

Capitol Office:
P.O. Box 12068
Austin, Texas 78711
(512) 463-0103



Robert L. Nichols
STATE SENATOR



Trent Ashby
STATE REPRESENTATIVE

Capitol Office:
P.O. Box 2910
Austin, Texas 78768
(512) 463-0508

December 14, 2021

The Honorable Wayne Christian, Chairman
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

Dear Chairman Christian and Commissioners,

We again write to you regarding the application for a permit to operate an oil and gas disposal facility in San Augustine County by PA Prospect Corporation (the "Application"). As you know, we have previously expressed our concern and the concerns of many of our constituents regarding the Application. These concerns originate from the myriad environmental and water-related impacts of such a facility given its proposed location in a sensitive watershed.

We have both participated in and observed the hearings process for the Application, and as more information has come to light, our concerns regarding the potential impacts of the proposed facility have grown rather than diminished. First, we learned about the recent decision by the Railroad Commission to set a posthearing conference on the Application to address the numerous discrepancies and new information presented by PA Prospect in the hearing process that deviated from the original Application. Second, we have heightened concern about the reliability of information in the Application given the recent actions by the Texas Board of Professional Geoscientists to issue a Notice of Violation against Tracey O'Shay, the licensed geoscientist who helped prepare the Application.¹

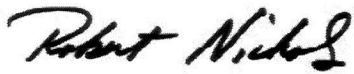
As the Railroad Commission continues its work to evaluate the Application, we urge you to heavily consider the errors by the applicant in this case. Taken together, these actions instill an overall lack of confidence in the facts stated in the Application. As you know, any damage to the watershed of San Augustine county caused by the proposed facility cannot be undone, thus it is

¹ See enclosed Notice of Violation and Proposed Board Order of the Board of Professional Geoscientists dated July 23, 2021.

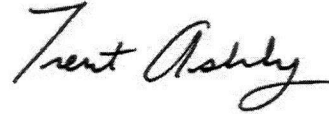
incumbent upon the State and particularly your Commission to protect the citizens of San Augustine county from such irreparable harm.

We will continue to follow the progress of the Commission in evaluating the Application, and please do not hesitate to contact our offices if we can answer any questions.

Sincerely,



Robert Nichols
State Senator, District 3



Trent Ashby
State Representative, District 57

Enclosure

CC: Commissioner Christi Craddick, Texas Railroad Commission
Commissioner Jim Wright, Texas Railroad Commission



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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Website: www.tbpg.state.tx.us

July 23, 2021

Certified Mail No. 9214890194038345436726
And First Class Mail Service

Ms. Tracey O'Shay, P.G. #3711
PO BOX 202035
Austin, TX 78720

RE: Notice of Violation (NOV) and proposed Agreed Board Order
Complaint Case No. 2020-00007

Dear Ms. O'Shay:

On April 16, 2021, the Texas Board of Professional Geoscientists (TBPG) initiated a complaint against you for alleged deficiencies within "Commercial, Surface Disposal, Treatment, Waste Separation, Recycling and Reclamation Facility Permit Application San Augustine Highway 103 Facility PA Prospect LLC, San Augustine County, Texas" that was sealed and submitted to a state agency in violation of Texas Administrative Code (TAC), TITLE 22, Part 39, Chapter 851, specifically TOC §851.102(a). The agency conducted an investigation which included seeking information and documentation from you and other involved parties, as applicable.

On May 27, 2021, a Complaint Review Team (CRT) of the Texas Board of Professional Geoscientists (TBPG) reviewed documents and evidence related to investigation of the complaint. As a result of the review of the investigation, the CRT found deficiencies under Texas Administrative Code (TAC), TITLE 22, Part 39, Chapter 851, specifically §851.102(a) and §851.101(c).

