COVID-19 has changed protocols, but the work and projects continue across the Garden State,

Compiled by John Joseph Parker
Contributing Editor

Environmental business, issues, projects and remediation did not stop because of the ongoing pandemic. COVID-19 has changed the ways companies do their jobs and how they interact with each other, but the work goes on. COMMERCE asked law firms and environmental firms to share how their worlds have adapted to COVID-19 and to share success stories where appropriate. Here are their thoughts and observations.

Brach Eichler LLC
By Frances B. Stella, Esq., Member; Chair, Environmental and Land Use Practice

Unlike other businesses and activities, environmental projects have always had health and safety plans (HASP); however, these procedures had to be modified to address COVID-19. We have successfully counseled our clients and contractors on a United States Superfund Site to modify their HASP and comply with government regulations. There are obvious tweaks that everyone has had to employ, such as daily health checks for site personnel, masks and social distancing. In addition, our contractors have been required to take separate vehicles, occupy different hotel rooms and more regularly clean vehicles and equipment. We have also had to seek approval from the USEPA and/or NJDEP to delay vapor intrusion testing to protect not only employees, but the occupants of residential property. We received approval for near-slab outdoor testing for vapor intrusion to avoid indoor activity and contact. There have also been modifications to ground water sampling events to reduce the number of people necessary to work on-site and granted extensions for sampling report submissions. Although these changes have increased costs, thus far we have had great success in continuing with on-site remedial projects and completing due diligence for real estate transactions, all while seeking to keep everyone safe.

Brownfield Coalition of the Northeast (BCONE)
By Rick Shoyer, President; President, Advanced GeoServices

Embrace the virtual. BCON was in the midst of planning for its biggest event of the year: the 11th Annual Northeast Sustainable Communities Workshop (NSCW), originally scheduled for May 2020 in person and in Trenton. As a regional organization with a strong New Jersey membership, BCON had to account for executive orders in multiple states, as well as travel bans. The organization pivoted to an all-virtual workshop, held on the afternoons of July 21 and 22, 2020. Thanks to the Socio platform and talented behind-the-scenes staff, the 2020 NSCW included informative panels with regional experts, great dialogue, enhanced networking, a virtual exhibit hall, awards and a scholarship fundraiser with a virtual wine tutorial and actual wine tasting. BCON has and will continue to discuss our experience with virtual conferencing with other organizations. To make sure that BCON members and annual sponsors continue to receive value and stay connected, all events are now presented online—that includes BCON’s quarterly New Jersey Redevelopment Roundtables that provide continuing education credits for LSRPs, PGs, and PEs. Programming has been enhanced in the other states we serve for the rest of 2020, as well. Topics for sessions have broadened to include solar redevelopment; Opportunity Zones; the management of fill; impacts of COVID on urban and suburban redevelopment; and statutory and regulatory updates from across the
region, including emerging contaminants requirements. BCONE leaders continue to participate in NJDEP stakeholder processes virtually, like the one on resiliency and sea level rise. Our members are guest-lecturing at a fall 2020 virtual course on due diligence being held at City College of New York as a way to offer applied experience to academic theory. BCONE hopes to offer a similar course at New Jersey colleges and universities.

Cole Schotz P.C.
By Richard J. Ericsson, Esq.,
Co-Chair,
Environmental Department

We have been helping our clients weather the storm in all aspects of business transactions by being flexible and adaptable in the face of unprecedented market volatility, business uncertainty and regulatory delays. This requires the agility to accommodate sudden changes in deal strategy, approvals and timeframes critical to each transaction, and constant communication with every player—adversaries, consultants, government regulators, lenders, support staff—all of whom are at the same time adjusting to drastic change and discombobulating new work and lifestyle environments. We navigated this pandemic minefield in March as we helped our clients press forward on the acquisition out of bankruptcy of the 1,300-acre Philadelphia Energy Solutions oil refinery in Philadelphia, Pennsylvania. With more than $500 million in upcoming environmental remediation, decommissioning and demolition costs, the property is slated for almost 15 million square feet of strategically located e-commerce logistics centers. We worked the video calls late into the night for over three months to successfully secure agreements with the U.S. EPA, state and local regulators, insurance carriers and the major oil company that was a prior owner of the refinery. Everyone’s dedication to transcend the difficulties of the pandemic made one optimistic about the future of commerce in uncharted times.

