

Advisory Opinion Request AOR #3

Requestor: TBPG/Board-issued

Re: What constitutes “responsible charge”?

Any interested person may submit written comments concerning this Advisory Opinion Request and Draft Opinion to: Michael Hess, TBPG Executive Director, P. O. Box 13225, Austin, Texas 78711, or by e-mail to mhess@tbp.state.tx.us or faxed to (512) 936-4409. Comments must be submitted no later than 30 days from the date of the posting in the Texas Register. Please reference the Advisory Opinion Request Number 3.

Draft Opinion

A foundation of Professional Geoscientist (P.G.) licensure, and of most other types of professional licensure, is “responsible charge”. The Texas Occupations Code, §1002.002 (8), also called the Texas Geoscience Practice Act (“the Act”), defines “responsible charge” as “the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.” With licensure, a P.G.’s independent judgment becomes equivalent to professional judgment. The most typical circumstance in the public practice of geoscience is that a licensed P.G. in responsible charge of geoscientific work is the actual individual who directly performs that work. However, the Act also provides the option for a P.G. to remain in responsible charge of geoscientific work by supervising the work of others. The P.G.’s professional judgment involved in supervising the work of others is initially related to determining whether the work is actually geoscientific. Then, a P.G. must decide if the individual(s) to be supervised, who may *not* be licensed, are adequately trained or otherwise qualified to perform the particular geoscientific work. Ultimately, the P.G. who is in responsible charge and will sign and seal the geoscientific work must determine the suitability of a supervised individual to perform some specific geoscientific work and to what extent such an individual must be supervised.

“Professional geoscience services” is defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience (TITLE 22, PART 39, CHAPTER 851), §851.10 (19), as “Services which must be performed by or under the direct supervision of a licensed geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service.”

In §1002.002(7), the Act provides additional clarification as to what constitutes geoscientific work. The “public practice of geoscience” is defined as “the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks”.

“Direct supervision” is further defined in the Texas Board of Professional Geoscientists Rules for Geoscience Licensure and the Practice of Geoscience, §851.10(7), as “Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons.”

What is the difference, if any, between “supervision” as in §1002.002(8), “responsible supervision” as in §1002.002(7), and “direct supervision” as in §851.10(7) and §851.10(19)? In practice, the answer depends upon the professional judgment of the P.G. When a P.G. signs and seals a work product, that P.G. is publicly declaring that he/she has been in responsible charge of the work and is accountable for its compliance with an appropriate standard of practice. In the course of performing the work, if a P.G. decides that another individual, licensed or unlicensed, is sufficiently experienced and trained to perform certain tasks or portions of the work under the P.G.’s supervision, delegation of such tasks to this individual by the P.G. in responsible charge is permissible. The extent to which a P.G. must be physically present and involved for the supervision to be effective is a matter of professional judgment.

A situation where a P.G. would typically be expected to be physically present is during subsurface investigations such as well drilling and/or lithologic logging. The litmus test for this particular scenario can be simple. If the P.G. in responsible charge is not present when and where the work is being performed and a subordinate Geoscientist-in-Training (GIT), technician, or some other type of professional performs the delegated work to an apparent appropriate standard of practice, is there a practical means for the P.G. in responsible charge to identify deficiencies in the subordinate’s work? Without drilling another well, in many situations the answer is likely *no*. This suggests that for the P.G. to exercise a reasonable standard of care, that P.G. would probably personally perform the field work or only allow a GIT or other unlicensed person to perform the work under the P.G.’s direct supervision, meaning physical presence.

Use the same scenario but modify the circumstances so that after the well is drilled and the lithologic logs prepared the subordinate preserves and brings all the soil cores or drill cuttings from the field to some other place where the P.G. in responsible charge is located. In this scenario, some P.G.s might be able to lay out all the cores or cuttings and confirm the quality of the subordinate’s work by directly examining the same subject material. In this situation, some P.G.s could arguably exercise responsible supervision without having gone to the field personally to directly supervise the subordinate during the work.

Another variation on this basic drilling scenario might be if the drilled location is the most recent in a lengthy series of similar drilled locations, all in close proximity to each other. Depending upon the objectives of the work, it might be that a P.G. could directly supervise a GIT or other subordinate during an initial series of closely similar tasks and develop sufficient confidence in the subordinate’s skills to allow the subordinate to work for periods without the physical presence and direct supervision of the P.G. When and if a P.G. in responsible charge believes an unlicensed subordinate is prepared to perform specific tasks and can be responsibly supervised without actually being present depends upon that P.G.’s professional judgment.

The importance of having a P.G. in responsible charge to insure that geoscientific work under their control meets or exceeds an acceptable standard of practice cannot be overstated. Should a P.G. elect to delegate geoscientific tasks to a subordinate, licensed or unlicensed, and should the

work produced by the subordinate not achieve an acceptable standard, it is incumbent upon the P.G. in responsible charge to see that work deficiencies are corrected before signing and sealing the work. Sealed geoscientific work product that is demonstrably sub-standard could call into question the competency of the P.G. who was in responsible charge and even that individual's suitability to retain a Professional Geoscientist license.

SUMMARY

Without creating an exhaustive set of scenarios and hypothetical situations, the intent of supervision, responsible supervision or direct supervision as it relates to responsible charge is that the P.G. must be in a position to not simply proofread work after the fact when it is too late to verify its accuracy. A P.G. in responsible charge is accountable for the final quality of a work product and the accuracy of the underlying data used to produce the work product. A P.G. in responsible charge who supervises others in the performance of specific tasks that contribute to a final work product must be able to monitor work in progress and, if necessary, step in and provide additional guidance or corrections before undetected errors become deficiencies in the final geoscience work product to the detriment of public health, safety or welfare.