The CRT recommended the disciplinary actions of a probated license suspension for one year, a \$43,500 administrative penalty, a requirement to obtain 40 hours of remedial training in groundwater, and restrict you from practicing in areas related to groundwater until 16 hours of the required 40 hours of qualified remedial groundwater education is met and accepted by TBPG in accordance with the following authority:

- 1) TOC §1002.402 states in part, "The board may impose appropriate sanctions for... (10) "violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country."
- 2) TOC §1002.403(a) states in part, "The Board may take the following disciplinary actions.... (3) "suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;"
- 3) TOC §1002.403(a) states in part, "The Board may take the following disciplinary actions.... (5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;
- 4) TOC §1002.403(a) states in part, "The Board may take the following disciplinary actions.... (7) require that a license holder obtain remedial education and training prescribed by the board;
- 5) TOC §1002.403(a) states in part, "The Board may take the following disciplinary actions.... (10) "impose an appropriate administrative penalty as provided by Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under this chapter."

The proposed action is based on the following:

You failed to act with reasonable care and competence and apply the technical knowledge and skill, which is ordinarily applied by reasonably prudent Professional Geoscientists practicing under similar circumstances and conditions when submitting sealed work within "Commercial, Surface Disposal, Treatment, Waste Separation, Recycling and Reclamation Facility Permit Application San Augustine

Highway 103 Facility PA Prospect LLC, San Augustine County, Texas" to a state agency in violation of Texas Administrative Code Title 22, Part 29, Chapter §851.102(a).

You also failed to submit the required Qualifying Work Experience Record form as requested on June 15, 2021. The letter requested that you complete the Qualifying Work Experience record. The experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work, specifically geology, personally performed by Tracy O'Shay, P.G. Please also include any additional relevant experience that has not already been submitted or presented to the CRT. This failure to submit the required document is in violation of Texas Administrative Code Title 22, Part 29, Chapter §851.101(c).

In accordance with Texas Government Code 2001.54(c), you have the right to show compliance with all requirements of law prior to final action by the Board.

Within thirty (30) calendar days following receipt of this notice, you may:

- 1) Accept the CRT's recommended sanction: a) review, sign and return the enclosed "Response to Notice of Violation (NOV)" form with the first box checked (be sure to sign and date the form) and b) review, sign and return the enclosed **proposed** TBPG Order (see important notes below); c) be sure to sign and date the form;
- 2) Make a written request for an informal conference and a hearing (if necessary), regarding the alleged violation and return the enclosed "Response to Notice of Violation (NOV)" form with the second box checked; be sure to sign and date the form; or
- 3) Make a written request for a hearing regarding the alleged the alleged violation and return the enclosed "Response to Notice of Violation (NOV)" form with the third box checked; be sure to sign and date the form.

Your written response should be submitted to:

Texas Board of Professional Geoscientists
Rebecca Funderburg, P.G., Compliance Coordinator
P.O. Box 13225
Austin, TX 78711

If you fail to request a hearing in writing within 30 days of receipt of this notice you will be deemed to have admitted the factual allegations in this notice, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

FAILURE TO TIMELY RESPOND TO THIS NOTICE BY TIMELY REQUESTING EITHER AN INFORMAL CONFERENCE AND A CONTESTED-CASE HEARING OR A CONTESTED-CASE HEARING WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION BEING GRANTED BY DEFAULT. YOU MUST RESPOND AND REQUEST A HEARING IN WRITING WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE OR YOU WAIVE YOUR RIGHT TO A HEARING.



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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The proposed sanction recommended by the CRT is subject to approval from the full TBPG Board. Should the Board not approve this recommended sanction or any other sanction (should a different sanction be negotiated through an informal conference), the full Board would recommend a sanction it would support, if any. If the full Board rejects the proposed or modified settlement, the new sanction that would be supported by the Board will be communicated to you in a new Notice of Violation. This NOV and all actions taken by the Board are part of the public record and subject to disclosure under the Public Information Act. All disciplinary actions taken by the Board are posted on the Board's web site for five years following the date of the action.

If you have any questions regarding this notice, please contact Ms. Rebecca Funderburg, P.G., Compliance Coordinator, at (512) 936-4410 or via email at rfunderburg@tbpg.texas.gov.

