

Texas Board of Professional Geoscientists

Presentation for

Environmental Trade Fair

Conference 2019

Austin, Texas

Texas Board of Professional Geoscientists



Professional Ethics and Agency Information

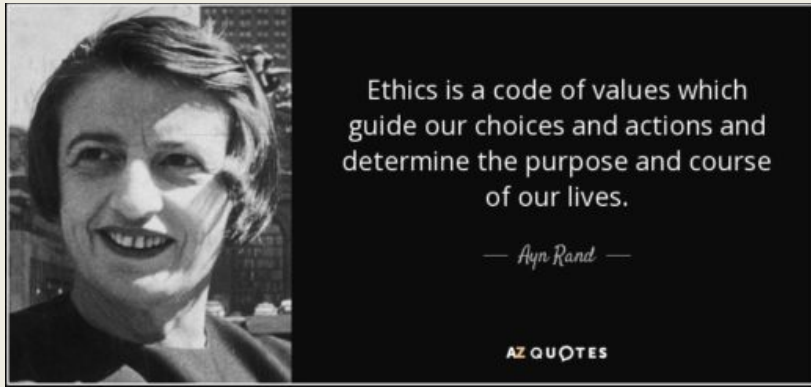
Presented by:

Wesley McCoy, P.G.

TBPG Enforcement Coordinator

Why license Geoscientists? *To Protect the Public!*

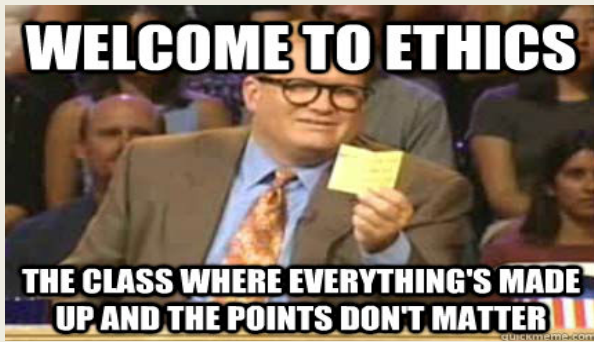




What is 'Ethics'?

- Ethics* - *also called **moral philosophy*** - the discipline concerned with what is morally good and bad, right and wrong. The term is also applied to any system or theory of moral values or principles.

*from the on-line Encyclopaedia Britannica



Ethics



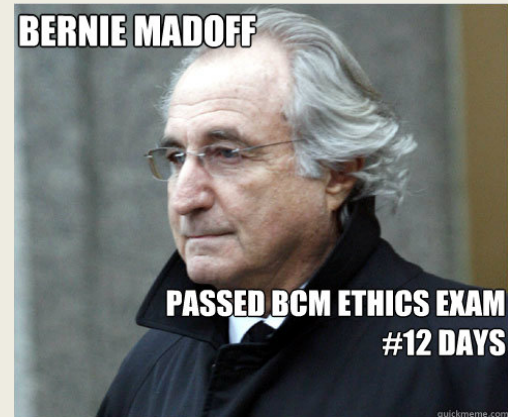
“What, then, is ethics? Ethics is two things. First, ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

...secondly, ethics refers to the study and development of one's ethical standards. As mentioned above, feelings, laws, and social norms can deviate from what is ethical.”

- From *What is Ethics*, 1987, by Velasquez, Andre, Shanks, and Meyer

Ethics are influenced by...

- Religious/Philosophical Beliefs
- Personal Experiences
- Outside Forces such as Authority, Peer Pressure, the Law
- Utilitarianism/Convenience/Personal Benefit



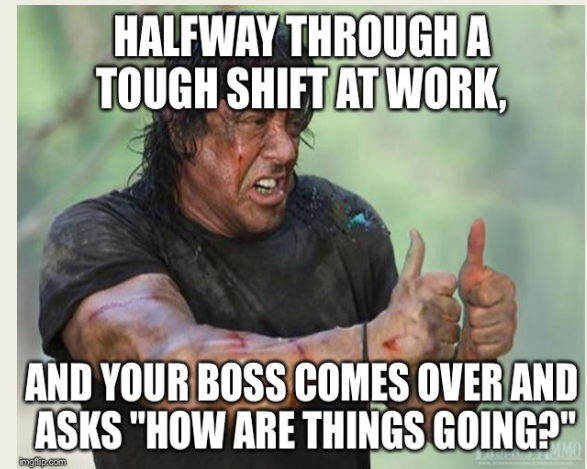


Ethics can be either
“positive” or “negative”

“He’s not immoral, he’s amoral!”

