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October 27, 2011

Mr. Charles Horton
Executive Director
Texas Board of Professional Geoscientists
P.O. Box 13225
Austin, Texas 78711

Dear Mr. Horton,

RE: TBPG Petition for Adoption of Rules
Texas Register, dated September 30, 2011

The purpose of this letter, sent on behalf of the Austin Geological Society's Executive Board with input from elected officers and active members, is to object to the Texas Board of Professional Geoscientists' (TBPG) recently proposed changes to rules posted in the September 30, 2011, Texas Register. We specifically and strongly object to language in Part 39, Texas Board of Professional Geoscientists 22 TAC §851.10, §851.33, and §851.34, and conclude that these sections should be rescinded in their entirety. The proposed rules misrepresent what is contained in the Texas Occupations Code; are not in the interest of public health, safety, or environmental or economic welfare; and are an apparent attempt to impose a political agenda on scientific research and teaching in the State of Texas, as well as to expand the regulatory authority of the TBPG.

The changes proposed to "identify and define non-exempted geoscientific work" (§851.33, §851.34) represent a complete reversal in the philosophy and intent of the Texas Geoscientists Practice Act (Act) as defined in the Texas Occupations Code (TOC). TOC authorizes TBPG to "adopt rules related to the public practice of geoscience by a firm or corporation." The Act clearly states that geoscientists in the private sector and academe are exempt from licensure. Even so, many of the geoscientists working in these areas choose to be registered out of respect for their public-sector colleagues and concern for good professional practice in our home state. A primary intention of the Act is to provide public-sector geoscientists with the means to compete fairly against registered engineers in Texas who, prior to formation of the TBPG, were attempting to control aspects of *geological* practices. We conclude that if the proposed rules are adopted, the public-sector geoscientists may lose their ability to practice within their own areas of expertise in Texas!

The apparent attempt to increase State revenue by requiring registration of private-sector geoscientists, particularly those working in oil and gas, ignores the possibly larger financial impact on discovery and development of oil and gas resources if the TBPG attempts to impose onerous requirements on these workers. An example of an onerous requirement is found in the definition of the term “workpiece.” In §851.10, workpiece “ is defined as any report, map, survey, data collection, interpretive workstation product, computer-generated product, or other document that is related to the practice of geoscience, regardless of the type of workpiece format, including hardcopy and electronic media.” TBPG is supposed to provide and enforce a Code of Conduct for public-sector geoscientific practices in Texas, not attempt to dictate permissive practices among geoscientific industrialists or micromanage how these professionals conduct their daily activities.

Not only does it appear that the TBPG is attempting to stifle oil and gas development in the State of Texas, it also seems that the TBPG wishes to control activities related to “subterranean storage or sequestration of gases, including CO₂ sequestration.” Again, parts of the proposed rule included in §851.33 could impact the supply of natural gas, excess quantities of which are injected and stored in the subsurface for possible use during energy shortages associated with national emergencies.

Subsurface geologists, working in both the petroleum industry and CO₂ sequestration, are familiar with the uncertainty surrounding estimates of capacity for geologic formations to retain fluids. For this and other reasons, it is unreasonable for TBPG to include in its proposed rules (e.g., §851.33) a requirement that statistical certainty be asserted for the retention of gas in the subsurface. The U.S. Environmental Protection Agency already regulates practices surrounding the injection of fluids into the subsurface through Underground Injection Control statutes in the Safe Drinking Water Act of 1974. The Railroad Commission of Texas (RRC) has primacy for injection of (1) natural gas for subsurface gas storage, (2) CO₂ for enhanced oil recovery, and is in the process of applying for primacy over injection of (3) CO₂ for pure subsurface CO₂ storage (also known as *brine sequestration*). It is unclear to us why the TBPG is trying to duplicate already well-established rules for subsurface injection of gas. For these reasons and others, we insist that §851.33 be rescinded.

One more area in which the TBPG appears to be overstepping its bounds through publication of the proposed rules is the study of climate science. Climate science is a rapidly advancing, multidisciplinary, academic field of study that has become a tool in political partisanship. In §851.33(b)(2), the TBPG is apparently attempting to overturn the exemption of academic geoscientists engaged in research, specifically those working on climate-science issues. For example, this rule states that geoscientists preparing a “workpiece” on the study of past, present, or future climatic conditions or climate science for use in any public primary educational institute, government agency, or quasi-government agency is subject to jurisdiction of the TBPG. By seeking to place ALL climate-related science under the regulation of the TBPG, and, thus, requiring larger swaths of the scientific community to operate as registered geoscientists, TBPG is negatively affecting the rights of scientists to work in this state. Under no

reasonable interpretation of existing enabling language does the TBPG have this right. Furthermore, in §851.33(d), the TBPG proposes to dictate how the scientific process should progress through description of what the TBPG apparently views as an approach to research. Again, existing regulations already provide for regulation of standards of practice; these added regulations are, therefore, duplicative and should be scrapped in their entirety.

In summary, we suggest that the TBPG may be attempting to impose a fiscal and political agenda on industrial and academic practices in the State of Texas. It is the conclusion of the AGS that the TBPG is seeking—to use additional funding from the expected influx of geoprosessionals working in the oil and gas industry, and the enforcement of existing geoscientists who would be investigated by the TBPG for operating under these onerous regulations, to increase state revenue. We further expect this approach to backfire because it is no more than an attempt to police activities related to subsurface gas storage and university research in climate-related sciences.

We think the primary objective of TBPG registration should be to allow geoscientists working in the public sector (i.e., primarily the fields of hydrogeology, environmental geology, and engineering geology) to have the respect and credentials they need to perform work in the interest of public health, safety, and general welfare of the State of Texas. The rules proposed in 22TAC §851.10, §851.33, and §851.34 are incongruous with this objective, are ill considered, and should be rescinded in their entirety.

Sincerely,



Rebecca C. Smyth, rebecca.smyth@beg.utexas.edu
on behalf of the Austin Geological Society's Executive Board:

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Peter R. Rose, 2011-2012 President Elect
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Rebecca C. Smyth, 2011-2012 Vice President
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