

JOINT MEETING MINUTES
TEXAS BOARD OF PROFESSIONAL ENGINEERS
AND TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
1917 IH-35 SOUTH – BOARD ROOM
AUSTIN, TEXAS 78741
DECEMBER 11, 2009
2:00 P.M.

Call to Order. Ms. Barbara Roeling, P.G., TBPG, Co-Chair, called the joint meeting of the Texas Board of Professional Engineers (TBPE) and the Texas Board of Professional Geoscientists (TBPG) to order on December 11, 2009, at 2:40 p.m. at the TBPE office, 1917 IH-35 South, Austin, Texas. (Note: All votes are unanimous unless otherwise stated.)

1. Roll Call and Welcome Visitors.

The following Committee members were present:

Shannon K. McClendon, TBPE	Co-Chair
Barbara O. Roeling, P.G., TBPG	Co-Chair
Y. Lynn Clark, P.G., TBPG	Member
James Greer, P.E., TBPE	Member
Gregory Ulmer, TBPG	Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General representing TBPE, and Mr. Kevin Heyburn, Assistant Attorney General representing TBPG, were present to provide legal counsel. Also present were the following staff members:

Charles Horton	Interim Executive Director, TBPG
Lance Kinney, P.E.	Interim Executive Director, TBPE
C. W. Clark, P.E.	Director of Compliance & Enforcement, TBPE
David Howell, P.E.	Director of Licensing, TBPE
Alberto Jimenez, P.G.	Investigator, TBPG
Molly Roman	Administrative Coordinator, TBPG
Dorothy Nieto	Executive Assistant, TBPE

Visitors. Peyton McKnight, Texas Council of Engineering Companies (TCEC).

2. Public Comment. None.

Discuss and Possibly Act on the Following Items:

3. Discuss and possibly approve the April 30, 2009, minutes of the joint meeting of the Texas Board of Engineers and Texas Board of Geoscientists.

It was MOVED/SECONDED (McClendon/Clark) to approve the April 30, 2009, minutes of the joint meeting of the TBPE and the TBPG with several minor editorial changes. A vote was taken, and the MOTION PASSED.

4. Discussion and possible action regarding firms registered with the TBPE that offer and provide geoscientific services that do not appear to be incidental and specific to engineering.

Mr. Horton stated that, in a recent rule amendment proposal, the TBPG Board proposed a change that would expressly limit the offering of, or provision of, public geoscientist services by a firm or corporation to firms registered by the TBPG, except geoscientist work that is performed by an engineering firm, if the work is "incidental and specific" to engineering work being performed. This rule change is consistent with the engineering firm registration requirement. The TBPG received a public comment that the language in §1002.351(b) limits the TBPG's authority to require geoscience firm registration of an engineering firm that practices in both professions. The issue is the wording of the second and third sentences of §1002.351(b). The TBPG concern is

that there are engineering firms that are registered with the TBPE Board that are providing geoscience services that are not incidental and specific and believe they should be registered with the TBPG Board.

Mr. McKnight with TCEC addressed the Committee and commented that these are statutory language issues which require legislative approval for a change. Mr. McKnight agrees that someone providing geoscience services must be registered with the TBPG but the language does not necessarily require a registered engineering firm to register with the PG Board.

Mr. Clark added that at the time of the development of the Geoscience Act there was a lot of give and take by both professions and the exemption language did not seem to be an issue. Mr. Clark opined that the statutory language does not prohibit the TBPG Board from requiring firms providing geosciences services to be registered with the TBPG Board. In his opinion, it is the responsibility of both boards to protect the health, safety, and welfare of the public and that the creation of the Joint Committee was to address any issues that come between the professions. Mr. Greer stated that he believes any individual or firm practicing out of their competency should be addressed by the Joint Committee. Ms. Roeling agreed that examples should be provided to the Committee members and discussed.

