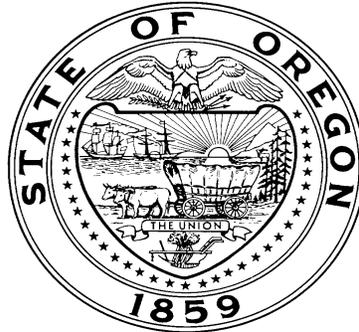


Oregon State Board of Geologist Examiners



Professional Practices Guidance

PRELIMINARY DRAFT
December 2013

Disclaimer

This guidance document is intended to provide general information about the Oregon State Board of Geologist Examiners (OSBGE) and its regulation of the public practice of geology in Oregon. This guidance document does not replace, supersede, or otherwise override statutes, rules, orders, or formal policies pertaining to the public practice of geology. The information herein does not and is not intended to make or create any new standard, requirement, or procedure for which rulemaking or other legal process is required. This guidance document is not intended to address every possible situation or question regarding the OSBGE's regulation of the public practice of geology. This document is updated and revised at OSBGE's discretion. This document does not and is not intended to provide legal advice. No rights, duties, or benefits, substantive or procedural, are created or implied by this guidance document. The information in this guidance document is not enforceable by any person or entity against the OSBGE. In no event shall the OSBGE, or any employee or representative thereof, be liable for any damages whatsoever resulting from the dissemination or use of any information in this guidance document.

TABLE OF CONTENTS

I The Board & Purpose for Guidance Document ----- page 5

A. Board mission & authority----- page 5

B. Purpose for guidance document----- page 5

C. Acknowledgements ----- page 6

II. Regulatory Framework ----- page 6

A. History and Statutes ----- page 6

1. Administration

2. Registration

B. Administrative Rules ----- page 8

C. Code of Professional Conduct ----- page 9

III. What is the “Public Practice of Geology” ----- page 13

A. “Public Practice” defined -----page 13

B. Areas of Public Practice-----page 13

1. Environmental Geology

a. Phase I Environmental Site Assessments

b. Phase II Environmental Site Assessments

2. Hydrology and Hydrogeology

- a. Certified Water Rights Examiner
- 3. Engineering Geology (including Certified Engineering Geologist)
 - a. Practice of Geology vs. Engineering Geology
 - b. Practice of Engineering Geology vs. Engineering
- 4. Geophysics
- 5. Economic Geology
- 6. Paleontology
- 7. Other Geological Practices
- C. Signature/Stamping by Registered Geology-----page 20**
 - 1. Final vs. Draft Work Products
 - 2. Compiled vs. Stand-Alone Work Products
 - 3. Responsibility for Stamp
 - 4. Electronic/Digital Signatures
- D. State/Local Governments to Use Registered Geologist-----page 22**
- IV. Exemptions from the “Public Practice of Geology” ----- page 23**
 - A. In General -----page 23**
 - B. Specific Exemptions -----page 23**
 - 1. Geologists in Academia
 - 2. Geologists in Federal Employment

- 3. Subordinates to Registered Geologists
- 4. Geological Service Business/Nonpublic Geological Services
- 5. Other Registered or Licensed Professional/Engineers
 - a. General
 - b. Mining/Mineral Examiners Specifically
- C. Temporary Permits-----page 27
- D. Public Testimony-----page 27
- V. Path to Registration ----- page 28**
 - A. Geologist in Training -----page 28
 - B. Registered Geologist-----page 28
 - 1. Exams
 - 2. Education
 - 3. Experience
 - a. What is Responsible Charge?
 - C. Certified Engineering Geologist -----page 29
 - 1. Registered Geologist
 - 2. Specialty Exam
 - 3. Experience

VI. Compliance	page 30
A. Registration	page 30
B. Renewals	page 31
C. Complaints	page 32
1. Examples of Complaint Issues	
2. Filing a Complaint	
3. Individuals Subject to Complaint	
a. Registrants	
b. Non-Registrants	
4. Standards of Practice	
D. Overview of Complaint Process	page 37
E. Board Authority to Discipline/Assess Penalties	page 37
1. Disciplinary Action	
2. Civil Penalties	
VII. References	page 39

Appendix

- Links to Statutes
- Link to Administrative Rules
- OSBGE Information

Professional Practices Guidance

I. The Board & Purpose for Guidance Document

A. Board Mission & Authority

The Oregon State Board of Geologist Examiners (OSBGE) is charged with regulating the practice of geology within the State of Oregon. Geology is defined in Oregon Revised Statute (ORS) 672.505(6) as “that science which treats of the earth in general; investigation of the earth’s crust and the rocks and other materials which compose it; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of humanity.” Public practice of geology is defined in ORS 672.505(7) as “the performance for another of geological service or work, such as consultation, investigation, surveys, evaluation, planning, mapping and inspection of geological work, that is related to public welfare or safeguarding of life, health, property and the environment...”, and this guideline elaborates on just what that means.

Based on its statutory direction, the mission of OSBGE is to help assure the safety, health, and welfare of Oregonians with regard to the public practice of geology through:

- Licensing of those engaged in the public practice of geology;
- Response to complaints from the public and members of the profession;
- Public education directed at appropriate regulatory communities;
- Cooperation with closely related Boards and Commissions;
- Attention to ethics; and
- Systematic outreach to counties, cities, and registrants.

OSBGE works to achieve this mission through focused efforts in all these areas. The public is best protected if the Board ensures that: (1) only individuals fully qualified by education, experience, and examination are granted the privilege by registration to publicly practice geology in Oregon, (2) relevant laws and rules are regularly reviewed, with needed revisions promulgated expeditiously; (3) enforcement of regulatory laws and rules is pursued vigorously and impartially; and (4) information regarding the Board’s goals and activities are effectively available to registrants and the public.

B. Purpose for Guidance Document

This Professional Practices Guidance document is one of four in OSBGE’s series of guidance documents. The purpose of this guidance document is to provide information related to the public practice of geology in Oregon, including registration requirements and other information the Board believes should be of interest to registrants and the public. This guidance document can be consulted to learn about typical practices and regulatory requirements. This document is intended as a user-friendly summary of key

information about the public practice of geology. The Board designed the document to address common questions received from registrants and the public over the years, as well as lessons learned by the Board.

C. Acknowledgements

Past and present Board members and staff along with many OSBGE registrants contributed time and expertise to the development of OSBGE's guidance documents. The Board thanks all who took the time to participate in the development of guidance documents through participation in meetings or review and comment on drafts.

II. Regulatory Framework

A. History and Statutes

1. Administration

OSBGE was established through action of the 1977 Oregon Legislature and its authorizing statutes signed into law by then Governor Robert L. Straub. The Legislature established OSBGE as six member body, with four registrant members, one non-registrant serving as public member, and the State Geologist (i.e., Director of the Oregon Department of Geology and Mineral Industries) serving as ex officio member.

OSBGE was originally administered under the umbrella of the Oregon Department of Commerce. Staff that provided services to a number of other regulatory boards carried out the functions of OSBGE. In 1987, the Oregon Department of Commerce was dissolved, and OSBGE received administrative services through an interagency agreement with the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS). This arrangement ended in January 1999 when OSBGE hired a full time administrative assistant to handle all activities of the OSBGE, and the Board office was moved out of the OSBEELS offices. OSBGE has directly employed staff since this time. As of 2013, OSBGE operates with two staff working at a total of 1 Full Time Equivalent (1 FTE).

In 1999, the Board was designated as a semi-independent agency under ORS 182 after a pilot project authorized through 1997 legislation was deemed a success by those agencies involved and the Oregon Legislature. Semi-independent status recognizes the self-sustaining nature of the Board (i.e., funded solely via fees) and provides the Board with more flexibility to manage its business operations compared to a larger agency receiving state general funds or other funds. As a semi-independent agency, the Board is exempt from certain personnel, contracting, and procurement requirements but in many ways must operate like any other state agency, such as with respect to laws for public meetings, public records, administrative procedures, and rulemaking.

2. Registration

During the Board's first year, individuals that met statutory requirements for registration were grandfathered into registration. After that year, an examination was established by the Board and became a required step to obtaining registration with the Board. The Oregon examination was used until 1997. At that time, the Board began using the national examination prepared by the national Association of State Boards of Geology (ASBOG). This examination is a key requirement for registration, whether by initial registration or cooperative (i.e., reciprocity) registration. The examination is taken in two parts – the Geology Fundamentals and Geology Practice sections. See the registration section of this guidance document for more details on the examination and its link to registration. In addition to passing the examination, education and work experience requirements apply.

Oregon is one of only three states offering a Certified Engineering Geologist (CEG) specialty. The neighboring states of California and Washington are the other states with this specialty certification. The Board developed a specialty examination in conjunction with the State of Washington. Passage of the CEG examination continues to be a key requirement for CEG registration. However, the Board determined in 2012 that it would also accept passage of the California exam for certified engineering geology in lieu of passing the Oregon-Washington CEG exam. The specialty certification is not available on a reciprocity basis even though the same exam results may be used. This is because statute requires the individual to first be registered with the Board as a geologist before the specialty certification can be granted. In addition to passing a CEG exam and becoming a RG, a candidate for the CEG examination must have experience working in engineering geology as a prerequisite to sit for the CEG examination. See the registration section of this guidance document for more details on work experience and other application requirements for the CEG registration.

Of the statutes enacted in 1977, much of the original language remains in the current statutes. The most significant statutory changes in terms of professional practice have been:

- 1995: added negligence to the list of reasons the Board can take disciplinary action against a registrant, joining fraud, deceit, gross negligence, incompetence, or misconduct,
- 1995: added registered geologists as professionals able to pursue the water rights examiner certification; this program is administered by OSBEELS,
- 1995: clarified that a RG must also be a CEG to practice or offer to perform engineering geology activities,
- 2001: changed the registration title from Registered Professional Geologist (RPG) to Registered Geologist (RG),
- 2003: updated the definition of public practice of geology to include a specific exemption for public testimony or preparations to testify in a public proceeding,
- 2005: made various clarifications to education and work experience

requirements in terms of Board review of applications and made housekeeping changes to procedures that would apply to any new specialty certification considered by the Board (i.e., in addition to CEG).

