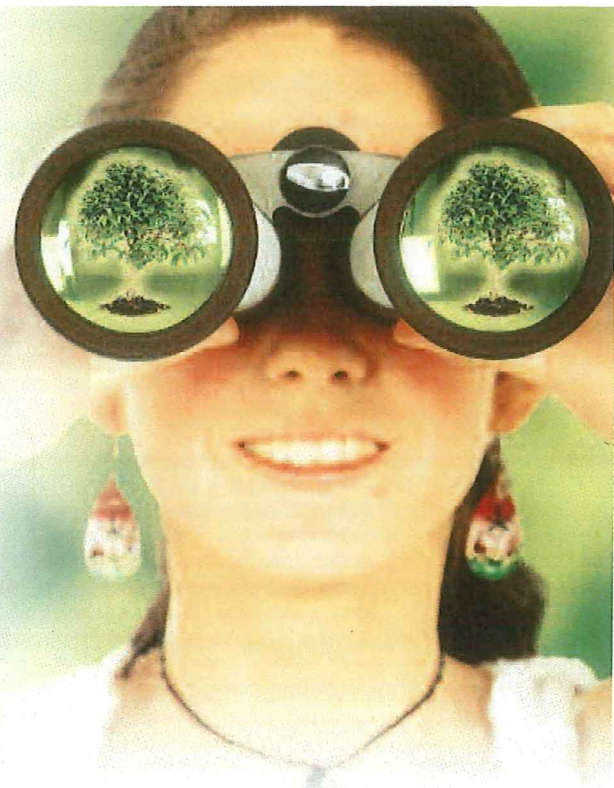


A State-of-the-Industry Report: Seeing More "Green" in 2015

Most environmental professionals are upbeat about the future, and are seeing their business opportunities expand in New Jersey and across the nation.



BY MARTIN C. DAKS
CONTRIBUTING EDITOR

FROM THE NEW JERSEY DEPARTMENT of Environmental Protection's rules and regulations to federal laws, environmental issues matter to anyone doing business. Understanding how to prepare for and ultimately protect against going afoul of these significant requirements is essential. Thus, *COMMERCE* spoke with a variety of environmental experts to develop this state-of-the-industry report, and to better document any potential impact on New Jersey's business community.



According to **Greenbaum Rowe Smith & Davis LLP** Partner **David B. Farer, Esq.**, chair of the Woodbridge, New Jersey-based firm's

Environmental Department and president-elect and fellow of the American College of Environmental Lawyers, "We're seeing a lot of activity across industrial, commercial and residential sectors, and among sellers, buyers, and landlords and tenants. Transactional activity is vigorous, and so is due diligence, compliance and risk-assessment."

New Jersey's long history as a home for heavy industry with a legacy of contaminated sites remains relevant, as one recent court case reveals.

"An important state Supreme Court

ruling in January 2015, *Morristown Associates v. Grant Oil Co.*, established that under the state Spill Act, a party cleaning up environmental contamination can basically pursue others responsible for the pollution, without having to worry about a statute of limitations," explains Farer. "The decision gives even more leverage to private party plaintiffs [whom Greenbaum Rowe often represents] to seek to recover their cleanup costs from others, including upstream or upgradient property owners and operators."

Environmental cleanup is also getting more complex, with Farer seeing a rising number of "complex multimedia activity," involving soil, vapor or even migrating groundwater—where water that originates from a polluted site may flow under or across other properties—that involves multiple property owners and operators.

And that's not all. A growing number of retailers are getting into hot water over the Resource Conservation and Recovery Act, adds Farer. "RCRA is a 'cradle-to-grave' federal hazardous waste program," so when consumers return any number of products to retailers—including cosmetics, fertilizer or paint—a store cannot just throw out the returns. They have to dispose of the goods under federal hazardous waste regulations or they face some big fines.

The federal government has been increasingly focused on this matter, and now New Jersey regulators are indicating interest, too."



Nationally and across the state, the environmental sector is going strong, according to CIANJ EBC (Environmental Business

Council) Roundtable moderator Lanny Kurzweil, Esq., a partner at Newark, New Jersey-based law firm McCarter & English, LLP, who handles environmental matters across many industries. "The main environmental issue is who will decide how best to clean up sites that need it," as the Site Remediation Reform Act continues to be fully implemented, he says.