Concrete Washout Systems
By Bill McGuire,
Marketing Consultant

For Concrete Washout Systems (CWS), safety starts with our supervisors—employees learn by example. If they don’t see them practicing good safety habits, they won’t think safety is important. There’s a saying that’s even more relevant in these times: “safety doesn’t happen by accident.” Safety means keeping yourself and others free from harm or danger by being careful with what you are doing. That means equipping employees with face shields, masks, gloves, sanitizing wipes, paper towels and mandating their use. Crews also take extra precaution in cleaning their equipment before a shift and after each use, and also do a job-site audit to determine where employees are touching shared surfaces and making sure those surfaces are disinfected regularly throughout the day. Doing business in the age of COVID-19 is more difficult than usual, but not impossible. It’s also about getting buy-in from employees and leadership from supervisors. These measures will keep workers and their families safe while they go about doing a job that has been deemed essential. As the economy continues to reopen, CWS is showing how business, while not as usual, can still be conducted if the proper safety protocols are followed.

Connell Foley LLP
By Agnes Antonian, Esq.,
Co-Chair,
Environmental Law Group,

The COVID-19 pandemic has impacted all aspects of our society, and the realm of environmental permitting was not spared. The delays caused by protective measures have adversely
affected real estate developers and redevelopers, including homebuilders and commercial, office and industrial developers, whose permitted projects were put on hold even if the permits had fixed expiration dates. Fortunately, the state has provided relief in the form of executive orders and a Permit Extension Act that enables the extension of permit periods and other deadlines. However, an understanding of the new laws and the permit extension process is necessary to reap the benefit of the relief measures. Connell Foley has been able to help its clients navigate the changes to the permitting system. We have not only advised our clients on the issues, but have also helped them file the necessary registrations to benefit from the Permit Extension Act. Accordingly, they have extended the life of their permits and other approvals without undergoing the costly and time-consuming procedures for obtaining new permits and approvals.

Connell Foley LLP
By Steve Barnett, Esq., PE, CIH, MSPH

A client seller was having difficulty clearing environmental investigation and remediation requirements to close a commercial real estate transaction. The NJDEP regulations and guidance allowed closing out areas of concern by means of including a cap and deed notice in the Response Action Outcome (RAO). However, the buyer’s lender would not accept a cap or deed notice. Connell Foley performed a careful analysis of the site sampling results and field notes, and applicable NJDEP preliminary assessment, site investigation, remedial investigation and remedial action rules and guidance. Discussions with the seller’s LSRP yielded several options to close out remaining areas of concern with an unconditional RAO (no cap or deed notice needed). The LSRP conducted additional review, sampling and analysis according to our discussions. The new approaches were successful, allowing the buyer’s lender to give clearance for closing. The transaction closed on schedule despite COVID-19, much to the appreciation of the seller and the buyer who were pleased with the outcome.

Clear communication with clients and regulators is important during the COVID-19 pandemic, as is recognizing the impact of working remotely and other challenges. For example, we recently obtained NJDEP approval of insurance policy language that allows parties subject to the requirement to use insurance to post financial assurance for a remediation permit, rather than tying up funds in a cash escrow account. When a remediation is completed using engineering controls, the Site Remediation Reform Act requires the party conducting the remediation to obtain a remediation permit and post financial assurance to secure the operations and maintenance of the engineering control for 30 years. Although the Act allowed for the use of insurance, carriers were reluctant to issue policies that met all of the requirements. Working with Ironshore Insurance, Christopher Alviggi of NFP and Advance Realty, we were able to develop policy language that was submitted

Continued From Page 36

Continued On Page 40
**Equity Environmental Engineering**  
By Peter Jaran, PE, LSRP, Managing Director

For a project located in Brooklyn, New York, Equity had to assist our client with petitioning the New York City Department of Buildings (DOB) to allow the commercial real estate project to continue. At a time when only affordable housing projects were given the green light to continue with construction, Equity was able to craft a persuading letter, supported by data and project details, to have the DOB issue correspondence for the non-residential project to continue. There was some low-level contamination exposure for onsite workers that had to be addressed, which may have been the deciding factor in allowing the project to proceed. Our client was up and running with a fairly short delay during the pandemic.