The central statutes that define what is considered to be the professional practice of geology are the definitions of “geology” and the “public practice of geology” found in ORS 672.505(6), (7):

“Geology” refers to:

- (a) That science that treats of the earth in general;*
- (b) Investigation of the earth’s crust and the rocks and other minerals that compose it; and*
- (c) The applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of humanity.*

ORS 672.505(6)

“Public practice of geology” means the performance for another of geological service or work, such as consultation, investigation, surveys, evaluation, planning, mapping and inspection of geological work, that is related to public welfare or safeguarding of life, health, property and the environment, except as specifically exempted by ORS 672.505 to 672.705.

ORS 672.505(7)

These statutes and their application by the Board are relevant to most questions regarding professional practice issues for which registration is required. In most cases, the question of “must one be registered to perform such work?” is answered by considering these statutory definitions. The Board applies these statutes when considering work by non-registered persons as under ORS 672.525(1):

“No person, other than a registered geologist, a registered certified specialty geologist or a subordinate under the direction of either, shall provide or prepare for the public practice of geology any geologic maps, plans, reports, or documents except as specifically exempted in ORS 672.535.

A “Registered Geologist” or RG is a person who is registered with OSBGE as a geologist under the provisions of ORS 672.505 to 672.705 and through that registration able to engage in the public practice of geology. See ORS 672.505(10). The OSBGE uses these and other statutory definitions in regulating the public practice of geology in Oregon.

B. Administrative Rules

Under its statutory authority, OSBGE has promulgated rules to address how it carries out its responsibilities and to otherwise provide prospective and active registrants with information on registration and professional practice. These rules help to explain, interpret, or carry out the statutes that apply to the regulation of the public practice of geology. The Board’s rules are found in Chapter 809 of the Oregon Administrative Rules. (See next page and Appendix for more information.) In a few instances, statutes

require the Board to adopt rules on particular topics, e.g., minimum coursework requirements for registration per ORS 672.555(4), creation of any specialty certifications per ORS 672.565(1), Code of Professional Conduct per ORS 672.655, and fees per ORS 672.705.

The Board reviews and revises administrative rules as necessary. The Board generally uses a Rules Advisory Committee comprised of volunteer registrants and chaired by a member of the Board to assist in the rulemaking process. The Board follows the Oregon Administrative Procedures Act's requirements for public rulemaking. Decisions about final rules are made by the Board in public meetings.

OSBGE Administrative Rules (by Division, Title, Summary of Topics Addressed)
<u>DIVISION 1 - PROCEDURAL RULES</u> (covers various Board operational procedures)
<u>DIVISION 3 - DEFINITIONS</u> (provides definitions as used in the Board's rules)
<u>DIVISION 5 - CERTIFICATION OF SPECIALTY</u> (addresses certifications for engineering geologist and geologist-in-training)
<u>DIVISION 10 - FEES</u> (includes fee schedule and Board's operational budget)
<u>DIVISION 15 - RENEWALS, RESTORATIONS</u> (covers renewal process, restoration of lapsed registration, Geologist-in-Training, and Reissuance of Revoked Registration)
<u>DIVISION 20 - CODE OF PROFESSIONAL CONDUCT</u> (defines registrant responsibilities to profession, employer, and the Board, defines misconduct for purposes of possible disciplinary action and civil penalties)
<u>DIVISION 30 - QUALIFICATION STANDARDS AND EXPERIENCE</u> (addresses supervision, work experience, and transcript standards generally plus sets specific qualifications to sit for exams and obtain registration as Geologist-in-Training, Registered Geologist, or Engineering Geologist)
<u>DIVISION 40 - EXAMINATION PROCEDURES</u> (covers all aspects of the exam process)
<u>DIVISION 50 - GENERAL</u> (sets requirements for stamping and signature, also covers qualifications for cooperative registration or temporary permits, etc.)
<u>DIVISION 55 - COMPLIANCE</u> (establishes procedures for review of complaints and contested case process)
<u>DIVISION 60 - BOARD OPERATIONS</u> (addresses various requirements for Board membership)

C. Code of Professional Conduct

Every registrant and applicant for registration needs to be familiar with and follow the Code of Professional Conduct as found in the Board's rules. These rules outline a registrant's responsibilities to the profession, employer, and OSBGE. The rules also define that any violation of the Code of Professional Conduct by a registrant is misconduct and grounds for disciplinary action by the Board, which may also include the assessment of civil penalties under ORS 672.690(1). Misconduct is defined to include, but not limited to, acts such as fraud, deceit, negligence, misuse of stamp, and claiming responsibility for someone else's work. (See OAR 809-020-0030.)

Due to the importance of the Code of Professional Conduct to a registrant's professional practice, the current rule is included herein. (See page 10-12.)

OAR CHAPTER 809, DIVISION 20
CODE OF PROFESSIONAL CONDUCT

809-020-0001

Goals

- (1) A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.*
- (2) To the fullest extent possible, a geologist shall protect the public health and welfare and property in carrying out professional duties.*

809-020-0006

Responsibility to Profession

- (1) A Registered Geologist shall undertake professional service or render expert opinion only when qualified by training or experience in the technical areas involved.*
- (2) When serving as an expert or technical witness before a court, commission, or other tribunal, a Registered Geologist shall express only those opinions founded upon adequate professional knowledge of the matters at issue.*
- (3) A Registered Geologist shall sign and seal only professional work, including, but not limited to, maps and report for which the geologist has direct professional knowledge, and for which the geologist intends to be responsible for its accuracy and adequacy.*
- (4) A Registered Geologist shall not take credit for work conducted by others. When using the results of other geologists' work in the performance of the practice of geology, a geologist shall give due credit to the other geologists by citation or acknowledgement. Work of other geologists which is proprietary, or was not intended to be made generally available, shall not be used without the permission of the other geologist. Nothing in this paragraph prohibits any person from sending the work of any geologist or the work of any person publicly practicing geology in Oregon to the Board.*
- (5) A Registered Geologist shall not knowingly make false statements or misrepresentations, or permit the publication or use of the geologist's name or work in association with any fraudulent activities.*
- (6) A Registered Geologist shall make full disclosure to all parties concerned of any conflict of interest in projects or properties on which the geologist performs work.*
- (7) If a Registered Geologist has knowledge or reasonable cause to believe another person or geologist is in violation of the registration law, ORS*

Chapter 672, or the related administrative rules, the geologist shall present such information to the Oregon Board of Geologist Examiners, in writing.

(8) If a Registered Geologist's professional judgment is overruled or not adhered to under circumstances where the geologist has reasonable cause to believe there is a clear and present threat to the public health or welfare or property, the geologist shall immediately notify the client/employer. If the client/employer does not take appropriate action within a reasonable amount of time under the circumstances, the geologist shall notify in writing the agency of local government having jurisdiction, or in the case of state/federal property the state/federal agency having land management responsibility, and the Board of the nature of the public threat.

809-020-0011

Responsibility to Employer

(1) A geologist shall avoid conflict of interest with a client/employer and shall disclose the circumstances to the client/employer if a conflict is unavoidable.

(2) A geologist shall not, during the time of the geologist's retention or employment by a client/employer, use information developed for, or the resources of, said client/employer for private gain or in any other manner that may conflict with the client/employer's interest without the knowledge and consent of the client/employer, except as specified in OAR 809-020-0006(8) Responsibility to Profession. In the case of a former client/employer, a geologist shall honor agreements with that former client/employer with regard to proprietary information, except as specified by OAR 809-020-0006(8).

(3) A geologist shall either engage or advise a client/employer to engage other experts or specialists if the client/employer's interests are best served by such service.

(4) A geologist shall give due notice of withdrawal of service from a client/employer. Due notice shall be either 30 days or a time mutually agreed to by the geologist and the client/employer, whichever is less. However, a geologist may withdraw from service without due notice if:

(a) The geologist fails to receive compensation, or has reasonable cause to believe that compensation for services performed will not be received;

(b) The geologist knows, or has reasonable cause to believe, that continued employment will result in a violation of this Code, ORS Chapter 672, the related administrative rules, or will otherwise be illegal;

(c) The geologist knows, or has reasonable cause to believe, that the client/employer is involved in illegal or fraudulent practices, or practices dangerous to the public health, and welfare and property;

(d) The geologist knows, or has reasonable cause to believe, that continued employment will result in sickness or injury to the geologist or the geologist's dependents.

(5) A geologist shall not accept compensation concurrently from more than one client/employer on a project, unless the circumstances of payment are fully disclosed and agreed to by all financially interested parties.

809-020-0025

Responsibility to the Board

(1) A geologist, when requested by the Board, shall respond to communications from the Board within 21 days after notification is mailed by registered or certified mail.

(2) A geologist, when requested by the Board, shall present information and assistance to the Board in pursuing violations of laws and rules relating to the practice of geology in the State of Oregon. A geologist shall not dismiss from his employment, or take any other sanction against another geologist because of the other geologist's compliance with this, or any other subsection, of the Code of Professional Conduct, ORS Chapter 672, or the related administrative rules.