"Will it be the NJDEP or LSRPs?" he asks. "Our clients believe strongly that the vetted LSRPs are best suited to see that sites are thoroughly cleaned up, quickly and without wasting state or private resources. There shouldn't be a generic approach to closing out sites, and it makes sense for state standards to be more advisory and tailored by the LSRPs to each site's problems and profiles."

The Grant Oil New Jersey Supreme Court ruling that established there is no statute of limitations for private

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party claims under the New Jersey Spill Act means “you don’t have to run to the courthouse to sue quickly in certain environmental matters, and can be more contemplative and strategic,” Kurzweil adds. “But it also means potentially long tails for unfunded and unknown liabilities. Witnesses move on or die, evidence is lost and as a general matter, the cases become more complicated with the significant passage of time.”

Nationally, Kurzweil says, hot-button environmental issues in 2015 include the recent proposal to allow off-shore drilling in the Atlantic Ocean, the Keystone XL Pipeline and fracking. At McCarter & English, Kurzweil says, the internal excitement revolves around the hiring of Tricia Caliguire, Esq., most recently chief counsel to the state Board of Public Utilities and before that, the environmental and energy policy advisor to Governor Christie. Her arrival followed the firm’s absorption of the attorneys of the Washington, D.C.-based energy boutique Miller Balis & O’Neil, which represents clients before the Federal Energy Regulatory Commission.



Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys employ a “boots-on-the-ground” approach that keeps them “immersed” in client activity and “enables us to offer practical strategic advice on the regulatory programs and policies specific to their project,” explains Tony Pinto, Esq., a shareholder in the Westfield, New Jersey-based law firm, and Practice Group Leader of the firm’s Real Estate Transactions Group.

He advises regional, national and global companies about regulatory and compliance matters, and explains, “We continue to be very active in the redevelopment of the New Jersey coastline, and to aggressively mediate many disputes to reduce costs and keep our client’s projects on track.”

New Jersey’s LSRP program has helped to cut through a lot of red tape and has spurred new projects, but the pace of real estate development and redevelopment activity could be threatened by

outsized regulatory costs, Pinto warns.

“The cost of regulation by governmental agencies that are out of touch with the issues faced by the real estate and development community continue to be problematic,” he says. “We believe the creation of more creative programs, which ensure the rational enforcement of environmental regulations, are needed. We continue to forge relationships with governing bodies, and are active as stakeholder representatives with state and federal regulatory agencies in order to forge good relationships, and to be proactive with new regulatory schemes.”



New Jersey appears to “have turned a corner in its approach to environmental issues, starting with the Site Remediation Reform Act (SRRA),” according to Jeffrey B. Wagenbach, Esq., a partner with the Morristown, New Jersey-based law firm Riker Danzig Scherer Hyland & Perretti LLP. Wagenbach focuses his practice on environmental matters.

But even though the SRAA has been fully in effect for almost three years, “I think we are only now starting to see some important issues come to the fore,” he explains. “For example, case closeout questions and the impact and use of Remedial Action Permits present challenging issues for lawyers and responsible parties. Second, there seems to be a maturing of the case law on both the state and federal level regarding when parties are liable, and what levels of proof are needed.”

Businesses that have legacy sites, or face legacy claims, need to take heed of these shifts before making consequential decisions involving such sites, counsels Wagenbach.

There are also “some great things happening on the federal level, especially in the energy area,” he adds. Although he believes the energy sector would benefit from a “more consistent approach,” on balance, these are favorable trends.”

Riker Danzig has invested in the firm’s environmental practice group, “and are

poised to take advantage of some emerging trends,” Wagenbach reports. “For example, at a recent seminar on site remediation regulatory and litigation issues, nine of our 14 professionals had prominent speaking roles. I see us approaching a shifting of the sands in both the regulatory and litigation arena, and we are ready at all levels to address these shifts.”



Edd Hogan, Esq., a partner with the Bridgewater, New Jersey, office of Norris, McLaughlin & Marcus P.A., and the firm’s co-chair

of the Environmental Law Group, says that there are “fewer surprises” as the LSRP program becomes mature. “We’re seeing that LSRP and other consultants are true professionals, and are focusing on client service, employee management and other business-related interests, beyond strict legal and other requirements.”

