The Sunset Commission indicates that these standards provides a model for evaluating licensing and regulatory programs, promoting efficiency, effectiveness, fairness, and accountability to the public. The Sunset Commission uses these standards to guide reviews of agency structure, oversight, and operations (see page 8 "Sunset in Texas 2013-2015").

Over the next biennium, TBPG will be looking ahead to its upcoming Sunset Review. It will also continue to work closely with state agencies that the Appointed Board identified as relevant to the implementation of TOC §1002.201-207 (changes in the Texas Geoscience Practice Act by the passage of SB 138 in the 83<sup>rd</sup> Texas Legislature). The Appointed Board, its Compliance and Enforcement Committee, and agency staff have worked hard to implement these requirements over the past two years. It is important that other state agencies and their staff comply with the requirement of the Texas Geoscience Practice Act by forwarding information regarding potential violations of the Texas Geoscience Practice Act and/or TBPG's rules when the agencies become aware of potential violations.

**Agency Update.** Since the passage of Senate Bill 138 (SB 138) TBPG has, primarily through its



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## TBPG Enforcement Activities

I have received some inquiries regarding the TBPG's review of complaints that have been investigated by staff. The TBPG's authority to open, investigate, and take action on complaints is set forth in the Texas Geoscience Practice Act (Texas Occupations Code, Chapter 1002 or the Act). The TBPG's rules, at Texas Administrative Code (TAC) §851.157, provides for how the TBPG receives or opens complaints, how a complaint is investigated and reviewed, the reasons disciplinary action may be taken by the Appointed Board, and the due process safeguards that are in place to ensure the Appointed Board only takes action when it is authorized and warranted.

The questions I have received recently have focused on how a complaint is reviewed once an investigation has been completed. TBPG staff receive and/or open complaints routinely. As complaint investigations are completed, the cases are put in a queue to be reviewed by a Complaint Review Team (CRT). A Complaint Review Team consists of at least one, but no more than two TBPG Appointed Board Members and the TBPG's

Enforcement Coordinator. These participants meet together to review a completed investigation to make certain determinations. Also in attendance in CRT meeting is the Executive Director, the Assistant Attorney General (AAG) assigned to the TBPG, other TBPG investigative staff, and the Complainant and Respondent to each complaint under review, when they choose to attend. Other individuals, who may be witnesses or who otherwise have knowledge of the circumstances under review, may also be asked to attend. The Executive Director moderates the meeting. The AAG is present to give general legal advice (regarding the Act, TBPG's rules, the complaint process, etc.). The Executive Director may also assist with these types of questions.

Respondents (an individual or firm against whom the complaint was filed) and Complainants (person or persons who filed the complaints) receive prior notice of the meeting date, time and place and are invited to attend. A CRT meeting typically involves the review of a number of complaint cases. Each complaint is reviewed individually.

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*The mission of the Texas Board of Professional Geoscientists is to protect public health, safety, and welfare, and the state's natural resources by ensuring that only qualified persons carry out the public practice of geoscience and enforcing the Code of Professional Conduct the Board has established for its licensees.*

## Notes from the Executive Director, *continued*

Compliance and Enforcement Committee and agency staff, been planning and working on completing tasks related to the requirements in SB 138. SB 138 also requires a state agency that becomes aware of a potential violation of this chapter or a rule under this chapter to forward any information relating to the potential violation and any subsequently obtained information to TBPG.

To date, the following activities have been completed:

- On November 22, 2013 the TBPG adopted rules necessary to implement Sections 1002.201 - 1002.202, of the Texas Occupations Code (TOC), as amended by SB 138, and Sections 1002.206 - 1002.207, TOC, as added by SB 138.
- TBPG has developed and posted information regarding the procedure for filing a complaint with TBPG on its website.
- TBPG has provided a means by which a person may electronically file a complaint with TBPG.
- TBPG will accept a complaint regardless of whether the complaint is notarized. TBPG has revised its administrative rules, procedures, and its complaint form to comply with the requirement.

**Education and agency coordination.** SB 138 requires TBPG to work with each agency of the state that uses the services of a person licensed under this chapter and other appropriate state agencies as determined by the TBPG to educate each agency's

employees regarding the procedures by which complaints are filed with and resolved by TBPG.

- The TBPG has reviewed a full listing of state agencies and has identified the agencies to which the education provisions of SB 138 apply. The agencies are prioritized into Tier I, Tier II, and Tier III agencies. The TBPG also plans to contact and educate staff of licensing agencies that regulate professions with which Professional Geoscientists may work. The TBPG will need to consider its resources as it goes forward working with and setting up training with identified state agencies.
- The TBPG has developed a PowerPoint-based training module to facilitate its task of educating each agency's employees regarding the procedures by which complaints are filed with and resolved by TBPG.
  1. The training is 1-2 hours in duration.
  2. Training is provided "in-person" and through web audio/video conferencing.
  3. Participants who complete the training will be provided documentation of completion. The training is also designed to count for credit towards the one hour of professional ethics continuing education required of licensed Professional Geoscientists (as part of the annual requirement of 15 hours of professional development hours required) for annual renewal of a P.G. license.

