

Texas Board of Professional Geoscientists



Complaint Investigation and Enforcement Standard Operating Procedures (SOP)

November 20, 2020 Revision

Table of Contents

| | Page |
|---|-----------|
| I. Introduction | 2 |
| Enforcement Policy..... | 2 |
| II. General Overview..... | 2 |
| Definitions..... | 4 |
| III. Complaint Process | 4 |
| Complaint Form..... | 4 |
| Assist Complainant | 5 |
| Open Complaint..... | 5 |
| Jurisdictional Review..... | 6 |
| Determination of Immediate Threat | 7 |
| Prioritize..... | 7 |
| Investigator Assigned..... | 7 |
| Investigation and Report..... | 8 |
| Enforcement Coordinator Reviews Complaint..... | 8 |
| Complaint Review Team | 9 |
| Notice of Alleged Violation | 10 |
| Response to Notice of Alleged Violation..... | 11 |
| Alternative Dispute Resolution; Informal Settlement Conference..... | 11 |
| Proposed Agreed Board Order / Default Board Order | 12 |
| Formal Hearing | 12 |
| Appointed Board Review of Proposal for Decision..... | 13 |
| Final Board Order | 13 |
| Judicial Review..... | 13 |
| IV. Compliance Investigations..... | 13 |
| V. Complaint Case Actions..... | 14 |
| Formal Disciplinary Action | 14 |
| Grounds for Disciplinary Action..... | 14 |
| Compliance Tracking..... | 16 |
| Public Information | 17 |
| Recordkeeping..... | 17 |

Appendix A: Penalties and Suggested Sanctions Table

Texas Board of Professional Geoscientists Complaint Investigation and Enforcement

STANDARD OPERATING PROCEDURE

I. INTRODUCTION – ENFORCEMENT POLICY

The Texas Board of Professional Geoscientists (TBPG) has been given authority and responsibility by the Texas Legislature to oversee the public practice of geoscience in Texas. It is the intent of the Appointed Board that, in accordance with the Texas Geoscience Practice Act (TGPA) and TBPG's rules, only licensed Professional Geoscientists in this state engage in the non-exempt, public practice of geoscience. It is the policy of the Appointed Board to protect the public from the unlicensed and unregistered practice of geoscience by taking appropriate actions with those practicing non-exempt, public geoscience without a license or registration. The TBPG also protects the public by enforcing the Code of Professional Conduct and all other requirements.

TBPG carries out its enforcement responsibilities by receiving complaints from the public; initiating complaints when members of the Appointed Board or TBPG Staff become aware of potential violations; conducting investigations of formal complaints; initiating compliance investigations; and imposing disciplinary action against holders of licenses, registrations, or certifications issued by the Appointed Board to protect public health, safety and welfare.

The Appointed Board recognizes the need to have policies and procedures in place to ensure prompt, fair, and consistent action when violations occur and enforcement is necessary.

This procedures manual is intended only to be a guidance document for TBPG Appointed Board Members, TBPG Staff, and the public to ensure prompt, efficient and consistent handling of investigations and enforcement. These procedures are written with some references to the Texas Geoscience Practice Act and the TBPG's rules. Consideration of this TBPG Complaint Standard Operating Procedures (SOP), the TGPA and TBPG rules provides the best understanding of TBPG's complaint procedures. If there is a conflict between this SOP and State law or TBPG rules, State law or TBPG rules will prevail.

This Standard Operating Procedure was developed in consultation with the Assistant Attorney General assigned to the TBPG and the Chief of the Administrative Law Division, Office of Attorney General with particular regard to the function of Complaint Review Team non-public meetings in July 2016. This SOP is updated regularly to reflect changes to TBPG rules.

II. GENERAL OVERVIEW - DEFINITIONS

A complaint may be filed with the TBPG by a member of the public (a licensed Professional Geoscientist, a consumer of geoscientific services, staff of other local, state or federal agencies, etc.), a member of the Appointed Board, or by TBPG Staff. A complaint may be filed against a Professional Geoscientist (PG) licensed by TBPG; a Geoscientist in Training (GIT) certified by TBPG; or a Geoscience Firm registered by 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 geoscientific services in Texas.

A complaint against a registered Geoscience Firm will be directed to the Authorized Official of the Firm (AOF).

The implementation of enforcement procedures is the ultimate responsibility of the Executive Director. The Appointed Board has the ultimate authority regarding disciplinary actions taken as a result of a complaint.

The complaint process includes review of complaint investigations performed by a Complaint Review Team (CRT). A meeting of a CRT does not result in the taking of any formal action. A CRT reviews certain complaint investigations for the purpose of recommending to the Appointed Board whether to pursue possible disciplinary action (through prescribed procedures) or dismiss a complaint. A CRT will typically consist of the TBPG Enforcement Coordinator and two Appointed Board members (including one professional and one public Member). Meetings of a CRT are informal. A meeting of a CRT does not constitute a quorum of the Appointed Board or a Board Committee and is not subject to the Open Meetings Act. The Executive Director or designee will preside over CRT meetings and assist those evaluating the complaint by providing information regarding agency processes. The Assistant Attorney General (AAG) assigned to the agency or designee will attend CRT meetings, as needed, to advise the CRT regarding legal matters. The Enforcement Coordinator and Appointed Board Members' role is to evaluate the complaint investigation, consider any new information that is presented at a CRT meeting, and either recommend the finding of violation(s) (and propose specific disciplinary action through a proposed Agreed Board Order) or to recommend that the Appointed Board dismiss the complaint (with or without an informal advisory). A CRT may also make no recommendation regarding a complaint case if it determines that further information is needed. In such a complaint case, TBPG Staff are directed to follow up by attempting to obtain the further information and resetting the complaint case for another CRT review. CRT meetings are not recorded by the agency and minutes are not taken; however, CRT recommendations will be documented in writing on the appropriate agency form.