**Gibbons P.C.**  
By Camille V. Otero, Esq., Chair, Environmental Department.

In March, before issuance of COVID-19-related executive orders and court closings, Gibbons was deep into discovery in a major environmental litigation, representing a plaintiff seeking indemnity for cleanup costs. We were on the cusp of depositions when suddenly thrust into the quarantine, with no ability to meet with our clients or fact witnesses to prepare them for, or defend them at, depositions. Gibbons adapted quickly to the new, unprecedented COVID-19 restrictions. With the court providing only modest extensions, we learned how to manage and conduct depositions remotely, to advance this critical matter for the plaintiffs while complying with mandated quarantines and social distancing guidance. In total, Gibbons conducted 18 remote depositions, avoiding significant delay that could have prejudiced our client’s interests. We also argued several discovery and dispositive motions remotely and continue to aggressively advance the client’s interests while navigating technological obstacles to litigation in the COVID-19 world. We’re now in expert discovery, having interviewed and retained experts remotely, and will conduct expert depositions virtually through November. Our jury trial was recently adjourned to March 2021; we hope it will proceed in person. Otherwise, we’ll prepare for trial remotely and learn how to present the case to a jury virtually.

**GZA GeoEnvironmental, Inc.**  
By David Winslow, Ph.D., PG, Senior Vice President/Principal

GZA performed environmental consulting services on a large brownfield redevelopment project in Orangeburg, New York, where construction of a large data center was in the final stages when COVID-19 restrictions went into effect. Maintaining security, health and safety, and schedule were paramount to the client and GZA. We worked closely with state authorities to determine that our work was considered essential and could continue. GZA instituted a series of COVID-19 response plans: developed a proprietary app for employees to self-monitor and report symptoms daily; created our COVID-19 Playbook for office and field personnel; provided field staff with personal protective equipment and confirmed their understanding of social distancing requirements and other best practices; limited access to job-site trailers; and conducted site meetings and

**Continued From Page 38**

**Continued On Page 42**
design team meetings via videoconferencing. Additionally, we increased the use of telemetry in our monitoring equipment to decrease the time field personnel spent within the construction site downloading data. Implementing these measures allowed us to complete our work on the project, keep the project moving forward towards completion to meet the client’s schedule and prevent GZA personnel from contracting or spreading the virus within the project Site.

LSRPA
By Scott Drew, President; Senior Principal, Geosyntec

The LSRPA, until this year, operated almost exclusively by meeting in person. All continuing education classes and gatherings were face-to-face. Many meetings with the NJDEP were held in conference rooms. Hundreds of LSRPs gathered each year for the annual conference where networking is a key benefit. Technology has allowed us to adapt. Starting in the late spring of 2020, the LSRPA now offers nearly all continuing education courses online. The licensing exam for new LSRPs has been delayed, but the association continues to offer courses, also now online, to help LSRPs prepare for the exam when it is offered. We’ve also built networking opportunities into meetings through open Q&A sessions. Our meetings with the NJDEP and the licensing board have been exclusively by telephone or online since the pandemic shut down state offices. Yet, important issues such as due diligence and discharge reporting, draft regulations, resiliency and environmental justice continue to be discussed with senior NJDEP leadership and licensing board members. What we have come to realize is that information is important. The method is adaptable, and by adjusting our methods, we can continue to provide the services our members need—despite any restrictions.

Riker, Danzig, Scherer, Hyland & Perretti LLP
By Steven T. Senior, Esq., Co-Chair, Environmental Group

Remediation projects are planned months and sometimes years in advance. Thus, when the pandemic arrived on the scene in early 2020, many sensitive, environmental projects needed to commence or already were underway. We advised clients on the concerns arising from continuing environmental projects during a pandemic, including on their contractual rights and responsibilities, and using best practices, in the event of a disruption of ongoing activities. As an example, we assisted one client that was in the midst of a $30 million remediation project at the beginning of March. The project nearly came to a standstill on several occasions as a result of the Executive Orders resulting from the pandemic. We advised the client on its ability to continue the project and the legal consequences of either continuing or ceasing the work, including the applicability of force majeure and other contractual issues. In the end, with our assistance, the client was able to navigate the relevant issues and continue the project in a secure manner.