809-020-0030

Misconduct

Any violation of the Code of Professional Conduct is misconduct under OAR 809-003-0000(12) and is grounds for discipline under ORS 672.675(2) and the assessment of civil penalties under 672.690(1). Misconduct under OAR 809-003-0000(11) also includes, but is not limited to, any of the following acts committed in connection with or related to the public practice of geology:

(1) Signing or stamping work not prepared under the direct supervision or control of the registered geologist;

(2) Offering or accepting gifts (other than those of nominal value, such as entertainment or hospitality), with the intent of influencing the judgment of a client, prospective client, government official, or another geologist in connection with a project, or employment, in which the registered geologist is to be retained or has a financial interest;

(3) Fraud, deceit, misrepresentation, false impersonation, false or forged evidence, or a felony conviction;

(4) Practicing geology while impaired by alcohol or other drugs;

(5) Engaging in false, misleading or deceptive advertising;

(6) Negligence, gross negligence, or incompetence.

III. What is the “Public Practice of Geology”

A. “Public Practice” defined

672.505(7) defines “Public practice of geology” to mean the performance for another of geological service or work, such as consultation, investigation, surveys, evaluation, planning, mapping and inspection of geological work, that is related to public welfare or safeguarding of life, health, property and the environment, except as specifically exempted by ORS 672.505 to 672.705.

672.525(8) A person shall be construed to publicly practice or offer to publicly practice geology if the person:

- (a) Publicly practices any branch of the profession of geology;*
- (b) By verbal claim, sign, advertisement, letterhead or card, or in any other way, purports to be a registered geologist, or through the use of some other title implies that the person is a registered geologist or that the person is registered under ORS 672.505 to 672.705; or*
- (c) Offers to provide any geological services or work recognized as the public practice of geology for a fee or other compensation.*

The statutes define what constitutes the public practice of geology. If a geologist is doing geology work or service for another and that work has a nexus with public health, safety, and welfare, then that work may be the public practice of geology for which registration is required. (See section below on Exemptions from Registration for information on the limited exemptions in Oregon law.)

B. Areas of Public Practice

Geology as a science is very diverse and can be subdivided into numerous categories, with each category having specialties of its own. However, when considering the realm of public practice, geology can be broadly divided into several specialties. Examples include environmental geology, hydrology and hydrogeology, engineering geology, geophysics, paleontology, and economic geology. Traditionally, RGs were often resource or economic geologists working in public practice and carrying out basic geologic mapping. Typical examples of this resource or economic geology work are gas, oil, and mineral exploration. Evolution of geologic work into hydrogeology and environmental geology changed these limits for RGs. These fields of geologic work have become quite extensive and presently are believed to employ the majority of RGs in Oregon.

A common professional practice concern is related to the question of “who can perform what work” with respect to geology. The statutes, rules, and policies provide guidance but with each case or situation needing to be evaluated on the facts presented. Although each case is fact specific, the Board finds that past investigations and compliance cases provide some guidance. In regards to practice areas that overlap with engineering, OSBGE and OSBEELS have developed a process using a Joint Compliance Committee

(JCC) to resolve such complaints; in particular, with regard to the overlap between the practice areas of geotechnical engineering and engineering geology.

When considering overlap issues with other licensed or registered professionals, ORS 672.545(3)(a) allows work that otherwise would be considered the public practice of geology if that work is within the lawful scope of practice for that other licensed or registered profession or is incidental to such practice. Whether such geologic work is incidental to the practice of another profession is fact specific and generally must be determined on a case-by-case basis. Civil and mining engineering are examples of two practice areas where such questions often arise due to the overlap such work has with the public practice of geology.

1. Environmental Geology

Environmental geology is a catch-all phrase that describes a multidisciplinary field of applied science involving the study of the interaction of humans with the geologic environment. Typical concerns of an environmental geologist include contamination of water and soil by sewage and toxic chemical wastes, reclamation of mined lands, and land-use geology.

There are numerous environmental professions practiced in the State of Oregon, many of which are regulated through various boards (like OSBGE) or other agencies. When such environmental work requires interpretation of naturally occurring earthen materials, such as soil, rock, or water, the work likely involves the public practice of geology that requires the person doing the work be appropriately registered with the Board or exempt from registration.

The most common works completed by an environmental geologist are Phases I & II Environmental Site Assessments and air, water, and soil cleanup with monitoring. Following is some general guidance on site assessments, but there are always cases that due to the specific situation require fact specific review.

a. Phase I Environmental Site Assessments

A Phase I Environmental Site Assessment (ESA) is a disciplined approach to the assessment process of a site and is part of the due diligence requirements of most lending institutions for industrial and commercial property transfers. A Phase I ESA is most typically a quick turnaround project that includes the review and evaluation of existing, available, and relevant background data on a site concerning the potential or documented use, storage, treatment, discharge, disposal, or release of hazardous substances that would pose a risk.

For a typical Phase I ESA, background information on local geology, hydrogeology, and water use is collected from publicly available and published materials. Most of the time, the preparer of a Phase I ESA is not required to perform interpretation of the geology data collected and is only reporting on what

others have produced relevant to the project site. But Phase I ESA sometimes crosses into the public practice of geology. For example and not necessarily an inclusive list, if the investigation requires interpretation of the geological data (including independent analysis of subsurface conditions), development of a conceptual site model to guide future modeling, interpretation of vertical borings, determination of permeability, or analysis of depth to groundwater or flow direction, then it involves the public practice of geology that likely requires a person who is appropriately registered with the OSBGE or otherwise exempt from such registration.

As part of the 2002 Brownfields Amendments to CERCLA, Congress adopted new liability protections for prospective purchasers of potentially contaminated properties. Effective November 1, 2006, the All Appropriate Inquiry (AAI) is a due diligence investigation method used provide a defense to liability under the U.S. Environmental Protection Agency (EPA) Superfund law. Used as a measure by which EPA decides if prospective purchasers have performed sufficient due diligence, the AAI standard requires the work be done by or under the direction and supervision of a registered geologist or other "Environmental Professional" who qualifies with specific education, training, and experience. Thus, AAI work in Oregon will likely involve the public practice of geology that must be done or overseen by a registrant of OSBGE unless such work is exempt from registration.

b. Phase II Environmental Site Assessments

A Phase II ESA is a generic phrase for intrusive subsurface investigation activities at a project site that includes interpretation of the resulting data generated and generally involves a focused soil, soil-gas, and/or ground water sampling and analysis program. A Phase II ESA report discusses the investigation results with regard to the regional context of the site (i.e., environmental sensitivity, ground water use, and background environmental quality) to evaluate the significance of hazardous substances that may have been released. While the scope of work of each Phase II ESA is unique, these subsurface investigation and interpretation activities generally qualify as the public practice of geology. Therefore, unless performed by a person exempt from registration, those Phase II ESA activities that relate to such geologic work must be done or overseen by a RG, with appropriate stamping and signing of reports.

Commonly following the Phase II ESA, a soil and/or ground water cleanup or monitoring program is required. The scope of the cleanup or monitoring efforts can be extremely diverse. Like the Phase II ESA, the cleanup and monitoring efforts normally require an understanding of the subsurface geologic conditions and, therefore, constitute the public practice of geology that, unless exempt, require the involvement of a registrant of OSBGE.

2. Hydrology and Hydrogeology (including water resources)

Hydrology is the study of the movement, distribution, and quality of water throughout the earth. Practitioners of hydrology possess expertise in earth or environmental science (e.g., geology, engineering, physics, or chemistry). Because of the broad nature of the field of hydrology, an individual does not necessarily need to be a RG to practice hydrology in the State of Oregon, depending on the nature and scope of the work being done. However, some hydrology work falls within the public practice of geology and may be subject to the regulatory authority of the Board. For example, when the hydrologic system being evaluated can have an impact on stream bank or slope stability, or other geomorphic processes, such work may be the public practice of geology. In addition, the Board regulates hydrology work done by registrants.

Hydrogeology is the science and practice that deals with the distribution and movement of ground water in soil and rock near the earth's surface. By its very nature, ground water is subject to mass and energy exchange with surface waters. Applications of hydrogeology are commonly used in environmental geology and engineering geology, as well as other fields of geologic practice. A common application of hydrogeology is in the realm of ground water contamination and water resources. Because hydrogeology is so closely associated with soil and rock material and geologic structures, hydrogeologic work generally falls within the public practice of geology for which a person must be appropriately registered with the Board or exempt from such registration.

a. Certified Water Rights Examiner (CWRE)

A Certified Water Rights Examiner or CWRE is a trained and registered surveyor, engineer, or geologist (i.e., RG) who has passed exams allowing the individual to document and confirm the location and beneficial use of water. A water right holder must provide this type of documentation as part of a claim for beneficial use in order to fulfill the requirements for the certification process by the Oregon Water Resources Department (WRD). As a result, CWRE's play an important role in the overall water rights process.

Although an RG is eligible to pursue the CWRE certificate, the registration process for CWRE's is within the purview of OSBEELS and not OSBGE. OSBEELS has statutory authority to issue CWRE certificates, regulate the professional conduct of CWREs, require continuing education for CWREs, and discipline CWRE's for violations. The WRD is responsible for preparing, administering, and scoring the CWRE exam.

Even though OSBGE does not require continuing education as a condition for RG renewal, the RG with CWRE certification is subject to the continuing education requirements set by OSBEELS. RGs need to be aware of the requirement to complete 10 professional development hours of continuing education during a biennial period in order to renew a CWRE certificate for the next biennial renewal

period. OSBEELS has set standards for what is acceptable continuing education and how documentation must be provided.