Complaint confidentiality: Complaints received or opened by the TBPG are confidential until the TBPG files charges. Texas Occupations Code §1002.202 specifies when a complaint is and is not confidential and when actions taken by the Appointed Board are subject to disclosure or made public:

§1002.202 (e) The board shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint.

Complaint information is not confidential after the date formal charges are filed.

(f) For any complaint 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 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.*

It is not a breach of confidentiality to notify or otherwise inform a party to a complaint, including a witness, that a complaint has been filed or to discuss information regarding a complaint.

Quarterly Reports: In the event that resolution of a complaint takes longer than ninety (90) calendar days, TBPG must provide a status report on the complaint investigation to the Complainant and Respondent (if appropriate) on a quarterly basis.

Definitions: All terms in this procedure that are defined in the TBPG’s rules or the Texas Geoscience Practice Act have the meanings set forth therein.

In addition, this document also uses:

“C” to mean a Complainant, and,

“R” to mean a Respondent (to a complaint).

IMPORTANT NOTES ON DEFAULT PROCESS:

When the TBPG files charges against the Respondent to a complaint, TBPG will issue to the Respondent a Notice of Alleged Violation letter (NOV). The NOV will be sent to the Respondent at the last (most recent) known address as shown by the agency’s record via regular US First Class mail and by certified or registered mail, return receipt requested. If the Respondent does not respond to a NOV, the waiver and default procedures set in TBPG rule §851.158 shall be followed.

III. COMPLAINT PROCESS

The following description of the TBPG complaint process is organized to complement a display of the complaint process that is included in the appendices. The following sections are numbered so that the sections correlate to the numbering of elements in the “TBPG Complaint Process Flowchart.”

1. Complaint form: Complaints and investigations under Texas Occupations Code, Chapter 1002 are of two types: (a) complaints received from a member of the public; and (b) complaints and investigations that are initiated by the TBPG as a result of information that becomes known to the TBPG or TBPG Staff and that may indicate a violation.

The agency provides the complaint form that should be used to file a complaint. 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 TBPG Staff deputy to the Secretary-Treasurer or electronically through the TBPG’s internet website. The TBPG will accept a complaint regardless of whether the complaint is notarized.

A complaint that is initiated by the TBPG must:

(1) be made in writing; (2) be signed by the person who became aware of information that may indicate a violation.

A complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be considered to be within the jurisdiction of the TBPG unless the Complainant can show good cause to the TBPG for the late filing or the complaint alleges conduct that posed a significant threat to public safety.

If the TBPG receives information from an individual that alleges that a license-holder or registered firm has violated the Texas Geoscience Practice Act (the Act), the TBPG’s rules, or other relevant statutes or rules, or that an unlicensed individual or unregistered firm has violated the Act, TBPG

Staff will contact the individual who submitted the information, provide information to that individual regarding the limits of confidentiality of their identity, provide a copy of the TBPG's complaint form to the person, and inform the individual of the proper procedure to file a complaint. If, after approximately 15 calendar days from the date that the person was provided complaint process information, the person has not filed a complaint, the Enforcement Coordinator will evaluate the information that has been provided and make a determination whether the agency has sufficient information to indicate that a violation of law or rules may have occurred. If the Enforcement Coordinator determines that a violation may have occurred, the Enforcement Coordinator will file a complaint, using the TBPG's complaint form. If the Enforcement Coordinator determines that there is not sufficient information to indicate that a violation may have occurred, the information received will be placed in a file and retained for one year. No further action will be taken, unless additional information is received or discovered, or a formal complaint related to the matter is received.

If the agency receives information from an anonymous source that may indicate a possible violation of the Act or TBPG rules, (which would include information that may indicate a possible violation on a complaint form that has not been signed) or discovers information (e.g. through review of information provided to the TBPG from other state agencies, news media, government program provider lists, listings of professional associations or societies, telephone books, or business yellow pages, etc.) that contains verifiable prima facie evidence that a violation occurred, the Enforcement Coordinator may submit a complaint, using the TBPG's complaint form. Consistent with the Board's long standing policy, complaints will not be opened against former licensees for simply not renewing their license.

2. Verify and/or Assist Complainant, as needed: When a sworn complaint is received from the public, TBPG Staff will contact the Complainant to verify that the Complainant filed the complaint. The TBPG Staff who contacts the Complainant will document the verification or lack thereof. If the individual whose name/apparent signature appears on the complaint form denies that he or she submitted the complaint, the information submitted will not meet the definition of a complaint as defined in the Act. A submitted complaint form that has not been signed also does not meet the definition of a complaint in the Act. In either case, the agency will consider the information as if it had been submitted anonymously. TBPG will process the information received in the same manner as any other information it receives anonymously.

