July 11, 2014

W. Craig Fugate  
Administrator  
Federal Emergency Management Agency  
Federal Center Plaza  
500 C Street, S.W.  
Washington, DC 20472

Lt. General Thomas P. Bostick, P.E.  
Commanding General  
Chief of Engineers  
U.S. Army Corps of Engineers  
441 G Street, N.W.  
Washington, DC 20314

Dear Administrator Fugate and Lt. General Bostick, P.E.,

On behalf of the more than 32,000 members of the National Society of Professional Engineers (NSPE), we respectfully submit NSPE Position Statement 1771: FEMA Levee Certification for your careful consideration.

As the attached Position Statement articulates, NSPE commends FEMA for recognizing the crucially significant role of the Professional Engineer (PE) in evaluating a levee for certification. It is, however, our belief that the FEMA levee certification program places an unreasonable burden on PEs, exposing them to great risk.

The U.S. Army Corps of Engineers (USACE) estimates that there are 15,000 miles of levees in place under its flood control program. There are unknown additional miles of levees erected and maintained by states, localities, and private businesses. Evaluation of a levee system requires that historical records of the original design standards, construction methods, and maintenance activities be provided for review and analysis. Often, the documents necessary to adequately perform FEMA’s certification are not available to the PE who is asked to provide this assessment.

Under the FEMA program, a PE is in many instances being asked to certify levees without the protection of professional liability insurance or other liability protections. Many qualified PEs have been advised by their professional liability insurance carriers that they will lose professional liability insurance coverage or have their premiums substantially increased if their practice includes levee certification under the current FEMA program. As a result, many qualified PEs no longer offer services under the FEMA program because it would leave them and their firms vulnerable to potential lawsuits and related costs.

Therefore, NSPE urges FEMA to revise its certification requirement to shift the responsibility and liability to the parties in the best position to assume that responsibility and liability -- the levee boards, owners and operators. In addition, the language in 44 CFR 65.10 should be amended to remove all references to the words
“certify”, “certification”, “accreditation”, “guarantee”, “warranty”, and similar words to prevent further misinterpretation by the courts.

We appreciate the opportunity to provide this statement and your consideration of the position of NSPE. Should you have any questions, comments or concerns regarding this issue please feel free to contact Arielle Eiser, the NSPE Manager of Government Relations at 703.684.2844 or aeiser@nspe.org.

Sincerely,

Harve D. Hnatiuk, P.E., F.NSPE
President
National Society of Professional Engineers