



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MEMORANDUM

TO: District Directors
Local Program Contract Managers
Interested parties

FROM: Jorge R. Caspary, P.G., Director, Division of Waste Management
Jon Arthur, Ph.D., P.G., Director, Florida Geological Survey

SUBJECT: Review of Geological Documents and Dispute of Geological Professional Opinion

DATE: January 16, 2014

The assessment and evaluation of subsurface geological conditions is often an iterative process that requires the application of principles of geochemistry, sedimentology, karst geology, hydrogeology, geomorphology and groundwater flow, to name a few. Since geology is not an exact science, collaboration between geological professionals is of fundamental importance to arrive at reasonable conclusions based on available scientific evidence. Documents of a geological nature submitted to the Department to comply with various rules express professional opinions and must be signed and sealed by a Professional Geologist in Responsible Charge as defined in Chapter 61-G16-1.009, F.A.C., hereafter referred to as "Consultant PG".

In most circumstances, documents submitted to the Department contain geological cross sections, boring logs, interpretation of geological conditions and patterns and are the product of consultations between a Consultant PG and a PG employed by the Department ("Agency PG"). In these cases, and where the signed and sealed document is the product of a collaborative approach and is in compliance with applicable rules, the approval of the submitted document does not merit a second signed and sealed approval because the document is already signed and sealed by the Consultant PG.

However, in those rare circumstances where the professional opinion of an Agency PG (or one funded by one our contracts including contracted counties) contradicts, alters, or modifies the signed and sealed opinion of a PG in Responsible Charge, then an interpretation is possible whereby the Agency PG is assuming a successor professional geologist role similar to that defined for professional engineers in Chapter 61-G15-27.001, F.A.C. The agency has witnessed challenges of this kind. While the Agency PG may not assume financial liability for the performance of the project as a government employee (due to sovereign immunity), the individual is responsible for his/her professional opinion as a licensed PG in Florida.

Particular cases exist where, in spite of interprofessional consultations, agreement on conclusions submitted in a signed and sealed document is not reached and an Agency PG orders, in writing, that additional data points must be obtained. In these circumstances, a submitting PG in Responsible Charge has the option to dispute an Agency's PG opinion.

As such, effective immediately, the following procedures will apply where a Consultant PG disputes of the professional geological opinion of an Agency's PG:

1. The Consultant PG must notify in writing or by electronic means to the Agency PG that he/she intends to dispute the Agency's PG opinion.
2. The disputing opinions, modifications, or alterations to a Consultant PG signed and sealed document or design must clearly reference the section of the applicable Rule that is in non-compliance. The Agency PG should only refer to the applicable rule that is not in compliance rather than proposing detailed modifications to the Consultant PG. This approach would preclude perception of a transfer of responsible charge.
3. The Agency PG must be prepared to present data to support their professional opinion in the form of well-kept and complete documentation as to having reached a different conclusion.
4. The Agency PG must notify the section administrator who will proceed to request an independent review of the submitted documentation by a qualified (i.e., proficient in the subsdiscipline) PG from the Program Administrator.
5. The Program Administrator must appoint an independent PG. Program Administrators are encouraged to consult the State Geologist as needed for guidance regarding designation of an appropriate independent PG. The State Geologist is the Director of the Florida Geological Survey and an ex-officio member of the Florida Board of Professional Geologists.

Any questions on issues of professional practice in the field of geology should be referred to the Florida Board of Professional Geologists or to the State Geologist.