Giving South Jersey the Power to Grow

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President’s Message

With each edition of The Chronicle, I learn something new. In this Energy & Environment issue, I am impressed with the work our members are doing to support economic development in South Jersey through their investments of resources, expertise and experience.

We start with Atlantic City Electric announcing PowerAhead, their grid resiliency plan to invest $176 million in additional upgrades. ACE President Vince Maione describes the plan in Powering Ahead to Help South Jersey Grow as well as updates readers on the improvements made over the past five years through their Reliability Improvement Plan.

Once on the verge of being first in the nation for offshore wind energy, New Jersey still has reason to be optimistic this energy (and economic development) generator remains viable as outlined in Offshore Wind Far from Dead in New Jersey.

It’s no secret New Jersey’s Department of Environmental Protection is an integral player in economic development. Heather Demirjian provides insight into the Flood Hazard Area Control Act and DEP’s finalized rules impacting projects in Don’t Let Flood Hazard Standards Jeopardize Your Projects.

The DEP is also at center in public access to beaches. In DEP’s Beach Access Rules: An Empty Shell?, attorneys Richard Hluchan and Robert Baranowski unwind the legislation and litigation over who has authority to impose requirements for public beach access. [Editor’s Note: at the time of this writing additional legislation has been introduced designed to guarantee public access to beaches.]

In 2015, the SNJDC’s Energy & Environment Committee hosted a seminar on the Site Remediation Reform Act and the progress made under the Act’s LSRP Program for remediating contaminated sites, thus decreasing the threat to public health and successfully returning properties to productive use. Collaborative Effort Underway for Continuous Improvement of NJ’s LSRP Program highlights that progress and efforts underway to implement some needed improvements.

For a primer in understanding the process of determining responsibility for cleaning up environmental contamination, look to I Didn’t Do It – Apportioning Responsibility for Environmental Cleanup by Charlene Drake.

I hope you too learn something new reading this publication. We welcome your comments at marlene@snjdc.org. To learn more about the SNJDC, contact us at (856) 228-7500 or visit sndc.org.

Sincerely,

Marlene Z. Asselta
President
Southern New Jersey Development Council
Powering Ahead to Help South Jersey Grow
By Vince Maione, Atlantic City Electric Region President

When a severe storm is predicted to impact our service territory, we inform our customers on ways to prepare in case of an extended outage such as having an emergency storm kit ready with essential items including a flashlight, a three day supply of bottled water, non-perishable food, medications and cash.

In addition to asking our customers to prepare, we as a company must also prepare. At Atlantic City Electric we continually strive to provide our customers with the most reliable service possible through upgrades to our electric system to help protect it against extreme weather.

We understand how inconvenient outages can be and with the increased use of technology, our customers are much more dependent upon a reliable electric grid. Most utility infrastructure is installed new and utilized for decades. Because of the tremendous amount of equipment that we operate and maintain, we are constantly evaluating the need to enhance the electric grid and replace aging infrastructure.

Through our grid resiliency plan, PowerAhead, which is subject to approval by the NJ Board of Public Utilities (BPU), we plan to spend an additional $176 million in system upgrades over five years to further strengthen and modernize the electric grid making it more resilient to storms like Hurricane Sandy, the Derecho and the Bow Echo event that have been occurring more frequently in the area.

PowerAhead will not only help strengthen the electric system, it’s expected to create more than 100 jobs annually for the southern New Jersey region - jobs that are greatly needed, especially in light of the casino closings and other economic issues in South Jersey.

PowerAhead will specifically address vulnerable areas that have experienced extended outages during recent severe storms. It will enable our system to continue operating despite damage and will promote a more rapid return to normal operations when outages do occur.

PowerAhead’s planned projects include selective undergrounding of existing distribution circuits; constructing system ties to the barrier islands from the mainland; increased storm and flood prevention of substations and other equipment along the barrier islands; and increased system automation and remote control for faster and safer restoration.