For more information about the CWRE certification, the Board recommends that individuals contact OSBEELS directly. Interested individuals are also encouraged to review the administrative rules adopted by OSBEELS that specifically address the certification. See OAR 820-010-0209 and 820-010-0442 for application requirements and OAR 820-050-0001 and 820-050-0010 for continuing education requirements.¹

3. Engineering Geology

Engineering geology is the application of the geological sciences to engineering practices for the purposes of assuring that the geologic factors affecting the location, design, construction, operation, and maintenance of engineering works are recognized and adequately provided for. Engineering geologists investigate and provide geologic and geotechnical recommendations, analysis, and design. Works completed by engineering geologists include but are not necessarily limited to investigations related to: geologic hazards, geotechnics, material properties, landslide and slope stability, erosion, flooding, dewatering, and seismic issues. To engage in and complete engineering geologic investigations in Oregon, one must be a CEG or exempt from such registration. All CEGs are also RGs as this is one of the prerequisites to being eligible for the CEG specialty certification. However, many RGs are not also CEGs.

The fields of engineering geology and geotechnical engineering are very similar and share large areas of overlap. Both fields practice geotechnics (the application of scientific methods and engineering principles to the acquisition, interpretation, and use of knowledge of materials of the Earth's crust for the solution of engineering problems), and both commonly contribute to geotechnical investigations and reports. However, the public practice of geotechnical engineering is regulated in the state by OSBEELS and not OSBGE.

a. Practice of Geology vs. Engineering Geology by Registrants

As stated above, all Oregon CEGs are also RGs; however, most RGs are not also certified as CEGs. Work by a registrant that falls under the definition of engineering geology (where the purpose is civil works) must be completed or supervised and stamped by a CEG. In general, if the geologic work is being completed to provide recommendations for the siting or construction of a structure (including buildings, roads, dams, etc.), this work is engineering geology and must be completed or supervised by a CEG.

¹ OSBEELS rules: http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_820/820_010.html and http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_820/820_050.html

With regard to this issue, a common question asked by RGs is “Can a RG who does not also hold the CEG specialty certification complete geologic hazards mapping if the intent of this mapping will be for development purposes?” The answer is that geologic hazards identification and mapping are typically within the broad practice of geology, and, therefore, RGs can complete the work without also being a CEG provided that the work only identifies relative hazards and does not imply or provide recommendations for the siting or construction of structures. Because construction within geologically hazardous areas requires an understanding of geotechnics and structural design options, recommendations for siting structures (including setbacks) should typically only be completed by a CEG.

b. Engineering Geology vs. Engineering

Another common question asked is “Can engineering geologic work be completed by a RG if a registered Professional Engineer (PE) is also involved in the project?” The answer is if the work done by the RG is engineering geology, then the RG must be a CEG to do the work. A RG without a CEG certification is not considered qualified to work as a responsible professional geologist on a civil works project.

OSBGE does not regulate the practice of geotechnical engineering, which is similar to engineering geologic work, by Geotechnical Engineers registered with OSBEELS. The practice of engineering in Oregon, including the practice of geotechnical engineering by registered Geotechnical Engineers, is regulated by OSBEELS. However, OSBGE regulates the public practice of geology by a Geotechnical Engineer or other PE where such work falls outside the scope of practice or area of expertise for the Geotechnical Engineer or PE and is not incidental to the engineering work being done. OSBGE generally collaborates with OSBEELS when issues about overlapping scope of practice arise.

4. Geophysics

Geophysics is the study of the Earth and its atmosphere using the principles of physics. A geophysicist is an individual who uses instruments to remotely gain information about earth and atmospheric conditions. When used to interpret subsurface soil, rock, ground water, or geologic structures, the application of geophysics is considered to be the practice of geology, and where such work is the public practice of geology the person must be appropriately registered with OSBGE or exempt from registration. When geophysics is used to identify non-geologic conditions, such as underground utilities or storage tanks, the work is likely not the public practice of geology for which registration with OSBGE is required.

5. Economic Geology (Mining, Minerals, Petroleum)

Economic geology is the use of geologic knowledge to find and recover materials that can be used for economic or industrial purposes, including fuels, minerals, ores, and construction-grade rock and aggregates. Economic geology is studied and practiced by geologists; however, other professionals such as engineers, environmental scientists and specialist in land and water reclamation also conduct research and investigations related to resource extraction issues. When an investigation is completed for the purpose of identifying the location, quality, and quantity of the resource, the work is likely the public practice of geology for which registration is required, unless exempt. For example, during the extraction or reclamation phases of a mining operation, the evaluation of water or soil contamination concerns will likely involve the public practice of geology for which registration is required unless the activity falls within an exemption. Similarly, the evaluation of slope stability and fill (spoils) placement or the mechanical properties of earth materials, such as blast strength, during the mining or reclamation phases of the project likely involves the public practice of engineering geology for which CEG registration is required absent an exemption.

6. Paleontology

Paleontology is the study of the history of life on Earth, as reflected in the fossil record. Some typical areas of work in paleontology include the following: taxonomy, biostratigraphy, evolution, biometrics, paleoecology, and taphonomy. The practice of paleontology commonly does not impact the health, safety or welfare of the public, which means the work then does not fall within the definition of the public practice of geology. In addition, practitioners in this area commonly fall within one of the exemptions from registration with OSBGE (e.g., teachers, federal government employees, etc.). When paleontological work is completed for an individual or organization for pay (e.g. private consulting), the work may be the public practice of geology for which registration with OSBGE is required.

7. Other Geologic Practices

There are numerous other geologic practices, such as geochemistry, watershed assessment, stream restoration, and archaeology, which are not discussed in this guidance document. If the practice of geology is incidental to one of these other primary fields, OSBGE generally does not have jurisdiction absent some clear link to the public health, safety and welfare. When the practice of geology, irrespective of the specialty, is completed in the public arena and can impact the health, safety and welfare of the public, the work may fall within the definition of public practice of geology. In such cases, OSBGE has jurisdiction to regulate such geological work unless it falls within one of the exemptions.

Geologists more and more frequently use and interpret data that have been acquired via remote sensing technology (e.g., aerial photographs, LIDAR elevation data, thermal infrared imagery). These powerful analytical tools require specialists to acquire and

process the raw data. OSBEELS regulates the practice of photogrammetric mapping.² OSBGE's understanding is that the use or interpretation of acquired remote sensed data is generally not photogrammetric mapping for which registration with OSBEELS is required, but that the actual acquiring of the remote sensed data is and must be done or overseen by a registered photogrammetrist. OSBGE understands the Oregon Department of Geology and Mineral Industries shares this position, which has been upheld through the Department's past communications with the OSBEELS. Anyone engaging in activity that might be considered the practice of photogrammetric mapping, however, is encouraged to contact OSBEELS about the matter as OSBEELS has jurisdiction over and regulates such practice.

C. Stamping/Signature by Registered Geologist

Oregon statute requires stamping (also called sealing) of drawings, reports, or other geologic papers or documents involving geologic work. Digital use of the geologist stamp is recommended where electronic transmission of reports is used.

ORS 672.605 Seal of geologist. *Each registrant, upon issuance of a certificate, shall obtain a seal of the design authorized by the State Board of Geologist Examiners, bearing the registrant's name and the legend "Registered Geologist" or "certified specialty geologist." All drawings, reports, or other geologic papers or documents involving geologic work as defined in ORS 672.505 to 672.705 that have been prepared or approved by a Registered Geologist, or a subordinate employee under the direction of a Registered Geologist for the use of or for delivery to any person or for public record within this State, shall be signed by the Registered Geologist and impressed with the seal or the seal of a nonresident practicing under the provisions of ORS 672.505 to 672.705, either of which shall indicate responsibility for them. [1977 c.612 §12; 2001 c.232 §2]*

OSBGE has approved two stamp designs, one for the RG and one for CEG. Details are specified in OAR 809-050-0000. A new registrant provides his or her registration information to a local print shop to obtain a stamp with registration number and name.



²Under ORS 672.002(7), "photogrammetric mapping" means an evaluating and measuring of land that is limited to the determination of the topography, area, contours and location of planimetric features, by using photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process."

1. Final vs. Draft Work Products

OSBGE clarified by rule (OAR 809-050-0000(1)) that the registrant's stamp must be affixed to final products created in the public practice of geology. The registrant is not required to stamp draft geology products or documents that are clearly labeled and identified as draft. The Board expects a draft document to ultimately be superseded by a final, stamped product. Draft documents must be clearly marked as draft per OAR 809-050-0000(3).

2. Compiled vs. Stand-Alone Work Products

When a stand-alone report is sealed by the registrant responsible for the work, the registrant is not required to also stamp individual work products contained in the report. For example, the registrant does not have to individually stamp each geology figure, map, and log included in the report. However, any geology products within a stand-alone report that were not prepared by the registrant stamping the report must be individually stamped by the registrant(s) who prepared those products. If a final geology product is not included in a compiled report, such as but not limited to a boring log, then the registrant must individually stamp the product. *See* OAR 809-050-0000(4),(5).

3. Responsibility for Stamp

A registrant who stamps a final version of a geology product must be in responsible charge for the geology content of that product per OAR 809-050-0000(6). (See also Path to Registration section of this guideline for an explanation of responsible charge.) Said another way, if a registrant stamps the geologic work completed by a person who is not registered with OSBGE, then that registrant is accepting full legal responsibility for that work done by the unregistered person. When there are two or more RGs on a project with each geologist completing different elements of that project, the stamped document should clearly reflect which geologist completed which element(s) of the project. If this is not clearly stated, then the RGs stamping the document are each accepting legal responsibility for all the geologic work presented in the document. In addition, when a document is stamped by two different registered professions with fields of practice that overlap, such as that of CEGs and Geotechnical Engineers, it should be clear in the document which professional is taking responsibility for which work. And finally, a registrant must take care to ensure no other individual inappropriately uses his or her stamp.

OSBGE established by rule (OAR 809-050-0005) that the registrant must sign every geology work product that is stamped in accordance with ORS 672.605 and OAR 809-050-0000. The registrant is to place a handwritten signature in permanent ink across the stamp. The registrant also must then write the word "Expires" followed by the registration expiration date directly below the seal. This requirement applies unless an electronic or digital signature is used as provided for in Board rule per OAR 809-050-0000(2)-(6).

