



# Texas Geoscience Today

## Texas Board of Professional Geoscientists

VOLUME VII ISSUE I

WINTER 2012

### SPECIAL POINTS OF INTEREST:

- Upcoming ASBOG® exams
- Licensing and Enforcement news
- Welcome New TBPG Board Members!

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## The Chairman's Column

I am pleased to give you my first report as the Board's new Chairman. I took over the Chairman's duties at the August 12, 2011 Board Meeting after having served on the Board for over four years as a public member. As a little background, my career has included 27 years in the natural gas pipeline business, and then a little over 10 years of regulatory experience at the Texas Railroad Commission, much of that time as the Executive Director of the Commission. Since leaving the Railroad Commission, I have been involved in consulting activities and serving on other boards and



councils.

As the Texas Board of Professional Geoscientists completes its 10<sup>th</sup> year of existence a lot has been accomplished, but a lot still needs to be done. The Board has grown through the beginnings of getting the agency firmly established and basic day-to-day functions are operating well. Our new licensing system was put online this past summer and provides the agency with advanced features that allow us to deliver improved service to our licensees. The agency currently has one vacancy and the accompanying report from Director Horton describes our staff and their responsibilities. The agency is fortunate to have a staff that is well versed in the nuances of operation of a state agency.

On August 31, 2011 the agency's first Executive Director, LTC Michael D. Hess, elected to retire. Mr. Hess served the agency well in getting its operations started on the right foot. Unfortunately for the agency, Mr. Hess' civilian career with the agency was interrupted for almost 4 years when he was called back to active military duty. He returned to his prior position as Executive Director of the agency in June 2010, when he was released from active duty. We wish to thank him for his service to the agency and especially for his military service to our country and wish him the very best in his future endeavors.

During Mr. Hess' military deployment the agency functioned with acting executive directors,

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## Notes from the Executive Director

TBPG's former Executive Director, LTC Michael D. Hess retired effective August 31, 2011. The Board and agency staff appreciate his contributions to the agency and wish him well in retirement and his future pursuits.

On August 12, 2011, the Board appointed me to serve as the agency's next Executive Director. I accepted the appointment and I look forward to working with the Board, agency staff, the Board's many licensees and stakeholders, the office of Governor Rick Perry/staff, Members of the Legislature/staff, other state regulatory and oversight agencies and entities, and the public in fulfilling the Board's mission and statutory responsibilities. I appreciate the support I have received from the Board and agency staff. I have served the agency since January 2009 when I was hired by the Board as the Interim Executive Director for the agency. For about the past year, since LTC Hess returned from active duty, I served as Deputy Executive Director. The agency has made significant gains in the past three

years with the implementation of a new upgraded regulatory database and associated processes, an increased focus on customer service, and staff development. We are all confident that we will continue to make improvements in the future.

At a Special meeting of the Board, on November 7, 2011, the Board **withdrew** certain proposed new rule sections §851.33 and §851.34 and a change to Texas Administrative Code §851.10 (relating to work performed in the oil and gas industry). At its regular meeting on November 18, 2011, the Board adopted proposed changes to its rules in Texas Administrative Code §851.104, §851.108, and §851.156 with some modifications based on public input.

The Board also withdrew proposed changes to §851.32 and §851.152. The Board's General Issues

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## ANNOUNCEMENTS

**Congratulations** to the 25 candidates who passed the ASBOG® Fundamentals exam, and the 20 candidates who passed the ASBOG® Practice of Geology exam in September!

Upcoming ASBOG® Examination dates:

**March 2, 2012**

**October 5, 2012**

Examinations are held in Austin, Texas

The next TBPG Board Meeting is scheduled on **February 17, 2012**

Please contact TBPG if you would like more information on:

- P.G. licensure
- Firm Registration
- GIT certification

Check our website for more details on upcoming events.

## TBPG Enforcement

Like most other professional and occupational licensing agencies, TBPG depends on both its licensees and consumers of services to report complaints involving unlicensed/unregistered representation/practice and possible violations to the Code of Conduct of the Board. In fact, the Board adopted rule §851.106 as part of the Board's Code of Conduct. This rule outlines the responsibilities P.G.s, GITs and Geoscience Firms have regarding the regulation of the geoscience profession and public protection. One of the most frequent concerns that we hear at the agency regarding licensees' reporting suspected violations of the Act to the Board is concern over the possible real life consequences to an individual or firm for reporting individuals/firms that may be in violation. This brings up the topic of **ANONYMOUS REPORTING**.

### Key points:

The Act (§1002.154(a-1)) specifies that 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

board staff and that may indicate a violation.

The Act (§1002.202(b)) specifies that "a complaint from a member of the public must be: (1) in writing; (2) sworn to by the person making the complaint; and (3) filed with the secretary-treasurer."