Sincerely,

Rene Truan
Executive Director

Enclosures: Proposed Agreed Board Order
Response to Notice of Violation (NOV)



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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IN THE MATTER OF
Tracey O'Shay, P.G.
Complaint No. 2020-00007

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BEFORE THE
Texas Board of Professional Geoscientists
P.O. Box 13225
Austin, Texas

AGREED BOARD ORDER

I. JURISDICTION

The Texas Board of Professional Geoscientists ("the Board") is authorized to enforce the Texas Occupations Code, Chapter 1002 and the rules found in Title 22, Part 39, Chapters 850 and 851 of the Texas Administrative Code (TAC) relating to the license of a person as a licensed Professional Geoscientist in Texas.

II. THE BOARD'S ORDER

The Board has determined that Tracey O'Shay, P.G. (Respondent) violated the following: Texas Administrative Code (TAC), TITLE 22, Part 39, Chapter 851, specifically §851.102(a) and §851.101(c). Based on the facts in the record, the Board imposes the disciplinary actions of a probated license suspension for one year, a \$43,000 administrative penalty, a requirement to obtain 40 hours of remedial training in groundwater, and restrict you from practicing in areas related to groundwater until 16 hours of the required 40 hours of qualified remedial groundwater education is met and accepted by TBPG.

III. RESPONDENT AGREES TO THE BOARD'S ORDER

Respondent understands and agrees with the Board's Order and therefore will accept the disciplinary actions and agrees to a probated license suspension for one year, a \$43,000 administrative penalty, a requirement to obtain 40 hours of remedial training in groundwater, and restrict you from practicing in areas related to groundwater until 16 hours of the required 40 hours of qualified remedial groundwater education is met and accepted by TBPG. **Administrative Penalties are imposed under the authority of TOC §1002.403(10).**

Respondent understands and agrees with the Board's Order and waives the right to an administrative appeal hearing.

By signing this Agreed Order, Respondent waives the right to an administrative appeal hearing. Respondent acknowledges that the circumstances related to the case that lead to TBPG action resulting in this Agreed Board Order may be publically disclosed in various forums such as the Board's newsletter and webpage.

Respondent acknowledges that the Board does not waive the right to enforce this Agreed Order, may prosecute any further violations that Respondent may commit, and may consider the findings contained in this Agreed Order in assessment of any future enforcement actions.

The Respondent acknowledges and understands the terms of this Agreed Order, enters into it freely, and agrees to its terms. All disciplinary actions taken by the Board, other than a Private Reprimand, are posted on the Board's web site for five years following the date of the action.

NOW THEREFORE, IT IS ORDERED that Tracey O'Shay, P.G. shall comply with all terms and conditions set out above, shall henceforth comply with this Agreed Order and with all applicable laws, rules, and regulations.

Ordered this _____ Day of _____

Becky Johnson, P.G., Board Chair
Texas Board of Professional Geoscientists

Agreed As to Form and Substance:

Respondent

Date of Signature



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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Response to Notice of Violation (NOV)

Tracey O'Shay, P.G.
Notice of Violation (NOV) Letter Dated July 23, 2021
Complaint No. 2020-00007

I, _____, have received a Notice of Violation (NOV) from the Texas Board of Professional Geoscientists (TBPG) in which I was notified that the TBPG is proposing the following disciplinary actions:

- 1) Administrative Penalty of \$43,500; 2) Probated License Suspension of One Year; 3) A requirement to obtain 40 hours of remedial training in groundwater; 4) Restriction from practicing in areas related to groundwater until 16 hours of the required 40 hours of qualified remedial groundwater education is met and accepted by TBPG