Norris, McLaughlin & Marcus’ environmental practice is growing, he adds. “In addition to adding two members [partners] who were promoted from within—John A. Jakub, Esq., and William J. Beneduce, Esq.—we continue to strengthen our services in New York, New Jersey and Pennsylvania. Clients today are looking for more than routine legal advice; they also want creative problem-solving, especially as we see more focus on redeveloping urban and older suburban sites. Developers have to contend with municipal, NJDEP, and other land use authorities and regulations, and this calls for an integrative approach to resolve issues.”



Energy sources—from coal to solar—are spurring plenty of legal activity, according to Dorothy M. Laguzza, Esq., a Newark,

New Jersey-based partner with the national law firm LeClairRyan.

“About a dozen states [New Jersey was not one of them] have sued the federal Environmental Protection Agency in an effort to stop proposed

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rules designed to cut greenhouse gases from existing coal-fired power plants," says Laguzza. "Those suits followed one brought against the EPA by a coal mining company, Murray Energy Corp."

Closer to home, solar is a big deal as "many businesses are looking into state tax credits and other incentives that are available for investing in solar-power facilities," Laguzza explains. "There's also a growing excitement about brownfield redevelopment and, particularly, the intersection of brownfields and solar generation."

In 2015, LeClairRyan is continuing to expand its national reach, adding offices in Sacramento, California, Houston, Texas, and Atlanta, Georgia, she notes. The firm is also representing an energy company in Methyl Tertiary Butyl Ether water-contamination suits brought by Pennsylvania and other states.

"There's plenty of other activity," she adds. "Among other trends, we're seeing more federal regulation in Superfund cleanup and other matters. And, of course, the recent New Jersey Supreme Court decision—*Morristown Associates v. Grant Oil*—clarifying that there's no statute of limitations on bringing a suit under the state's Spill Act—is likely to spur even more litigation."



The EPA's final regulations on coal-fired plants may be controversial with the coal and power generation industries, but they could offer some opportunities to clever companies, according to Veronica Foster, an associate and senior consultant with Golder Associates, a Mount Laurel, New Jersey-based firm that offers environmental and energy consulting, design and construction services.

"The proposed EPA rules seek to regulate the way electric utilities dispose of the coal combustion residuals [CCRs], which can be coal ash or other wastes generated by their coal-fired plants," she says. "EPA's concern is that the 'leachable constituents' in the ash, such as heavy metals, could contaminate water supplies. But New Jersey is very

friendly about the beneficial reuse of CCRs: for example, some concrete manufacturers may use ash instead of natural soil as a replacement material—preserving natural resources for other future uses."

She notes that this provides the concrete manufacturer raw material cost-savings, while offering the power plant disposal cost-savings. And once the concrete is cured, the constituents in the ash are essentially captive in the concrete."

With some coal-fired Garden State power generators being located in densely populated areas, where traditional disposal might be a problem under the new EPA rules due to space constraints, the utilities may be able to sell the coal ash to concrete plants, adds Foster.

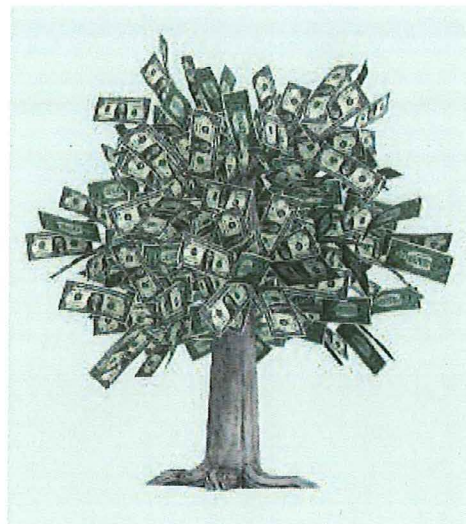
"Of course the amount of ash and other waste materials which can be beneficially re-used depends on the cost to transport the waste to the beneficial user and whether the beneficial end-user has a need for all the ash/CCRs produced by the utility," she says. "But at least there may be some options."



"With the energy sector a key catalyst, a more confident private sector and a recovering economy, I see acceleration in the need for environmental services not only in New Jersey but nationally as well," observes Robert R. Kreilick, Jr., P.G., CEO of Summit Drilling, a Bridgewater, New Jersey-based provider of environmental drilling services. "In 2014, the industry saw some major activity on the M&A front, with completed deals between GHD/CRA, AMEC and Foster Wheeler and, of course, the mega-deal between AECOM and URS."