- Daniel A. Müller, Geologist

Ethics can be Subjective



“I’ll do anything I’m ordered as long as it’s not Immoral, Unethical, or Illegal!”

– Daniel A. Müller, Geologist

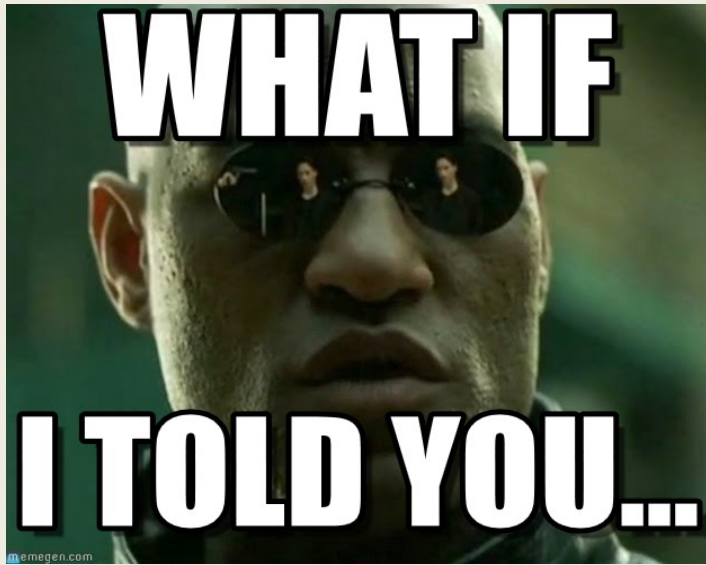
Your Boss gives you a mop and bucket
and tells you to swab the Head! Ethical?





Is this Immoral? Unethical?
Illegal?

Depends on Context



Your boss calls you in to his office one day, gives you a handgun and tells you to go down the street and rob the local bank branch.

How do you respond?



Legal

Permitted by law
lawful, allowed, recognized
or not in violation of law
in conformity with statutes,
regulations, principles,

Hopefully, your response to being ordered to commit a crime will be negative, in that you recognize that you are being asked to commit a criminal act and thus refuse to do so. Unfortunately, history is replete with individuals who failed to refuse to do so and committed criminal acts.

“I was only following orders” is not a viable justification for one’s actions.

Let's take the previous illustration in a slightly different light. Your Boss tells you to take existing figures from another company's geoscience report and replace the title block with your company's title block, but leave the seal and signature of the geologist on the figures. *What do you do?*



**So if someone tells you
not to follow their orders...**




**...then are you not
following their orders
by following their orders?**

Unfortunately, in this case the geologist who was ordered to photo shop the figures complied. His excuse, when caught, was that he was only “*following orders*”.


There are many “rules of thumb” for determining ethics. *The Golden Rule*, for example, and its variants:

Golden Rule | Do unto **others**
as **you** would
have **them** do
unto **you**

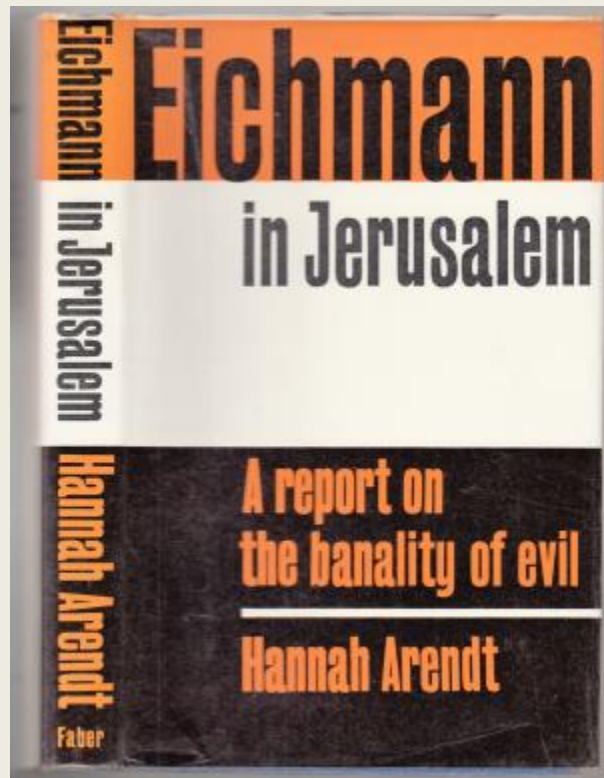


DO UNTO
OTHERS
AS THEY
HAVE DONE
TO YOU

Do unto others
before they do unto you.



Apparently when
you treat people
like they treat you,
they get upset.



In 1963, the political theorist Hannah Arendt wrote a book detailing her observations at the trial of Adolf Eichmann in Jerusalem after his abduction from Buenos Aires by Mossad agents. While many of her assertions were later disputed, her discourse on Eichmann's testimony that he relied on philosopher Immanuel Kant's *Categorical Imperative* for his decisions in life, and that "*he had ceased to live according to Kantian principles, that he had known it, and that he had consoled himself with the thoughts that he no longer 'was master of his own deeds,' that he was unable 'to change anything'*". The legislator is the moral self, and in Eichmann's view Hitler was the legislator, thus Eichmann was only "following orders".



A categorical imperative denotes an absolute, unconditional requirement that must be obeyed in all circumstances and is justified as an end in itself

Kant used this to apply to someone wanting to achieve certain goals – “*If I wish to pass this exam, I must study*”.

Sometimes the desired outcome is not what we expected!

Judgment received from US Bankruptcy Court

ORDERED, ADJUDGED, AND DECREED

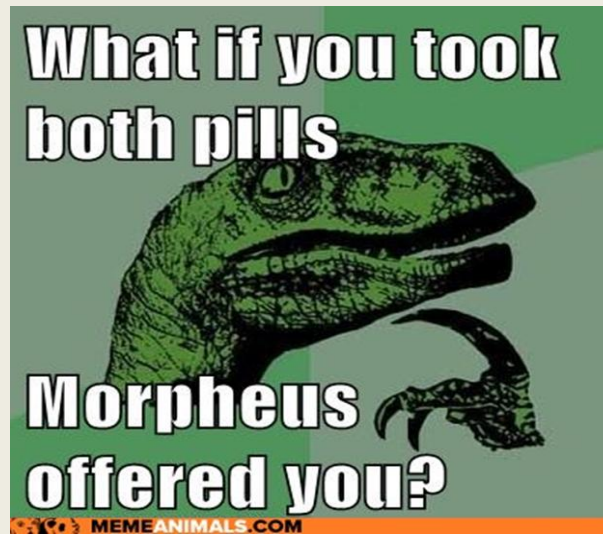
1. The Court finds that the Defendant is dishonest and his character devoid of conscience. The Defendant's testimony at trial was disingenuous, and at times, misleading to this Court. His testimony demonstrates that he refuses to take responsibility for his actions, or acknowledge that his conduct has harmed others.