If a sworn complaint is received in which a jurisdictional allegation has been made, but the complaint form is incomplete or if it appears that insufficient information has been provided regarding the alleged violation to conduct an investigation, TBPG Staff will contact the Complainant to assist in the completion of the complaint form. If, after investigative follow-up, sufficient information to commence an investigation regarding the alleged violation is not submitted, the complaint will be recommended for dismissal.

3. Open complaint: A complaint must contain sufficient information for the TBPG to determine whether the TBPG has the jurisdiction and authority to resolve the complaint. A complaint must have sufficient information for the TBPG to commence an investigation, though the amount of information ultimately required for the TBPG to determine the validity of the complaint may be more than the information initially included with the complaint.

Upon the receipt of a written, sworn complaint from a member of the public that contains sufficient information to determine whether the TBPG has jurisdiction and authority, the complaint will be opened. A complaint opened by TBPG is typically submitted by the Enforcement Coordinator. The

Enforcement Coordinator/designee will also open a complaint submitted by an Appointed Board Member or TBPG Staff upon receipt of the complaint.

When a complaint is opened, TBPG Staff will establish an electronic complaint record in the agency database and a “paper” complaint file and assign the complaint a unique number for tracking and communication purposes. As each complaint is processed, the following minimum information will be developed and/or recorded, as applicable, for each complaint filed with the TBPG:

1. The name and contact information of the person who filed the complaint;
2. The date the complaint was received by the TBPG (a complaint will be considered open on the date that the TBPG receives the complaint—the date that the agency date stamp indicates that the mail was opened, the date of an e-mail on which a scanned complaint has been attached, the date of a fax that includes a complaint, or the date that an employee or member of the Appointed Board signed a complaint);
3. The subject matter of the complaint and a brief summary of supporting evidence;
4. The name and contact information of each person contacted in relation to the complaint investigation;
5. A summary of the results of the investigation;
6. An explanation of the reason the file was closed.
7. Final disposition of the complaint and actions taken.

The progress of a complaint will be tracked in the agency database. All documentary information received by the agency regarding a complaint will be maintained in a physical complaint file.

4. Jurisdictional Review: The Enforcement Coordinator/designee will review a complaint for jurisdiction. 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 (PG). If the Enforcement Coordinator determines that a complaint does not appear to be within the TBPG’s jurisdiction, the complaint will be dismissed. The Enforcement Coordinator will notify both the Complainant and Respondent of the dismissal and report the dismissal to the Appointed Board, along with all other complaints that are dismissed for lack of jurisdiction since the last report of dismissed complaints to the Appointed Board. A decision by the Enforcement Coordinator to dismiss a complaint as non-jurisdictional is final. There is no appeal of the Enforcement Coordinator’s determination that results in a complaint being dismissed. However, if the Complainant submits new information that, in the judgment of the Enforcement Coordinator, supports a new jurisdictional allegation or that supports the original allegation, a new complaint may be opened.

If the Enforcement Coordinator is uncertain or cannot determine whether a complaint is within the TBPG’s jurisdiction, the complaint may be scheduled for a CRT to determine whether the complaint is within the TBPG’s jurisdiction. If the complaint is determined to be within the TBPG’s jurisdiction, the complaint will proceed to the next step in the process. If the complaint is not within the TBPG’s jurisdiction, the CRT will recommend that the Appointed Board dismiss the complaint.

If a complaint is determined to be outside of the TBPG’s jurisdiction, but is believed to be within the jurisdiction of another governmental regulatory agency, the Complainant will be notified in writing and referred to the appropriate authority. TBPG Staff may also provide information to another state agency as long as the other state agency is made aware of the confidentiality provisions of the information (when applicable).

5. Determination of Immediate Threat: A complaint against a licensee, registered firm, or certificate holder that has been determined to be within the jurisdiction of the TBPG will be reviewed by the Executive Director/designee to determine whether there is substantial evidence to indicate that continued licensure, firm registration, or certification poses an immediate and ongoing threat to the safety and wellbeing of the people of Texas. If it is determined that such a threat exists, an emergency meeting of the TBPG's Officers will be convened, in person, if meeting in person is feasible, or via a telephone conference call or other acceptable electronic meeting media. The TBPG Officers have the discretion of whether or not to include the Complainant and/or the Respondent to the complaint. If the TBPG Officers determine that there is substantial evidence to indicate that continued licensure, firm registration or certification poses an immediate and ongoing threat to the safety and wellbeing of the people of Texas, an emergency suspension of the license will be initiated. An emergency suspension will be imposed as provided by the Administrative Procedure Act, Texas Government Code, Ch. 2001. The Assistant Attorney General will provide the TBPG Officers guidance through the review and, if applicable, the emergency suspension process.

6. Prioritize: Although the TBPG will utilize its resources to expedite the resolution of all complaints as quickly as is feasible, agency resources will be deployed in a prioritized fashion. Per TOC §1002.154, a complaint that alleges an action that may harm the public takes precedence over a complaint that does not allege an action that may harm the public or may harm the public to a lesser degree. With regard to complaints that do not allege an action that may harm the public, a complaint filed by a member of the public takes precedence over a complaint initiated by the TBPG. TBPG Staff indicate the prioritization of each complaint in the complaint record in the agency database.

