



**National Society of
Professional Engineers®**

September 16, 2015

Vilas Mujumdar
AAES Representative to the WFEO

Dear Vilas:

As the AAES representative to WFEO, NSPE wishes to convey its serious concerns with the proposed WFEO Model Code of Practice as currently drafted. We strongly urge you to recommend to WFEO that this document **not** be approved in its current form, but rather that it be sent back to the committee and be substantially rewritten to address the concerns stated below. Without such modifications, we believe this document has the potential to create unintended consequences that would very negatively impact professional engineers. Thank you for consideration of NSPE's position.

In summary, the WFEO Model Code of Practice is, at its core, a thoughtful document on an important issue: how to address the increasing challenges posed by climate to change to infrastructure resiliency. However, while this document is presented as a model code of practice, its context is global and relates more to policy direction at the highest management levels of public and private sector projects. Unfortunately, what the document does not address is its impact on the individual practicing professional engineer.

Section 2, the Introduction, discusses the duty of professional engineers. Specifically, it states that: "It is the engineer's duty to take all reasonable measures to ensure that those systems (meaning engineered systems) appropriately anticipate the impact of changing climate conditions". There are other provisions in section that also set practice standards that are typically not within the scope of authority or the scope of engagement terms for most professional engineering service providers. By using terms such as this in a model code document, the invitation is for the standards to be used as a measure for a breach of the engineer's standard of care, especially following property losses associated with natural disasters. I say that because part of the intent of the proposed model is to require the engineering community to anticipate natural disasters that may be greater than current codes consider...and to take mitigation provisions into the design.

In Section 4, Model Code of Practice Principles, the principles discussed include matters to be determined by the owners or the developers of a project before even setting the scope of professional services to be engaged by outside consultants. The climate change policy considerations of the public or private entity developing a project should not be allowed to be construed in any way as a practice standard applicable to the professional service provider...unless those principles are clearly included within the scope of services contracted to the service provider.

Simply put, if approved, this Model Code of Practice would create an entirely new standard of care for professional engineers that far exceeds the existing duties and responsibilities of the professional engineer. This Model Code, if approved as is, will expose professional engineers to increased claims and litigation. NSPE shared this document with a major professional insurance liability company and asked the company to review the document. Following its review, NSPE was advised that this document would establish a new standard



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of care and raise new and serious professional liability concerns. This document increases the liability of professional engineers by its use of statements of affirmative duties of the professional engineer that lack consensus, and as described on page 11, are “new and evolving” areas.

NSPE therefore makes the following recommendations to WFEO in considering and editing this document:

- 1) This document should **not** be approved as a Model Code of Practice. If WFEO does approve the document, it should be as a white paper to advance awareness and discussion within the profession and provide general guidance that can be adapted to the specific prevailing legal and regulatory environment, which will be unique to each nation, state or municipality. However, it must not create a new standard of care that is unreasonable, conflicts with existing law and standards and needlessly opens up professional engineers to increased liability risk.
 - a. If, contrary to this recommendation, WFEO insists on publishing this document as a code or practice standard, the document **must** include a prominent and legally defensible disclaimer, vetted by knowledgeable engineering legal counsel in the United States and other stakeholder countries. This option is offered only as a last resort and would still leave our profession unnecessarily open to liability risks due to a new, unreasonable, controversial standard of care. Accordingly, NSPE strongly encourages adoption of suggestion 1 above.
- 2) The document should be edited to make clear that it does **not** establish a new standard of care.

NSPE appreciates and acknowledges the work that has gone in to preparing this draft, addressing an important issue that is entirely relevant to the professional engineer’s duty to protect the public health, safety and welfare. We are confident that, with appropriate revisions that are sensitive to the need to avoid creating counterproductive liability and legal exposure, a revised document can provide guidance that will greatly assist the professional engineer in honoring that duty.

Sincerely,

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