*Chad Horton*

## TBPG Enforcement Activities, *continued*

Due to confidentiality requirements, only the CRT members, the AAG, TBPG support staff, and the Respondent and Complainant and any pertinent witnesses for a case are allowed to be present for a specific case. The CRT is not an open meeting and anyone not involved in a specific case must leave the room prior to the case being reviewed. During a CRT review of a complaint, the investigator first reviews the complaint report, highlighting pertinent facts, such as the original allegation, the Respondent's response to the complaint, and any additional information discovered or verified through the complaint investigation process. Then the Complainant and the Respondent (when in attendance) have the opportunity to present information or clarify any information that was presented. CRT Members (Board Members/the Enforcement Coordinator) may ask further questions of the investigator or other individuals present at the meeting.

After the CRT has heard from the investigator, Complainant, Respondent or any other person or persons who may have knowledge about a complaint or investigative staff), CRT may meet to deliberate. Individuals other than CRT Members, the AAG and agency staff are asked to leave the room. The CRT deliberates to decide:

- Whether there have been violations of the Texas Geoscience Practice Act or Board rules;
- If so, whether the facts warrant the proposal of finding(s) of violation(s) and the proposal of disciplinary action.

If the CRT determines that there were no violation(s) or the violation(s) do not warrant formal disciplinary action, a complaint may be dismissed, with or without advisement. Advisement is not a disciplinary action. If the CRT determines there were violations that warrant disciplinary action, then the CRT may determine what formal disciplinary action should be proposed. The CRT must consider certain factors that are specified in the Act and in Board rules (seriousness of the acts or omissions, the number of disciplinary actions that have been taken against the Respondent, the hazard to the health, safety, property, or welfare of the public, and other aggravating or mitigating circumstances).

Once the CRT has decided on a course of action, the Respondent and Complainant then return to learn the CRT's decision.

If the CRT proposes that a disciplinary action is warranted, then a Notice of Violation, which includes an Agreement form and a proposed Agreed Board Order, is sent to the Respondent. The Respondent has three choices when receiving an NOV: 1) agree to the Order, 2) request an Informal Settlement Conference, or 3) request a formal hearing before the State Office of Administrative Hearings (SOAH). If the Respondent agrees with the proposed Board Order, then the Order is scheduled for the next available Board meeting for decision by the full Board minus the two Board Members who were on the CRT. A proposed Agreed Board Order is not final until the full Appointed Board votes on it. The Board may reject a proposed Agreed Board Order. When it does, the Board will deliberate regarding how the complaint should be dispensed and provide guidance.

If the Respondent to a complaint chooses to request an informal conference, the CRT will meet/dialog with the Respondent. If new information or arguments are presented, the proposed manner of disposing of the complaint may be modified. If no agreement is reached, the matter is scheduled for a formal hearing before a SOAH judge. When a case is heard by a SOAH judge, the judge's Proposal For Decision is provided to the Appointed Board for a final decision.

## The Chairman's Column, *continued*

from recent comments and reactions by some licensees, some may view TBPG as a "professional organization" rather than a licensing agency. But, the TBPG has been given the obligation to ensure geoscience as practiced for the public adheres to a high standard of competency to include ethical behavior and sound professional practices. Licensure carries a high level of responsibility for the individual to include professional development (continuing education), high quality work products, adherence to ethical and professional standards, and reportage of known violations to our Code of Professional Conduct.

Licensure of Professional Geoscientists should not limit the number practicing our profession, but it must always ensure the health, safety, and welfare of the public by limiting licensure only to those who are qualified to practice. The TBPG was granted authority to license individuals from other states provided those states have licensure requirements substantially similar to those of Texas. We have reciprocity agreements with three states that facilitate licensure of individuals in those states, and our agency continues to reach out to other states to establish similar reciprocity agreements. Through this endeavor, we have found that many states were not granted this authority in their enabling legislation so are unable to enter agreements, or have licensure requirements dissimilar to those of Texas.

Under the leadership of our past chairman, Mr. Charles Knobloch, TBPG just completed a review of our Rules, a requirement of all agencies every four years. It was organized, detailed, and included input and comments by the public and our licensees. We are grateful for those who took the time to question the logic for some of our rules, examined our authority, and offered suggestions and changes. This readied our agency as we go into the Sunset Review process.

Our staff and appointed board look forward to serving the citizens of Texas by fulfilling the responsibilities given to us. We are always open to constructive suggestions to improve our service to licensees.

*C. V. Hallmark*



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## Licensing Numbers

Current licensing numbers:

- 4405 Professional Geoscientists
- 355 Geoscience Firms
- 76 Geoscientists-in-Training

## Occupational Licensing Benefits for Military

Recent amendments to Texas Occupations Code Chapter 55 requires state agencies to adopt rules necessary to implement certain provisions regarding that Chapter. These laws provide for certain licensing benefits to military service members, military veterans, and military spouses who apply for an occupational license in the State of Texas.

TBPG currently has rules that allow for cooperative licensure in Texas of individuals who are currently licensed in another state or jurisdiction and who meet the specified criteria as outlined in TBPG rule §851.29 (b)(3).

At its next Board meeting on October 16, 2015, TBPG seeks to propose new rules to fully implement the authorized benefits outlined in TOC 55 for military members, veterans, and their wives.

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