

# TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS



*Rules for Professional Geoscientist Licensure  
And the Public Practice of Geoscience*

*November 24, 2016*

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TITLE 22. Examining Boards  
PART 39. Texas Board of Professional Geoscientists



**CHAPTER 850. Texas Board of Professional Geoscientists**

***Subchapter A. Authority and Definitions***

**§850.1. Authority.**

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

**Source Note:** The provisions of this §850.1 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective January 8, 2008, 33 TexReg 184

**§850.10. Definitions.**

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

- (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 Appointed 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) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.
- (5) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).
- (6) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Appointed Board after an opportunity for adjudicative hearing.
- (7) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.
- (8) License--The whole or part of any TBPG registration, license, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by the Act.
- (9) Licensee--An individual holding a current Professional Geoscientist license, GIT certificate, or firm registration.
- (10) Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code Title 22; Part 39; Chapters 850 and 851.
- (11) Sanction--A penalty imposed in a disciplinary process. An imposed disciplinary action is a sanction.
- (12) TBPG--The Texas Board of Professional Geoscientists, as used in this Chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

**Source Note:** The provisions of this §850.10 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective January 8, 2008, 33 TexReg 185; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective December 7, 2014, 39 TexReg 9535

### ***Subchapter B. Organization and Responsibilities.***

#### **§850.60. Responsibilities of the Board - General Provisions.**

- (a) The purpose of this chapter is to implement the provisions in the Act concerning the licensure of Professional Geoscientists and regulation of the public practice of geoscience.
- (b) It is the intent of the Appointed Board that the Rules of the TBPG be interpreted in the best interest of the public and the state.
- (c) Through this chapter, the Appointed Board intends to establish procedures to receive petitions and complaints from the general public and the TBPG licensees, assure that access to TBPG programs is made available to all citizens, to set appropriate fees, and administer the TBPG's programs effectively.

**Source Note:** The provisions of this §850.60 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§850.61. Responsibilities of the Board - Meetings.**

- (a) Meetings will be conducted under Robert's Rules of Order.
- (b) Unless the Act provides another standard, when a quorum (a majority of the members) is present, a motion before the Appointed Board is carried by an affirmative vote of the majority of the members of the Appointed Board present.
- (c) Meetings will be conducted as public meetings under the Government Code, Chapter 551, Subchapter A, Open Meetings.
- (d) The Appointed 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 Appointed Board meetings.
- (e) The Appointed Board shall provide the public a reasonable opportunity to appear before the Appointed Board at its meetings and to speak on any issue under the jurisdiction of the TBPG. Subject to the statutory requirement of a "reasonable opportunity," the Appointed Board may limit the amount of time that each speaker may speak on a given subject under the jurisdiction of the TBPG.

**Source Note:** The provisions of this §850.61 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§850.62. General Powers and Duties of the TBPG.**

- (a) Unless exempted by the Act, the TBPG ensures that a person may not engage in the public practice of geoscience unless the person holds a license issued by the TBPG.
- (b) The TBPG 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 the authority provided to the TBPG under the Act.
- (c) The Act and Rules adopted by the Appointed Board under the authority of the Act apply to every licensee, registered firm, Geoscientist-in-Training, and unlicensed individual or unregistered firm providing or offering to provide professional geoscience services.

- (d) Unless an exemption in the Act applies, the TBPG 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) Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the TBPG meetings and programs.
- (f) The TBPG welcomes appropriate citizen input and communications at TBPG meetings and upon prior reasonable notice to the TBPG, the TBPG will provide interpreters and/or sign language specialists to assist the public in presenting their input to the TBPG.
- (g) The TBPG works with each state agency that uses the services of a person licensed by the TBPG and other state agencies as determined by the Appointed Board, including a state agency with which the Appointed Board has entered into a Memorandum of Understanding that addresses the coordination of activities or complaints, to educate the agencies' employees regarding the procedures by which complaints are filed with and resolved by the TBPG.

**Source Note:** The provisions of this §850.62 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective January 3, 2008, 32 TexReg 10004; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective January 1, 2014, 38 TexReg 9367; amended to be effective December 7, 2014, 39 TexReg 9535; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§850.63. Responsibilities of the Appointed Board.**

- (a) The Appointed 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 Appointed Board may deny a license on the grounds described in and set forth in the Act.
- (c) The Appointed Board may reinstate a license by the procedures and on the conditions set forth in the Act.
- (d) The Appointed Board may impose an administrative penalty based on the factors and subject to the limitations set forth in the Act.
- (e) The Appointed Board, through its Executive Director, 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 with Disabilities Act of 1990, Public Law 101-336.

**Source Note:** The provisions of this §850.63 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective April 22, 2008, 33 TexReg 3277; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective January 1, 2014, 38 TexReg 9367; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§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 TBPG 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.

**Source Note:** The provisions of this §850.65 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective January 1, 2014, 38 TexReg 9367; amended to be effective December 7, 2014, 39 TexReg 9535

### ***Subchapter C. Fees.***

#### **§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 under 1 Texas Administrative Code §§70.1 - 70.12 (relating to Cost of Copies of Public Information).

**Source Note:** The provisions of this §850.81 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective November 15, 2010, 35 TexReg 9737

#### **§850.82. Dishonored Payment.**

(a) If a payment drawn to the TBPG for an initial license, certification or registration or the renewal of a license, certification, or registration is dishonored by a payor, the TBPG shall take the following actions:

- (1) Notify the applicant or license, certification or registration holder of the issue and request resolution of the payment, plus the insufficient funds fee in §851.80 of this title within 30 days;
- (2) Invalidate any new or renewed license, certification, or registration that was processed based on the payment that was dishonored, if the payment has not been resolved within 30 days of the sending or receipt of the notice, as applicable.

(b) If any other payment to the TBPG is dishonored by a payor, the TBPG will take appropriate steps as determined by the Executive Director.

**Source Note:** The provisions of this §850.82 adopted to be effective September 15, 2002, 27 TexReg 8479; amended to be effective January 7, 2008, 33 TexReg 185; amended to be effective November 15, 2010, 35 TexReg 9737; amended to be effective December 7, 2014, 39 TexReg 9535

### ***Subchapter D. Advisory Opinions.***

#### **§850.100. Subject of an Advisory Opinion**

On its own initiative or at the request of any interested person, the Appointed 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.

**Source Note:** The provisions of this §850.100 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§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 Appointed 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 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 TBPG.

**Source Note:** The provisions of this §850.101 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§850.102. Appointed Board Initiated Opinion**

When a majority of the Appointed 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 TBPG, the Appointed Board may on its own motion issue an advisory opinion.

**Source Note:** The provisions of this §850.102 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

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

- (a) The Appointed 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 TBPG'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 TBPG rule, or if the request has already been answered by the Appointed Board.
- (d) If the Executive Director determines the TBPG has no jurisdiction or the request can be answered by reference to a statute, TBPG 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 Appointed 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 Appointed 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 Appointed Board.
- (h) When sufficient information exists, the appropriate committee shall draft an advisory opinion and schedule the draft advisory opinion for review by the Appointed Board for approval for posting 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 Appointed Board.
- (k) The Appointed 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 Appointed Board shall be published in summary form in the *Texas Register*.
- (m) To reconsider or revise an issued advisory opinion, the Appointed Board shall process the reconsideration or revision as a new request and follow the process as set forth in this section.