The Consequence

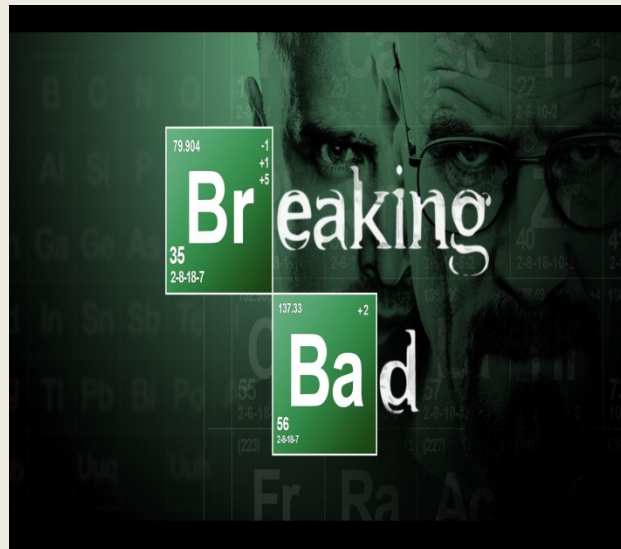
Requirement to Serve a Copy of This Order on Professional Organizations

8. To ensure that the Defendant's conduct does not continue or harm others, and to the extent the Defendant remains a licensed professional or member of any professional organization, the Defendant is required to serve a copy of this Judgment on those organizations.

Signed: US Bankruptcy Court Judge



Let's look at two ethical examples,
one fiction and the other
real, where decisions were made
hoping for desired outcomes

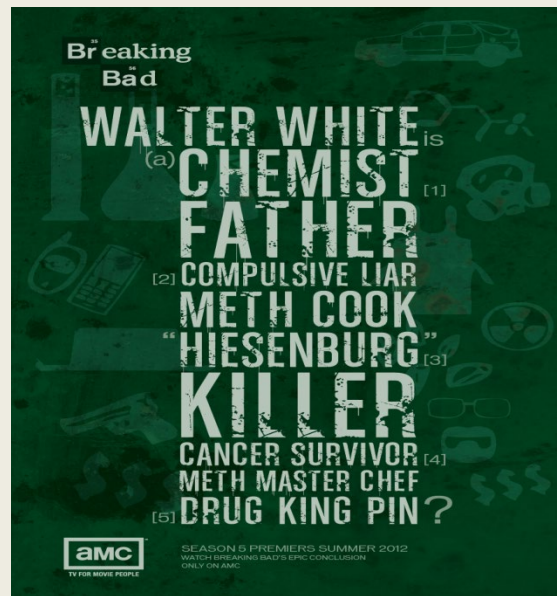


Breaking Bad was a TV series on AMC that ran for 5 seasons from 2008 to 2013. It was the story of Walter White, a high school chemistry teacher in Albuquerque NM who was diagnosed with lung cancer and given a short time to live. Already depressed, Walter became even more concerned about his family's future well being without him. Walter's wife, Skylar, is pregnant with their second child, and his son, Walter, Jr., has cerebral palsy. The family is already experiencing financial hardship and Walter's cancer diagnosis only exacerbates the situation.



Walter's brother-in-law, Hank, is a DEA agent who invites Walter to go on a "ride along" with him to witness the raid of a residence where methamphetamine is being made. Walter sits in the car as Hank and other DEA agents bust in the front door and arrest those inside. Walter, meanwhile, notices someone exiting a second story window, jumping to the ground and escaping unnoticed by the DEA agents. Walter recognizes the escapee as Jesse Pinkman, a former student of his. Walter does not inform Hank about Jesse.

Walter has seen the large amounts of cash recovered by the DEA in their drug raids and, given his dire personal situation, gets to thinking that his knowledge of chemistry combined with Jesse's knowledge of the drug business could be an answer to his money problems. Walter contacts Jesse and coerces him to join him as a partner in cooking Crystal Meth.