The Committee members discussed the MOU procedure and the proposed rule by the TBPG Board. Mr. Heyburn commented that the Joint Committee cannot address the issue brought up by Mr. McKnight because it is a statute and must be addressed by the legislature. He suggested the Joint Committee can review instances where engineering firms may be engaging in the incidental practice of geoscience and focus on that problem. Mr. Heyburn and Mr. Horton worked on a possible amendment to the current TBPG/TBPE MOU and presented it to the Joint Committee. Mr. McKnight mentioned that this had not been brought to his attention and that he merely received the information through the Texas Register and noticed the change that contradicted the statute. Ms. Roeling commented that the TBPG Board is not looking at this change from an economic standpoint but rather for a service to the public, and the intent of the TBPG Board is to monitor the geoscience aspect in an engineering firm. Mr. McKnight stated that he believes the Joint Committee is the appropriate venue to identify and discuss engineering firms providing geosciences services. Ms. McClendon clarified that the MOU does not allow the Joint Committee to implement sanctions or penalties when a party is identified but rather to inform them if there is an issue and what the proper next steps are. If the identified firm does not agree then each Board will follow the proper enforcement processes. Mr. Heyburn suggested that the Joint Committee add the proposed amendment to the current MOU. Ms. Roeling mentioned that the additional wording includes firms. The Committee agreed that the MOU be addressed at the next scheduled Joint Committee and have staff work on the additional proposed language.

It was MOVED/SECONDED (Roeling/Clark) to ask the Interim Executive Directors to work with general counsel and draft proper wording to address the engineering firms providing geosciences services and present to individual Boards for approval then to the Joint Committee to approve to add the MOU. A vote was taken, and the MOTION PASSED.

5. **Discussion and possible action regarding the clarification of the process of handling a complaint against:**
 - a) **A Professional Geoscientist that engages in the practice of engineering, and**
 - b) **A Professional Engineer that engages in the practice of geoscience**

Mr. Horton presented a flow chart of the process each Board would use to handle a complaint as envisioned by the TBPG staff.

It was MOVED/SECONDED (Greer/Clark) to recommend to each Board to consider approving the TBPE/TBPG complaint process flow chart presented by the TBPG and include it as part of the MOU.

Ms. McClendon recommended an amendment to the initial motion to have the flowchart mirror and include the TBPE.

It was MOVED/SECONDED (Greer/Clark) to accept the amendment to the motion. A vote was taken, and the MOTION PASSED.

6. **Discussion and possible action regarding the possible development of a guidance document to display which licenses (PG and PE) are authorized to perform frequently performed tasks (or specific parts of tasks), including, but not limited to:**

- **Phase II Environmental Site Assessments**
- **Affected Property Assessments and Associated Reporting**
- **Leaking Petroleum Storage Tank Corrective Assessment**
- **Installation of Extraction Wells for the Use in Remediation**
- **Other examples, as applicable**

Ms. Roeling mentioned that the intent of this discussion is to come up with a list pointing out what is engineering and what is geoscience. The TBPE 1995 Policy Advisory made the PG Board realize this was already defined and they appreciate the PE Board's work. As cases come through, the TBPG Board will look to the Joint Committee to clearly define the overlap. The TBPG Board will initialize this policy as a guidance tool. The TBPG Board will be preparing policy advisories, and/or documentation on the different activities mentioned above delineating what is the practice of geoscience. The TBPG Board will correspond with the TBPE Board when something is not clearly identified. The Joint Committee may consider a working group to assist with this task. Mr. Kinney ensured the Joint Committee members that any change to the 1995 policy advisory must go through a process and be presented to the TBPE Policy Advisory Opinion Committee.

7. **Executive Directors' Reports**

Mr. Kinney informed the Joint Committee that the Executive Director position is currently vacant. He is serving as Interim Executive Director. Mr. Clark congratulated Mr. Kinney and informed him that everyone is delighted to have him serve as Interim Executive Director. He would also like to add that the TBPG Board thanks Ms. Beebe Farrow for an excellent job as the TBPE Executive Director, and enjoyed working with her.

Mr. Horton reviewed the rule changes adopted at the TBPG June Board meeting. The TBPG Board will review proposed rules changes which outline the process for becoming a Geoscientist In Training (GIT) certificate holder and maintaining the status. He added that he is currently reviewing all the TBPG rules. He is also reviewing all the firms that have failed to renew with the Board. He reported that the number of enforcement cases has increased and they are further defining the complaint process. He reported that three outreach presentations have been completed. TBPG has also been approved for an increase in staff; one of the staff positions is being held for Col. Hess, and of the approved positions the majority will go to the Enforcement division.

8. **Consideration of future agenda items**

The Committee members would like to discuss the MOU, the flow chart, and possibly discuss and review individuals/firms practicing in the overlap area at the next scheduled joint meeting.

9. **Set next joint meeting date**

Ms. Nieto will send out a matrix with possible dates in April 2010.

Adjourn.

Ms. Roeling adjourned the meeting at 4:26 pm.

Date the minutes were approved as edited:

May 19, 2010

Date minutes were accepted by the TBPE Board:

August 26, 2010