**Source Note:** The provisions of this §850.103 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§850.104. Compilation of Advisory Opinions**

The TBPG shall number and classify each final advisory opinion issued and shall make them available on the Internet.

**Source Note:** The provisions of this §850.104 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

#### **§850.105. Time Period**

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

**Source Note:** The provisions of this §850.105 adopted to be effective April 28, 2010, 35 TexReg 3284; amended to be effective December 7, 2014, 39 TexReg 9535

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

### ***Subchapter A. Definitions.***

#### **§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 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 Appointed Board.
- (3) Address of record--In the case of an individual or firm licensed, certified, or registered by the Texas Board of Professional Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.
- (4) 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) Applicant--An individual making application for a geoscience license or Geoscientist-in-Training (GIT) certification; a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm registration.
- (6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).
- (7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.
- (8) ASBOG®--National Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.
- (9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration with the TBPG; 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 professional geoscience services; and communicating with the TBPG regarding any matter.
- (10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).
- (11) Certificant--An individual holding a certificate as a Geoscientist-in-Training.
- (12) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.
- (13) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.
- (14) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG'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 (P.G.) or registration by an individual, firm, or other legal entity.

(15) Council of Soil Scientist Examiners (CSSE)--The purpose of the Council of Soil Science Examiners is to create, score and maintain examinations for State Soil Scientists licensing programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(16) Default--The failure of the Respondent to respond in writing to a notice or 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, e-mail, fax or other electronic media 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.

(17) 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 individual(s).

(18) Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) 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, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) 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 applied with professional judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.

(25) Geoscience services (also professional geoscience services, and professional geoscience)--Services which must be performed by or under the direct supervision of a Professional 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 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. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

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

(28) License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(30) Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(31) Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(32) 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.

(33) 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 professional geoscience services.

(34) Registered firm--A firm that is currently registered with the TBPG.

(35) Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(36) Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(37) Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.



(38) Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(39) Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation 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.

(40) Sole-proprietorship--A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner.

(41) TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

**Source Note:** The provisions of this §851.10 adopted to be effective October 31, 2002, 27 TexReg 10028; amended to be effective January 8, 2008, 33 TexReg 185; amended to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2014, 38 TexReg 9368; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 18, 2015, 40 TexReg 1384; amended to be effective March 15, 2016, 41 TexReg 1843

### ***Subchapter B. P.G. 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 Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services documented and verified through professional references as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256;

(A) 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;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

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

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. 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 TBPG:

- (1) A completed, signed, notarized application for licensure as a Professional Geoscientist;
- (2) Documentation of having passed an examination as specified in §851.21 of this chapter;
- (3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;
- (4) A minimum of five (5) reference statements as specified in §851.24 of this chapter;
- (5) Official transcript(s), as specified in §851.25 of this chapter;
- (6) The application/first year licensing fee as specified in §851.80(b) of this chapter;
- (7) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction; and

(8) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG 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.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

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

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG 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.

(i) 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 thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (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.

(k) 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 (p) of this section.

(l) 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. 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.

(m) A license number is not transferable.

(n) 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.

(o) Altering a license wall certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) 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 this chapter. When a license is

issued, a license wall certificate, the first license certificate expiration card, and the first wallet license card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall 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.

(3) 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.

(4) The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

**Source Note:** The provisions of this §851.20 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective October 1, 2013, 38 TexReg 5731; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 18, 2015, 40 TexReg 1384; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.21. Licensing Requirements-Examinations.**

(a) Qualifying examinations:

(1) An applicant for the Geology discipline must pass both parts of the National Association of State Boards of Geology (ASBOG®) examination. Applicants taking the ASBOG® examinations must also abide by the rules and regulations of ASBOG®.

(2) An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) examination. Applicants taking the CSSE examinations must also abide by the rules and regulations of CSSE.

(3) An applicant for the Geophysics discipline must pass the Texas Geophysics Examination (TGE).

(b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act. 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) Applicants requesting a waiver from any examination(s) shall complete a Waiver Request (Form V) and any additional information needed to substantiate the eligibility for the waiver with the application.

(g) Examination requirements and examination procedure: A qualified individual who has not passed qualifying licensing examination(s) may access and abide by all relevant components of one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) Licensure in the discipline of geology (part I)/ASBOG® Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter 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 an Exam Request (Form E) and any required documents to the TBPG, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.
- (ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.
- (iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Candidate Request Form shall be provided to the TBPG.
- (iv) The applicant shall follow all examination administration procedures and take the examination.
- (v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(2) Licensure in the discipline of geology (part II)/ASBOG® Practice of Geology examination:

(A) Requirements:

- (i) Under application for licensure as a Professional Geoscientist with the TBPG.
- (ii) Meet all other qualifications for licensure in subsection (a) of this section, and be within six months of meeting the qualifying experience requirement.

(B) Procedure:

- (i) The applicant shall complete and submit both the Initial Application for P.G. Licensure (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and an Exam Request (Form E) along with the appropriate fee and any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.
- (ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.
- (iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Examination Candidate Request Form shall be provided to the TBPG.
- (iv) The applicant shall follow all examination administration procedures and take the examination.
- (v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(3) Licensure in the discipline of geophysics/TGE:

(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 TGE.

(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 Examination Request Form (Form E) along with the appropriate fee and any required documents to the TBPG.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide TGE 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 staff shall notify the applicant of the results of the examination.

(4) Licensure in the discipline of soil science/Council of Soil Science Examiners (CSSE)

Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant 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 TBPG.

**Source Note:** The provisions of this §851.21 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.23. Qualifying Experience Record.**

Applicants shall submit a Qualifying Experience Record (Form IV) to the TBPG as a part of the P.G. Professional Reference Statement (Form I).

(1) The 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 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 experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license.

(4) Parts of the experience record that are to be verified by references shall be written in sufficient detail to allow the Board staff to document the minimum amount of experience required and to allow the reference provider to recognize and verify the quality and quantity of the experience claimed.

(5) The experience record must demonstrate evidence of the applicant's competency to be placed in responsible charge of geoscience services of a similar character.

(6) Experience is qualifying if the applicant's duties and responsibilities included the performance of geoscience tasks or is acceptable to the TBPG.

**Source Note:** The provisions of this §851.23 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.24. References.**

(a) Applicants for a license shall provide at least five reference statements to the TBPG, of which not fewer than three are from Professional Geoscientists or other professionals acceptable to the Appointed Board who have knowledge of the applicant's moral and ethical character, reputation, general suitability for holding a license, and relevant work experience, unless more references are required to meet the requirements in this chapter.