4. Electronic/Digital Signatures

An electronic or digital signature may be used in an electronic or digital document when such a signature is: (a) unique to the registrant using it, (b) under the direct control of the registrant, (c) verifiable, and (d) included the registrant's expiration date immediately preceded by the word "Expires." When an electronic or digital document with an electronic or digital signature is altered in any manner, the stamp is no longer valid and the document can no longer be considered prepared or approved by or under the direction of a RG. The registrant must stamp the updated document. Registrants also need to understand that the use of an electronic or digital signature by any person other than the registrant may be grounds for disciplinary action by OSBGE. (See OAR 809-050-0000(2)-(6).)

D. State and Local Governments to Use Registered Geologist

Oregon statute requires state and local public agencies to contract for any geological services with individuals registered with OSBGE or a firm employing a registered geologist unless the activity is exempt. Agency representatives with questions about what type of geologist to hire can find information in OSBGE's guidance documents and in a Consumer's Guide available at <http://www.oregon.gov/osbge/Pages/Consumer-Guide.aspx>. Staff and the Board also will review and respond to inquiries from public agencies as questions are brought to their attention.

ORS 672.695 Public agencies required to contract with or for registered geologist. This state and its political subdivisions, such as a county, city or a legally constituted board, district, commission or authority, shall contract for geological services only with persons registered under ORS 672.505 to 672.705 or a firm employing a registered geologist.

In addition to regulating the practice of registrants, OSBGE has the authority to investigate complaints related to geological services provided by non-registrants for public agencies in violation of ORS 672.695. Any member of the public or a registrant can file such complaints against public agencies, or the Board can pursue its own complaint if information comes to light about violation of this statute. More information on this can be found in the Compliance section of this document.

OSBGE does not have statutory authority over federal or tribal governments. Federal and tribal agencies often have geologists on staff, and their staff is exempt from registration requirements when working solely for these public employers. OSBGE encourages a federal or tribal agency needing to contract with outside professionals for geological services to ensure such professionals are qualified, such as by being registered with the Board.

IV. Exemptions from Registration

A. In General

Any work that meets the definition of “public practice of geology” must be done by a person appropriately registered with OSBGE unless covered within one of the statutory exemptions from that registration requirement. The exemptions are set forth in ORS 672.535 & 672.545.

B. Specific Exemptions

There are three exemptions specified in 672.535, and each is described in turn. There are also several other de facto exemptions addressed in the statutes, and those are also described.

1. Geologists in Academia

ORS 672.535 provides that the following persons are exempt from the provisions of ORS 672.505 to 672.705: (1) Persons engaged in teaching and conducting research in the science of geology in an accredited college or university, and students acting under their direction, but who are not engaged in the public practice of geology in this state.

Geologists performing geology work or service in public and private universities are exempt from the statutory requirement to be registered with OSBGE. These geologists often perform research, mapping, and other geologic studies as part of their academic jobs. This academic geology work is exempt from the registration requirement even though the work might otherwise fall within the statutory definition of the public practice of geology. However, if an academic geologist engages in other work on the side that is not part of their academic job and this work is the public practice of geology, then that private work is not covered by this exemption. In that event, the person must be registered with OSBGE unless the work falls within another exemption. Only geology work that is part of the academic job falls under this exemption.

OSBGE strongly encourages professors who are charged with training our future professional geologists to become registered themselves even though they may not be required to do so by law. Most geology students will go into careers in the geology field that require registration in Oregon or in whatever state they move to after obtaining a degree. Registration requirements for geologists are currently in place in thirty-one states. By holding registration, professors can serve as good role-models for their students. Professors are then also covered for any private geology work they elect to do outside of their academic jobs.

2. Geologists in Federal Employment

ORS 672.535 provides that the following persons are exempt from the provisions of ORS 672.505 to 672.705: (2) Officers and employees of the United States of America, practicing solely as such officers or employees;

Officers or employees of the federal government doing geology work as part of their employment are exempt from registration with OSBGE even though that work might otherwise meet the definition of the public practice of geology for which registration with OSBGE would be required. As with academic geologists, other geology work done by a federal employee on the side that is not part of their employment and meets the definition of the public practice of geology would require registration unless another exemption applied. Thus, OSBGE strongly encourages geologists in federal employment to obtain registration as then they are covered for any geology work they elect to do outside of their federal employment.

3. Subordinates to Registered Geologists

ORS 672.535 provides that the following persons are exempt from the provisions of ORS 672.505 to 672.705: (3) A subordinate to a geologist registered under ORS 672.505 to 672.705 insofar as the subordinate acts solely in such capacity. This exemption, however, does not permit any such subordinate to practice geology for others or use the title “registered geologist.”

Individuals working towards qualifying as a RG, including those who have qualified for and elected to obtain a Geologist-in-Training (GIT) registration by OSBGE, are allowed to do work that would otherwise be the public practice of geology for which registration as an RG or CEG is required so long as they are doing so under the supervision of a RG or CEG. (See Path to Registration section of this guideline for more on the GIT registration.) Non-registered individuals must be cognizant of this limitation to their work. Businesses that provide geological services are cautioned to not employ non-registered geologists and then ask them to take responsible charge of geology work. Non-registered individuals who perform geology work or service and are working toward registration must make sure they are properly supervised by a RG or CEG. Otherwise, the non-registered individual is likely to be subject to sanctions for engaging in the unregistered public practice of geology and such work will not qualify as the work experience needed to meet the requirements for registration.

4. Geological Service Business and Nonpublic Geological Services

ORS 672.545 permits the practice of geology by proprietorship, partnership or corporation; employment of nonregistered geologist to perform non-public geological services necessary to the conduct of the business; the practice of geology by other professionals within the scope of their other license or registration; and the practice of geology by nonresident on a specific project for 60 consecutive days or less.

ORS 672.545 provides:

(1) ORS 672.505 to 672.705 do not prohibit one or more geologists from practicing through the medium of a sole proprietorship, partnership, or corporation. In a partnership or corporation whose primary activity consists of geological services, at least one partner or officer shall be a registered geologist.

(2) ORS 672.505 to 672.705 do not prevent or prohibit an individual, firm, company, association, or corporation whose principal business is other than the public practice of geology from employing a nonregistered geologist to perform nonpublic geological services necessary to the conduct of their business.

OSBGE does not regulate how businesses providing geological services are created or the form of business (i.e., sole proprietorship, LCC, corporation, etc.) its organizers choose. The important part of ORS 672.545 with respect to the professional practice of geology is the requirement for a business whose primary activity consists of geological services to have at least one partner or officer that is an RG.

There is a distinction in the law between the public and non-public practice of geology. Under ORS 672.545(2) an individual, firm, company, association, or corporation whose principal business is other than the public practice of geology may employ a nonregistered geologist to perform nonpublic geological services necessary to the conduct of their business. “Nonpublic” means the geology work or services do not fall within the definition of the public practice of geology in ORS 672.505(6), which means that the geology work or services is not done for another or that it is not related to the public welfare or safeguarding of life, health, property and the environment. ORS 672.545(2) covers the situation where the geology work is done solely for the company or entity that employs the individual engaging in the practice of geology and the company is not engaged primarily in the business of the public practice of geology within the meaning of ORS 675.505(6). For example, an oil and gas exploration company doing exploratory work in Oregon solely for its own use and not otherwise engaged in the public practice of geology can employ geologists who engage in the practice of geology in Oregon solely for the company without the geologists being required to be registered with OSBGE. This exemption does not apply to the use of the title, however. Those “company geologists” must not use any title or description in relation to such work that would tend to convey the impression that the individual is a registrant of OSBGE. Any such “company geologist” that did so could be subject to sanction by OSBGE.

5. Other Registered or Licensed Professionals/Engineers

ORS 672.545(3) provides: ORS 672.505 to 672.705 shall not be construed to prevent or to affect: (a) The practice of any licensed profession or trade by limiting its appropriate and current custom or practice including the practice of any profession or trade for which a license or registration is required under any other law of this state including the practice of registered civil and mining

engineers lawfully practicing civil and mining engineering in its various specialized branches;

Under this exemption, an individual is not required to hold two different professional licenses to conduct work that falls within an area of professional overlap. This recognition of practice overlap is a common throughout Oregon licensing statutes. For OSBGE and its registrants, the most common area of practice overlap is with professional engineers who are regulated by OSBEELS. However, OSBGE has also encountered issues of practice overlap involving hydrologists, whom may or may not hold a license from another Oregon board or regulatory agency.

a. General

Erosion Control Design by Hydrologists: The work of hydrologists often overlaps with the professional practice of geology. When the hydrologist is registered by another regulatory board other than OSBGE, the outside board has the regulatory authority over the hydrologic work performed within the scope of that other registration. However, when the hydrologist is not regulated by another board, OSBGE may need to review the work to determine if the work constitutes geologic work that requires registration. If this work is determined not to be geologic work that requires registration with OSBGE, then the information may be forwarded to another regulatory board or agency, as appropriate.

Engineering Work by Professional Engineers: As discussed previously, some engineering practice overlaps with the practice of geology and/or engineering geology, including, but not limited to, environmental engineering, civil engineering, hydrology, geotechnical engineering, and photogrammetrics. Overlap issues between the fields of geology and engineering in the State of Oregon have led to the development of a Memorandum of Understanding (MOU) that defines a process using a Joint Compliance Committee (JCC) composed of members of both OSBGE and OSBEELS to make recommendations to both boards for the resolution of compliance complaints that involve areas of practice overlap. The JCC provides recommendations for resolution of those complaints to the two Boards.

b. Mining/Mineral Examiners Specifically

Federal programs (BLM and USFS) train Certified Mineral Examiners. Only federal employees are eligible for this certification. An unusual compliance case was brought before the Board where under contract a retired federal employee was hired to return to federal land and evaluate a mineral claim. The Board determined the case still fit the exempt status because only federal employees may possess the certification, the certification was required to perform the contract, the project was completed only on federal lands, and there was insufficient evidence to say the individual was doing more than acting as a scrivener.