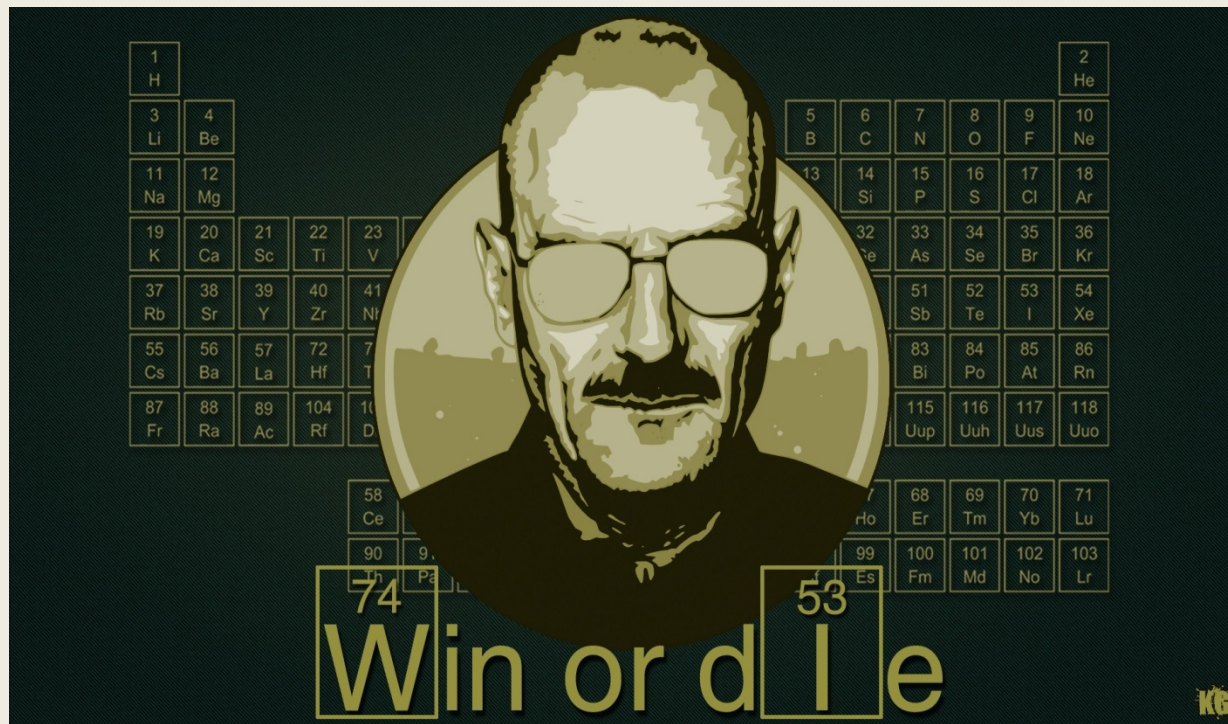
For the rest of the series Walter descends into the dark world of illegal drugs, making and distributing. His decisions affect a lot of people, many of whom Walter never meets in person. After a shaky start, Walter's main Concern is to hide his activity from his wife and family, especially from his brother-in-law, Hank. In the beginning, Walter is an understandable Anti-Hero, and his desire to provide security for his family can cause a sympathetic reaction from the audience. As the series proceeds, however, The character of Walter White transitions from a bumbling high school chemistry teacher into a sinister, greedy, remorseless self-serving crime lord, who goes by the moniker "Heisenberg". Walter's evolution is affected by his ability to make 95% pure Crystal Meth, which is blue due to the chemicals he uses, and the vast amount of money he makes.



Jesse becomes increasingly disillusioned with Walter as Jesse only cooks Crystal Meth when he needs money for his recreational drug use. Walter in turn becomes fed up with Jesse's lack of desire for full time meth cooking. In the middle of the series, Jesse meets a young woman to whom he is immediately attracted, and the attraction is mutual. Unfortunately, the woman is a recovering addict whose father has been desperately trying to get to complete rehab and get her life back. Her connection with Jesse gets her back into drug use. Walter becomes very angry with Jesse not showing up to cook meth, so he goes to the girl's house (bought by her father for her) to find Jesse. Breaking in through the back door, Walter finds Jesse and the girl passed out in the bedroom from drug use. The girl is lying on her back and vomiting. It is clear to Walter that the girl is choking, but he grimly stands by allowing her to choke to death, hoping that with her out of the way Jesse will return to help him cook Meth.