- (1) One or more of the reference statements shall verify geoscience experience claimed to meet the minimum years of experience required. Professional Geoscientists who have not worked with or directly supervised an applicant may review and judge the applicant's experience; such review shall be noted in the reference statement.
- (2) References should include one or more individuals who have directly supervised or maintained responsible charge of the applicant.
- (b) 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.
- (c) The Appointed Board members and/or Board staff may, at their discretion, consider any, all or none of the responses from reference providers. 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 Appointed Board and/or Board staff may at their discretion communicate with any reference provider or seek additional information.
- (d) The applicant shall provide the reference statement form and a complete copy of the applicable portion(s) of the experience record to each reference provider.
- (e) For a reference statement to be considered complete, the reference provider 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; and
  - (4) Place the completed reference statement and signed qualifying experience record in an envelope. After sealing the envelope, the reference provider's signature shall be placed across the sealed flap of the envelope and covered with transparent tape. The reference provider shall return the sealed envelope to the applicant.
- (f) Applicants shall enclose all of the sealed reference envelopes with the Initial Application for P.G. Licensure (Form A) when submitted to the TBPG.

**Source Note:** The provisions of this §851.24 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§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 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 Appointed 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 TBPG. Official transcripts shall be forwarded directly to the TBPG 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 TBPG at the request of the Executive Director.

- (c) If transcripts cannot be transmitted directly to the TBPG from the issuing institution, the Executive Director may recommend alternatives to the Appointed Board for its approval. Such alternatives may include validating transcripts in the applicant's possession through an Appointed Board-approved commercial evaluation service.
- (d) Degrees and coursework earned at foreign universities shall be acceptable if the degree conferred and coursework have 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 shall be accepted in lieu of an official transcript only if the credential evaluation service has indicated that the credential evaluation was based on a verified official academic record or 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 staff 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 staff shall consider a quarter hour of academic credit as two-thirds of a semester hour.

**Source Note:** The provisions of this §851.25 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective February 15, 2013, 38 TexReg 644; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.26. Licensing of Military Service Members, Military Veterans, and Military Spouses**

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active Duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Armed Forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the provisions of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) An individual who holds a P.G. license or a GIT Certification issued by TBPG is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of TBPG that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(e) A Military Service Member who holds a P.G. license or a GIT certification is entitled to two years of additional time to complete any continuing education requirement and any other requirement related to the renewal of the military service member's P.G. license or GIT certification.

(f) The TBPG may issue a license to an applicant who is a military service member, military veteran, or a military spouse and who:

(1) Holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a P.G. license or a GIT certification in Texas; or

(2) Within the five years preceding the application date held the P.G. license or GIT certification in Texas.

(g) The executive director may waive any prerequisite to obtaining a license for an applicant described by subsection (f) after reviewing the applicant's credentials.

(h) An applicant who is a military service member, military veteran, or a military spouse and who does not meet criteria in subsection (f) may provide an alternate demonstration of competency to meet the requirements for obtaining a P.G. license or a GIT certification.

(i) TBPG may accept as an alternate method of demonstrating competence certain service, experience, training, or education obtained in the military that is verified and that is relevant to the practice of professional geoscience.

(j) As soon as practicable after a military service member, military veteran or military spouse files an application for a license, Board staff shall:

(1) Process the application; and

(2) Issue a license to an applicant who qualifies for the license under this section. A license issued under this subsection may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

(k) This section may not apply to an applicant who:

(1) Holds a restricted license issued by another jurisdiction;

(2) Has held a license that was subject to disciplinary action in another jurisdiction; or

(3) Has an unacceptable criminal history under the Texas Geoscience Practice Act, rules of the Board, or under Texas Occupations Code Chapter 53, related to Consequences of Criminal Conviction.

(l) Upon the issuance of a license under subsection (g) of this section, Board staff shall notify the new licensee of the requirements for the license holder to renew the license. A license issued under subsection (g) shall be valid for a term of 12 months from the end of the month the license is issued.

(m) TBPG shall waive the license application and examination fees paid to the state for an applicant who is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(n) This section applies to an application for license filed with the TBPG on or after January 1, 2016, except for subsection (m), which applies to an application filed on or after September 1, 2015.

**Source Note:** The provisions of this §851.26 adopted to be effective March 15, 2016, 41 TexReg 1843

#### **§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 TBPG, on payment of the established fee. A licensee



need not destroy his or her current license certificate, but shall remain responsible for its care and custody, including any misuse of the certificate.

**Source Note:** The provisions of this §851.27 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

**§851.28. Professional Geoscientist License Renewal and Reinstatement.**

(a) The Board staff will mail a renewal notice to the last recorded address of each licensee, at least sixty (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 licensee 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 sixty (60) days in advance of its expiration. An expired license may be renewed within three years of the license expiration date.

(b) Upon the first renewal of a license, the licensure period will be prorated so that the new expiration date will be the last day of the licensee's birth month. The prorated renewal period will be for a minimum of four months and a maximum of fifteen months. Every subsequent expiration date shall be set for one year past the previous renewal date.

(c) A late penalty fee of \$50 will be charged for a complete renewal application and fee received or postmarked sixty-one (61) days after the licensee's expiration date.

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

(e) A license that has been expired for sixty (60) days or less may be renewed by submitting a P.G. Renewal Application (Form B) and the annual renewal fee to the TBPG. The renewal fee for a license that is renewed within sixty (60) days of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public 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 staff.

(f) A license that has been expired for more than sixty (60) days and less than ten months from the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee, and the late penalty fee. The renewal fee for a license that is renewed for more than sixty (60) days and less than ten months of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public 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 staff.

(g) A license that has expired for ten months or more but less than three years after the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee for each year missed plus the current year's renewal fee, and the late penalty fee. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced 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, 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 staff.

- (h) A license that is allowed to expire for a period of three years after the license expiration date is permanently expired and may not be renewed. The former licensee may re-apply for a new license as provided by the Act and applicable TBPG rules and will have to meet all licensure requirements in said Act and rules at the time of re-application.
- (i) As per §1002.403 of the Act, the Appointed Board may suspend or revoke a license as disciplinary action against a licensee 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 staff 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 the Board Order that suspended the license.
- (2) A license that has been revoked can be re-instated only if, by a majority vote, the Appointed 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 and rules of the TBPG will not occur.
- (j) Pursuant to Texas Occupations Code §55.002, a licensee 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 licensee provides adequate documentation, including copies of orders, to establish to the satisfaction of the Executive Director that the licensee failed to renew in a timely manner because the licensee was serving on active duty in the United States armed forces outside of Texas.
- (k) The application fee is non-refundable.

**Source Note:** The provisions of this §851.28 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective October 1, 2013, 38 TexReg 5731; amended to be effective December 11, 2014, 39 TexReg 9539

### **§851.29. Endorsement and Reciprocal Licensure.**

(a) Endorsement.

(1) Endorsement is the process whereby TBPG, based on review of evidence of having completed a requirement for licensure for an equivalent license in another jurisdiction, determines that the applicant has met a requirement for licensure as a Professional Geoscientist.

(2) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered in the last ten years to practice a discipline of geoscience in Texas or another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.

(3) The Board staff will only consider documentation provided to the TBPG 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 provides information to the TBPG and pays any associated costs.