Typical mining and mineral work must meet the definition of the public practice of geology in order to require registration. Mining that involves geology work where civil works (e.g., cut slopes) are being designed may meet that definition and require the person doing the work be appropriately registered with the Board or exempt.

C. Temporary Permits

ORS 672.545(3) provides: ORS 672.505 to 672.705 shall not be construed to prevent or to affect: (b) The practice of geology by a person not a resident of and having no established place of business in this state, when the practice is limited to a specific project and does not exceed one period of 60 consecutive days in any calendar year, and provided the person is licensed or registered to practice such profession in another state where the requirements for certification, registration or licensing are not lower than those specified in ORS 672.505 to 672.705 and provided further that such nonresident shall file with the State Board of Geologist Examiners, on or before entering the state for commencing such work, a statement giving name, residence, the number of the license or certificate of registration of the nonresident, and by what authority issued, and upon the completion of the work, a statement of the time engaged in such work within the state.

OSBGE offers a temporary permit in accordance with ORS 672.545(3). The statute greatly restrains the conditions applicable to such permits, and the Board rule for temporary permits implements those statutory restrictions. The rule is found at 809-050-0010(3). OSBGE is only able to issue a temporary permit to a geologist that neither resides in Oregon nor has an established place of business in Oregon and that holds a current registration or certification to practice geology from another U.S. state, territory or possession or the District of Columbia. ORS 672.545(3) restricts temporary permits to 60 days and does not provide OSBGE with any flexibility in how those 60 days are calculated. The 60 days must be consecutive days without work starts or stops credited to extend the timeframe.

A geologist with registration or certification in another U.S. state, territory or possession or the District of Columbia who publicly practices geology in Oregon without the benefit of a temporary permit or without first obtaining a cooperative registration may be in violation of the law for engaging in the unregistered practice of geology for which OSBGE could impose sanctions.

D. Public Proceeding Testimony

ORS 672.525(9) provides: A person does not publicly practice or offer to publicly practice geology solely because the person testifies or prepares to testify in a public proceeding.

This statutory provision makes it clear that neither providing public testimony nor preparing to testify in a public proceeding is the public practice of geology. Public proceedings include venues such as local government planning commission hearings, council hearings, legislative hearings, and state agency permit hearings.

V. Path to Registration

A. Geologist-in-Training

A Geologist-in-Training (GIT) is an individual registered by OSBGE based on application made after completing the minimum education requirements necessary for registration (45 quarter hr. geology coursework or related coursework approved) and passing the first part (Geology Fundamentals) of the national geology examination. The GIT registration is not mandatory but is strongly encouraged as a way for the individual to demonstrate the progress being made towards registration. Some businesses actually offer a pay differential to those with the GIT compared to no registration. The GIT registration does not alter the need for the registrant to publicly practice geology under the supervision of a RG or CEG. After completing a minimum of three years of qualifying work experience, the GIT may apply to take the second part (Geology Practice) of the national geology examination. Upon passing this exam, the GIT may apply for registration as a RG.

B. Registered Geologist (RG)

A RG is an individual granted registration by OSBGE to public practice geology based on application made after meeting the following pre-requisites. To summarize, an applicant must demonstrate seven (7) years of qualifying credit for education and work experience and have passed the national geology examination

1. Exams

Passed the Geology Fundamentals and Geology Practice sections of the national geology examination.

2. Education

Demonstrated the minimum education requirements (45 quarter hours geology coursework or related coursework approved). May have also received credit for graduate-level studies, up to a maximum of 4 years credit.

3. Experience

A minimum of either 3 years supervised work experience or 5 years of responsible charge work.

a. What is Responsible Charge?

The term “responsible charge” has generated confusion over the years, and OSBGE went through a rule amendment process in 2011 - 2012 with hopes of finally clarifying what this means in relation to public practice of geology and qualifying work experience for registration purposes.

“Responsible charge of work” means the independent control and direction of geological work by the use of initiative, skill and independent judgment, or the supervision of such work (ORS 675.505(11)). As used in the definition, “geological work” means the public practice of geology or work that would otherwise require registration by OSBGE if not exempted (OAR 809-003-0000(9)). Taken together, what this means is that an individual cannot be working “in responsible charge” unless that person is working as a RG in Oregon, working in another jurisdiction with proper licensure from that jurisdiction, working as a geologist in a jurisdiction that does not require licensure, or working under one of the limited exemptions of ORS 672.535. The exemptions of ORS 672.535 are addressed in the “Exemptions from Registration” section of this guideline.

The limitations on “in responsible charge” work are further articulated in OAR 809-003-0000(27) which defines when a person can supervise geological work involving the public practice of geology. The individual supervising the geologic work must be fully responsible, accountable and liable for the geological work and (a) registered as a geologist in Oregon, (b) certified as an engineering geologist in Oregon, (c) registered as a geologist in another jurisdiction with licensing requirements comparable to Oregon or (d) in charge of the geological work in a situation or another jurisdiction that does not require licensure. A geologist not registered with OSBGE and not working under an exemption from registration cannot be publicly practicing geology and thus certainly cannot be supervising others in the public practice of geology. An individual registered with OSBGE as a GIT and working in Oregon is not in responsible charge and cannot supervise the geological work of others but instead must be working under the supervision of a RG or CEG.

C. Certified Engineering Geologist (CEG)

A CEG is an individual granted specialty registration by OSBGE to publicly practice engineering geology based on application made after meeting the following pre-requisites:

1. Registered Geologist (RG)

First qualified for and obtained registration with OSBGE as a RG (i.e., met the requirements summarized under B. of this section.)

2. Specialty Exam

The RG must have:

- Passed the Oregon-Washington examination for engineering geology, either in Oregon or as verified by the State of Washington Geologist Licensing Board or
- Passed the California exam for engineering geology, as verified by the State of California Board For Professional Engineers, Land Surveyors, and Geologists.

3. Experience

Met one of the following experience requirements:

- Three years' experience under the direct supervision of an engineering geologist
- Five years' experience in responsible charge of engineering geological projects. (See discussion above about responsible charge.)
- A minimum of 5 years work experience from a combination of (A) and (B).

VI. Compliance

A. Registration

ORS 672.585(1) provides: The State Board of Geologist Examiners shall issue a certificate of registration, upon payment of the registration fee, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of ORS 672.505 to 672.705. The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered geologist, or certified specialty geologist, while the certificate remains unrevoked or unexpired.

OSBGE ensures compliance with registration standards through review of applications for registration and complaints about unlicensed practice. If an applicant has submitted a complete application and does not appear to meet the qualifications for the particular type of registration applied for, then the applicant is given the option of withdrawing the application to avoid the need for OSBGE to proceed with the application denial process. If an applicant withdraws an application, generally the applicant will be able to re-apply after demonstrating that he or she has met the qualifications that previously appeared to be lacking. If an applicant does not withdraw an application, the OSBGE will proceed with the application denial process; this includes notice of the basis for the denial and an opportunity to request a hearing on the proposed denial under the Oregon Administrator Procedures Act (ORS Chapter 183). When the Board notifies an applicant of its intent to deny an application, information on the process to request a hearing is provided.

OSBGE accepts applications for “Standard” (also sometimes called “Initial”) and “Cooperative” (also sometimes called “Reciprocity”) registration. Standard registration is for applicants who do not hold a license or registration to practice geology in any other jurisdiction. In other words, this is the registration path for individuals seeking their first professional registration to publicly practice geology after completing required education, examinations and work experience. Cooperative registration is for applicants with an active license or registration to practice geology issued by another jurisdiction. Statute specifies that the person must hold a license or registration from a US state, territory, or possession or the District of Columbia. This means that a person licensed or registered in another country would not be able to seek cooperative registration and instead would have to qualify via the standard registration path. Regardless of the registration path, the Board has the same standards regarding examination, education and work experience.

The Board is required by statute (ORS 672.635(3)) to provide for an annual roster of its registrants. Many years ago now, the Board shifted to providing a monthly update of the roster via its website. In 2013, the Board further increased public access to the registrant roster by moving to a registration lookup feature on its website. The registrant data is updated daily, making the data very current and easy to access.

B. Renewals

ORS 672.585(2) provides: All certificates shall be renewed annually at such time as will be designated by the board. All applications for renewal shall be filed with the administrator before the expiration date, accompanied by the annual renewal fee. A license which has expired for failure to renew may only be restored after application and payment of the prescribed restoration fee.

OSBGE registrants must renew registrations on an annual basis. Renewal is due by or before the last day of the anniversary month of the initial date of issuance. For a CEG with a different initial date for the CEG than the RG, the first year of the CEG is prorated and the CEG and RG renewal date made the same. Through the renewal process, OSBGE keeps track of where registrants are located as well as whether registration to practice is being maintained.

An expired registration may be reinstated within five years without reapplication or retaking of examinations. However, the registrant will be responsible for paying for (a) the annual registration fees for all years in which the registration was expired, (b) the annual renewal fee for the current year; and (c) restoration fees. If the registrant fails to restore the registration within 5 years, the registration expires and cannot be renewed. A person with an expired registration must apply as a new applicant and pass national exams or apply by cooperative licensure if eligible. In such a case, the registrant’s original registration number will not be reinstated.

C. Complaints

The Board's primary purpose is to protect the public by enforcing the statutes and rules for the public practice of geology. As part of its regulatory responsibilities, OSBGE reviews complaints related to both the conduct of registrants and unlicensed practice. Complaint investigations may or may not result in formal charges or civil penalties as provided in ORS 672.665 and 672.690.

