Public Health and Safety—Observing Off-Site Safety Issues

Case No. 10-5

Facts:

Engineer A works for ES Consulting, a consulting engineering firm. In performing engineering services for ES Consulting, Engineer A performs construction observation services on a project for Client X. During the performance of the construction observation services for Client X, Engineer A observes potential safety issues relating to the performance of work by a subcontractor on a project being constructed on an adjacent piece of property for Owner Y, a party with whom neither Engineer A, ES Consulting, or Client X has any direct relationship.

Question:

What are Engineer A's ethical obligations under the circumstances?

References:

Section I.1	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health, and welfare of the public.*
Section I.6	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
Section II.1.f.	-	*NSPE Code of Ethics:*	*Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
Section III.2.	-	*NSPE Code of Ethics:*	*Engineers shall at all times strive to serve the public interest.*

Discussion:

An engineer's role in protecting the public health and safety is fundamental and basic to the overall ethical responsibilities of all engineers. The NSPE Code of Ethics places the obligation to hold paramount the safety, health, and welfare of the public as the engineer's first and primary obligation. Because of their education, experience, and training, engineers possess unique qualifications which often permit them to identify situations and circumstances that may raise serious risks.

The NSPE Board of Ethical Review has reviewed a variety of cases over the years that have explored the scope and bounds of that obligation. The duty to hold paramount the public health, safety, and welfare is among the most basic and fundamental obligations to which an engineer is required to adhere. While the obligation is an important and

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essential one, it is not without some limits with regard to the role of the engineer in society generally. While in many instances, the obligation is often clear and obvious, in other instances, there could be an obligation on the part of the engineer to balance competing or concurrent concerns.

As early as BER Case No. 65-12, the Board dealt with a situation in which a group of engineers believed that a product was unsafe. The Board then determined that as long as the engineers held to that view, they were ethically justified in refusing to participate in the processing or production of the product in question. The Board recognized that such action by the engineers would likely lead to loss of employment, but the engineers had a right to maintain their position based upon the provisions of the NSPE Code.

In BER Case No. 82-5, where an engineer employed by a large defense industry firm documented and reported to his employer excessive costs and time delays by subcontractors, the Board ruled that the engineer did not have an ethical obligation to continue his efforts to secure a change in the policy after his employer rejected his reports, or to report his concerns to a proper authority, but had an ethical right to do so as a matter of personal conscience.

The Board noted that the case did not involve a danger to the public health or safety, but instead related to a claim of unsatisfactory plans and the unjustified expenditure of public funds. The Board indicated that it could have dismissed the case on the narrow ground that the Code does not apply to a claim not involving public health and safety, but the Board decided that such was too narrow a reading of the ethical duties of engineers engaged in such activities. The Board also stated that if an engineer feels strongly that an employer's course of conduct is improper when related to public concerns, and if the engineer feels compelled to “blow the whistle” to expose facts as he sees them, he may well have to pay the price of loss of employment. In this type of situation, the Board felt that the ethical duty or right of the engineer became a matter of personal conscience, but the Board was unwilling to issue a blanket statement that there was an ethical duty in these kinds of situations for the engineer to continue the campaign within the company and make the issue one for public discussion.

In BER Case No. 88-6, an engineer was employed as the city engineer/director of public works with responsibility for disposal of plants and beds associated with poultry processing facilities, and reported to a city administrator. After (1) noticing problems with overflow capacity, which are required to be reported to the state water pollution control authorities, (2) discussing the problem privately with members of the city council, (3) being warned by the city administrator to report the problem only to him, (4) discussing the problem again informally with the city council, and (5) being relieved by the city administrator of responsibility for the disposal of plants and beds, the engineer continued to work in the capacity as city engineer/director of public works.

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In ruling that the engineer failed to fulfill her ethical obligations by informing the city administrator and certain members of the city council of her concern, the Board found that the engineer was aware of a pattern of ongoing disregard for the law by her immediate supervisor, as well as by members of the city council. After several attempts to modify the views of her superiors, the engineer knew, or should have known, that "proper authorities" were not the city officials, but more probably, state officials. The Board could not find it credible that a city engineer/director of public works for a medium-sized town would not be aware of this basic obligation. The Board said that the engineer's inaction permitted a serious violation of the law to continue and made the engineer an "accessory" to the actions of the city administrator and others.

The facts in the present case are somewhat different from the earlier cited cases, notably because the unsafe condition observed by Engineer A is not within the professional scope of responsibility of Engineer A. The Board is of the view that this is a key factual distinction from the earlier BER cases. As a general rule, an engineer cannot be expected to take on personal or professional responsibility for each and every potential health and safety risk they may be exposed to during the course of a day, which are essentially unrelated to the services for which the engineer is being professionally engaged. To impose such a responsibility upon an engineer could thrust the engineer into a never-ending scope of activities that are beyond what is reasonable, and could expose the engineer to unlimited personal and professional liability.

Having said that, the facts in the present case suggest that Engineer A's recognition of potential safety issues in connection with the adjacent construction project might cause Engineer A to decide that the matter requires some level of response on Engineer A's part. One potential response could include bringing the matter to the attention of Engineer A's superiors in ES Consulting and Client X to explore informing appropriate responsible parties on the adjacent site (e.g., project superintendent), particularly if the safety issues involved could cause some disruption and have some bearing on the progress of the work on Client X's property. However, in the Board of Ethical Review's opinion, this is a personal judgment and does not constitute an ethical obligation that can be imposed on Engineer A to take immediate or direct action. To do otherwise would make Engineer A accountable for a wide range of public duties and responsibilities that are beyond the bounds of reason.

Conclusion:

Engineer A should bring this potential safety issue to the attention of Engineer A's supervisor and ES Consulting. The Board assumes that the potential safety issues do not pose an imminent danger; therefore, Engineer A does not have an obligation to report this issue beyond his superiors in ES Consulting.

Board of Ethical Review:

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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