(4) In order for the Board staff to consider evidence supporting the endorsement of a licensing qualification, the applicant must ensure that his or her licensing authority provides:

(A) Verification that the license is current or was held in the past ten years from the date of application; and

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

(5) Verification may be in the form of:

(A) A document signed by an authorized agent of the jurisdiction 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 TBPG may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Reciprocal Licensure.

(1) Licensure by reciprocity agreement.

(A) 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, including the District of Columbia) or another country 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 jurisdictions.

(B) 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 jurisdictions.

(C) The TBPG shall maintain a list of each jurisdiction 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.

(2) Licensure by similar examination. An individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who has applied for licensure as a Professional Geoscientist under this subsection may meet the licensing examination requirement by submitting proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21 of this chapter.

(3) Licensure by recognition of licensed experience in another jurisdiction. An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who was licensed without examination, i.e. "grandfathered", with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under paragraph (2) of this subsection shall be deemed to have met the examination requirement upon verification of the following:

(A) Verification of a valid licensure in the other jurisdiction. The applicant requesting licensure under this subsection must be in good standing with the jurisdiction in which that individual holds their current license as a professional geologist or geoscientist;

(B) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(C) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one jurisdiction) during the five (5) years prior to application with the TBPG; and

(D) Verification that no complaint is pending against the applicant, that no complaint against the applicant has been substantiated, and no disciplinary action has ever been taken against the applicant.

(E) The applicant seeking licensure under this subsection shall be responsible for contacting the jurisdiction(s) in which the applicant is currently licensed and all jurisdictions in which the applicant has



ever been licensed and cause to have verification of information in subparagraphs (A) - (D) of this paragraph submitted to TBPG.

**Source Note:** The provisions of this §851.29 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective July 1, 2012, 37 TexReg 4596; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective November 24, 2016, 41 TexReg 9138

### **§851.30. Firm Registration.**

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are 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 includes the public practice of geoscience as determined by TBPG 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 geoscience services performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization. For the purposes of this section, the term public includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. In order to be eligible to register as a Geoscience Firm, 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 a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; 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 professional geoscience services; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscience services are 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 is the public practice of geoscience as determined by TBPG 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 geoscience services performed in this state;

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

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the 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 SOS, 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 TBPG 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 Initial Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(7) Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes, but is not limited to, the following information listed in subparagraphs (A) - (E) of this paragraph:

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

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone 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) A signed statement attesting to the correctness and completeness of the application.

(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 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 TBPG. 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 forty-five (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.

(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 is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPB Rules. When a firm registration is issued, a firm registration wall 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 wall 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 wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card 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, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed 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) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the firm's registration was expired, and payment of a \$50 late renewal penalty. 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 staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

**Source Note:** The provisions of this §851.30 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective February 15, 2013, 38 TexReg 644; amended to be effective June 1, 2013, 38 TexReg 3352; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 18, 2015, 40 TexReg 1384; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.31. Temporary License.**

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

**Source Note:** The provisions of this §851.31 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective November 24, 2016, 41 TexReg 9138

#### **§851.32. Continuing Education Program.**

(a) Each licensee 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 licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

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

(e) If a licensee 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 subsection.

(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; or

(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 (CEU)--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 Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee 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 staff 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 licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee 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 licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, 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 licensee must submit CEP certification on the log 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.

#### [Attached Graphic](#)

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

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff 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 staff may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee 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 licensee 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) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPB. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, including 2 hours of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 units (including 2 hours of ethics) shall be the maximum number required.

(p) Noncompliance:

(1) If a licensee 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 licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee's last known address as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.

(3) A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.

(4) Falsely reporting that CEP requirements have been met for a renewal period is misconduct and will subject the licensee to disciplinary action.

**Source Note:** The provisions of this §851.32 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective October 1, 2013, 38 TexReg 5731; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843; amended to be effective November 24, 2016, 41 TexReg 9138

### **§851.35. Voluntary Surrender of a License, Registration, or Certification.**

(a) A license holder who does not wish to maintain a license, registration, or certification may voluntarily surrender the license, registration, or certification by submitting a request in writing on a form prescribed by the TBPB, provided that the license holder:

(1) has a current license, registration, or certification;

(2) is not out of compliance with a disciplinary order;

- (3) does not have a complaint pending; and
- (4) is not under a continuing education audit.
- (b) The effective date of a voluntary surrender of a license shall be the date that the Board accepts the surrender and will mark the termination of the licensee's license, registration, or certification.
- (c) Any fees paid on the license, registration, or certification shall not be refunded upon surrender.
- (d) A license, registration, or certification that has been voluntarily surrendered may not be renewed. A licensee who has voluntarily surrendered a license, registration, or certification may apply for a new license, registration, or certification.
- (e) The Board maintains jurisdiction over a complaint filed against a licensee alleging violation of the TBPB's Code of Professional Conduct that occurred prior to the date of surrender of the license, registration, or certification.

**Source Note:** The provisions of this §851.35 adopted to be effective November 24, 2016, 41 TexReg 9138

#### **§851.40. Geoscientist-in-Training (GIT).**

- (a) The GIT certification is intended for individuals who wish to express the intent to become a Professional Geoscientist while they are gaining qualifying geoscience work experience. Individuals who meet the educational requirements of §1002.255(a)(2)(A) of the Act and have successfully passed an examination as specified in §851.21 of this chapter are eligible to apply for GIT certification. This certification does not entitle an individual to practice as a licensed Professional Geoscientist.
- (b) Upon accruing 5 years of post graduate geoscience work experience, individuals who are GIT certified and in good standing with the TBPB may apply for licensure as a Professional Geoscientist by submitting the following:
  - (1) TBPB Initial Application for P.G Licensure (Form A);
  - (2) The application fee as detailed in §851.80 of this chapter;
  - (3) The required reference statements as detailed in §851.24 of this chapter;
  - (4) The required evidence of qualifying work experience as described in §851.23 of this chapter; and
  - (5) Proof of having passed one of the following discipline specific examinations:
    - (A) National Association of State Boards of Geology (ASBOG®) Practice of Geology;
    - (B) Council of Soil Science Examiners (CSSE) Soil Science Practice Examination; or
    - (C) Texas Geophysics Examination.

**Source Note:** The provisions of this §851.40 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.41. Geoscientist-in-Training Certification Requirements and Application Procedure.**

- (a) To qualify for certification, an applicant must meet the following requirements:
  - (1) Educational requirements for licensure as a P.G. as established in §851.25(a) of this chapter.
  - (2) Passed one of the following examinations:
    - (A) Geology discipline: National Association of State Boards of Geology (ASBOG®) Fundamentals of Geology Examination;
    - (B) Soil Science discipline: Council of Soil Science Examiners (CSSE) Soil Science Fundamentals Examination; or
    - (C) Geophysics discipline: The Texas Geophysics Examination.
  - (3) One Reference Statement addressing the applicant's moral and ethical character.
  - (4) Application fee published in §851.80 of this chapter.
- (b) Application Procedure:

- (1) Submit a GIT Certification Initial Application (Form H);
- (2) Submit an official academic transcript in accordance with §851.25(b) of this chapter;
- (3) Submit one GIT Personal Reference Statement (Form III); and
- (4) Pay the application fee.