ORS 672.665 Charges against geologist. Any person may prefer charges of fraud, deceit, negligence, gross negligence, incompetence or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the administrator of the State Board of Geologist Examiners.

672.690 (1) In addition to any other penalty provided by law, a person who violates any provision of ORS 672.515 to 672.705 or any rule adopted thereunder is subject to payment of a civil penalty to the State Board of Geologist Examiners in an amount of not more than \$1,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) Notwithstanding ORS 670.335, all penalties recovered shall be deposited into an account established as provided under ORS 182.470. Moneys deposited are continuously appropriated to the board and shall be used only for the administration and enforcement of ORS 182.456 to 182.472 and 672.505 to 672.705.

To ensure compliance with statute, OSBGE requires that all complaints be sworn to and submitted in writing. "Sworn to" means the complainant declares by signature under penalty of perjury that the statements and information in the complaint are believed to be true. This can be either by letter or by completing a complaint form provided for this purpose. OSBGE recommends use of the complaint form as it guides the complainant through all the information required to file a complaint. (The form is available via the Board's website at: http://www.oregon.gov/osbge/pdfs/complaint_form_osbge.pdf.) If a complaint is submitted by letter, the letter must include the name of the person the complaint is against, contact information for that person, contact information for the complainant, statement of facts relating to the alleged violation, and a declaration under penalty of perjury that the information is true to the best of the complainant's knowledge, signature, and date.

1. Examples of Complaint Issues

Following is a list of examples of complaint issues that may be considered by OSBGE.

Registrants (GIT, RG, or CEG)

- Improper stamping/signing or failure to stamp/sign geology work products by a registrant (including stamping/signing with a lapsed registration),

- Stamping/signing geology work products for which the geologist does not have direct professional knowledge and for which the geologist is not responsible for in terms of accuracy and adequacy,
- Using the stamp of another registrant or allowing another person to use his/her stamp,
- Providing false or forged evidence of any kind to OSBGE as part of registration process,
- Providing engineering geology services without the required specialty certification,
- Undertaking professional service or rendering expert opinion outside of qualifications by training or experience,
- Taking credit for work conducted by others and/or not properly referencing the work of others,
- Making false statements or misrepresentations, or allowing the publication or use of the geologist's name or work in association with any fraudulent activities,
- Not properly disclosing to clients or other parties concerned any conflict of interest in projects or properties on which the geologist performs work,
- Offering or accepting gifts (other than those of nominal value, such as entertainment or hospitality), with the intent of influencing the judgment of a client, prospective client, government official, or another geologist in connection with a project, or employment, in which the registered geologist is to be retained or has a financial interest,
- Practicing geology while impaired by alcohol or other drugs,
- Engaging in false, misleading or deceptive advertising, and
- Failure to protect public health, safety and welfare in practice by negligence, gross negligence, or incompetence.

Non-Registrants

- Former registrant practicing with expired or lapsed (delinquent) registration, including stamping or signing geologic work,
- Non-registrant publicly practicing geology in Oregon,
- Non-registrant offering to publicly practice geology in Oregon, as evidenced through actions of the individual such as advertisement, offering geological services for compensation, use of RG or geologist title, or otherwise conveying the impression that the person is a registered geologist, and
- Non-registrant claiming to be scrivener but actually engaging in the public practice of geology

2. Filing a Complaint

OAR 809-020-0006(7) provides: If a Registered Geologist has knowledge or reasonable cause to believe another person or geologist is in violation of the registration law, ORS Chapter 672, or the related administrative rules, the geologist shall present such information to the Oregon Board of Geologist Examiners, in writing.

Every RG has an obligation to help regulate the profession. If a RG has knowledge or reasonable cause to believe statutes or rules for public practice of geology have been violated, that registrant is required to act on that information. Registrants are to present information and assistance to the Board in pursuing violations of laws and rules relating to the public practice of geology.

In addition to investigating complaints against registrants, OSBGE is also charged with handling complaints related to the unregistered public practice of geology. Such complaints can be filed with the Board or initiated by the Board as appropriate based upon information brought to the Board's attention that indicates potential unregistered practice. (Board authority in this regard derives primarily from ORS 672.525 and ORS 672.690.)

In summary, any individual may voluntarily file a written complaint with the Board about either an alleged violation of statutes or rules by a registrant or alleged unregistered practice of geology by a non-registrant. A registrant, however, does not have the option and must report potential violations.

3. Individuals Subject to Complaints

a. Registrant Subject to Complaint

An OSBGE registrant is obligated by the Code of Professional Conduct to cooperate with complaint investigations. For example, OAR 809-020-0025(1) requires the geologist to respond to communications from the Board within 21 days after notification is mailed by registered or certified mail. Registrants are to present information and assistance to the Board in pursuing violations of laws and rules relating to the public practice of geology. A violation of the Code of Professional Conduct by a registrant is considered misconduct for purposes of potential disciplinary action and the assessment of civil penalties under 672.690(1). Per OAR 809-020-0030, misconduct also includes, but is not limited to, any of the following acts committed in connection with or related to the public practice of geology:

- (1) Signing or stamping work not prepared under the direct supervision or control of the registered geologist;
- (2) Offering or accepting gifts (other than those of nominal value, such as entertainment or hospitality), with the intent of influencing the judgment of a client, prospective client, government official, or another geologist in connection with a project, or employment, in which the registered geologist is to be retained or has a financial interest;
- (3) Fraud, deceit, misrepresentation, false impersonation, false or forged evidence, or a felony conviction;
- (4) Practicing geology while impaired by alcohol or other drugs;
- (5) Engaging in false, misleading or deceptive advertising;

(6) Negligence, gross negligence, or incompetence.

b. Non-Registrants Subject to Complaint

OSBGE can impose civil penalties if it finds that a non-registrant publicly practiced geology in Oregon. If the non-registrant is licensed or registered by another state licensing board, OSBGE will coordinate with that board during the complaint investigation and may refer the case to that board. In such cases, the non-registrant could face civil penalties from OSBGE and disciplinary action from the licensing board that oversees his/her profession.

4. Standards of Practice

A professional standard of practice (also sometimes called a standard of care) is a standard of conduct that reflects a minimum acceptable degree of care, skill, and diligence for practitioners of the profession. The degree of care is what a reasonably prudent professional would exercise in the same or similar circumstances, i.e., that which every geologist is expected to do or not do in the same or similar situation. A standard of practice for a geologist is a reflection of the knowledge and skill that an ordinary member of the community of geological professionals possesses.

For the geology profession, a few examples of basic standards of practice would include (but by no means be limited to) having a location and geology map of the study area included in a geology report, mapping a groundwater gradient based on no less than 3 data points, including a north arrow, scale and legend on a geology map, or ensuring that all information, data, and materials are properly referenced in a geology report if not original work.

Registrants and those filing complaints against registrants need to understand that these standards of practice are not the same as best practices. OSBGE encourages all registrants to aspire to use best practices in carrying out the public practice of geology. But when evaluating whether a registrant has committed a violation of statutes and rules, the Board must focus on whether the minimum acceptable standards of practice were met in how the public practice of geology was carried out by the registrant.

To operate without meeting standards of practice could be incompetence or negligence, or in the more serious cases gross negligence on the part of the OSBGE registrant. These terms are defined by OSBGE as follows:

- *Incompetence: Inadequacy or unsuitability for effective action. The Board shall consider incompetence in the practice of geology to include, but not be limited to instances where a geologist has been adjudicated mentally incompetent by the court; been engaged in conduct which shows a lack of ability or fitness to discharge the duties and responsibilities a geologist owes a client, employer, or the general public; or been engaged in conduct which shows a lack of knowledge,*

or inability, to apply the principles or skills of the profession. OAR 809-003-0000(11)

- *Negligence: Failure by a registrant to exercise the care, skill, and diligence demonstrated by a registrant under similar circumstances in the community in which the registrant practices. OAR 809-003-0000 (16)*
- *Gross Negligence: Reckless and wanton disregard for exercising care and caution. OAR 809-003-0000 (10)*

Complaint cases involving potential incompetence, negligence, or gross negligence are among the more serious cases that come before OSBGE. In such cases, the Board typically has heightened concern about the severity of potential impacts to public health, safety, and welfare. Fortunately, history has shown cases involving gross negligence – the more serious failures to meet standards of practice - are very rare. Cases involving proven incompetence or negligence have also been relatively limited over the years.

OSBGE is sometimes asked to provide specific standards of practice for the geology profession all packaged nice and neatly in writing. OSBGE determined that it would be neither practical nor prudent to try and define the specific standards of practice for the geology profession. Reasons for this decision include the wide range of geology disciplines with varying standards of practices specific to these disciplines, the continual evolution of practice related to advances in knowledge and technology which thereby feeds an evolution of standards of practice, and variation in geographic sites, project types, and scopes of work influencing application of standards of practice.

In a 2010 decision on an OSBGE revocation of registration case, the Oregon Supreme Court upheld the Board's position that it is not required to establish specific standards of practice through administrative rule (*Coffey v. Board of Geologist Examiners*, 348 Or 494 (2010)). The Court also held that the statutes administered by OSBGE do not require the Board to identify specific standards that it will follow in selecting particular sanctions in disciplinary proceedings. The Court concluded that the Oregon Legislature did not intend for the Board to adopt rules setting criteria for the selection of a particular sanction listed in ORS 672.675 before it could take disciplinary action in a contested case proceeding. This decision affirmed the Board's practice of gauging the type or types of disciplinary sanctions imposed on a case-by-case basis according to the severity of misconduct by the registrant. The Court noted that this was not an area where the Oregon Legislature specifically directed that rules must be adopted, such as it did for example with the Code of Professional Conduct. And finally, the Court upheld the Board's approach of using expert testimony from RGs or CEGs (as appropriate) to establish the standards of practice in the community of practice that are at issue in a given complaint case.