7. Investigator assigned/notices sent to C and R: After a complaint has been prioritized, an investigator will be assigned. TBPG Staff will notify the Complainant that the complaint has been received and provide information to the Complainant related to the processing of the complaint filed with the TBPG. Unless notification of the Respondent would jeopardize the investigation, TBPG Staff will also notify the Respondent that a complaint has been received, request a response to the complaint, provide the Respondent with sufficient information to respond to the complaint, and provide information to the Respondent related to the processing of a complaint filed with the TBPG. In most cases the information provided will be a copy of the complaint form and copies of exhibits submitted to support the complaint. If, in the judgment of the Enforcement Coordinator, in consultation with the Executive Director, notifying the Respondent that a complaint has been filed before an investigation has been initiated would jeopardize the integrity of an investigation, the Enforcement Coordinator may notify the Respondent of the complaint at another appropriate time during the investigation (such as when an investigator arrives at a practice site to interview the Respondent). Investigators may be TBPG Staff or contractors.

Attorney representation: A Respondent may elect to have an attorney represent him or her in a complaint before the TBPG. In order for the TBPG to communicate with an attorney regarding a complaint case over the phone or via mail/e-mail, the attorney/firm or the Respondent will notify the TBPG of the representation in writing. After such notification is received, future correspondence will be sent to the representing attorney or as otherwise specified. An attorney who accompanies a Respondent to a meeting will not be required to have written documentation of the representation, so long as the Respondent attests that the attorney is representing him or her. A Respondent may also designate, in writing, another person who is not an attorney to speak for him or her by providing a written statement designating the person as authorized to speak for Respondent.

8. Investigation/Report: The complaint investigation may be conducted by TBPG Staff or contractors or both. The investigation may include review of files or other materials; interviews with the Complainant, Respondent, and other knowledgeable or affected parties; and other investigative techniques as circumstances dictate. The assigned investigator will maintain relevant documentation in the complaint file. Appropriate documentation will include, but not be limited to, copies of correspondence, reports, photographs, records of interviews, written statements and affidavits. Any material included in the investigation report to document potential violations will be dated and initialed by the investigator.

Relevant communications and notices will be sent to the Respondent at the last (most recent) known address as shown by the agency's record via regular US First Class mail and by certified or registered mail, return receipt requested.

The investigator will complete a complaint investigation report. If, in the investigative report, the investigator recommends the dismissal of a complaint or the finding of violation(s) and/or specific disciplinary actions, a CRT is not obligated to concur when it reviews the complaint case. The opinion of the CRT may be different from that of the investigator as reflected in the investigative report. The report will identify all pertinent identifying information and include a summary of the complaint, a summary of the investigation, and investigative findings relative to any evidence that a violation occurred, along with a recommended sanction or resolution, if appropriate.

9. Enforcement Coordinator reviews complaint: The Enforcement Coordinator will review every completed complaint investigation report.

a. The Enforcement Coordinator will dismiss non-jurisdictional, meritless, and administrative meritless, and non-jurisdictional complaints.

i. Non-jurisdictional complaints—The TBPG has no jurisdiction over the conduct described in the allegations.

ii. Meritless complaints—a) allegations are unfounded (investigation of the complaint found no evidence to show a violation of board statute or rules); b) no legitimate basis for the allegation (the complaint allegations do not describe conduct that constitutes a violation of the statute or board rule); or c) the allegations are unsubstantiated (the allegations could not be verified by credible physical or independent testimonial evidence).

iii. Administrative complaints: There is evidence of a violation; however, the violation is minor, does not involve a threat to public health or safety and the violation or Respondent meets one or more of the following criteria:

a) The violation did not cause monetary cost or loss;

b) The violation did not involve dishonesty;

c) The violation occurred only once, and there is no indication that it will happen again;

d) Respondent self-reported the violation to the TBPG, corrected the problem immediately upon becoming aware of the violation, and reported the violation and corrective action to the TBPG within 30 days after becoming aware of the violation; or

e) The respondent immediately corrected the violation upon becoming notified by TBPG of the violation.

b. The Enforcement Coordinator may dismiss the following types of complaints:

i. Respondent failed to remove their licensing credentials from their social media after the Texas P. G. license expired, but cooperated by editing the advertisement to comply with the requirements of Texas Occupations Code §1002.251 within 10 days after being notified of the complaint.

- ii. Respondent who, in response to CE Audit, mistakenly informed the TBPG that CEP requirements had not been met, but after investigation TBPG enforcement determined that the Respondent had been confused or mistaken and determined that the Respondent actually did meet the CEP requirements. This provision does not apply to a Respondent who did not respond timely to the CE Audit and who responded only after TBPG issued the complaint.
- c. The Enforcement Coordinator may consult with an Appointed Board Member prior to dismissing a complaint.
- d. When appropriate, non-disciplinary advisement (a letter) may also be issued in conjunction with complaints closed by the Enforcement Coordinator, following consultation with an Appointed Board Member.
- e. If the Enforcement Coordinator does not dismiss a complaint, he or she will schedule the complaint for review by a Complaint Review Team (CRT).