Needless to say, the girl's father, who has never met Walter, is distraught over his daughter's death. The father returns to his job as an air traffic Controller at the Albuquerque air port, and because he cannot focus allows two passenger liners to collide over the city, resulting in a massive death count. In a poignant scene, Walter, having heard the noise of the collision, walks out to his front driveway and looks up to see personal belongings of the passengers falling out of the sky, in particular children's toys. The viewer knows the truth of the matter, but Walter has no clue as to the cause of the accident. In the meantime, the girl's father is arrested. Walter's actions, or in this case, lack thereof, continue to affect people he never meets.



Breaking Bad is a fictional case study in **The End Justifies The Means Ethics**. Or in this case, **The End Justifies The Means, but The End Changes Over Time**.



Now let's look at a real life Ethical Scenario. In 1985, InterNorth and Houston Natural Gas merged to form a new company, ENRON. Kenneth Lay had been The CEO of Houston Natural Gas and by the Fall of 1985 had become the CEO and Chief Executive of ENRON (ENRON was an abbreviation and not the merged company's original name). The merger created the company with the second largest gas pipeline network in the United States and put the company in a position to take advantage of regulatory changes creating a "market pricing" for Natural Gas.

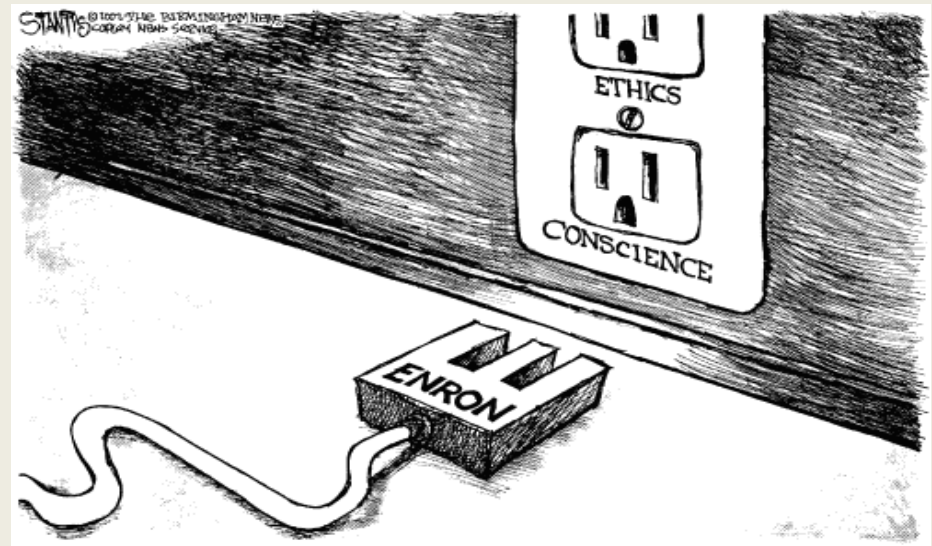


Lay moves the ENRON corporate offices to his home town of Houston and Eventually launches the Gas Bank, hiring Jeff Skilling, CEO of another company, as the CEO of the Gas Bank. The Gas Bank (ENRON GAS Services) is set up to allow gas producers and wholesale buyers to hedge price risk. ENRON begins to expand both nationally and internationally. ENRON forms another subsidiary, ENRON Development Corporation, to act in foreign markets. Throughout the 1990s, ENRON continued to grow and appeared, on the outside to be very profitable, as well as a power player in the energy sector.



From 1996 to 2001, ENRON received high praise from business periodicals, and Fortune magazine named the firm as one of the “**100 Best Companies to Work for in America**”. ENRON employees enjoyed good benefits, especially long term pensions and company stock.

Unfortunately, this was all a “smoke screen” and ENRON was in serious financial difficulty. Many of ENRON’s assets were either inflated or fraudulent. The company had engaged in “irregular” accounting methods. In 2001, the accounting practices were exposed and the company was forced into bankruptcy. Employees’ retirements were wiped out and the company stock collapsed. Arthur Andersen, an accounting firm which worked for ENRON, wound up being dissolved. The US Congress enacted the Sarbanes-Oxley Act to set new requirements for public company boards, management and public accounting firms.