**Source Note:** The provisions of this §851.41 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.43. GIT Certification Period and Renewal.**

- (a) An initial GIT certification is valid for one year and 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 Appointed Board.
- (b) A GIT certificate expires at the end of the month one year from the date of issuance, and can be renewed annually if the individual:
  - (1) Submits a GIT Certification Renewal Application (Form J) and pays the fee established by the Appointed Board;
  - (2) Accumulates eight or more Personal Development Hours (PDH) as described in §851.32 of this chapter throughout the prior certification year to include one hour of ethics training; and
  - (3) Remains in good standing with the TBPG.

**Source Note:** The provisions of this §851.43 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§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 word "licensed" or any other words that might lead one to believe they are licensed as a Professional Geoscientist.

**Source Note:** The provisions of this §851.44 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.80. Fees.**

- (a) All fees are non-refundable.
- (b) P.G. Initial application and license fee--\$255.
- (c) Examination processing fee--\$25.
- (d) Applicable examination fees:
  - (1) Geology--Fundamentals and Practice as determined by the National Association of State Boards of Geology (ASBOG®).
  - (2) Geophysics--\$175.
  - (3) Soil Science--Fundamentals and Practice as determined by the Council of Soil Science Examiners (CSSE).
- (e) Issuance of a revised or duplicate license--\$25.
- (f) P.G. renewal fee--\$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any individual sixty-five (65) years of age or older as of the renewal date shall be half the current renewal fee.
- (g) Late renewal penalty--\$50.
- (h) Fee for affidavit of licensure--\$15.



- (i) Verification of licensure--\$15.
- (j) Temporary license--\$200.
- (k) Firm registration initial application--\$300.
- (l) Firm registration renewal--\$300.
- (m) Insufficient funds fee--\$25.
- (n) Initial application for Geoscientist-in-Training certification--\$25.
- (o) Annual renewal of Geoscientist-in-Training certification--\$25.

**Source Note:** The provisions of this §851.80 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 18, 2015, 40 TexReg 1384

### ***Subchapter C. Code of Professional Conduct.***

#### **§851.101. General.**

- (a) This subchapter is promulgated pursuant to the Act, Texas Occupations Code (TOC), §1002.153, which directs the Appointed Board to adopt a code of professional conduct that is binding on all license holders under the Act and provides that the Appointed Board may enforce the code by imposing sanctions, as provided by the Act or this chapter. Except as otherwise noted, this subchapter applies only to situations which are related to the practice of professional geoscience.
- (b) Any person who holds a Professional Geoscientist license, is the Authorized Official of a Firm (AOF), is a Geoscience Firm, or who holds a certificate as a Geoscientist-in-Training (GIT) is responsible for understanding and complying with the Act, rules adopted by the Appointed Board, and any other law or rule pertaining to the practice of professional geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Texas Board of Professional Geoscientists (TBPG) is bound by the provisions of the Act and this chapter. The TBPG maintains jurisdiction over a license, registration, or certification it issues as long as the license, registration, or certification is current or renewable.
- (c) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training having knowledge of any alleged violation of the Act and/or TBPG rules shall cooperate with the TBPG in furnishing such information as may be required.
- (d) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training shall answer all inquiries concerning matters under the jurisdiction of the TBPG and shall fully comply with final decisions and orders of the Appointed Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act or this Chapter.
- (e) The Appointed Board may take disciplinary actions as provided in §1002.403 of the Act for reasons stated in §1002.402 of the Act.
- (f) This subchapter is 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.
- (g) A Professional Geoscientist, a Geoscientist-in-Training, or a Geoscience Firm may donate professional geoscience services to charitable causes but must adhere to all provisions of the Act and the rules of the TBPG in the provision of all geoscience services rendered, regardless of whether the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm is paid for the geoscience services.
- (h) A Professional Geoscientist or a Geoscientist-in-Training 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 TBPG in the provision of all professional geoscience 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.

**Source Note:** The provisions of this §851.101 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2014, 38 TexReg 9368; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§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 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) A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence. Conduct or professional geoscience services characterized by Gross Incompetence includes work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm, or evidenced by 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.

(d) A Professional Geoscientist who has been adjudicated mentally incompetent by a court may not renew a license or engage in activities requiring a license under the Act.

**Source Note:** The provisions of this §851.102 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§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 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.

**Source Note:** The provisions of this §851.103 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

**§851.104. Dishonest Practice.**

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall 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 to:

- (1) Defraud;
- (2) Deceive; or
- (3) Create a misleading impression.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not advertise publicly or individually to a client or prospective client in a manner that is false, deceptive, misleading, inaccurate, incomplete, out of context, or not verifiable.

(c) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall 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 services.

(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 individual or organization, including, but not limited to, the effectiveness of geoscience 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 geoscience 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 TBPG in writing about these claims.

(f) Professional Geoscientists and Geoscience Firms shall issue statements in an objective and truthful manner. Professional Geoscientists, Geoscientist-in-Training, and Geoscience Firms must make reasonable efforts to make affected parties aware of the concerns regarding particular actions or projects, and of the potential economic, environmental, and public safety consequences of geoscientific decisions or judgments that are overruled or disregarded.

(g) A Geoscience Firm which retains or hires others to advertise or promote the firm's practice remains responsible for the statements and representations made.

(h) A Geoscience Firm shall maintain a work environment that uses standard operating procedures and quality assurance/quality control standards related to the Geoscience Firm's practice to ensure that the Geoscience Firm protects the health, safety, property, and welfare of the public.

**Source Note:** The provisions of this §851.104 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2012, 36 TexReg 8826; amended to be effective November 1, 2012, 37 TexReg 8019; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

**§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 judgment of the

Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm in connection with the performance of a professional geoscience service, and thereby jeopardize an interest of a client or employer of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm, 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.

**Source Note:** The provisions of this §851.105 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§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 public in the practice of their profession.

(b) 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 TBPG;

(2) Aid or abet, directly or indirectly:

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

(B) Any business entity in the practice of professional 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, would violate any provision of the Act or the rules of the TBPG.

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

(d) A Professional Geoscientist shall be responsible and accountable for the care, custody, control, and use of his/her Professional 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 TBPG immediately upon discovery of the loss, theft, or misuse. The Executive Director may invalidate the license number of the lost, stolen, or misused seal upon the request of the Professional Geoscientist if the Executive Director deems it necessary.

- (e) 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 TBPG known or suspected violations of the Act or the rules of the TBPG.
- (f) A Professional Geoscientist or Geoscience Firm shall keep adequate records of geoscience 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 geoscience services;
  - (4) Billing, payment, and financial communications; and
  - (5) Other relevant records.
- (g) Professional Geoscientists, a Geoscientists-in-Training, and Geoscience Firms must 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.

**Source Note:** The provisions of this §851.106 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§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) A Professional Geoscientist who fails to renew his/her license prior to its annual expiration date shall not use the title, "Professional Geoscientist" or the initials, "P.G." and shall not offer to or engage in the public practice of professional geoscience or otherwise engage in activities that require a license until after the Professional Geoscientist's license has been properly renewed.
- (c) 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 offer to or 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.
- (d) 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.

