

**Comments for the July 10th EPA Hearing on Oil and Natural Gas
Rulemaking Proposed Stay**

Thank you to the Environmental Protection Agency for holding this hearing and allowing for public comment. Procedural actions, such as the stays under consideration today, certainly do not draw the kind of public attention that substantive rule proposals do, but their impact on the public health, safety, and welfare are substantive and demand the same serious and responsible consideration as the underlying rules themselves.

My name is Mark Golden and I am the Executive Director of the National Society of Professional Engineers. Ours is certainly not the only engineering organization, with whom the EPA interacts. However, unlike the specialty, engineering technical societies, ours is the only organization dedicated solely to ensuring the efficacy of a licensing system that protects the public health, safety, and welfare as well as informing government agencies, industry, and the public about engineering licensure.

In the early 20th century, industry and government did not set out to intentionally build dangerous buildings, bridges, power plants, or water systems. But, in some instances, the need for such basic infrastructure and the pressure to meet demand developed more rapidly than the necessary evaluations could be performed to protect the public. Failures, with tragic consequence, were the result. To address these concerns, the licensing of professional engineers, and the laws and rules at both the federal and state level that limit specific, sensitive areas of professional engineering practice to properly credentialed individuals, came into existence.

-- more --

Professional engineering licensing boards at the state level, regulation at the state and federal levels, and professional organizations such as my own, have worked tirelessly to update and modernize such requirements to keep them current with changes in technology, engineering science, and societal needs. As in all areas of regulation, maintaining a proper balance in the degree of regulatory oversight has been a constant goal.

Professional engineers, or PEs, must undergo a rigorous licensing process, encompassing education, examinations, and supervised work experience. The PE has enforceable legal as well as ethical duties to bring not only the proper technical competence needed to a project, but to place protection of the public health, safety, and welfare foremost. Not every engineering task requires such credentialing, but the public interest is best served when there is someone in the decision chain who has not only proper technical expertise, but a duty that overrides all other considerations where legitimate safety concerns arise. The licensed professional engineer serves this role.

Concerns over a failure to provide for appropriate involvement of licensed, professional engineers in projects are, unfortunately, not mere hypotheticals.

To cite just one example, in August of 2015, a federal work crew from the EPA caused a “blowout” of over three million gallons of untreated toxic wastewater from the abandoned Gold King Mine near Durango, Colorado. Not only was this a public safety crisis, it required extremely costly remediation. Post-disaster assessment of the matter found that a licensed professional engineer was not in responsible charge of the EPA’s project at Gold King Mine, as required under Colorado statute.

I could cite other examples where a licensed professional engineer should have been involved, but it was only after the fact—after a failure had occurred—that it was determined that they were not.

-- more --

NSPE commends the EPA for taking into account the lessons learned from such experiences as the Gold King Mine disaster. In the present rules, the EPA asserts a strong, well-reasoned and well-supported rationale for the need for licensed professional engineers to be in responsible charge on all engineering projects, both in an independent third-party capacity, as well as in an in-house role. A substantial public record was created and considered by the agency in finalizing the rules that are subject to the proposed stays. More than 7,000 public comments were received and more than 600 documents were made part of the record of the final rule.

We believe that these requirements are not only sound, but also based upon a full and adequate public record, as well as complete legal, judicial, and economic review. This includes a finding by the US Court of Appeals for the District of Columbia that “a lengthy discussion of the “costs and benefits” went in to the rule, including both industry and public comments on the PE certification requirements.

If the agency wishes to reconsider the substance of those rules in some future rulemaking, that is certainly its prerogative.

However, there is no reason or basis for displacing properly enacted final rules at this time. And to stay the rules requiring involvement of licensed professional engineers creates real and unnecessary risks to the public health, safety, and welfare in the interim.

NSPE strongly urges the EPA to enforce the current requirements until and unless a new rulemaking is undertaken.

NSPE and the professional engineers it represents share a common purpose with the EPA in ensuring that the United States exemplifies the best engineering standards in the world. NSPE commits to remaining fully and constructively engaged in any future proceeding.

-- more --

Thank you for your consideration.

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and
Modified Sources, 81 FR 35824