Respondent understands the allegations in the Board's NOV and accepts the action proposed. Respondent has elected to accept the Board's proposed action listed above and agrees to the Board's issuance of an Order, finding the Respondent engaged in the conduct and committed the violation(s) listed in the NOV and agrees the disciplinary actions of: 1) and; 2). Respondent waives the right to a hearing or an appeal regarding the Board's findings, the proposed action, and the Board's disposition of this case through the Board's issuance of an order. Respondent is aware that the Board may not approve this action. If the Board does not approve the action, another Notice of Violation will be sent to Respondent. If Respondent chooses this option, Respondent will be notified of the date, time and location of the Board's consideration of the order. Included is a copy of the actual order under consideration in accordance with the administrative procedures governing disciplinary action in Texas. All disciplinary actions, other than Private Reprimands, taken by the Board are posted on the Board's web site for five years following the date of the action.

Respondent does not accept the proposed action in the Board's NOV and requests an Informal Settlement Conference.

Respondent does not accept the proposed action in the Board's NOV and requests a formal hearing before the State Office of Administrative Hearings.

RESPONDENT'S SIGNATURE

DATE

RESPONDENT'S PRINTED NAME

LICENSE NUMBER (IF APPLICABLE)



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November 2, 2021

Via Certified Mail

TRACEY A. O'SHAY
P.O. BOX 202035
Austin, TX 78720

Re: Complaint Case No. 2020-00007 and Modified Agreed Board Order

Dear Ms. O'Shay:

As a result of the Informal Settlement Conference (ISC) held on Monday October 18, 2021, the ISC panel has modified the proposed Agreed Board Order for Complaint 2020-00007 in order to facilitate compliance with the Texas Occupations Code and the Texas Administrative Code. Please see the attached modified proposed Agreed Board Order for Complaint 2020-00007.

In accordance with Texas Government Code 2001.054(c), you have the right to show compliance with all requirements of law prior to final action by the Board. **Within twenty (20) calendar days following receipt of this notice, you may:**

- 1) Accept the ISC Panel's recommended sanctions and sign and return the enclosed modified **proposed** Agreed Board Order (see important notes below); or
- 2) Make a written request to TBPG for a formal hearing regarding the alleged violation.

Important notes: The proposed sanction recommended by the Informal Settlement Conference is subject to approval from the full Board. Should the Board not approve this recommended sanction, the full Board would recommend a sanction it would support, if any. If the full Board rejects the proposed or modified settlement, the new sanction that would be supported by the Board may be communicated to you in a new or modified Agreed Board Order.

This letter and all actions taken by the Board are public records and are subject to disclosure under the Public Information Act. All disciplinary actions taken by the Board are posted on the Board's web site for five years following the date of the action.

Your written response shall be submitted to:

Texas Board of Professional Geoscientists
TBPG Compliance Team
P.O. Box 13225
Austin, TX 78711

FAILURE TO RESPOND TO THIS NOTICE IN A TIMELY MANNER WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING, THE ALLEGATION CONTAINED IN THIS NOTICE WILL BE DEEMED TO BE TRUE, AND THE BOARD WILL CONSIDER THE AFOREMENTIONED PROPOSED ACTION BY DEFAULT.



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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If you have any questions regarding this notice, please contact me at (512) 936-4401 or via email at rtruan@tbpg.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Rene Truan".

Rene Truan
Executive Director
Texas Board of Professional Geoscientists

Enclosure: Modified Proposed Board Order



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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TBPG Complaint No. 2020-00007

IN THE MATTER OF

Tracey O'Shay, P.G.
License No. 3711

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BEFORE THE

Texas Board of Professional Geoscientists
P.O. Box 13225
Austin, Texas, 78711-3225