10. Complaint Review Team (CRT) reviews complaint: A CRT will review the completed investigation report it receives from the EC and the Complainant.

Notification/attendance: The Respondent will be notified of the complaint and that the complaint has been referred to a CRT for review. The Complainant will also be notified that the complaint has been referred to a CRT for review. Both the Complainant and the Respondent will have the opportunity to request that the CRT meet in person to review the complaint and to attend the meeting and provide testimony to the CRT. If neither the Complainant nor the Respondent requests a meeting, the CRT may choose to meet via a telephone conference call or other acceptable electronic meeting media.

Typically, the TBPG will schedule the review of several complaint cases on the same day. However, when special circumstances exist, the TBPG may decide to review a single complaint case to expedite the review.

CRT Opinions: The CRT members will work on a consensus model in developing an opinion of the next action to take regarding a complaint. Generally, the opinion of a CRT regarding a complaint case is one of the following:

- I. Further investigation: If the CRT determines that further investigation is warranted, the CRT will identify the specific investigatory information or issue to clarify and the complaint will be tabled and returned to the investigator.
- II. CRT recommends dismissal to the Appointed Board: The CRT may recommend to the Appointed Board that it dismiss a complaint for one of the following reasons:
 - 1. The TBPG has no jurisdiction over the conduct involved in the allegations;
 - 2. The allegations are unfounded (no legitimate basis for the allegation; groundless);
 - 3. The allegations are unsubstantiated (no determination could be made as to whether there was any basis for the allegation; unverified); or
 - 4. There is evidence of violations; however, the violations do not rise to a level warranting formal disciplinary action.

The Appointed Board may, through the Executive Director, issue a non-disciplinary warning or advisory letter. (Note: when violation(s) have occurred, dismissal of a complaint with a non-disciplinary advisement or warning is generally limited to violation(s) of an administrative nature, which do not involve a threat to public health or safety or in

complaint cases where mitigating circumstances were present). When appropriate, a non-disciplinary advisement letter may also be issued in conjunction with complaints closed for reasons 1-3 above.

Appointed Board dismisses complaints or returns with instruction: When complaint cases that were recommended by a CRT for dismissal are pending, there will be an agenda item providing for the review of complaint cases recommended for dismissal. The agenda item will list all complaint cases that are under consideration for dismissal by the Appointed Board. TBPG Staff will provide a summary of each complaint case to the Appointed Board Members. Each complaint case summary will be de-identified so as to prevent a person from knowing the identities of the Complainant or the Respondent. The complaint case summary is part of the complaint record and is not subject to disclosure per TOC 1002.202. The Appointed Board will determine whether to dismiss each complaint case under the item individually or in group(s).

NOTE: A decision of the Appointed Board to dismiss a complaint for one of the four reasons listed above is final and is not appealable or subject to Administrative or Judicial Review. There is no appeal of an Appointed Board determination that results in a complaint being dismissed. However, if the Complainant submits new information that, in the judgment of the Enforcement Coordinator, supports a jurisdictional allegation, then a new complaint may be opened.

III. Recommend finding of a violation warranting disciplinary action / recommended specific disciplinary action:

If, in the opinion of the CRT, there is sufficient evidence to support the finding of one or more violations of law or rule, the CRT will identify:

1. The specific statute or rule that was violated;
2. The specific conduct that constitutes the violation of rule or law;
3. Specific, documented evidence of non-compliance or violation, when applicable;
4. The recommended disciplinary action (sanction) to be taken against the Respondent.

11. Notice of Alleged Violation (NOV)/Response Sheet/Proposed Agreed Board Order: If the CRT opines that there is sufficient evidence to support the finding of one or more violations of law or rule that should be addressed through imposing a formal disciplinary action, the Executive Director will notify the Respondent, in writing, that the TBPG alleges that the Respondent has violated one or more applicable laws or rules. The issuance of a NOV is considered to be the filing of formal charges against the Respondent by the TBPG. The TBPG and the Respondent are the “parties to the complaint case.” The NOV will include:

- A statement of the legal authority of the TBPG to investigate and take action;
- A reference to the specific statute or rule that is alleged to have been violated;
- Documented evidence of violation or non-compliance, when applicable;
- A description of the specific conduct that constitutes the violation of rule or law; and
- The proposed disciplinary action to be taken against the Respondent, subject to the approval of a quorum of the Appointed Board.

The NOV will also provide the Respondent with the choice of (a) accepting/agreeing to the finding of violation and recommended disciplinary action and waiving the right to an informal conference

and a hearing; (b) not accepting the finding of violation and recommended sanction and requesting an informal conference and, if necessary, a formal hearing at SOAH, or (c) not accepting the finding of violation and recommended disciplinary action and requesting a formal hearing.

An NOV is considered public information and subject to disclosure under the Public Information Act.

An NOV will be sent to the address on file with the TBPG via certified mail, return receipt requested, or other delivery service that ensures appropriate documentation of receipt, and regular U.S. first class mail. An NOV will include a default clause, as described in TAC §851.158.