The Act (§1002.202(c)) specifies that "a complaint that is initiated by the board or board staff must be: (1) in writing; and (2) signed by the person who became aware of information that may indicate a violation."

The Act (§1002.202(e)) also specifies that "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."

It should be noted that in practice a complaint is not confidential to a person/firm that is the subject of a complaint (a "Respondent" to a complaint). A person/firm responding to a complaint has to know what has been alleged in order to respond to a complaint.

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## Notes from the Executive Director, *continued*

*(Continued from page 1)*

Committee will review public comments related to §851.152 and may consider recommending changes to §851.152 at a later date. Also at the regularly scheduled Board meeting on November 18, 2011, the TBPG reviewed public comments that had been submitted and heard public testimony regarding draft Advisory Opinion (AOR #6). The Board unanimously approved taking no formal action on the draft opinion that was published in the September 23, 2011 edition of the Texas Register. The Board instead referred the draft Advisory Opinion (AOR #6) back to the General Issues Committee for follow up with the academic community and state and local professional organizations to develop a recommended response to the question posed in AOR #6.

The General Issues Committee will be working with TBPG staff to set up meeting forums to invite interested stakeholders to work with the Committee to draft a response to the question posed in AOR #6 that considers issues raised by the geoscience community.

Regarding updates within the agency, I have implemented some staff changes: Molly Roman, who over the past year and a half had coordinated the Licensing function and taken the lead on the implementation of the new regulatory database is fully resuming her previous role of Operations Manager. Ms. Roman is second in charge of the

agency and her key duties are to continue to oversee the implementation of the regulatory database, to focus on Board public communication and outreach, and to coordinate the important work of the General Issues Committee.

Elsa Wofford, who came to the agency over a year and a half ago with significant experience with the California Board of Medical Examiners, now serves as TBPG's Licensing Coordinator.

Leticia Kappel, who has served TBPG since October 2004, continues to serve as the agency's Chief Financial Officer (CFO). Like staff in many other small state agencies, Ms. Kappel serves in many other areas in addition to those of a CFO, including human resources, timekeeping, and other key areas.

Currently there is an opening for an Enforcement Coordinator. On staff to support the Enforcement Coordinator are Alberto Jimenez, Investigator and Jeanne Nguyen, Enforcement Specialist. We prefer that the Enforcement Coordinator be licensed as a P.G. and I recently included a notice of the open position in an e-mail sent to all licensees. I plan to begin interviews for the Enforcement Coordinator soon.

New to the TBPG staff is Jennifer Garcia, Receptionist/Administrative Assistant. In addition to serving as the receptionist, Ms. Garcia also provides customer service in support of licensing, financial, Board/Board committee meetings and other general functions.

We have a great staff here, and our goal is to serve our licensees, the public, and the State of Texas. Please let us know how we can serve you better.

*Chuck Horton*

## The Chairman's Column, *continued*

(continued from page 1)

first with a former staff member and then needing more leadership, the Board hired Mr. Charles Horton to assume the role of Interim Executive Director in January 2009. Mr. Horton served in that capacity until Mr. Hess returned, at which time Mr. Horton was appointed Deputy Executive Director. Upon the retirement of Mr. Hess, the Board appointed Mr. Horton as Executive Director effective September 1, 2011. Mr. Horton has extensive experience in management and administration of Texas state government agencies. The combination of having policy making and subject matter expertise with the Board members, and state government administrative expertise with the Executive Director provides the ideal management team.

There were no major policy or regulatory actions implemented during the last legislative session that impacted the Board. As most of you know the focus of the legislative session had to do with budgets and funding. The agency's budget was reduced and our staffing authorization was reduced from 11 employees to 8 employees. With some re-organization, process improvement, and strategic hiring by Mr. Horton, we are confident that the agency can continue to provide the same services within the budget and staffing constraints that have been imposed on us by the Legislature.

Recently there has been some confusion concerning a rule change proposal involving exemptions of oil

and gas activities. While some have severely criticized the Board for even publishing the proposal, the process worked as the Legislature intended and a resolution of the issue was achieved. There has been uncertainty for several years about ambiguous language in the statute concerning this exemption and several questions and complaints about the exemption have been filed with the agency. By publishing the proposed rule and opening it for full public comment, the Board received overwhelming comments that the rule as proposed was inappropriate and contrary to the original intent of the statute. As a result, the Board has unanimously voted to withdraw the proposal, and went one additional step by proposing an Advisory Opinion that would make it perfectly clear that the exemption is absolute. That draft Advisory Opinion (AOR #7) is currently out for public comment and will be considered for adoption by the full Board at its February 17, 2012 open meeting.

In closing, I want to encourage each of you to take an active part in the agency by providing us with feedback on what you would like to see from the agency, what are we doing right, and what are we doing wrong. The agency is in existence only because the geoscience community wants the professionalism associated with licensure. It is your agency, so please take an active role in helping to shape the future of the agency as we begin our next decade of existence.