Atlantic City Electric linemen install equipment on steel utility poles - that can withstand 120 mph winds - along Stone Harbor Boulevard. Through its Reliability Improvement Plan and other electric distribution system investments, over the past five years ACE has invested approximately $716 million into its electric system. Customers are seeing the benefits of this work. During 2015, ACE achieved its best reliability performance in more than a decade. Customers experienced 41 percent fewer outages and, when outages did occur, service was restored about 25 percent faster compared to 2011.

Don Bressor, senior communications technician, Atlantic City Electric, inspects equipment at the Port Republic Substation in Atlantic County. Since 2011, ACE has performed system improvements on about 210 electric circuits, upgraded hundreds of miles of wire, replaced hundreds of poles, and installed automated switching technology on dozens of electric circuits designed to isolate outages and restore power to customers quicker. In addition, the company has upgraded four substations with new equipment and built new substations in Avalon, Cape May County; Franklin Township in Gloucester County and the City of Port Republic, Atlantic County.
A COMMITMENT THAT GROWS EVERY DAY.

Our commitment to conservation, renewable energy and environmental stewardship touches everything we do. It’s a commitment we’re proud of and one we’ll continue to honor for years to come.
Giving South Jersey the Power to Grow

Offshore Wind Far from Dead in New Jersey
By Markian Melnyk, President Atlantic Grid Development, LLC

Summer in New Jersey is time for relaxing at the shore and enjoying gentle sea breezes. When you’re gazing at the ocean you might vaguely recall that there once were plans to build wind turbines off the Jersey shore to power our homes and businesses with local clean energy.

Six years ago, on August 19, 2010, Governor Christie signed into law the Offshore Wind Economic Development Act. It created a pathway for developing New Jersey’s large offshore wind resource and promoted local job creation. “I just think that it makes sense for us to go in this direction, not only because it’s good for the environment, but because it’s going to help us create jobs,” said Christie at the time.1

Nevertheless, despite the slow progress there is reason for optimism. The leasing process has advanced. New Jersey’s offshore wind energy area, starting about 12 miles off the coast, is on the federally-controlled outer continental shelf. The U.S. Bureau of Ocean Energy Management, the same agency that gives permission for oil and gas drilling, has selected two wind energy developers for the New Jersey wind zone. These companies will now begin an extensive process of testing the wind energy resource, evaluating environmental conditions, and designing and engineering their projects.

New Jersey joins Massachusetts, Rhode Island, New York, Delaware, Maryland and Virginia in having federally-designated wind energy areas and each state is somewhere along the spectrum of offshore wind energy development. Rhode Island leads the bunch for now with a small project currently in construction off Block Island.

Cost reductions also signal a positive trend. While new in the United States, the offshore wind industry has a few decades of history in Europe. And from the beginning, industry participants understood that offshore technology would need to improve and costs decreased for offshore wind to make a meaningful contribution to our energy needs. Though barely visible from the shoreline, offshore wind turbines have become larger and more powerful as they have become more reliable and less costly to maintain. Building wind turbines larger than the Statue of Liberty in water 100 feet deep or deeper also requires specialized, heavy-lift construction vessels and highly-trained workers. And various firms have evolved to fill these roles. As an example, a long tradition of offshore work in the UK’s North Sea oil and gas fields was successfully diversified into offshore wind.

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Collaborative Effort Underway for Continuous Improvement of NJ’s LSRP Program

By Susan B. Boyle, Executive Director, NJ Licensed Site Remediation Professionals Association (LSRPA) and Senior Environmental Practice Leader, GEI Consultants, Inc.

Site remediation efforts in New Jersey celebrated a milestone this spring: 85% of the “old” sites met the May 2016 deadline that required them to delineate environmental hazards, assess risks, and mitigate immediate environmental concerns such as vapor intrusion or drinking water contamination within strict timeframes. When we say “old” sites, we mean pre-teen and older: these sites had been in the investigation phase for at least 10 years before the Site Remediation Reform Act (SRRA) was enacted 7+ years ago. Under the new SRRA process, cases overseen by private consultants licensed by the State of NJ benefitted from the LSRPs’ authority and responsibility for directing and certifying investigations within five to seven years. This is a success story for the health and welfare of the citizens of NJ and their environment, the economy of the Garden State, as well as the NJDEP, the LSRPs and their staff, and the responsible parties for whom they worked.

