April 13, 2016

Jacqueline M. Ponti-Lazaruk
Assistant Administrator, Water and Environmental Programs
Rural Utilities Service, Rural Development
U.S. Department of Agriculture
1400 Independence Avenue SW
STOP 1548, Room 5147
Washington, DC 20250–1590

RE: RUS Comments in Final Rule for Section 306D Water Systems for Rural and Native Villages in Alaska (9/1/2015)

Dear Ms. Ponti-Lazaruk,

On behalf of the National Society of Professional Engineers and the Alaska Society of Professional Engineers, we submit the following comment in regard to the Rural Utilities Service Final Rule, dated September 1, 2015, for Section 306D Water Systems for Rural and Native Villages in Alaska. NSPE and ASPE recognize that the rule in question is final. However, the substance of the rule to the value and integrity of a licensed professional engineer (PE) is so disconcerting and inconsistent with the role that licensed professional engineers (PEs) can and do play in helping rural villages that we believe it still requires further comment and follow-up.

Specifically, in the final rule published by the Rural Utilities Service in the Federal Register on September 1, 2015, in the comments section on pages 52607-52608, the agency published the following response to a recommendation by the Alaska Native Tribal Consortium to:

“allow RUS to consider the determination of a professional engineer that ‘replacement of existing infrastructure is required within the next five years to prevent loss of service or ability to meet regulatory or safety standards.’ The thinking here is based on our experience that it typically requires 4-5 years to complete major repairs, taking into account the time to identify and evaluate the problem, identify and secure appropriate funding, complete required permitting and regulatory assessments, complete the design, order the materials, complete and inspect the repairs, etc. If we could work together to select and prioritize projects and begin this lengthy process before service is interrupted or compromised, we could reduce by years the amount of time that those communities are at increased risk while the system is down or compromised during the repairs. Again, because prevention and repair is so much more effective than full-scale renovation or replacement, this is a wiser use of scarce public health dollars.

Specifically, we recommend the following modifications:

(4) A professional engineer determines that specific existing water and/or wastewater system components have exceeded their design life and replacements or upgrades are required to extend the service life to prevent loss of service or ability to meet regulatory or safety standards.
“a professional engineer determine that specific existing water and/or wastewater system components have exceeded their design life and replacements or upgrades are required to extend the service life to prevent loss of service or ability to meet regulatory or safety standards.”

For reasons not elaborated upon, the Rural Utility Service responded with a scathing rebuke of PEs, particularly those in professional practice. As part of its response to the above recommendation, the RUS stated:

“RUS, however, disagrees with the proposed addition of a 4th part of the definition that would allow ‘a professional engineer to determine if existing water and/or wastewater system components have exceeded their design life and replacements or upgrades are required to extend the service life to prevent loss of service or ability to meet regulatory or safety standards.’ The language as proposed would allow for any professional engineer, regardless of background, association, etc., to make a determination of need based on their personal assessment of a systems useful life. This approach would allow for inconsistencies in determinations and a potential for inaccurate prioritization of need. Allowing a professional engineer to determine whether a system has exceeded its useful life and is in need of repairs or replacement is not comparable to determining whether a dire sanitary need exists. Further, the commenters do not specify whether the professional engineer would be a private or public engineer. In the case of a private professional engineer, the Agency is concerned that there would be an incentive to prioritize the largest, most costly, projects to maximize revenues, rather than an unbiased prioritization of need. Section 306D of the Consolidated Farm and Rural Development Act authorizes the Secretary of Agriculture to ‘make grants to the State of Alaska for the benefit of rural or Native villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those villages, and to prioritize the allocation of grants based on health and sanitation conditions.’ Given the limited grant funds available and the existing conditions in many native Alaskan villages, the Agency has determined that distinguishing between general lifecycle replacement need and dire sanitary need is necessary to ensure that funds are used for their highest purpose. As stated above, the Agency, upon consideration of the comments, will modify section three of the proposed definition of dire sanitary need to include language allowing appropriate Federal and State Agencies to assess the level of need. In doing so, the Agency expects that such qualified and appropriate agencies will make determinations based on standard evaluative processes. This approach will allow for more consistent determinations and meet the requirements of the statute.”

NSPE and ASPE do not know what prompted this scathing rebuke. However, we wish to address several fundamental falsehoods and inaccuracies included in the above statement:

1) “The language would allow for any professional engineer, regardless of background, association, etc., to make a determination of need based on their personal assessment of a systems useful life. This approach would allow for inconsistencies in determinations and a potential for inaccurate prioritization of need. Allowing a professional engineer to determine whether a system has exceeded its useful life and is in need of repairs or replacement is not comparable to determining whether a dire sanitary need exists.”
NSPE/ASPE Response: A licensed professional engineer’s foremost responsibility is to protect the public health, safety, and welfare. As part of this professional responsibility, all PEs are ethically bound to practice ONLY within their areas of competence. Practice outside of one’s area of competence violates the PE’s ethical oath and can result in sanctions and revocation of the PE license. Professional engineers are uniquely qualified to make the very determinations listed above pertaining to a system’s useful life and whether a dire sanitary need exists. Professional engineers must complete rigorous education, examination, and experience requirements. In fact, the Environmental Protection Agency in a current proposed rulemaking proposes that a PE be required to serve on an audit team for facilities that handle hazardous materials because of a PE’s unique ethical and experience requirements.

2) “Further, the commenters do not specify whether the professional engineer would be a private or public engineer. In the case of a private professional engineer, the Agency is concerned that there would be an incentive to prioritize the largest, most costly, projects to maximize revenues, rather than an unbiased prioritization of need.”

NSPE/ASPE Response: The implication here is clear that the RUS is assuming that private engineers would consider cost and potential profits over the public health, safety, and welfare. Although RUS’s comment implicitly acknowledges that PEs working in the public sector would be qualified and capable of performing the required assessment, NSPE categorically objects to and challenges the suggestion that PEs in the private sector would not have the same qualifications and ethical obligations. Regardless of position or employer, ALL PEs are held to the same high standard of ethical behavior and are subject to the same penalties if they violate those standards. Ultimately, RUS and professional engineers, publicly or privately employed, share a common purpose: to protect the public health, safety, and welfare, in this instance by determining whether Alaskan rural villages need new sanitation systems to provide basic but essential services such as clean water infrastructure. NSPE asks RUS to reconsider its comments, not only as it applies in this particular instance, but in similar situations across the United States.

NSPE looks forward to working with the USDA and the Rural Utilities Service to discuss this matter further and to enhance the agency’s recognition of the professional engineer’s important role in protecting the public health, safety, and welfare. Please contact Arielle Eiser, Senior Manager of Government Relations, at aeiser@nspe.org with any questions or comments.

Sincerely,

Timothy R. Austin, P.E., F.NSPE
President
National Society of Professional Engineers

Angela M. Smith, P.E.
President
Alaska Society of Professional Engineers