With more than 500 New Jersey LSRPs, an extension of a May 7, 2014, deadline by the NJDEP, and funding in place to complete any remaining remedial investigations, "we have a healthy backlog of projects and are well positioned to capitalize on additional opportunities in 2015," adds Kreilick.

"We are also experiencing a shift from the investigative phase to a focus on remediation," he says. "Our outlook for 2015 and beyond is extremely optimistic. We are in growth mode with additions to our sonic fleet, and the opening of a regional office in the Capital District near Albany, New York, and we are pursuing acquisition opportunities as part of our strategic plan."





After getting caught up in the 2009 recession that snared many industries, the environmental segment appears to be bouncing back in New Jersey and elsewhere, according to Charles Harman, office manager and principal ecologist at the Somerset, New Jersey, office of AMEC Foster Wheeler plc, a London-based multinational consultancy, engineering and project management company.

"Locally and nationally, we're seeing increasing expenditures on brownfields and other projects," he explains. "Our company has grown [in part with AMEC's 2014 acquisition of Foster Wheeler], and the combination has added more depth to our engineering and design capabilities. We're engaging more in areas like LSRP support, vapor intrusion and other matters. We're also seeing more activity in ground water and other remediation projects, and in sediment and natural resource damage claims projects."

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The environmental industry in New Jersey, as well as the nation, remains strong and continues to grow, according to Kiran K. Gill, president and CEO of PARS Environmental, Inc., a full-service environmental consulting firm based in Robbinsville, New Jersey.

"The aftermath of Superstorm Sandy provided an unexpected growth in products and services related to the environmental cleanup and rehabilitation of the coastal areas in New Jersey and New York," she reports. "One noticeable trend in 2014 was the consolidation of very large firms in the industry. In the past, consolidation in the environmental industry had been confined to small- and medium-sized firms. But now, the consolidation of very large firms is likely to cause spin-offs of smaller firms."

PARS Environmental continues to invest in research, development and

commercialization of products and services for a changing environmental market.

"PARS is excited about the growth in the energy market for environmental services associated with the production of conventional energy, such as oil, gas and coal, and also with alternative energy such as solar, wind and waste-to-energy," says Gill. "PARS has also been actively involved in green infrastructure projects across the county and has worked extensively with the EPA on the research and development of innovative storm water management practices. We are excited to see these practices being adopted by many cities across the United States."

Gill also sees a "steady upswing" in the private sector environmental business in New Jersey, especially in due-diligence-related real estate transactions.

"The NJDEP is putting more emphasis on compliance and enforcement, especially as it relates to issues of Immediate Environmental Concern, such as vapor

intrusion," she says. "The LSRP program appears to be quite successful, as indicated by the significant number of Response Action Outcomes [an LSRP's written determination that a contaminated site has been remediated in accordance with all applicable statutes and regulations] compared to the number of No Further Action determinations [a similar approval, but one that's issued by the state agency instead of by an LSRP] that were issued by NJDEP during equivalent periods in the past."



The environmental industry in New Jersey seems to be gaining strength as real estate transactions and redevelopment projects are more active than in recent years, observes Craig Durand, LSRP, CHMM, president of Moorestown, New Jersey-based TTI Environmental, Inc., an integrated environmental services contractor and consultant.

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"Industries in New Jersey and nationally have been engaging TTI in many types of proactive and expansion-related projects," he says. "Spills and accidents that have occurred over the last couple of years have influenced regulatory programs and prompted environmental professionals to improve controls in physical assets and risk approach."

As the company's book of business continues to grow, TTI has acquired new offices in the New England area, "expanding our geographic service area as well as capabilities in civil and environmental engineering," Durand adds. "We are excited about securing a five-year, \$30 million contract with NAVFAC Washington. This contract should provide great opportunities for all of our divisions. Environmental construction projects continued to grow in complexity and our teams are contracted for challenging projects throughout the United States."

Environmental consulting and engineering companies seem to be partner-

ing more to meet the demands of large scale, and diverse contract opportunities, Durand notes. "The LSRP program in New Jersey is progressing forward, as more LSRPs have become comfortable working with the NJDEP's guidance."