AGREED BOARD ORDER

I. PARTIES AND JURISDICTION

The Texas Board of Professional Geoscientists (TBPG) is authorized to enforce the Texas Occupations Code, Chapter 1002 and the rules found in Title 22, Part 39, Chapters 850 and 851 of the Texas Administrative Code (TAC) relating to the license of a person as a licensed Professional Geoscientist in Texas. Tracey O'Shay, P.G. (Respondent), has P.G. license No. 3711. To avoid the expense and uncertainty of litigation, the TBPG and Respondent (the Parties) enter this Agreed Board Order (Order) and agree as follows:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact. TBPG received a complaint regarding a report that Ms. O'Shay submitted to the Railroad Commission of Texas, entitled "Commercial, Surface Disposal Treatment, Waste Separation, Recycling and Reclamation Facility Permit Application San Augustine Highway 103 Facility PA Prospect LLC, San Augustine County, Texas." TBPG reviewed the report and found numerous errors and inconsistencies, which showed that Ms. O'Shay failed to act with reasonable care and competence and failed to apply the technical knowledge and skill that is ordinarily applied by reasonably prudent Professional Geoscientists when submitting sealed work to a state agency. These errors, inconsistencies, and failures constituted numerous violations of 22 TAC § 851.102(a). Ms. O'Shay was represented by legal counsel and after initial delays cooperated with the TBPG's requests for additional information.

Conclusions of Law. The TBPG has determined that Respondent committed numerous violations of the following: 22 TAC §851.102(a) and §851.101(c). Administrative Penalties are authorized by Occupations Code §1002.403(10).

III. DISCIPLINARY ACTION

Respondent understands and agrees to the following disciplinary action:

(a) Respondent will pay an Administrative Penalty of \$4,000 within 30 calendar days after this Order is signed by the TBPG's representative; (b) Respondent will obtain 40 hours of remedial training acceptable to the TBPG in geological groundwater issues; (c) Respondent will restrict her practice to

soil science issues and will refrain from practicing in areas related to geological groundwater issues until after: (1) she has completed and documented 16 hours of the required 40 hours of qualified remedial geological groundwater training and (2) she has received notice from TBPG that it has accepted her reported hours, with such acceptance to not be unreasonably denied; (d) Respondent's license is subject to automatic suspension and non-renewal if the TBPG Executive Director determines she has violated any of the terms of this Order at any time or that she has failed to complete, document, and report to TBPG the 40 hours of remedial geological groundwater education acceptable to the TBPG within one year from the date the TBPG representative signs this Order.

IV. OTHER TERMS AND CONDITIONS

Respondent waives the right to an administrative hearing for the case that forms the basis of this Order and waives the right to judicial review of this Order.

Respondent further acknowledges and agrees as follows:

- (1) Information related to the case that resulted in this Order is subject to disclosure under the Texas Public Information Act and may be publicly disclosed in various forums such as the TBPG's newsletter and webpage;
- (2) All disciplinary actions taken by the TBPG, other than a Private Reprimand, are posted on the TBPG's web site for five years following the date of the action;
- (3) The TBPG has the right and authority to enforce this Order, may prosecute other violations that Respondent may commit, and may consider the findings contained in this Order when deciding appropriate disciplinary action for any future enforcement actions against the Respondent; and
- (4) The TBPG's failure to enforce any provision of this Order does not constitute a waiver of the TBPG's right to enforce this Order or any of the statutes or rules under the TBPG's jurisdiction. The Respondent acknowledges and understands the terms of this Order and enters it freely and voluntarily.

NOW THEREFORE, IT IS ORDERED that Tracey O'Shay, P.G. shall comply with this Agreed Board Order, which is effective on the Ordered date that appears below.

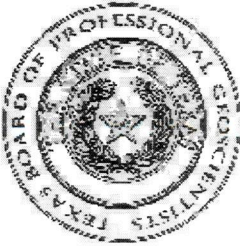
Ordered this _____ Day of _____, 20____.

Becky Johnson, P.G., Board Chair
Texas Board of Professional Geoscientists

Agreed As to Form and Substance:

Tracey O'Shay

Date of Signature



TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

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CERTIFICATE OF ACKNOWLEDGMENT

The State of Texas
County of _____

Before me, _____ (insert the name and character of the officer), on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

(Seal)

Given under my hand and seal of office this _____ day of _____, 20_____.

(Notary's Signature)
Notary Public, State of Texas

Agreed Board Order
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