



NEW YORK STATE SOCIETY OF
PROFESSIONAL ENGINEERS

6 Airline Drive, Albany New York 12205 • 518-283-7490 • fax 518-283-7495 • www.nysspe.org

April 7, 2022

Re: Comments - Proposed changes by the NYSDEC Regulations regarding Part 375 -Environmental Remediation Programs

On behalf of the **New York State Society of Professional Engineers (NYSSPE)**, in furtherance of public health, safety and welfare, we are writing to request reconsideration of a portion of the proposed amendments. While in general the proposed regulatory changes represent an appropriate exercise of administrative authority, in restricting the delivery of engineering services, as outlined below, we believe the agency has simply gone too far.

NYSSPE is a professional association representing the interests of its members and more generally the interests of all professional engineers (totaling more than 30,000 licensees in New York State) practicing in all disciplines (civil, structural, mechanical, electrical, geological, environmental, etc.) and practicing in all practice settings (private sector consulting, industry, government, education, etc.)

In Section §375-1.6(c)(4)(ii-iii), pertaining to final engineering reports, the regulation would impose a new, and in our view unnecessary, limitation upon the universe of qualified parties authorized to complete oversight on remediation projects covered under the proposal. In short, the regulation would require that all of the personnel working on these remediation projects, including, for example, those employed to conduct field observations and data collection, work for the same company as the professional engineer retained on the project. This new requirement would have an adverse impact upon a sizable segment of the professional engineering community and is unwarranted.

Today, many solo and small to intermediate sized engineering firms within the environmental engineering community simply operate on a more collaborative basis than that envisioned by the proposed regulation. These firms rely on other environmental consultants to provide these and other tasks during the course of a project. The professional engineers in these settings work side by side via separate contracts with the client. There is simply nothing to suggest that the current paradigm poses a threat to public

safety which cannot otherwise be mitigated. Adoption and implementation of this new regulation would be particularly detrimental to solo and small engineering firms many of which currently are qualified as WMBE firms and which do not have, and cannot readily secure, the staffing envisioned by the proposed regulation.

Moreover and most importantly, Education Law Section 7208 (f) expressly recognizes that in the delivery of professional engineering services professional engineers may utilize the services of both employees and other qualified third-parties. The statute expressly provides that not only may professional engineers "employ" qualified consultants, but that they may also "supervise" same.

It is understandable that the Department is most concerned about the accountability of those engaged in these projects and the potential for unreliable, or outright fraudulent, certifications. However, a number of measures can be taken to ensure that those engaged in environmental remediation projects are acting in a manner consistent with the public weal without upending current and widespread practices in the field. For example, the agency can require that environmental consulting firms satisfy credentialing criteria, and if necessary, seek enabling legislation if the agency were to conclude that it currently lacks the requisite regulatory authority. Similarly, direct regulatory oversight over those employed by these consulting firms, in relevant positions, can be put in place. Again, if necessary, enabling legislation is available if current administrative authority is wanting.

For all of the foregoing reasons it is urged that the regulation be amended to eliminate the objectionable portions outlined above. The Society would welcome the opportunity to work with all concerned to a help fashion a proposal which secures the regulatory goals, without the undue restrictions identified herein.

Respectfully submitted,

Mark Kriss

Mark Kriss
Legislative and Legal Counsel
NYSSPE