Frank Sweet, executive vice president of the fully integrated infrastructure and support services firm AECOM, is upbeat about the environmental industry. "Nationally and locally in New Jersey, the environmental industry is steady despite a lackluster economy," says Sweet, who is located in Piscataway, New Jersey. "This is a testament to our clients, who have a strong desire to remedy the consequences of our industrial past, and to enhance our environment for the future."

He notes that AECOM, which recently combined with URS—a leading provider of engineering, construction and techni-

cal services for public agencies and private sector companies—has enhanced its "capabilities to bundle our environmental services with our traditional engineering and construction services. This bundling enables AECOM to provide clients with integrated solutions for mega-projects, such as our work on the 2016 Olympic Games in Brazil, as well as for projects for our valued local clients who form the backbone of our success."

Sweet says he's seeing a "strong desire" among LSRPs to close sites rapidly in a manner that protects human health and the environment.

"Closing sites more quickly will reduce the potential for exposure and/or the duration of exposure. Gone are the days of a lengthy process of investigation, reporting and regulatory review and approvals. LSRPs can now make real-time decisions that significantly reduce the risk of exposure. NJDEP has been freed up to focus on larger issues and assist LSRPs who close complex sites. LSRPs, our clients, and the NJDEP are

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now in a much better position to partner with each and achieve mutual goals."



The environmental industry is facing lots of change, according to LSRP Mark Pietrucha, an associate at the East Windsor, New Jersey-based Woodard & Curran, an engineering, science and operations consulting firm.

"Regulations evolve constantly, so businesses are always working to adjust," he says. "Plus, with the continued strength in the U.S. oil and gas industry, a host of new issues are coming to public attention, including exploration/mining waste and the associated environmental management practices."

In New Jersey, the LSRP program is helping to speed up the remediation process, and helping to make an "impressive" dent in the number of open contamination cases, Pietrucha

adds. "While there have been some bumps in the road for all parties involved, the collaborative approach to a Site Remediation Reform Act Version 2.0 is encouraging."

Woodard & Curran sees a growing demand from clients for fully integrated project delivery. "For us, that means we are taking on projects from planning through design, construction, and ongoing operations, if necessary," Pietrucha reports. The traditional approach of hiring a firm for design and passing responsibility to another for construction, for example, can result in communication gaps, which can impact schedule and budget. Demand for a more seamless solution is growing, and we have increased our capacity to deliver them."

Looking ahead, Pietrucha suggests that Superstorm Sandy was a wakeup call to New Jersey "to take severe weather resiliency very seriously." He expects some policy action at the state level to support or require

more complete disaster planning and mitigation work.

"It's not clear what form this will take, but these are complex projects that require strategic planning and prioritizing investments in flood mitigation, emergency power systems, infrastructure hardening and more," according to Pietrucha. "On the LSRP front, the promulgation of the Board Rules



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in the near future will help set the standard of care that LSRPs will be measured against—a standard that is already being set by the work we are doing today. We're excited to be part of it, and look forward to the program's continued success."



Thanks to initiatives such as the LSRP program, environmental activity in New Jersey "continues to be strong, and site remediation continues to be robust," according to Neil Rivers, LSRP, a senior associate/vice president at the Lawrenceville, New Jersey, office of Langan Engineering & Environmental Services. "Nationally and statewide, we also continue to see more development as a result of an improving economy, and more work in the manufacturing sector that's driven by lower energy costs," he says. "As a result, there's more compliance work and permitting activity, particularly in the oil and gas sector, where we're getting more infrastructure-related and other work."

Rivers says that's the firm's biggest new area. "Nationally, we're involved in a lot of pipeline and other energy-related projects," he reports. "In New Jersey, we continue to see activity in brownfields, but also a step-up in environmental activity related to education construction, hospital and other medical facilities building projects and hotel construction. In a state such as New Jersey, where we reuse many brownfields, these kinds of developments spur significant activity for us."



New Jersey's proximity to New York City has enabled the state—particularly North Jersey—to benefit from New York's "explosive" real estate development, according to LSRP Benjamin Alter, a senior vice president at Fairfield, New Jersey-based GZA GeoEnvironmental, a consulting firm focused on geotechnical, environmental, water, ecological, and construction management services.