Organizations that represent all of those interests are doing more than celebrating this success. They are engaged in conversations about process reforms to improve the efficiency and timing of site remediation and property redevelopment. The Southern New Jersey Development Council is actively participating with the LSRPA and other organizations to improve the permit process to get cleaned-up properties redeveloped and back on the tax rolls sooner and to clarify exemptions for true volunteers, innocent purchasers, lenders and municipalities who are not responsible for the discharge of hazardous substances, but want to take on the clean-up and redevelopment of properties of importance to them and their communities.
DEP’s Beach Access Rules: An Empty Shell?
By Richard M. Hluchan, Esq., and Robert S. Baranowski, Jr., Esq.

The public’s right to access the water along the shore for fishing, recreation and other purposes is known as the “public trust doctrine,” which has roots dating back to a code enacted by the Roman Emperor Justinian in 530 A.D. In a crowded state such as New Jersey, where beachgoers may encounter limitations on access due to physical barriers or assertions of private ownership, the Department of Environmental Protection (“DEP”) has claimed the mantle over enforcement of beach access rights, under the auspices of the agency’s regulation of coastal development. However, state law already delegates regulation of beach access to municipalities. Whether DEP has the power to require beach access to be provided in a specific manner has recently been the subject of litigation and legislation, leading to passage of a law recognizing DEP’s authority to regulate beach access through development permits, but rendering the existing rules invalid.

In 2007, DEP adopted regulations requiring beach access to be provided around the clock, commanding municipalities “to create and enhance opportunities for public access to tidal waterways and their shores.” This included a mandate to provide parking and bathroom facilities ancillary to beach access. Those rules were invalidated by the Appellate Division in 2008. Borough of Avalon v. NJDEP, 403 N.J. Super. 590 (App. Div. 2008), certif. denied, 199 N.J. 133 (2009). The Avalon court held that municipalities had “exclusive control” over beaches under state law, N.J.S.A. 40:61-22.20(a), and that DEP did not have authority to impose requirements on municipalities regarding beach access.

Four years later, DEP adopted new public access rules. The new regulations stated that public access must be provided to tidal waterways. N.J.A.C. 7:7-9.48. The rules set out criteria for providing such access for any development project “on or adjacent to tidal waterways and their shores” as a condition of obtaining a coastal or waterfront development permit from DEP. N.J.A.C. 7:7-16.9. This included a requirement to deed restrict private land for public access.

The 2012 public access rules also sought to have municipalities adopt Municipal Public Access Plans (“MAP Plans”) as part of their land use Master Plans, specifying how public access would be provided in beachfront communities. Developers would be required to demonstrate compliance with these plans as a condition of obtaining a DEP land use permit.

The 2012 public access rules were challenged, and the Appellate Division again invalidated DEP’s attempt to regulate municipal control over beach access. Hackensack Riverkeeper, Inc. v. NJDEP, 443 N.J. Super. 293 (App. Div. 2015). Looking back to the court’s decision in Avalon, the appeals court repeated that DEP did not have authority to regulate public access. The court invalidated N.J.A.C. 7:7-9.48 and 7:7-16.9 “as well as any other provisions of the regulations that rely upon those two sections.” 443 N.J. Super. at 314.

The authors are partners with Hyland Levin LLP in Marlton, where they focus their practice on environmental and land use matters. Both authors are past chairs of the NJSBA Land Use Law Section and former Deputy Attorneys General for the State of New Jersey where they represented the Department of Environmental Protection. Mr. Hluchan is also the immediate past President of The Delaware Valley Environmental American Inn of Court.
Don’t Let Flood Hazard Standards Jeopardize Your Project
By Heather L. Demirjian, Chair, Environmental Law Department, Parker McCay P.A.

Over the past several decades, New Jersey has experienced severe flooding events that have devastated communities and caused billions of dollars in damage. Flooding impacts are not just felt along the coast. Flooding can occur along any water, both inland and coastal.