**Source Note:** The provisions of this §851.107 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.108. Criminal Convictions.**

- (a) The Texas Board of Professional Geologists (TBPG) will adhere to the provisions of Texas Occupation Code (TOC) Chapter 53 regarding the review of criminal convictions and certain deferred adjudications in regard to actions taken against an Applicant for a license or a license holder as a consequence of criminal conviction or certain deferred adjudications, as specified in TOC Chapter 53.
- (b) Crimes directly related to the duties and responsibilities of a Professional Geoscientist include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the practice of professional geoscience, such as the following:



- (1) Criminal negligence;
  - (2) Soliciting, offering, giving, or receiving any form of bribe;
  - (3) The unauthorized use of property, funds, or proprietary information belonging to a client or employer;
  - (4) Acts relating to the malicious acquisition, use, or dissemination of confidential information related to geoscience; and
  - (5) Any intentional violation as an individual or as a consenting person of any provision of the Act.
- (c) Any license holder whose license has been revoked under the provisions of TOC 53 due to incarceration may apply for a new license upon release from incarceration.

**Source Note:** The provisions of this §851.108 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2012, 36 TexReg 8826; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.109. Substance Abuse.**

- (a) If in the course of a disciplinary proceeding, it is found by the Appointed Board that a Professional Geoscientist's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code, contributed to a violation of the Act or the rules of the TBPG, the Appointed Board may condition its disposition of the disciplinary matter on the Professional Geoscientist's completion of a rehabilitation program approved by the Department of State Health Services.
- (b) A Professional Geoscientist's abuse of alcohol or a controlled substance that results in the impairment of the Professional Geoscientist's professional skill so as to cause or to have caused a direct threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for revocation or suspension of a Professional Geoscientist's license or other appropriate disciplinary actions provided by the Act.
- (c) In order to determine whether abuse of alcohol or a controlled substance contributed to a violation or whether the continued professional practice of a licensee is a threat to the public safety the Appointed Board may order an examination by one or more licensed health care providers authorized to provide diagnosis or treatment of substance abuse.

**Source Note:** The provisions of this §851.109 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.110. Effect of Enforcement Proceedings on Application.**

In accordance with §1002.401(b) of the Act, the TBPG may not issue a license pending the disposition of a complaint alleging a violation in Texas or another state if the TBPG has notice of the alleged violation.

**Source Note:** The provisions of this §851.110 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§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 another person.
- (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.

**Source Note:** The provisions of this §851.111 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

**§851.112. Required Reports to the TBPG.**

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

(1) Any changes in a firm's name, the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, Professional Geoscientist(s) employed by the firm, Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices, communication phone number(s) of the Authorized Official of the Firm or P.G.s, and any other changes as identified in §851.152 of this chapter;

(2) Any changes in an individual P.G.'s or Geologist in Training's (GIT's) mailing address or other contact information and any changes in employment status with a firm (e.g. leaving or starting employment with a current firm, any new additional place(s) of employment, etc.);

(3) 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 that requires registration by the TBPG to engage in the public practice of geoscience;

(4) The notification in paragraphs (1) - (3) 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;

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

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

(7) The settlement of or judgment rendered in a civil lawsuit filed against the licensee or Geoscience Firm relating to the Professional Geoscientist's or Geoscience Firm's professional geoscience services; or

(8) Final disciplinary or enforcement actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.

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

(d) A Geoscience Firm shall notify the TBPG in writing no later than thirty (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 only Professional Geoscientists of the firm;
  - (3) Employment status of the 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 professional geoscience services to the public in Texas; or
  - (5) Operation including addition or dissolution of branch and/or subsidiary offices.
- (e) Notice as provided in subsection (d) 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.
- (f) A Geoscience Firm that obtains a new certificate of authority from the Office of the Secretary of State or files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.

**Source Note:** The provisions of this §851.112 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

**§851.113. Duty to abide by Board Order and timely pay administrative penalty.**

- (a) All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.
- (b) All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code.
- (c) Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.
- (d) The Board may deny a person's request for a license, registration or certification, or the renewal of a license, registration, or certification if the person has failed to timely pay an administrative penalty.
- (e) When a person pays money to the Board, the Board may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.

**Source Note:** The provisions of this §851.113 adopted to be effective November 24, 2016, 41 TexReg 9138

***Subchapter D. Compliance and Enforcement.***

**§851.151. General.**

- (a) The Appointed Board is charged with the responsibility of enforcing the Act. Through the TBPG, the Appointed Board enforces the requirement of licensure as specified in the Act, the requirement of Geoscience Firm registration as specified in the Act, and all other requirements in the Act, the Code of Professional Conduct and other TBPG rules under the authority of the Act. Unless the person is licensed by the TBPG, a person may not:



- (1) Use the term "Licensed Professional Geoscientist", "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) When the TBPG discovers or is provided information that may indicate a violation of the Act or TBPG rules, the Board staff may initiate a complaint, as provided by TOC §1002.154. A member of the public may also submit a complaint, as provided by TOC §1002.154. In order for a complaint to be initiated by the agency or for information received from the public to be considered a complaint, the information initiated by Board staff or provided by the public must meet the criteria for a complaint provided in TOC §1002.202.
- (c) Before the Appointed Board suspends or revokes a license, the TBPG shall provide to the Respondent a notice of the proposed action, an opportunity to show compliance, and an opportunity for a hearing.
- (d) When a contested action is taken by the Appointed Board, the Respondent shall be informed of the Respondent's rights in regard to filing for judicial review, as provided in the Administrative Procedure Act (Government Code, Chapter 2001).

**Source Note:** The provisions of this §851.151 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.152. Firm Compliance.**

- (a) Unless registered with the TBPG or exempt from firm registration requirements under TOC §1002.351, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the seal of a Professional Geoscientist.
- (b) A business entity or sole proprietor that offers or is engaged in the non-exempt public practice of professional geoscience in Texas must register with the TBPG pursuant to the requirements of §851.30 of this chapter.
- (c) The Appointed Board may revoke a certificate of registration that was obtained in violation of the Act and/or TBPG rules including, but not limited to, fraudulent or misleading information submitted in the application.
- (d) A business entity or sole proprietor that is not registered with the TBPG 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 non-exempt public practice of geoscience by using the terms:
  - (1) "Professional Geoscientist;"
  - (2) "licensed geoscientist;"
  - (3) "registered geoscientist;"
  - (4) "licensed Professional Geoscientist;"
  - (5) "registered Professional Geoscientist;" or
  - (6) any abbreviation or variation of those terms listed in paragraphs (1) - (5) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.
- (e) The Appointed 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 TBPG rules or the Act by the firm or any employee of the firm. The Appointed Board also may take action against an Applicant pursuant to §851.110 of this chapter.

