

January 18, 2018

Ministry of Environment and Climate Change Strategy
Submission to: citizenengagement@gov.bc.ca

Dear Honourable George Heyman;

RE: Review of professional reliance in the natural resource sector

The Health Protection Program at Vancouver Coastal Health (VCH) respectfully submits the following feedback to the above referenced review process. To provide context, we start with a brief description of who we are and why we are interested in this review. We provide next, examples of how the current professional reliance approach is working and not working in the real world and our recommendations on what can be done to improve the model. We end with sharing our thoughts on emerging issues that are already and will continue to impact on the roles and functions of qualified professionals with respect to decision making in the natural resources sector in general.

1. Who we are

Within the geographic area covered by VCH, the Health Protection Program is responsible for food and drinking water safety, environmental health hazards identification and assessment, tobacco control, and community care facilities licensing. A number of legislations direct and guide our work including: the Public Health Act and regulations, Drinking Water Protection Act and regulations, Food Safety Act and regulations, Community Care Facilities and Assisted Living Act and regulations. In addition, certain regulations under the Environmental Management Act name the Medical Health Officer as one of the decision makers: the Contaminated Sites Regulation (section 18), the Organic Matter Recycling Regulation (section 22). We therefore do interact from time to time with a variety of natural resource sector **Qualified Professionals**: we receive and review reports from them as well as making decisions and recommendations based on the results of their assessments.

2. Qualified Professionals named in the regulations pursuant to the Public Health Act (PHA) and the Drinking Water Protection Act (DWPA) in the review process.

Given this review process was launched through the Ministry of Environment and Climate Change, it is not clear whether Qualified Professionals named in the regulations under the PHA and DWPA are included in the review. We assume they are. The specific regulations of interest containing roles for qualified professionals include the Sewerage System Regulation (SSR), Pool Regulation (PR), and the Drinking Water Protection Regulation (DWPR). We offer the following observations with respect to how the Professional Reliance model is working under these legislations:

What is working well -

- Qualified Professionals (QPs) are able to design and implement new and innovative technologies (SSR, PR & DWPR) that meet the outcome based regulations.
- Decreased risk exposure for the Health Authorities.
- Clear lines of accountability in the DWPR for the QP (Professional Engineer). In this case the P Eng. may be a review officer by delegation/appointment from the Medical Health Officer on an individual basis and is fully accountable to the Medical Health Officer. This manner of introducing technical expertise into the regulatory scheme ensures flexibility and accountability.

What is not working well –

Sewerage System Regulation

- Through complaints from the public, our Health Authority has been made aware of QP designed/installed sewerage systems which have clearly demonstrable faults/problems that may lead to (or had already caused) a sewerage system failure. In other cases there were breaches of critical setback requirements. In these cases, it can be a very onerous and lengthy process for a health authority (or citizen) to bring disciplinary action to the professional. Even when deficiencies are proven, the penalties to the QP are insignificant in many cases.
- The onus to repair a failed sewerage system falls to the land owner. If the repair is due to faulty design or installation by a QP, tracking down the professional who signed off on the system is impossible or very difficult in many cases.
- Health Authorities have very little regulatory oversight, or ability to review or prevent potential health hazards such as breaches of critical horizontal setbacks (i.e.: sewerage systems to wells) in the current regulatory scheme.

Pool Regulation

- The QP may not fully understand the health implications of their design and miss some of the health and safety concerns. Also, the QP sometimes sees itself as the project proponent rather than an independent third party offering professional service.

Drinking Water Protection Regulation

- There is no mandatory requirement currently that construction permit applications for waterworks are certified by a QP prior to submission. This means that applications may be made by anyone with or without the technical knowledge or professional accountability. As a result significant amounts of health agency resources can be expended to review technically inadequate applications, to educate the applicants, and to even act as technical advisors.
- The current reliance on the Environmental Operators Certification Program (EOCP) to ensure water system operator competency incorporates little if any accountability back to the government.
- Decisions under the DWPR may be inappropriately impacted by QP acting under other legislations such as the Forest and Range Practices Act (FRPA). Forest and Range Practices Act (FRPA) provides significant authority to Registered Professional Foresters (RPF) as QPs to design cut blocks and harvesting plans in addition to roadbuilding and silviculture works. When these activities are proposed in watersheds or around wells that serve as domestic water supply sources, conflicts may arise due to potential source water quality degradation. When the RPF submits a harvesting plan on behalf of the client, it places water licensees in a difficult position of trying to refute lengthy technical reports that make societal evaluations about acceptable impacts. When there is a disagreement on what is deemed to be acceptable – the burden of proof seems to shift toward the potentially impacted residents – which seems unfair, especially in view of the resources available to each party. We will discuss further in

section 4 below the challenges of not separating technical and value assessments and the inappropriateness of placing technical QPs in a position to decide on community values.