A number of ENRON executives were tried and convicted. Kenneth Lay, the CEO, was convicted of six counts of securities and wire fraud and sentenced to 45 years in jail. Lay passed away before his sentencing. Lay had laid all the blame on subordinates and claimed that he didn't know what was going on in the company.

10TH-ANNIVERSARY EDITION

NATIONAL BESTSELLER • UPDATED WITH A NEW AFTERWORD

BETHANY McLEAN AND PETER ELKIND

THE SMARTEST GUYS IN THE ROOM

THE AMAZING RISE AND
SCANDALOUS FALL OF ENRON

"Well-reported
and well-written."
—Warren Buffett



WITH A NEW
FOREWORD BY
JOE NOCERA

In both the fictional example and the real life example, the individuals were operating in a “vacuum”, so to speak, where nobody else knew what they were doing and they had no accountability. It became easy to justify to themselves their motives and goals, no matter how corrupt.



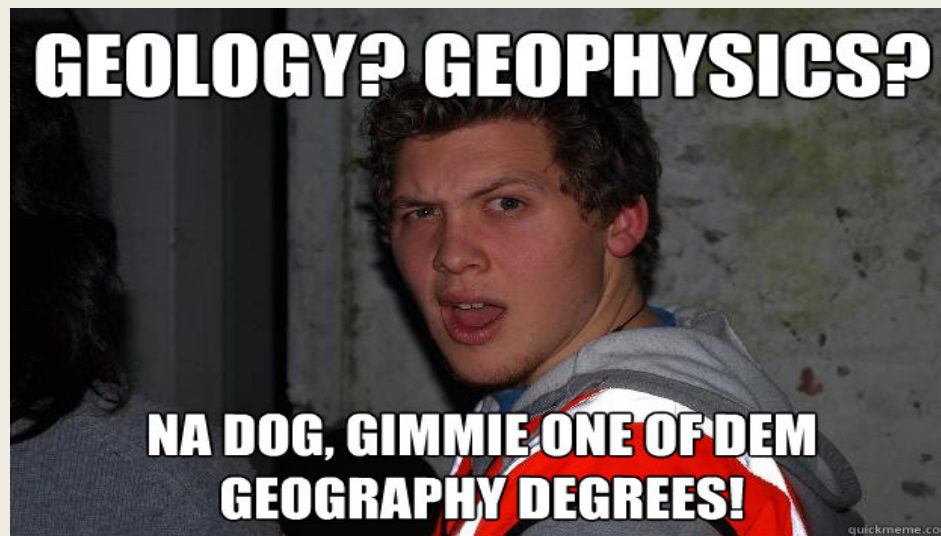
The difference between a moral man and a man of honor is that the latter regrets a discreditable act, even when it has worked and he has not been caught.

(H. L. Mencken)

izquotes.com

Whose Fault is it?





The ENRON example is mirrored in the environmental profession in preparing Phase II Environmental Site Assessments (ESA). It is common for firms and individuals who prepare Phase II ESAs, when reported to the licensing board for failing to use Licensed Professionals to sign and seal their reports, that they are exempt because "There is no Geology in the Report!". The fact that a decision was made to not include any geology in a Phase II ESA is a business decision that is contradicted by industry standards, i.e., the ASTM Guidance for these types of investigations. ASTM warns those performing such work that some jurisdictions require licensing and individuals performing such work should have knowledge of Hydrogeology and Geochemistry.

Complaints No.s 2017047 and 2017048



3.0 TARGET PROPERTY INFORMATION

This report represents results of a limited phase II Environmental Site Assessment for a dry cleaning facility located at 11054 [REDACTED], Houston, TX 77042. The surrounding area consists primarily of commercial/residential developments.

3.1 ADDRESS

2 PHYSICAL SETTING

11054 [REDACTED], Houston, TX 77042

3.2 PHYSICAL SETTING

3.2.1 Topography

According to the USGS 7.5-minute series Houston Topographic Quadrangle Map, dated 1981, the Property is relatively flat. Storm water flows to storm drains on the impervious surfaces that are reportedly connected to the City of Houston storm water system. No evidence of wetlands was identified on the Property during the site reconnaissance. In addition, the TRS report did not identify National or State wetlands for the Property.