Proposed Agreed Board Order: A proposed Agreed Board Order (ABO) will be included with a Notice of Alleged Violation letter. The Respondent who chooses to accept the proposed disciplinary action must sign the proposed Agreed Board Order. The proposed ABO will be presented to the TBPG at the next available full TBPG Board meeting (subject to notice requirements). The Appointed Board will consider the proposed order and decide whether to approve the proposed ABO.

12. Respondent's Response to the NOV:

(a) If the Respondent chooses to accept the finding of violation and recommended sanction, the Respondent must respond by sending the signed NOV response sheet and signed proposed ABO back to the agency within twenty (20) calendar days of receipt of the NOV and proposed ABO or agency may withdraw the proposed disciplinary action. Upon receipt of the signed NOV response sheet and signed proposed ABO signed by the Respondent, the ABO will be placed on the agenda of the next meeting of the full TBPG Board for consideration for approval.

(b) If the Respondent chooses not to accept the finding of violation and recommended sanction, then the Respondent may request either an informal conference with the CRT (and a formal hearing with the State Office of Administrative Hearings if an agreement is not reached) or a formal hearing before the State Office of Administrative Hearings (SOAH). If an agreement cannot be reached through the informal proceedings, the complaint case will be referred to the Office of Attorney General (OAG) using the formal referral process set forth by the OAG to schedule a hearing with SOAH.

As TBPG's Alternative Dispute Resolution option, an informal conference (Informal Settlement Conference or ISC) provides the Respondent with another opportunity to demonstrate compliance with statutes and rules or to provide any new information to the informal settlement conferees that demonstrates that the conduct involved does not warrant the proposed sanction or otherwise negotiate a settlement on the disposition of the complaint. Although the Complainant is not a party to the complaint, the TBPG may ask the Complainant to provide additional information for the proceeding at the discretion of the TBPG. After the Respondent has had an opportunity to provide information to the TBPG, the TBPG conferees may deliberate in private. The Respondent will be informed what modification, if any, the TBPG conferees propose to make to the charges or sanctions contained in the NOV. If the Respondent tentatively agrees to the proposed sanction (a tentative settlement agreement is reached), an Agreed Board Order (ABO) that is subject to the approval of a quorum of the Appointed Board may be prepared and sent to the Respondent. The Respondent must respond by sending the signed NOV response sheet and signed proposed ABO back to the agency within 20 calendar days of receipt of the NOV and proposed ABO or the proposed sanction may be withdrawn. Upon receipt of the signed NOV response sheet and signed proposed ABO, the ABO will be placed on the agenda of the next meeting of the Appointed Board for consideration for approval. If the TBPG and the Respondent do not reach a settlement, the complaint case will be referred to the Office of Attorney General (OAG) using the formal referral process set forth by the

OAG to schedule a complaint case for hearing with the State Office of Administrative Hearings (SOAH).

(c) If the Respondent chooses not to accept the finding of violation and recommended sanction and requests a formal hearing (without first requesting an informal conference), the complaint case will be referred to the OAG to prosecute the complaint case with SOAH.

d) If the Respondent does not respond to the NOV notice and ABO within 20 days of receipt, then a Default Order may be prepared and presented to the Board at its next meeting for consideration.

13. Proposed Agreed Board Order (ABO) or Default Board Order.

Agreed Board Order: When a Respondent agrees to, signs, and returns the NOV response sheet/proposed Agreed Board Order (ABO), TBPG Staff will place the proposed ABO on the agenda of the next possible meeting of the full TBPG Board for consideration for approval. Appointed Board Members who participated in the CRT will recuse themselves from participating in any discussion or action on that particular complaint case.

The Appointed Board will review each proposed ABO signed by a Respondent. The Enforcement Coordinator will present each proposed ABO to the Appointed Board, and provide a brief summary of information sufficient for the Appointed Board to evaluate whether the findings of violation presented in the order warrants the sanction being presented. The Appointed Board will address all orders in accordance with its procedures. If the Appointed Board votes to approve an order, it will be signed and dated by the TBPG Board Chairman and the order will take effect immediately, unless otherwise specified in the order or by the Appointed Board. After a proposed ABO has been signed by the TBPG Board Chairman, a copy of the ABO will be sent to the Complainant and the Respondent, and the complaint case will be closed. If the ABO requires that the Respondent comply with certain actions (such as supervision and reporting during a period of probated suspension, continuing education, completion of a chemical dependency program, etc.), TBPG Staff will monitor the complaint case for compliance until all of the terms of the ABO have been satisfied. If a Respondent fails to comply with the terms and conditions of an ABO, the lack of compliance will be referred to the Executive Director for appropriate action. Lack of compliance with an ABO or Default Order could result in a new complaint being filed.

If the Appointed Board votes to reject a proposed ABO, the Appointed Board will either A) vote to propose a modified ABO to the Respondent, B) instruct TBPG Staff to refer the complaint case to SOAH, or C) dismiss the complaint case. If the Respondent rejects a proposed ABO, as modified by the Appointed Board, TBPG Staff will refer the complaint case for a SOAH hearing.

Default Board Order: If the Respondent did not respond to the NOV, a proposed default Board Order will be considered by the Appointed Board for possible adoption. If the Appointed Board agrees to the Default Board Order, the Appointed Board will adopt the order. If the Appointed Board does not agree to the proposed Default Board Order, the Appointed Board may deliberate and instruct TBPG Staff to reissue an NOV that proposes a sanction the Appointed Board can support. Once the modified NOV and proposed Agreed Board Order is sent to the Respondent, the process for the complaint will be reset at step 11 of this SOP.