What changes are needed-

- DWPR, PR and SSR: Complaint and disciplinary processes for QPs must be more transparent, accessible, and simple. The penalties for non-compliance must be sufficiently significant to act as a deterrent. Additional proof of knowledge in the areas of works should be allowed at the discretion of the approving official.
- DWPR: increased legislated accountability requirements for the EOC
- SSR: Increased discretionary oversight by health authorities for submitted sewerage system filings (including ability of Health Authorities to reject a filing) where it is clear that critical horizontal setbacks are not being met, or other clear problems with the proposed system exist.

Other observations and recommendations

- It is not clear if certified well drillers are part of this review under their qualifications set out in the Ground Water Protection Regulation. Our health authority's has had experience with well drilling and installations that breach critical horizontal setbacks (e.g. 30m from new wells to contamination sources). There appears to be very little recourse with the well driller certification bodies when these issues are observed and raised.

3. The University of Victoria (UVic) Environmental Law Centre Report – “Professional Reliance and Environmental Regulation in British Columbia”

This 2015 report identified 27 provincial environmental regulatory activities where professional reliance is used to achieve the intended regulatory outcomes. The report reviewed how a selected sample of professional reliance practices is working in the current BC environmental regulatory landscape. The observations made in the report regarding the current state of the professional reliance model are consistent with our own experience as detailed above. In order to improve the professional reliance model, we agree with the report's recommendation that the province should review every legislation where professional reliance is used, using the criteria proposed by the UVic report (http://www.elc.uvic.ca/wordpress/wp-content/uploads/2015/02/Professional-Reliance-and-Environmental-Regulation-in-BC_2015Feb9.pdf)

4. Professional reliance in complex / major project assessment processes.

While this may not directly be an intended part of the current review we feel some comments regarding the current state of major project assessment processes in relation to the professional reliance model is useful and necessary. Over the past several years, our team, as a stakeholder, has been involved in a number of environmental impact assessments undertaken pursuant to either Environmental Management Act or the Environmental Assessment Act. These exercises usually involve pouring over volumes of reports prepared for the project proponents by consulting qualified professionals. We have observed a trend of decreasing trust in these processes by stakeholders and the general public. We believe the issue is not so much the technical competence of the qualified professionals who prepare the impact assessments; rather it is the context in which these review processes operate.

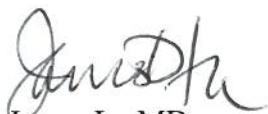
Impacts from large and complex projects possess far more dimensions than what technical engineering / physical environment assessments can address. However the current environmental assessment processes are focused heavily on the engineering and physical science aspects of the projects, without considering the context in which they fit in. For example, the value propositions (monetary and non-

monetary) for a particular project in question are most often very different between the project proponent, the government decision maker, the public, and the various stakeholders. Skilled and competent qualified professionals in engineering and the physical sciences are not social scientists. They are not able to answer social impact and value questions, although they are often placed in positions (voluntarily or involuntarily, and consciously or unconsciously) to do so. We believe this is a major reason why different consultants (qualified professionals) working for different interests (e.g. proponent, stakeholder) can often arrive at different conclusions given similar technical information. We recommend the following as improvements to the current state:

- **Good reporting practice.** Consultant reports should be written in plain non-technical language. In addition to acknowledging the excluded impacts, technical limitations, assumptions used and uncertainties in the assessment, the report should also identify the value based uncertainties of the proposed project.
- **Peer review.** For large, complex (and often controversial) assessments, paid third party qualified professionals, from a number of disciplines, should be required to peer review consultant reports more often, and this should be considered a best practice.
- **Include qualified social science professionals.** Increasingly, decisions on natural resources will not be based on technical / engineering merits alone but also on social values. Environmental assessment processes can benefit greatly with the inclusion of social scientists such as those working in the field of decision science. There is a need for government to therefore establish ways to recognize social scientists as qualified professionals in the natural resource regulatory and management setting.
- **Explicitly include climate change and environmental sustainability as core components in environmental assessment processes.** Climate change impacts and implications should be, if not already, central to decision making in the natural resources sector, regardless of one's values. There needs to be clear guidelines for qualified professionals on how to incorporate climate change into their work (e.g. historic flood levels used for assessing extreme weather event protection, sea level rise projections, and temperature rise projections). Additionally, qualification criteria will need to be established to ensure the QPs are appropriately competent to assess climate change impacts in their respective roles. Furthermore, natural resource development must be environmentally sustainable given climate change and other planetary pressures. We recommend the province consider using the UN Sustainable Development Goals (<http://www.un.org/sustainabledevelopment/>) to frame natural resources development. In doing so, there will be requirements for competent qualified professionals from a number of disciplines not currently identified and utilized in the natural resources sector to be included in impact assessment and decision making.

Qualified Professionals play important and vital roles in our civil society. Professional reliance can however be inappropriately used and monitored with ensuing decline in the public's trust in government. The current practice in BC can be improved through recognition of the model's limitations as well as building in greater transparency and accountability when it is used.

Sincerely



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