3.2.2 Geologic Setting

The Property is located within an area of gently tilted late Cretaceous sediments overlying Paleozoic sediments and Precambrian Texas continental crust.

According to the Natural Resources Conservation Service (NRCS) Web Soil Survey for Benbrook, Texas soils at the Property are comprised of Navo clay loam. The Navo soils have very slow in filtration rates and are very clayey. The soils are not classified as hydric and they are moderately well drained.

Complaints No.s 2017047 and 201748 were filed against an individual, Environmental Scientist, and his firm alleging that the Phase II Environmental Site Assessment report the individual and his firm prepared for a client in Houston, Texas, was substandard.

TBPG enforcement staff investigation found that the individual was not licensed and the firm was not registered. The investigation also found numerous technical problems with the report, such as improper sample collection and handling, and lack of correct identification of the site geology and hydrogeology

Since the individual was not licensed and the firm not registered, the only violation that could be assessed was for not having a valid license and firm registration.

**environmental
scientists do it**



in the grass in the dirt on the beach in a canoe



in the forest on the rocks in the mountains

in the field



Filing a successful complaint:

- Make sure you are in the right Jurisdiction
- Make sure you have all the facts
- Avoid arguing over Trivia
- Don't do anything that could put yourself in a bad light



Code of Professional Conduct



All License Holders must comply with the Code of Professional Conduct, Texas Administrative Code §851.101 - §851.112.

While certain activities are exempt from licensure under Texas Occupations Code §1002.252, **all** License Holders must abide by the Texas Geoscience Practice Act and Board rules.

Is it ethical to Trespass?
Is it legal to Trespass?



Organizational Ethics Codes *-Geology*



- American Institute of Professional Geologists (AIPG) website:
<http://aipg.org/>
- Assn Environmental & Engineering Geologists (AEG) website:
<http://aegweb.org/>
- American Assn of Petroleum Geologists (AAPG) website:
<http://www.aapg.org/>
- Geological Society of America (GSA)
website: <http://geosociety.org/>

Organization Ethics Codes

-Soils Science



- Soil Science Society of America
website – <http://www.soils.org>
- Soil and Water Conservation Society
website – <http://www.swcs.org>
- American Society of Agronomy
website – <http://www.agronomy.org>

Organization Ethics Codes *-Geophysics*



- American Geophysical Union
website – <http://sites.agu.org/>
- Seismological Society of America
website – <http://www.seismosoc.org/>



State employees in Texas are governed by their agency's code of conduct and by the State Ethics Commission

Texas Ethics Commission web site:

<http://ethics.state.tx.us/>



“I want to resign my membership, please refund my dues.”

- Frequent Letters from License Holders

A Professional License
is not
a Membership!



License vs Certification



License	Certification
Law – Needed in order to practice in a jurisdiction	Not law – does not allow practice in jurisdictions where license required
Academic requirements/waivers allowed	Academic requirements/no waivers
Legal enforcement/can have conditions placed on practice	Can lose certification/does not prevent practice
Felony criminal conviction results in loss of license	
Protects the Public	Promotes the Profession



Code of Ethics:

- Written and accepted by the profession
- Enforced by professional organizations on their membership
- Confirms to professional morals

Code of Professional Conduct

- In the TBPG Rules - §§851.101 - .112
- It's the Law, not simply a “Code of Ethics”

TBPG Guidelines



Guidelines for Employees of State and Local Governments Document:

and

TBPG P.G. Seal Guidance Document:

<https://tbpg.state.tx.us/enforcement.html>



*“Be always sure
you are right, then
go ahead”*

*David Crockett
1786 - 1836*



Ethics Video available at:

<http://tbpg.state.tx.us/ethicsquiz/quiz.php>

Wesley McCoy, P.G. - (512) 936-4410 or email
wmccoy@tbpg.texas.gov for questions

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