D. Overview of Complaint Process

Board staff will acknowledge complaints received. Complaints are routed to the Board's Compliance Coordinator. The Coordinator, with the assistance of staff, reviews and investigates the complaint, which may include gathering information and records about the allegations, consulting technical reviewers, interviewing witnesses or persons involved, and contacting others if necessary. The Board decides how to proceed, which could include proposing formal action, requesting further investigation, or closing the case. This procedure is outlined in the complaint process flowchart (next page) and reflects procedures related to the board's regulatory enforcement process stated in ORS 672.505 to ORS 672.705 and OAR 809, Division 55. For inquiries about the complaint process, please contact the Board Administrator.

E. Board Authority to Discipline/Assess Penalties

1. Disciplinary Action

OSBGE can pursue disciplinary action against a registrant upon finding evidence of violation of the geology practice statutes or rules. Statute defines the disciplinary options available to the Board as: (a) issuing a letter of reprimand, (b) suspending registration, (c) not renewing a registration, and (d) revocation of a registration. All but a letter of reprimand impact the registrant's ability to practice.

ORS 672.675 Grounds for reprimand, suspension, revocation or refusal to renew certificate. *The State Board of Geologist Examiners has the power to suspend, revoke or refuse to renew the certificate of registration of any registrant or reprimand any registrant who is found to have been involved in:*

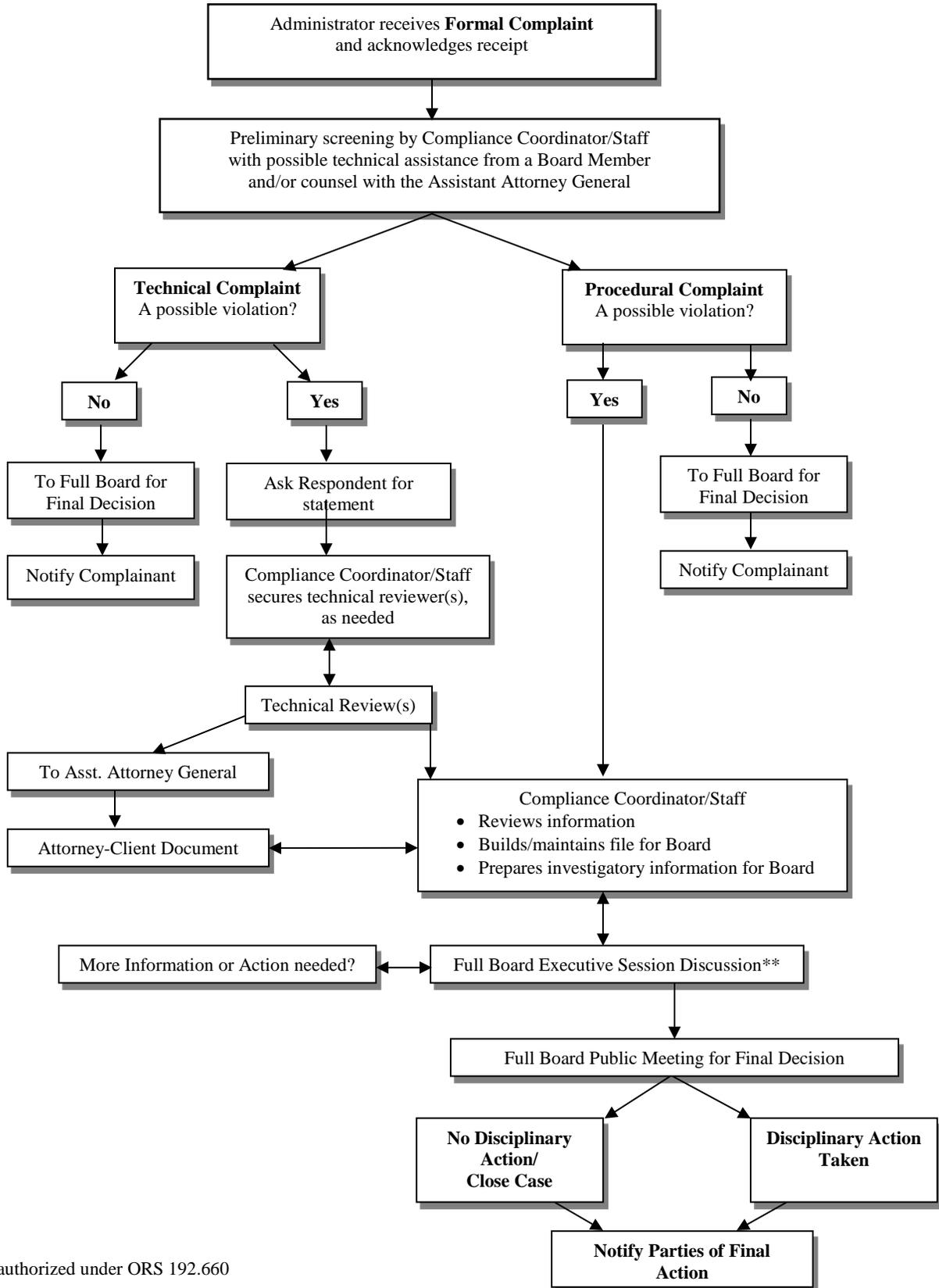
- (1) The practice of any fraud or deceit in obtaining a certificate of registration;*
- (2) Any negligence, gross negligence, incompetence or misconduct in the practice of geology as a registered geologist;**
- (3) Any felony;⁺ or*
- (4) The commission of any unlawful act as set forth in ORS 672.505 to 672.705.*

Notes: *Misconduct is defined by rule to include any violation of the Code of Professional Conduct adopted by OSBGE and applicable to all registrants of the Board.

+OSBGE may not take disciplinary action solely on the basis of a criminal conviction but may take action based on conduct that is not undertaken directly in the public practice of geology but that is substantially related to the fitness and ability of the registrant to publicly practice geology. See ORS 670.280.

When considering a complaint case with evidence of violation by a registrant, OSBGE has the authority to impose a variety of disciplinary actions as authorized by statute. For example, the Board might respond to a first offense with limited impact on public health, safety and welfare by disciplining in the form of a letter of reprimand to the registrant. However, the Board also has the authority to suspend a registration, not renew

OSBGE Complaint Process Flow Chart



**when authorized under ORS 192.660

a registration at the next renewal date, or revoke a registration. The Board values working with registrants to educate and thereby avoid future violations, but will proceed with disciplinary action that impacts ability to practice when the circumstances warrant such action.

In the case of a revocation, an individual does have the option of pursuing registration with the Board again under ORS 672.685, which provides: *Reissuance of revoked certificate. The State Board of Geologist Examiners may reissue a certificate of registration to any person whose certificate has been revoked upon written application to the board by the applicant, showing good cause to justify the reissuance.* The Board adopted a rule (809-015-0020) addressing how an individual can request Board consideration of reissuance of a revoked registration under this statute.

2. Civil Penalties

OSBGE has statutory authority to impose civil penalties on a registrant or non-registrant for violation of the geology practice statutes. The civil penalty amount authorized is \$1,000 per offense. What constitutes a single offense is determined on a case-by-case basis. One complaint case can involve multiple offenses by the respondent.

672.690 Civil penalties. (1) In addition to any other penalty provided by law, a person who violates any provision of ORS 672.515 to 672.705 or any rule adopted thereunder is subject to payment of a civil penalty to the State Board of Geologist Examiners in an amount of not more than \$1,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) Notwithstanding ORS 670.335, all penalties recovered shall be deposited into an account established as provided under ORS 182.470. Moneys deposited are continuously appropriated to the board and shall be used only for the administration and enforcement of ORS 182.456 to 182.472 and 672.505 to 672.705.

VII. References

The primary sources of information used in the development of this guidance document were: ORS Chapter 672, OAR Chapter 809, and the experiences and expertise of Board members and staff.

APPENDIX

Statutes

Laws governing the public practice of geology in Oregon are provided in Chapter 672 of the Oregon Revised Statutes (ORS). Other statutes governing key operations of the Board are found in Chapters 182, 183, 192, and 670 of the ORS. The ORS can be updated only through action of the Oregon Legislature. The Board cannot amend, delete, waive or otherwise alter statutes.

To ensure access to the current versions of the statutes, links are provided here instead of the text as statutory language is subject to change via future action by the Oregon Legislature.

ORS Chapter 672 (i.e., OSBGE statutes)

<http://www.leg.state.or.us/ors/672.html>

ORS Chapter 182 (Semi-Independent Agencies)

<http://www.leg.state.or.us/ors/182.html>

ORS Chapter 183 (Administrative Procedures Act)

<http://www.leg.state.or.us/ors/183.html>

ORS Chapter 192 (Public Records and Public Meetings)

<http://www.leg.state.or.us/ors/192.html>

ORS Chapter 670 (Licensing Administration)

<http://www.leg.state.or.us/ors/670.html>

Administrative Rules

OSBGE rules are provided in Chapter 809 of the Oregon Administrative Rules (OAR). The OARs can be updated by OSBGE following the rulemaking procedures prescribed by the Oregon Administrative Procedures Act.

To ensure access to the current versions of the rules, a link is provided here to Chapter 809 via the Secretary of State's website.

OAR Chapter 809 (i.e., OSBGE rules)

http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_809/809_tofc.html

OSBGE Information

For more information on OSBGE, visit the Board's website located at: <http://www.oregon.gov/OSBGE/Pages/index.aspx>. You may also contact the Board at:

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Physical/Mailing Address: 707 13th St. SE, Suite 114
Salem, OR 97301
Telephone: 503-566-2837