In light of the potential risks to people and property from flooding, the New Jersey Department of Environmental Protection (NJDEP) and many municipalities are more closely reviewing construction and development projects in flood areas to ensure that applicable flood hazard standards are being met. Flood hazard standards are complex. Factoring consideration of flood hazard standards into early project planning will help avoid the time delays and cost increases that result when a project must be redesigned at a later date to meet flood hazard standards necessary to obtain NJDEP permitting and municipal approvals.

NJ Flood Hazard Area Control Act and Regulations
The New Jersey Flood Hazard Area Control Act (FHACA) authorizes NJDEP to impose standards for the safety, health, and general welfare of the public on activities conducted in delineated flood hazard areas. N.J.S.A. 58:16A-50, et seq. In June, NJDEP finalized controversial new Flood Hazard Area Control Act Rules (FHA Rules), N.J.A.C. 7:13, et seq. The new FHA Rules faced stiff opposition from environmental groups and the State legislature for allegedly weakened environmental and water quality protections under the previously adopted FHA Rules. The State General Assembly and Senate have both introduced resolutions that would, if approved, invalidate the new FHA Rules (ACR160/SCR66). On June 16, the General Assembly approved ACR160. If the Senate approves SCR66, the new FHA Rules will be invalidated and the previously adopted FHA Rules will be reinstated.

Under both the previously adopted and new FHA Rules, a permit must be obtained from the NJDEP to conduct “regulated activities” in a “flood hazard area.” A “flood hazard area” is “land, and the space above that land” which lies below the highest water level during a 100-year flood. N.J.A.C. 7:13-1.2. “Regulated activities” include activities like excavating, creation of impervious surface, and “construction, repair, alteration, enlargement, elevation, or removal of a structure” or building. N.J.A.C. 7:13-2.4.

Municipal Flood Hazard Standards
Under the FHACA, a municipality cannot grant site plan approval for a development or construction project located in a flood hazard area that does not obtain a permit from NJDEP required under the FHA Rules. N.J.A.C. 58:16A-55.3. Under the FHACA, a municipality must also adopt rules for development within certain flood areas that are at least as stringent as the FHA Rules. N.J.S.A. 58:16A-57.

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Flood Hazard Standards... (continued from page 7)

Many municipalities have adopted rules that are more stringent. For example, the City of Margate requires all new construction or substantial improvements to existing construction to be anchored to prevent flotation, collapse or movement, requires the use of materials resistant to flood damage, and requires the lowest floor of buildings constructed in special and high-hazard areas to be elevated as much as the designated flood elevation plus two feet of freeboard. Margate Municipal Code §145-17 to 19.

Knowing whether your project is located in a flood hazard area and the types of permitting obligations and flood hazard standards that may apply is key to navigating what will continue to be a complex and evolving area of State and local regulation. Understanding State and local flood hazard standards will keep your project both literally and figuratively above water.

Powering Ahead... (continued from page 2)

In the meantime, our customers continue to benefit from the significant upgrades in the safety and reliability of our electric system. Through our Reliability Improvement Plan and other electric distribution enhancements, over the past five years we have spent about $716 million in system upgrades. This includes system improvements on about 210 electric circuits. These are higher voltage lines that distribute electricity to customers. We have also upgraded hundreds of miles of wire, replaced hundreds of poles, and installed automated switching technology on dozens of electric circuits designed to isolate outages and restore power to customers quicker.

To keep up with customer expectations, we have upgraded four of our substations with new equipment and built new substations in Avalon in Cape May County; Franklin Township in Gloucester County and the City of Port Republic in Atlantic County.

We have implemented a comprehensive vegetation management plan spending more than $40 million over the last three years on tree trimming and associated vegetation management along nearly 5,200 miles of power lines to help prevent outages. Our customers are seeing the benefits of this work. During 2015, we achieved our best reliability performance in more than a decade. Customers experienced 41 percent fewer outages and when outages did occur, service was restored about 25 percent faster compared to 2011.