Continued From Page 40

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Governor Murphy Directs All State Agency Decisions Be Guided By Environmental Justice Principles

The NJDEP issued guidance according to Governor Murphy’s Executive Order 23 that will assist all state government agencies in furthering “the promise of environmental justice,” according to NJDEP Commissioner Catherine R. McCabe. She says the guidance is part of the Murphy administration’s commitment to protect overburdened communities, specifically those that are primarily minority, have limited proficiency in English or economically disadvantaged from environmental contaminants such as air pollution.

This NJDEP guidance is being disseminated in a publication, Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government, which directs executive branch departments and agencies to apply the principles of environmental justice to their operations, participate in the newly formed Environmental Justice Interagency Council (EJIC) and create assessments and action plans to improve the agencies’ effects on environmental justice communities.

The initial activities set forth in Furthering the Promise are planned to begin in 2020, including the first Environmental Justice Interagency Council meeting in November and this fall, the NJDEP’s assessment of its own environmental and public health challenges and benefits. New Jersey Governor Phil Murphy on environmental justice: “We must recognize where our programs and policies may have inadvertently put public health burdens on our most disadvantaged communities and identify opportunities to increase environmental and public health protections in the future.”
On August 27, 2020, after decades of failed attempts, the New Jersey Legislature passed landmark environmental justice legislation that requires the NJDEP to consider potential environmental and public health effects when granting or renewing certain types of permits in overburdened communities. Governor Murphy signed the Environmental Justice Act (the Act) into law on Sept. 18, 2020.

The Act acknowledges and seeks to redress the disproportionate environmental and public health impacts of pollution on minority communities in New Jersey. Low-income communities and communities of color within the state have historically been subject to a disproportionate share of environmental and public health stressors. For example, the state reports that in 2017, approximately 12.9 percent of black adults in New Jersey have been diagnosed with asthma. In contrast, only 8.2 percent of white adults carry a similar diagnosis.

In an effort to address these historic conditions, the Act requires that any applicant seeking a new or renewed permit for certain types of operations submit an environmental justice impact statement and hold public hearings to address public health concerns at the local community level.

Critically, a “facility” is defined to include any major source of air pollution (as defined in the federal Clean Air Act, 42 U.S.C. s 7401 et seq.); any resource recovery facility or incinerator; any sludge processing facility, combuster or incinerator; any sewage treatment plant with a capacity of more than 50 million gallons per day; any transfer station or other solid waste facility or recycling facilities accepting at least 100 tons of recyclable material per day; scrap metal facilities; certain types of landfill; or medical waste incinerators.

An “overburdened” community is any census block group in which at least 35 percent of the households qualify as low-income households; at least 40 percent of the residents identify as minority or are affiliated with a state-recognized tribal community; or at least 40 percent of the households have limited English proficiency.

Continued On Page 48
Communities will be classified as “overburdened” based on the results of the most recent U.S. Census. The NJDEP will be required to publish and maintain a list of overburdened communities in the state by Jan. 16, 2021, and that list must be updated at least every two years. The NJDEP will also be required to notify a municipality if any part of the municipality is designated as an overburdened community.

Any time you submit a permit application for a new or expanded facility or an application for the renewal of an existing facility’s major source permit, you must: (1) prepare an environmental justice impact statement; (2) provide the impact statement to the NJDEP, the local governing body and the clerk of the municipality in which the overburdened community is located; and (3) conduct a public hearing in the overburdened community.

The environmental justice impact statement must assess the potential environmental and public health stressors associated with the facility, including any environmental conditions that could cause public health impacts such as asthma, cancer, elevated blood lead levels or cardiovascular disease.

The permit applicant must publish notice at least 60 days in advance of the public hearing. The notice must provide the date, time, and location of the hearing, and a brief summary of the environmental justice impact statement. You must also provide an address where community members can submit written comments to the permit applicant. The public hearing must be transcribed, and the transcript must be submitted to the NJDEP for consideration along with the permit application.

Without satisfying the foregoing requirements, the NJDEP will not consider your permit application or renewal complete.

Governor Murphy signed the Act on Sept. 18, 2020. Now, the ball is in the NJDEP’s court: they must adopt rules and regulations in order to implement the Act. Those adoptions must be pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Therefore, the heightened requirements of the Act will not take effect until the proposed regulations go through the formal notice and comment process. Developers and industrial facility owners are encouraged to closely monitor the regulatory process in order to keep apprised of when the new requirements will take effect.