*R. L. Kitchens*

**The mission of the Texas Board of Professional Geoscientists is to protect health, safety, and welfare by ensuring that only qualified persons carry out the public practice of geoscience.**

## TBPG Enforcement, *continued*

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Further, if a complaint results in the filing of charges by the Board (notice of the intent to take disciplinary action), the complaint and all of the information related to the complaint (the investigative file) is no longer confidential and will be provided to a respondent, if requested. This would include the original complaint which bears the printed name and signature of the complainant. In other words, there is no such thing as an "anonymous complaint."

So, can a licensee or other person make a complaint and remain anonymous? There is a way. Because the Board/agency has the authority to initiate a complaint as a result of information that becomes known to the board or board staff and that may indicate a violation, a person who wishes to report a situation to the Board that may be a violation of the Act or Board rules, the person may provide information that may be a violation and provide it to the Board anonymously. If a person chooses to do so, the person should be aware that the information provided may be provided to the respondent to a complaint at some point.

In practice, unless doing so would jeopardize the investigation of a complaint, the TBPG normally provides a copy of complaints to the respondents when the respondent is initially notified of the complaint and given an opportunity to respond to the complaint. Respondents deserve to know fully what has been alleged so they

may respond fully to the allegations.

P.G.s, GITs and Geoscience Firms are encouraged/required to report violations to the Board. In most situations, the most prudent way to do so is to complete a complaint form, including signing the form, attaching documentary evidence of the violation, and submitting the complaint to the Board. But in other circumstances, a person may choose to simply provide information that may indicate a violation to the Board anonymously. If the information provided is sufficient and verifiable, the agency will open a complaint.

### **What are the downsides to providing information anonymously to the Board, as opposed to simply filing a sworn, signed complaint?**

A complainant is involved in the complaint investigation. A complainant is invited to meetings in which the Board reviews complaints to determine whether a possible violation occurred and what sanction to propose to take, if it is determined that a violation occurred. A person who submits information anonymously cannot be involved because we do not know who the person is. Further, a licensee who submits information anonymously has not demonstrated compliance with the requirement in Board rule §851.106. However, a licensee who submitted information anonymously could possibly demonstrate compliance with §851.106 by proving that he or she submitted the anonymous complaint by maintaining a copy of what was submitted, along with proof of having mailed the information.



## Texas Board of Professional Geoscientists

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Phone: 512/936-4400

Fax: 512/936-4409

[www.tbpg.state.tx.us](http://www.tbpg.state.tx.us)

## Licensing Numbers

Current licensing numbers include:

- 4927 P.G.s
- 362 Geoscience Firms
- 18 GITs

## TBPG Staff

Charles Horton, *Executive Director*  
512 936-4401

Molly Roman, *Operations Manager*  
512 936-4405

Leticia Kappel, *Chief Financial Officer*  
512 936-4404

Elsa Wofford, *Licensing Coordinator*  
512 936-4403

Alberto Jimenez, P.G., *Investigator*  
512 936-4406

Jeanne Nguyen, *Enforcement Specialist*  
512 936-4402

Jennifer Garcia, *Administrative Assistant*  
512 936-4428

## Welcome New Board Members!

TBPG would like to welcome our newly appointed members to the Board. Ms. Becky Johnson, P.G., of Fort Worth, is an environmental science professor at Texas Christian University, and a business owner. Ms. Judy Reeves, P.G., Ph.D., of Grapevine, is a senior hydrologist at Cirrus Associates LLC. Mr. Gregory Ulmer, J.D., of Houston, was reappointed to the Board. Mr. Ulmer is an attorney for Baker & Hostetler LLP, in Houston.

Their terms on the Board will expire on February 1, 2017.

## Farewell to Board Members

TBPG would like to sincerely thank former TBPG Chairman Y. Lynn Clark, P.G. and former TBPG Secretary/Treasurer Glenn Lowenstein, P.G. for their many years of service to the Board and the geoscience industry. Both members have been an integral part of many TBPG accomplishments, most recently of which includes obtaining the statutory authority to issue Advisory Opinions. We appreciate their many hours given on behalf of TBPG and its mission. *Thank you!*

## Board Members

Ron Kitchens, *Chair*  
Harper

Charles Knobloch, P.G., J.D., *Vice-Chair*  
Houston

Kelly Krenz-Doe, P.G., *Sec./Treas.*  
Houston

Tom Hallmark, P.G., Ph.D.  
College Station

Becky Johnson, P.G.  
Fort Worth

Justin McNamee  
Rowlett

Judy A. Reeves, P.G., Ph.D.  
Richardson

Barbara Roeling, P.G.  
Austin

Greg Ulmer, J.D.  
Houston