We as a company are extremely proud to achieve these improvements for the benefit of our customers. I thank our employees for working safely and diligently to make the needed improvements to our energy grid so that our customers can continue to enjoy their lives and our businesses can prosper.
DONG Energy, a European company with strong oil and gas roots, but now also a renewable energy powerhouse, provides another example. The company recently won a Dutch contract to build two large, 350 MW offshore wind farms. But the real news is that DONG’s bid sets a new record low price for offshore wind energy. The 15-year contract calls for DONG to produce electricity for €72.70 per MWh (US $80.40). Considering that the offshore wind industry set a goal four years ago to reach €100 per MWh over the life-time of a wind farm by 2020, the latest contract price is indeed a significant milestone.

And guess what else? DONG Energy is one of the companies that holds a New Jersey offshore wind lease. It is encouraging to see the innovations, experience, and competitive supply chain that have driven progress in Europe’s offshore wind industry gradually take hold here in the United States.

Offshore electric transmission is another area where we see advances. The electricity produced in an offshore wind turbine will get to New Jersey’s homes and businesses through cables laid below the seabed. Strings of turbines, spaced roughly a kilometer apart, are linked together with medium-voltage cables, and these strings intersect at an offshore substation platform where the voltage is increased for export to the land-based grid on buried high-voltage cables. Typically, large, heavy and expensive, these offshore substations were challenging to build since lifting such massive objects required contracting one of the few extra-heavy lift vessels in the world and hoping for calm weather. High winds or waves could cause hundreds of thousands of dollars in delay costs.

Siemens, a large electrical equipment manufacturer, recognized this challenge and recently introduced a simplified, modular offshore platform. Their Offshore Transformer Module (OTM) is lighter, less expensive to build, and easier to maintain. Most importantly, because it is lighter it fits on the same foundations used for wind turbines and it can be lifted into place with the same jack-up barges used to assemble turbines. No extra-heavy lift vessel required.

So, even though offshore wind in New Jersey has been quiet for a few years, recent developments point to a bright future for this affordable, job-creating, made-in-New Jersey clean energy resource. Opportunities for companies across many industry sectors to participate in the offshore wind supply chain are growing.
I Didn’t Do It – Apportioning Responsibility for Environmental Cleanup

By Charlene Drake, LSRP, Senior Project Manager, Langan Engineering and Environmental Services

An assessment of a property identified environmental contamination, but was it local or did it come from another site? In a state with a long history of industrialization and dense development such as New Jersey, confusion and disputes over the allocation of responsibility for environmental contamination are all too common.

In New Jersey, investigations are performed under the oversight of a Licensed Site Remediation Professional (LSRP) who works to assess and design remedies for pollution. As a practicing LSRP who has worked in New Jersey for the past two decades, I have seen many cases where contamination has migrated from one site to another.

When an LSRP believes that a client’s site is being contaminated by another site, they must follow the New Jersey Department of Environmental Protection (NJDEP) Off-Site Source Groundwater Investigation Technical Guidance (April 2015). The contention that one site is being contaminated by another must be supported by substantial evidence. Unless another party such as a tenant or former property owner is accepting responsibility for assessment and remediation, once contamination is found on your site, you are responsible for evaluating and determining whether the source is originating wholly or partially on your property.

Sampling of environmental media such as soil and groundwater may also play a key role in your evaluation. Sampling is typically performed on and off site to evaluate whether the data distribution (e.g., higher levels of contaminants off site) suggest that the contaminants are moving or have moved onto your property from elsewhere or are attributable to regional or background conditions.

It is best to have multiple lines of evidence to show that contamination is migrating onto your site. However, the conclusion of an evaluation is not always black and white. Sometimes contaminants in groundwater can become mixed to the extent that determining whether the groundwater contaminant is coming from an off-site source is difficult. As of this writing, NJDEP will soon be releasing a draft Commingled Plume Technical Guidance, which is intended to clarify administrative procedures to address regulatory compliance in the case of commingled plumes. One of the tools expected to be discussed in this guidance is the evolving science of Compound Specific Isotope Analysis (CSIA), which uses unique chemical signatures to segregate sources.