14. Formal Hearing: In the event that the Respondent has requested a hearing and has not subsequently agreed to a tentative settlement with the TBPG, the complaint case will be referred to the Office of Attorney General (OAG) using the formal referral process set forth by the OAG for

scheduling for a hearing with SOAH. TBPG Staff and Appointed Board members will assist the AAG appointed to the complaint case, as appropriate. Per the Administrative Procedures Act (APA), the Administrative Law Judge (ALJ) will serve a proposal for decision (PFD) on each party (i.e., the TBPG and the Respondent). Following the filing of exceptions and responses to exceptions and presentation of briefs, the ALJ may or may not modify the PFD.

Please see TBPG Subchapter E of the TBPG rules (TAC §§1002.201-220) for further information regarding SOAH hearings.

15. Appointed Board Review of Proposal for Decision: Following review of a final Proposal for Decision (PFD) issued by an ALJ, the Appointed Board will review the PFD and make a final decision regarding how the complaint case will be disposed. The Respondent will be notified of the meeting. The parties may address the Appointed Board, but may only mention matters contained in the PFD or the evidence presented in the complaint case.

If a Respondent fails to appear at a contested case hearing, the ALJ will issue an order to remand the complaint case back to the TBPG (see §1002.203).

16. Final Board Order: When the Appointed Board reviews a Proposal for Decision or a complaint case that has been remanded back to the TBPG, a draft/proposed Board Order will be prepared by the OAG. The complaint case will be placed on the agenda for the next full TBPG Board meeting. TBPG Staff will notify the Respondent of the meeting. Following presentation of the complaint case and draft/proposed Board Order, the Appointed Board will deliberate/vote on the draft/proposed Board Order. If the Board Order is approved, the TBPG Board Chairman will sign the Board Order. A copy of the Board Order will be sent to the Complainant and the Respondent and the complaint case is closed. TBPG Staff will also follow up with posting the action on the TBPG website (as appropriate) and complete other administrative tasks related to the complaint case. If the Board Order requires that the Respondent comply with certain actions (such as supervision and reporting during a period of probated suspension, continuing education, completion of a chemical dependency program, etc.), TBPG Staff will monitor the complaint case for compliance until all of the terms of the Board Order have been satisfied. If a Respondent fails to comply with actions required in a Board Order, the lack of compliance will be referred to the Executive Director for appropriate action. A lack of compliance with a Board Order could result in opening a new complaint.

17. Judicial Review: Judicial Review procedures are adopted in TBPG rule §851.220. If TBPG Staff is served with a motion for rehearing/lawsuit regarding a disciplinary order, TBPG Staff will refer the complaint case to the OAG immediately and will prepare, send the administrative record to the assigned AAG, and otherwise work with the OAG to respond to the action.

IV. COMPLIANCE INVESTIGATIONS

The TBPG may, on its own, without receiving or opening a complaint, initiate compliance investigations to determine compliance with the Texas Geoscience Practice Act (the Act). Compliance investigations are targeted to determine whether individuals or firms are: illegally using a title protected under the Act; engaged in or offering to perform the public practice of geoscience without licensure or firm registration; failing to comply with signature and sealing requirements of geoscientific reports; or failing to comply with other requirements in applicable laws or rules.

Compliance investigations may involve review of work performed by both licensees and non-licensees.

Compliance investigations are intended to identify whether there are potential violations. If a compliance investigation results in the discovery of evidence of a serious violation or violations or repeated or long term ongoing violations, then TBPG Staff may open a formal complaint. If a complaint is opened by TBPG Staff, then the complaint process described in Part III of this standard operating procedure will be initiated.

V. COMPLAINT CASE ACTIONS

A. Formal disciplinary action

Except in the case of an emergency suspension of a license, formal disciplinary action is taken only after proper notice of the intent to take disciplinary action has been served (i.e. Notice of Alleged Violation). In the event that a Respondent does not respond to a Notice of Alleged Violation, the TBPG may take action in accordance with the default procedure described in Section II of this Standard Operating Procedure.

Board Orders. Violations that do not meet the criteria for a warning or advisory letter will be addressed with a Board Order. Board Orders may include sanctions and/or administrative penalties.

B. Grounds for Disciplinary Action, Authorized Disciplinary Action(s), and Factors to Consider

Upon consideration of disciplinary action, the CRT should ensure that the alleged violations meet the grounds for enforcement established in the Act. According to the Act, the Appointed Board may take enforcement action for the following types of violations:

- The practice of fraud or deceit in obtaining a license;
- Incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;
- Conviction of a license holder of a crime involving moral turpitude or a felony;
- 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;
- The issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;
- 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;
- Aiding or abetting a person in a violation of this Act;
- The revocation or suspension of a license, the denial of renewal of a license, or other disciplinary action taken by a state agency, Board of registration, or similar licensing agency for geoscientists or a profession or occupation related to the public practice of geoscience;
- Practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or qualified to practice geoscience, if the

person is not licensed under this Act or the person's firm or corporation does not employ a licensed geoscientist as required under this Act; or

- Violating the Act, a rule adopted under this 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.