**Source Note:** The provisions of this §851.152 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective November 1, 2012, 37 TexReg 8019; amended to be effective June 1, 2013, 38 TexReg 3352; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 18, 2015, 40 TexReg 1384; amended to be effective March 15, 2016, 41 TexReg 1843

**§851.153. Professional Geoscientist Compliance.**

Any Professional 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 chapter shall be subject to legal and disciplinary actions available to the Appointed Board. Professional Geoscientists shall perform or directly supervise the geoscience services of any subordinates.

**Source Note:** The provisions of this §851.153 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

**§851.154. Loan Default Ground for Nonrenewal of License.**

(a) The TBPG complies with the provisions of Texas Education Code, Chapter 57, §57.491 in regard to the nonrenewal of a Professional Geoscientist license due to a default status with the Texas Guaranteed Student Loan Corporation (TGS LC).

(b) Upon receipt of notification from the TGS LC that a licensee is in default status on a loan or a repayment agreement, Board staff shall provide a notice to the licensee that it intends not to renew the license unless the licensee provides Board staff with a certificate from the TGS LC certifying that:

(1) The licensee has entered a repayment agreement or another repayment agreement on the defaulted loan or repayment agreement; or

(2) The licensee is not in default on a loan guaranteed by TGS LC or on a repayment agreement. The notice will provide an opportunity for a hearing to a licensee before the agency takes action concerning the nonrenewal of the license. The licensee shall be provided 30 days to request a hearing.

(c) A licensee shall file a request for a hearing within 30 days from the date of receipt of the notice provided in paragraph (b) of this subsection. Upon written request for a hearing by a licensee, Board staff shall refer the matter to the Office of the Attorney General for appropriate action. Hearings shall be conducted by the State Office of Administrative Hearings.

(d) If a timely request for a hearing is not made, no hearing will be held and the license will not be renewed unless the licensee provides Board staff with a certificate from the TGS LC indicating the licensee is not in default on a guaranteed loan or a repayment agreement.

(e) If a hearing on the nonrenewal is held, the Appointed Board shall review the results of the hearing and make a final determination.

**Source Note:** The provisions of this §851.154 adopted to be effective March 18, 2015, 40 TexReg 1384

**§851.155. Actions Following Certain Notifications Regarding Child Support Delinquency.**

(a) In accordance with the Family Code Chapter 232, on receipt of a final order from a court or the Title IV-D agency suspending a license, the Board staff shall immediately determine if the TBPG has issued a license to the individual named on the order and, if a license has been issued, Board staff shall suspend the license and record the suspension of the license in the TBPG's licensing records.

(b) Board staff shall implement the terms of a final order suspending license without additional review or hearing. Board staff shall provide notice of the suspension to the license holder and to any employers on record with the TBPG.

(c) A licensee whose license has been suspended under this section is not entitled to a refund for any fee paid to the licensing authority.

(d) On receipt of an order from a court or the Title IV-D agency vacating or staying an order suspending a license, Board staff shall promptly reinstate the suspended license. If the reinstated license is expired, Board staff shall provide a renewal notice to the licensee and provide for the license to be renewable online. Board staff shall provide notice of the reinstatement to the license holder's employers on record with the TBPG, upon a written request and payment of a license verification fee.

(e) In accordance with the Family Code Chapter 232, on receipt of a notice from a child support agency, as defined by Texas Family Code, §101.004 concerning an obligor who has failed to pay child support under a support order for six months or more that requests the authority to refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor, Board staff shall refuse to approve an application for issuance of a license to the obligor or renewal of an existing license of the obligor until the authority is notified by the child support agency that the obligor has:

(1) paid all child support arrearages;

(2) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(3) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(4) successfully contested the denial of issuance or renewal of license under Texas Family Code §232.1035(d).

(f) Board staff shall provide notice of the request to refuse to approve an application to the applicant or licensee.

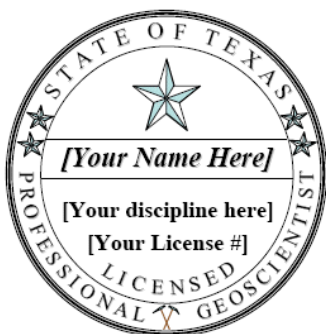
(g) Upon receipt of a notice from a child support agency, as defined by Texas Family Code, §101.004, that a request to refuse to act on an application has been withdrawn, upon receipt of a notice that a court has ordered that a request be withdrawn, or upon the receipt of any other legal action has been taken that would warrant it, Board staff shall notify the applicant or licensee and take up the review of an application held by the process described in this section and process the application, as appropriate.

**Source Note:** The provisions of this §851.155 adopted to be effective March 18, 2015, 40 TexReg 1384

#### **§851.156. Professional Geoscientist Seals and Geoscience Firm Identification.**

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist shall utilize 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 name and number are clearly legible.



(c) A Professional Geoscientist shall only seal documents that contain geoscience services performed by or under his/her direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

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

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

(f) All seals utilized by a license holder shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

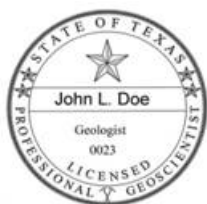
(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of his/her original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting FONT.

*John L. Doe*

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).



*John L. Doe*

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

- (i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.
- (j) A Professional Geoscientist shall take reasonable steps to insure the security of his/her physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.
- (k) 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 document as outlined in subsection (l) of this section before such document is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional 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."
- (l) The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding. All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. 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 printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.
- (m) Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist or Professional Geoscientists. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.
- (n) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services 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.
- (o) When a Professional 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; or
  - (2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.
- (p) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.
- (q) A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.
- (r) 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 Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(s) TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was placed under seal.

**Source Note:** The provisions of this §851.156 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2012, 36 TexReg 8826; amended to be effective November 1, 2012, 37 TexReg 8019; amended to be effective October 1, 2013, 38 TexReg 5731; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

### **§851.157. Complaints and Disciplinary Actions.**

(a) A complaint may be filed with the TBPG by a member of the public, a member of the Appointed Board, or by Board staff. Complaints against a person or entity whose activities are regulated by the TBPG must be made in writing, sworn to by the person making the complaint, and filed with the Secretary-Treasurer of the Appointed Board at the office of the TBPG in Austin. A complaint may be filed against any person who: holds a Professional Geoscientist license issued by the TBPG and/or is the Authorized Official of a Firm (AOF) registered by the TBPG, is a registered Geoscience Firm, or holds a certificate as a Geoscientist-in-Training issued by the TBPG. A complaint may also be filed against a person or firm that is not licensed or registered with the TBPG alleging that the person or firm has engaged in the unlicensed or unregistered public practice or offering of geoscience services in Texas. A state agency that becomes aware of a potential violation of the Act or a rule adopted by the Appointed Board may fulfill the requirements of the Act in Texas Occupations Code, §1002.207, by filing a formal complaint with the TBPG or providing the information relating to the potential violation in writing to Board staff. Information forwarded by a state agency that is privileged or confidential remains privileged or confidential following receipt by the TBPG. The privilege or confidentiality extends to any TBPG communication concerning the information forwarded, regardless of the form, manner, or content of the communication.