A competent Phase I or Preliminary Assessment (PA) will be the cornerstone of your source evaluation and will include the following steps:

- A records search available from online database sources such as New Jersey Dataminer to identify known contaminated sites in the vicinity of your site. This potential source can be further evaluated by requesting a file review from the state or federal agency (typically NJDEP or the U.S. Environmental Protection Agency).
- An inventory of your current operation to evaluate possible sources of leaks and spills and to document best management practices to prevent discharges.
- A review of historical aerial photographs, insurance maps, city directories, old topographic maps and similar documents.
- An interview with previous owners and people knowledgeable about the property.
- A review of local permit records.

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Bringing knowledge and creativity to complex development sites

Advantage Engineers’ team of environmental experts have extensive experience supporting our clients with site development projects in New Jersey. Each site has its own unique history, including some with legacy environmental issues that require assessment and engineered remediation solutions to be incorporated into the design. Advantage’s success in tackling complicated redevelopment projects is rooted in two of our core values: knowledge and creativity.

Advantage begins each new project with a focus on understanding our client’s vision and key drivers for project success. We then engage a team of experts to analyze existing site conditions, which may include one of our in-house New Jersey Licensed Site Remediation Professionals (LSRPs) for their expertise in site characterization, remediation, hazardous materials assessment, and ecology. Our teams of knowledge-able professionals have extensive experience negotiating the challenging regulatory atmosphere in New Jersey and have become well-known by our clients for a holistic approach towards site investigation and remediation, with site usability as the key objective. The Advantage team simultaneously strives to find creative engineering solutions while reducing client risk, meeting the project schedule, and minimizing project costs.

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Patrick Cummings, P.G., LSRP: 856.231.0800, PCummings@advantageengineers.com
Investigators and owners can be relieved of the responsibility for cleaning up environmental contamination when they document that the source of contamination is from off site and there is no on-site source. N.J.A.C. 7 1E-5.3(a) and 7:26C 1.7 requires that previously unidentified contamination be reported to the NJDEP. N.J.A.C. 7:26D-3.9 does not require that the investigator document the actual location of the source causing the contamination. In such a case, the condition should be reported to the NJDEP Hotline (1-877-WARNDEP) as an unknown source.

Protection of human health and the environment is the highest priority in all cases, and in cases of severe potential exposure such as an affected drinking-water well or indoor air over actionable limits, the condition should be immediately reported to the NJDEP as an Immediate Environmental Concern, which comes with strict timeframes for response and mitigation of hazards.

From a practical standpoint, cost recovery or damages relating to contamination of your property faces many challenges, and the services of an environmental attorney experienced in these matters is strongly recommended. The contention that contamination is coming from an off-site source must be well-supported. Good science and support from environmental professionals well versed in technical and regulatory requirements are your best defense.

DEP’s Beach Access... (continued from page 6)

This ruling was stayed while DEP asked the Supreme Court of New Jersey to review the Appellate Division’s decision. On June 17, 2016, the Supreme Court simply declined to review the matter and vacated the stay. That made the Appellate Division’s invalidation of the rules a final decision, and the 2012 regulations were nullified.

While DEP’s petition to the Supreme Court was pending, DEP was also seeking authority from the Legislature to impose public access requirements in waterfront development and coastal permits. On January 16, 2016, a bill was signed into law giving DEP that authority. P.L.2015, ch. 260. However, that law says nothing about validating the previously overturned rules, which included regulation over municipal provision of beach access. In fact, the new law requires that implementing regulations must be adopted in accordance with the Administrative Procedure Act, N.J.S.A.52:14B-1 et seq. This has not been done.

Since the Hackensack decision and the subsequent legislation vesting DEP with express authority to require public access as a permit condition, it has been unclear whether DEP will continue to apply the invalidated regulations. What is clear is that when the Supreme Court vacated the stay in Hackensack, and declined to review the Appellate Court’s decision, the DEP public access rules were judicially invalidated. Until DEP adopts new rules in compliance with P.L.2015, ch. 260 and the Administrative Procedure Act, the beach access rules are no more than an empty shell.
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Brett Wiltsey, Esq.
Cherry Hill Office Managing Partner
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To find out how the EDA can energize your business or project, call 609-858-6767 or visit NJEDA.com.