



LIAPG ● 200 Orville Drive, Unit 8 ● Bohemia, NY 11716 ● liapgpres@gmail.com ● <https://www.liapg.org/>

20 April 2022

NYSDEC
Div. of Environmental Remediation
625 Broadway
Albany, NY 12233-7012
Attn: Jenn Dawson

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

The Long Island Association of Professional Geologists is a NYS Not For Profit organization registered as an IRS 501(c)6. The LIAPG is a business league of professional geologists, environmental professionals, and associated business persons on Long Island and in the NYC Metropolitan Area. We are located in New York State's region having the largest number of professionals holding Professional Geologist licenses. Our membership has strongly requested that LIAPG issue these comments to NYSDEC.

The profession of geology was established in New York State in 2016 with the amendment to Article 145 of the Education Law, making it one of five design professions in the state.

One of LIAPG's missions is to advocate for the protection of public health, safety, and welfare, and the balanced protection of the environment through the advancement of competent and ethical practice of geology in New York State. As part of this mission, the organization has reviewed the proposed regulatory changes and submit the following comments:

1. §375-1.2 – Definitions – Section 375-1.2 (aj) defines the practice of engineering as defined in article 145 of the Education Law of the State of New York. LIAPG recommends that the NYSDEC add a definition to define a professional geologist as defined in article 145. Adding the definition of professional geologist differentiates the professional geologist from the qualified environmental professional in a similar manner that the definition of Professional Engineer differentiates the professional engineer from a qualified environmental professional. The inclusion of the definition of the professional geologist strengthens the quality of professional products received by the NYSDEC.
2. §375-1.2(ak) – Definition of Qualified Environmental Professional – This section defines a “qualified environmental professional” (QEP) and provides that QEPs may perform work under Part 375. The scope of work that a QEP can perform contradicts the Education Law definition of the professional geologist. It is LIAPG's interpretation that governmental agencies may not accept geological work unless that work is performed by or directly supervised by a professional geologist except as described in Education Law Section 7208-a (2-8). This oversight may be corrected by adding the definition of professional geologist in a separate definition than the qualified environmental professional.



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3. §375-1.6(c)(4)(ii-iii) – Final Engineering Reports – The proposed modifications of this section would require all personnel working on these remediation projects to work for the same company as the professional engineer retained to oversee the work and sign off on the report. This work consists of many field tasks that are defined within the scope of the practice of geology and the quality of product could be increased by requiring the professional geologist to sign documentation for the work they complete. This would create a level of accountability for additional portions of the final engineering report outside the professional engineer’s scope of practice.

This new requirement also could result in a substantial economic burden, if not a complete barrier to the practice for small and disadvantaged professional geology and professional engineering communities. Throughout New York State, many design professional firms (geologist or engineer) are mid-sized, small--sized, or sole-practice organizations that normally work on projects on a collaborative basis, which are not accommodated in the proposed updated regulations. Some small engineering firms that currently provide services under the Part 375 regulations rely on professional geology firms to assist in the completion of tasks in these projects. Some project owners contract separately with each design professional firm, but the companies work in conjunction to provide the best end product. Many of these smaller firms across New York are WMBE-certified and the proposed modifications may disenfranchise this segment of the professions if they do not have the requisite professional staff at the level envisioned by the proposed changes.

NYS Education Law Section 7208 (f) and 7208-a (1) state that in the delivery of professional engineering and professional geology services, respectively, these professionals may utilize the services of both employees and other qualified third-parties. The section provides that not only may professional engineers and professional geologists “employ” qualified consultants, but that they may also “supervise” the same as detailed in the Education Law.

Only professional geologists may practice geology and be in responsible charge of geologic work. LIAPG strongly suggests that where the project contains only geologic components, i.e. no engineering, that a “Final Site Report” could be signed by a professional geologist.

4. §375-(multiple sections) - Referencing of Professional Geologist - There are other locations in the regulations where a Professional Engineer is referenced, and LIAPG requests that NYSDEC add “or Professional Geologist” where applicable. This is consistent with the intent of the law, and it differentiates the design professions (professional engineer and professional geologist) from QEPs.

LIAPG understands that the NYSDEC is concerned with the end-product quality and the ability to hold those completing the work accountable. Unqualified, unreliable, or fraudulent certification of technical services can threaten the public’s safety and health. This is a fundamental reason that the state created licensure for design professionals.



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The proposed regulations do not appear to accommodate or consider joint ventures, or multi-party agreements whereby a professional geologist (or other design professional) may be contracted independently to sign their own work, in a similar fashion to an engineering firm or multi-discipline firm. These common alternatives to a “prime contractor” accomplish the same objectives of public accountability and ensuring the quality of work. This does not preclude a qualified professional engineer from signing work performed by a geologist working for the same firm, provided that work is not the practice of geology. The signing of reports by the proper design professional places the liability on the professional most qualified to complete the work.

The definition and scope of practice for the Profession of Geology was codified into New York Education Law in 2016 and we request that the NYSDEC apply the law to the applicable sections of these regulations. LIAPG is requesting the regulations be amended as described above to remove the objectionable language and strengthen the overall regulation to be consistent with the definition of geology in the Law. The LIAPG is willing to discuss these comments and work with the NYSDEC to better strengthen the regulation.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Chris W. Wenczel', is positioned below the word 'Sincerely,'.

Chris W. Wenczel, P.G.
LIAPG President