

**TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**  
*Compliance and Enforcement Committee*

October 8, 2009  
4:00 P.M.

**Summary of Minutes**

- A. The meeting was called to order at 4:26 p.m.
- B. Roll was called and a quorum was certified. Members present were Committee Chair Glenn Lowenstein, P.G., Kelly Krenz-Doe, P.G., Y. Lynn Clark, P.G., and Dr. Tom Hallmark, P.G.
- C. Regarding approval of minutes from the August 7, 2009 Compliance and Enforcement Committee Meeting. The minutes were unanimously approved as written.
- D. Public comment. Mr. Matthew Cowan, P.G. was present as a member of the public. He addressed interest in Agenda Item J and the issue of “public versus private”.
- E. Regarding the Complaint Review Team meeting held in September 2009. Of the two complaints under review, only one of the individuals had responded to TBPG. Once both individuals have responded, Agreed Board Orders will be drafted and brought before the Board for approval.
- F. Regarding the Corrective Action Specialists project status. There were 130 originally firms contacted. A total of 9 cease and desist letters were sent out. Twenty-one firms did not respond at all.
- G. Regarding expired Geoscience Firm registrations. For the 55 geoscience firms that have expired registrations, a letter has been drafted and will be sent to the firms on the list to encourage renewals of registration.
- H. Regarding TBPG rule review. It was determined that Mr. Horton would systematically go through the Compliance and Enforcement rules to ensure they include all necessary items for enforcement. Any proposed revisions to current rules will be presented to the committee for approval at a later date.
- I. Regarding the posting of Disciplinary Actions on the agency website. The committee has determined that the date on the chart should clarify whether it is the date of the disciplinary action or the date of the order signed. Additionally, it was determined that a note should be included on the webpage regarding requests for further information.
- J. Regarding the issue of “public vs. private”. It was mentioned that the words “the public” when used together mean members of the community in general. The committee unanimously approved clarifying the term “practicing before the public” to mean practicing before the public at large for use in the committee and for enforcement purposes. It was also determined to be an appropriate subject for a future advisory opinion. Until it is published as an opinion, it was determined that an FAQ will be written for the website by Members Krenz-Doe and Lowenstein to provide guidance on the issue of “public versus private”.

- K. Regarding Phase II Environmental Site Assessments (ESAs). It was determined that Phase I ESAs primarily deal with real estate transactions and whether contamination exists on a piece of property. Phase I ESAs can be done by a Professional Engineer, a Professional Geoscientist, or an Environmental Professional with 5 years of experience. However, Phase II ESAs confirm the presence or absence of contaminants. It was determined that:
- a. If there is subsurface work that is done, it would be considered geoscience.
  - b. If it simply collecting samples and labeling them, it would not be geoscience.
  - c. If there are conclusions drawn from the information gathered, it is geoscience.

Other questions presented were:

- a. Whether Phase II ESAs are geoscience exclusively?
- b. Can those who hire for Phase II ESAs be required to hire Professional Geoscientists?
- c. Can it be pointed out to entities that they are hiring unlicensed people to do the public practice of geoscience?

Committee conclusion: some Phase II ESAs are strictly geoscience; some are not. These will have to be determined on a case-by-case basis.

- L. Regarding specific geoscience products signed and sealed as engineering. This item was addressed in combination with item M.
- M. Regarding Affected Property Assessment Reports (APARs). A question was received by staff: Can an engineer perform and submit an APAR? Conclusion: Not if involves geoscience. However, it was determined that some engineering is involved in some of these reports, depending on the person preparing it.
- N. Regarding outreach to oil and gas sector. Member Krenz-Doe reported on the oil and gas and industry advisory committees. There has been discussion with those in the geophysics community, and oil and gas industry to find assistance for advisory issues.
- O. Regarding the generation of an oil and gas prospectus and applicability of the Texas Geoscience Practice Act. A P.G. had contacted staff because he has acquired specific knowledge of shady activity regarding an oil and gas prospectus. It was determined that a complaint could be filed by the P.G. to address the specific situation and determine jurisdiction. A determination cannot be made unless more specific information is submitted. If the specific complaint involves criminal activity or fraud, it would be investigated by the Office of the Attorney General.
- P. Regarding the complaint process and the fee schedule for violations. A complete review of the sanctions table was recommended. TBPG statute has a maximum penalty of \$100 per violation per incidence.
- Q. Regarding other committee actions that may be relevant to the Compliance and Enforcement Committee. This item was not addressed.
- R. Regarding education outreach and the GIT program. This item was not addressed.
- S. Regarding follow up actions and future topics. Future topics include rule revisions regarding enforcement, and updating the sanctions table.
- T. The next meeting date is scheduled on January 28, 2010 in Austin.
- U. The meeting was adjourned at 6:56 p.m.