

## **FEDERAL LEGISLATIVE/REGULATORY MATTERS**

**No Calls for PE Oversight in Final Deepwater Report** – The National Academy of Engineering has released its final report on the 2010 Deepwater Horizon disaster and its recommendations for preventing future disasters.

While the report calls for the overhaul and re-establishment of a strong safety culture in the offshore drilling industry, as well as independent oversight in the design of wells and well equipment, it does not specifically recommend oversight by PEs as a safeguard against future catastrophes. Three PEs served on the National Academy panel.

NSPE believes that licensed professional engineers should have direct supervision over all engineering design, operations, and maintenance of offshore oil rigs. In December 2010 testimony to the Chemical Safety Board, NSPE Deputy Executive Director and General Counsel Arthur Schwartz explained that safety can be compromised when employees feel compelled to put loyalty to their employer before ethics. PEs, however, are unique. "First, professional engineers are accountable to the state that licensed them, ensuring that a professional engineer's loyalty is to the public, not an employer. Like doctors and attorneys, professional engineers depend on their license to practice; and losing that license would ruin a professional engineer's reputation and end his or her career. Continued licensure carries more weight than continued employment at one company," Schwartz said.

**Aging Water Infrastructure Needs Costly Upgrades, Report Says** – Is any engineering feat taken more for granted than the delivery of clean, safe drinking water? It cost households fractions of a penny per gallon, the infrastructure that delivers it to the public is mostly out of view, and water, unlike electricity, almost never stops flowing to our homes.

This engineering success story, however, faces a monumental challenge. According to a report from the American Water Works Association, it will cost at least \$1 trillion over the next 25 years to maintain current levels of water service. That money will be needed to restore aging pipes and expand water systems to accommodate population growth.

AWWA says the report is "the most thorough and comprehensive analysis ever undertaken of the nation's drinking water infrastructure renewal needs." It expands on an AWWA report published more than 10 years ago that examined 20 cities. The new report covers the entire United States.

The report has six key findings:

1. **The Needs Are Large**  
\$1 trillion over the next 25 years. Looking farther down the road, over the coming 40-year period, these needs exceed \$1.7 trillion. Replacement needs account for about 54% of the national total, according to the report, with about 46% attributable to population growth and migration over that period.
2. **Household Water Bills Will Go Up**  
Most Americans pay less than \$3.75 for every 1,000 gallons of water they use. That may change. While there are many variables in how infrastructure costs are spread among customers, AWWA says that the total cost borne by the community will increase. Infrastructure costs alone could triple the size of a typical family's water bill.

3. **There Are Important Regional Differences**  
The South and West face the biggest investment challenges mainly due to population growth. Growth is not as much of a challenge in the Northeast and Midwest, but population shifts in these regions could leave fewer local customers supporting the cost of infrastructure renewal.
4. **There Are Important Differences Based on System Size**  
Small communities face the biggest challenge simply because there are fewer people to absorb the costs, and they typically require more pipe miles per customer. A three-person household in such a community could see its water bill increase by as much as \$550 per year.
5. **The Costs Keep Coming**  
Investment must be sustained for many years to maintain current levels of service. Once pipes laid between the late 1800s and 1960 are replaced, it will be time to begin replacing pipes laid after 1960.
6. **Postponing Investment Only Makes the Problem Worse**  
Not all of the \$1 trillion investment needed through 2035 must be made right now, but postponing the investment steepens the slope of the investment curve. "As large as the cost of reinvestment may be," the report says, "not undertaking it will be worse in the long run by almost any standard."

## **COURT DECISIONS**

***Heavenly Days Crematorium v. Harri, Smariga and Associates*** – Relying on the language of the Maryland Certificate of Merit statute, a trial court dismissed a claim against HSA involving breach of contract and professional negligence of documents resulting in delays and fines imposed as a result of the lapse of a grant of approval by the county.

The intermediate Court of Special Appeals affirmed, on the grounds that no certificate was filed within 90 days of filing the Complaint and no motion to waive or extend the requirement was filed within the same 90 days. Both courts interpreted the statute as establishing a "bright line" cut-off at 90 days and a subsequent late motion to waive and late certificate were not acceptable.

The Maryland Court of Appeals recently granted certiorari and will hear the case in early June 2012. This case is very important to the professions as a whole as it gives design professionals certainty of the value of this statute in cutting off meritless claims early. We submit that the statute was read correctly by the courts so far, but believe that if Architects, Surveyors and the Engineering Associations chime in, the decision is more likely to be upheld.

***University Consulting Engineers v. Delaware Association of Professional Engineers*** – The owner of a business that uses the word "engineer" in its title is appealing a ruling by the Delaware licensing board that ordered his company to stop using the word.

University Consulting Engineers was told by the board in December 2010 to stop practicing unlicensed engineering; the board ruled against the firm again in September 2011 on the same charge. The owner, Greg Fylak, has appealed the ruling in Delaware State Superior Court.

At issue is the word "engineers," specifically as it refers to the services the firm offers and who works for the firm, according to documents from the licensing board. That board ruled in September 2011 that use of the word "engineers" in the firm's title implied that the firm was offering engineering services to the general

*Reprinted by Permission of the National Society of Professional Engineers (NSPE).  
For more information about NSPE membership, products, and services, please visit [www.nspe.org](http://www.nspe.org)*

public, even though it was not approved to do so and though it did not employ any licensed professional engineers.

The committee found that "UCE's use of that language is inherently misleading as it is likely to deceive the public as to the company's entitlement to practice engineering," according to the board.

Fylak and his attorneys argued in the September ruling that Fylak's firm targeted only law firms and insurance agencies for business, thus not advertising to the public. They also countered that he connects customers with engineering experts for litigation purposes and that in litigation a professional license is not required to establish expert status. Fylak did not comment for this article.

Cases like this are a good example of education via enforcement, says Jerry Carter, executive director of the National Council of Examiners for Engineering and Surveying. Most states would pursue such a case if the firm's name included the word "engineer" and did not employ any licensed engineers, he adds.

"Sometimes the education of the public has to involve legal action," Carter says.

# # #