(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 acted upon by the TBPG unless the Complainant can show good cause 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 staff or an Appointed Board Member as a result of information that becomes known to the Board staff or an Appointed Board Member and that may indicate a violation.

(d) The TBPG 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) Submitted to the authorized staff deputy to the Secretary-Treasurer or electronically through the TBPG's internet website.

(D) The Board staff shall accept a complaint regardless of whether the complaint is notarized.

(2) A complaint that is initiated by a member of the Board staff or an Appointed Board Member must be:



- (A) Made in writing; and
  - (B) Signed by the person who became aware of information that may indicate a violation.
- (e) The TBPG 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. Information submitted to the TBPG that has not been filed as a complaint and the identity of the person who submits the information are not confidential. The TBPG maintains confidentiality or privilege of any confidential information submitted by a state agency under Texas Occupations Code, §1002.207. A state agency will inform the TBPG of the confidentiality or privilege provisions applicable to the information in accordance with procedures agreed upon between the agencies. If Board staff opens a complaint based on information it has received, the information becomes a part of the complaint record and is subject to the confidentiality provisions in Texas Occupations Code, §1002.202, in addition to any other confidentiality provisions that may apply.
- (f) Except in the case of a suspension under TOC §1002.403(3), the procedures involved in the investigation and dispensation of complaints usually include the following steps, generally in the following order, as appropriate:
- (1) Verify that the complaint meets legal requirements;
  - (2) Verify the identity of the Complainant (if complaint is not notarized);
  - (3) Open complaint and set up complaint record;
  - (4) Review complaint for TBPG jurisdiction;
  - (5) Review for imminent danger to the public health, safety, or welfare;
  - (6) Prioritize complaint as required by TOC §1002.154;
  - (7) Provide acknowledgement and notification to Complainant;
  - (8) Investigate complaint/complete confidential investigation report;
  - (9) Review of investigation with the possible outcomes of:
    - (A) Dismissal of complaint (with or without non-disciplinary advisory or warning); or
    - (B) Proposed finding of violation and proposed disciplinary action;
  - (10) If proposed finding of violation and proposed disciplinary action, written notices of violation providing opportunity to agree (accept proposed Agreed Board Order) or conference informally or request a hearing, if a hearing is provided for by law;
  - (11) Informal conference that may result in a modification to the proposed finding of violation and the proposed disciplinary action;
  - (12) Hearing with State Office of Administrative Hearings, if provided for by law and requested or scheduled by default, resulting in the issuance of a Proposal For Decision (PFD);
  - (13) Appointed Board review of resulting proposed Agreed Board Order, Board Order, or PFD. Upon the review of any proposed Agreed Board Order or Board Order, the Appointed Board may accept or reject the proposed Order. If a proposed Agreed Order is rejected, the Appointed Board may dismiss the complaint or direct Board staff to modify an order and propose the modified Order to a Respondent for later consideration.
- (g) The Appointed Board may impose appropriate sanctions against a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm, as applicable, 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 GIT 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 the Act or the person's firm or corporation does not employ a Professional Geoscientist as required under the Act; or

(10) Violating the Act, a rule adopted under the Act, 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.

(h) The Appointed Board may take the following disciplinary actions:

(1) Refuse to issue or renew a license;

(2) Permanently revoke a license;

(3) Suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the Appointed Board determines that the license 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 under this chapter;

(5) Impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(6) Require that a license holder participate in a peer review program under rules adopted by the Appointed Board;

(7) Require that a license holder obtain remedial education and training prescribed by the Appointed Board;

(8) Impose probation on a license holder requiring regular reporting to the Appointed 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 the Act;

(10) Impose an appropriate administrative penalty as provided by TOC Chapter 1002, Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under the Act; or

(11) Issue a cease and desist order.

(i) Allegations and disciplinary actions will be set forth in the final 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; or

(9) Any other matters impacting justice and public welfare.

(j) The Appointed Board shall consider the following factors in determining the amount of an administrative penalty assessed by the Appointed Board:

(1) An administrative penalty shall not exceed the dollar amount specified in the Act for each violation. Each day a violation continues is a separate violation for the purposes of imposing a penalty.

(2) The amount of an administrative penalty shall be based on:

(A) The seriousness of the violation, including:

(i) The nature, circumstances, extent, and gravity of any prohibited acts; and

(ii) The hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) The economic harm to property or the environment caused by the violation;

(C) The history of previous violations;

(D) The disciplinary action or amount of administrative penalty necessary to deter a future violation;

(E) Efforts or resistance to correct the violation; and

(F) Any other matter that justice may require.

(k) 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 Appointed 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.

(l) All disciplinary actions shall be permanently recorded and made available upon request as public information.

**Source Note:** The provisions of this §851.157 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective January 1, 2014, 38 TexReg 9368; amended to be effective December 11, 2014, 39 TexReg 9539; amended to be effective March 15, 2016, 41 TexReg 1843

#### **§851.158. Actions Against Non-License Holders.**

A non-license holder who is assessed an administrative penalty may exercise due process rights under Texas Occupations Code Chapter 1002, Subchapter J. The Appointed Board may also seek an injunction as provided under Texas Occupations Code Chapter 1002, Subchapter K.

**Source Note:** The provisions of this §851.158 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

### ***Subchapter E. Hearings - Contested Cases.***

#### **§851.201. Contested Case Hearings.**

The State Office of Administrative Hearings shall conduct all formal hearings and contested cases in accordance with the Administrative Procedure Act (APA), Chapter 2001, Texas Government Code and Texas Administrative Code, Title 1, Chapter 155.

**Source Note:** The provisions of this §851.201 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

#### **§851.202. Extensions of Time.**

The Executive Director may enter into an agreement with parties to a contested case to modify time limits as provided under the Administrative Procedure Act (APA), Texas Government Code §2001.147.

**Source Note:** The provisions of this §851.202 adopted to be effective December 15, 2010, 35 TexReg 10695; amended to be effective December 11, 2014, 39 TexReg 9539

### **§851.203. Defaults.**

- (a) The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board's records.
- (b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board.
- (c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing.
- (d) Contesting a final order issued following a default. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:
  - (1) the default was neither intentional nor the result of conscious indifference;
  - (2) the respondent has a meritorious defense;
  - (3) a new hearing will not cause delay or otherwise injure the Board; and
  - (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.
- (e) Failure to Prosecute. If a party who does not represent TBPG Board or staff and who has the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case.
- (f) Applicants for licensure bear the burden to prove fitness for licensure.

**Source Note:** The provisions of this §851.203 adopted to be effective November 24, 2016, 41 TexReg 9138

### **§851.204. Costs of Administrative Hearings.**

- (a) If a person files a suit for judicial review of an agency decision in a contested case, the Board shall request that the contested-case hearing be transcribed.
- (b) Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.
- (c) Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court.
- (d) Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.
- (e) Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the Board sends a request for payment and copy of the documentation of costs to the respondent's last known address as shown by the Board's records or to the respondent's attorney if any.

- (f) The Board may deny a person's request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.
- (g) When a person pays money to the Board, the Board may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.

**Source Note:** The provisions of this §851.204 adopted to be effective November 24, 2016, 41 TexReg 9138