Board Orders may include any of the following sanctions:

- Refusal to issue or renew a license;
- Permanent revocation of a license;
- Suspension of a license for a period of time, not to exceed three years;
- Issuance of a public or private reprimand;
- Imposition of conditions or restrictions on the practice of an applicant, licensee, or firm;
- Requirement that the licensee participate in a peer review program;
- Requirement for the licensee to obtain remedial education;
- Imposition of probation with regular reporting to the TBPG;
- Require restitution of fees or compensation;
- Imposition of administrative penalty; and/or
- Issuance of a cease and desist order.

The following factors must be considered when determining the appropriate sanctions:

- The seriousness of the conduct, including the hazard or potential hazard to the health or safety of the public;
- The economic damage or potential damage to property caused by the misconduct;
- The Respondent's licensure history including previous grounds for sanction;
- The sanction necessary to deter future violations;
- Efforts to correct the misconduct; and
- Any other matter that justice may require.

When the violation involves **a violation of the Code of Professional Conduct by a licensee**, appropriate sanctions include:

- Refusal to renew a license;
- Permanent revocation of a license;
- Suspension of a license for a period of time, not to exceed three years;
- Issuance of a public or private reprimand;
- Imposition of conditions or restrictions on the practice of an applicant, licensee, or firm;
- Requirement that the licensee participate in a peer review program;
- Requirement for the licensee to obtain remedial education;
- Imposition of probation with regular reporting to the TBPG;
- Require restitution of fees or compensation; and/or
- Imposition of administrative penalty.

If the violations have been committed by an applicant for a license, certification, or registration the following sanctions may be imposed:

- Reprimand;
- Administrative penalty;
- Suspension of the license upon its effective date; and/or
- Denial of the license, certification, or registration.

If an unlicensed person or unregistered firm has been found to have engaged in the public practice of geoscience as defined by the Act, the following actions may be taken:

- Cease and desist order; and/or
- Administrative penalty.

When an administrative penalty is recommended, the amount of the penalty will be based on:

- The seriousness of the violation;
- The economic harm caused to property or the environment;
- The history of previous violations;
- The amount necessary to deter future violations;
- Efforts or resistance to correct the violations; and
- Any other matter that justice may require.

Administrative penalties may not exceed \$1500 per day per violation. Penalties assessed may be less than \$1500.

In general, any violations that involve practicing without a license, using fraud or deceit to obtain a license, or endangering the public through incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence, should be addressed by an order that includes appropriate sanctions and an administrative penalty.

For convenience and consistency, the “TBPG Penalties and Suggested Sanctions” table has been included in this document as Appendix A. The table contains the most-commonly cited violations that TBPG receives, along with the suggested sanction for those violations. This table in no way replaces, circumvents, supersedes, or limits the penalties and sanctions available to the TBPG under the Texas Geoscience Practice Act.

C. Compliance Tracking

TBPG Staff will track a Respondent’s compliance with the conditions of Board Orders. Upon the satisfactory completion of the conditions of a Board Order, the Respondent will be notified in writing. A copy of the notice will be maintained in the complaint file.

If a person or firm falls out of compliance with a condition of a Board Order, the matter will be referred to the Executive Director for consideration. Potential follow-up actions include:

- Opening a new complaint for failure to comply with a Board Order
- Referral of an unpaid administrative penalty to the Attorney General for collection per Texas Occupations Code §1002.455

- Report of the debt of an unpaid administrative penalty to the Comptroller per Texas Government Code §403.055(f).
- Application of fees paid to the TBPG for a license renewal or other administrative action toward the owed administrative penalty.

D. Public Information

Information on final enforcement actions will be made available to the public through files at the agency's offices and on the agency's website. Disciplinary actions will be placed on the agency's Disciplinary Actions webpage according to the following schedule:

- Revocation, suspension or refusal to issue or renew a license, certification or registration: permanently.
- All other disciplinary actions, except private reprimands: for five years following the date that all conditions of the order have been satisfied.
- Private reprimands: these actions are not placed on the agency disciplinary web site.

E. Recordkeeping

The electronic record of every complaint will be maintained indefinitely in the regulatory database. When it is no longer useful to maintain the physical complaint record, it will be imaged and the physical file will be disposed of in accordance with the TBPG record retention schedule. Images of physical complaint records will be attached to the electronic record in the regulatory database.

The physical complaint file will be maintained and converted to an imaged file as follows:

- The physical complaint file for complaint cases that have been dismissed with no formal action may be imaged and attached to the electronic complaint record as soon as it is feasible.
- The physical complaint file for complaint cases that are resolved with disciplinary action may be imaged and attached to the electronic complaint record as soon as it is feasible six months after all terms of the Board Order have been satisfied.
- The physical complaint file for complaint cases that are subject to judicial review or for which there is pending litigation will be maintained as long as the complaint case is subject to judicial review, a complaint case has been filed, appeals are available, a litigation hold is in place, or, in the judgment of TBPG Staff, should be maintained, whichever comes later.
- The Executive Director will determine how long the agency will maintain non-documentary evidence on a case-by-case basis.