"New Jersey's adoption of the LSRP program has made it a lot easier to resolve cases and keep pace with the increasing level of development and redevelopment activity, especially in the northern part of the state," he reports. "We're continuing to expand our presence in New Jersey with strategic senior-level hires, which has enabled us to establish local capabilities in geotechnical engineering, land-use, Superfund and other matters."

As the highly successful LSRP program matures, the state NJDEP is focusing more on environmental reviews and procedures, he adds.

"Overall, environmental-related activity is growing," says Alter. "And thanks to the LSRP and other programs, it's been a smooth process."

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There's plenty of environmental work to go around, according to J. Peter Borbas, PLS, PP, owner and president of

Boonton, New Jersey-based Borbas Surveying and Mapping, LLC.

"Nationally, we're at a point where government, commerce and the public are all interested in developing and promoting policies that are friendly to the environment," he notes. "In New Jersey, the NJDEP under the Christie administration has been open to public partnerships and has sought out the advice of stakeholders and others. I'm encouraged by the attitudes of legislators and regulators, and I've seen the level of professionalism among environmental consultants greatly increase."

All this has meant more work for companies like his, adds Borbas, who notes "My site remediation work in New Jersey and New York has been stable,

and we're also getting into new areas such as imagery that can be captured by drones, and the development of three-dimensional modeling for hydrographic and bulkhead rehabilitation and restoration near New York and New Jersey waterways.



Philip I. Brilliant, CHMM, LSRP, owner and principal environmental scientist of Toms River, New Jersey-based Brilliant Environ-

mental Services, LLC, says the environmental consulting and contracting industry in New Jersey, as well as across the country, "is strong and growing, though we all need to learn from mistakes."

Clients are a lot more sophisticated and involved in projects than they were in the past, he explains. "Today, financial objectives and property reuses are now part of the conversations on day one, not towards the completion."

As a result, firms should focus on their strengths, but should also keep refreshing and expanding the services they provide, he advises. "We must continue to learn new options and directions for environmental services, otherwise clients will find someone who does."

Brilliant takes his own advice to heart. In 2014, we started offering light drilling services, specifically soil boring services using a small probe mounted on the back of a golf cart for residential



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properties, as well as limited access areas," he reports. "In 2015, we hope to increase our use of this equipment on our client sites, but will also extend these services and other field services to consultants and LSRPs throughout New Jersey. But we realize that we are not a drilling company and are not interested in competing with our friends and subcontractors."

He's also seen a significant expansion of LSRP professionals. "During the last 20 years or so, in Massachusetts many Licensed Site Professionals have become sole proprietors or small consulting firms under that state's LSP program, and we are starting to see this trend in New Jersey," Brilliant explains. "Several LSRPs over the past few years have started to venture out in their own firms and, in some cases, can compete and be on even ground with multinational firms because in New Jersey, LSRPs rule. In my mind this can be a successful formula if an individual does not burn his or her bridges, and can use established firms as

resources in sampling, engineering, drilling or drafting, to name a few services. Whether they're a sole-proprietor or a large firm, every LSRP must work within his or her knowledge area and use experts and resources as needed; so I still believe we all can succeed."



A combination of traditional and high-tech concerns is likely to continue to drive the environmental industry in 2015 and beyond, according to NJIT Professor Jay N. Meegoda, Ph.D., P.E., director of the Newark institution's Geotechnical Testing Lab. His research can be best described as the mechanics of geo-environmental engineering, where he utilizes scientific concepts and engineering technologies in real-world applications. He set up the centrifugal testing laboratory and the asphalt-testing laboratory for his research.

Dr. Meegoda is a co-principal investi-

gator of a \$1 million grant from the National Science Foundation (NSF) with a \$1 million match from NJIT to establish a state-of-the-art geo-environmental lab. He was one of the main players in writing the proposal, set-up and extensive use of this NSF-sponsored NJIT state-of-the-art geo-environmental laboratory.

Under the heading of mechanics of geo-environmental engineering, Dr. Meegoda's research can be further subdivided into five main trust areas: engineering properties of contaminated soils; centrifugal modeling of contaminant transport; micro-mechanics; reuse of contaminated soils; ultrasound research; and an Underground Infrastructure Initiative.

"Pollution prevention; water, storm water and wastewater," are all big issues, he says. "And the environmental impact of nanoparticles [molecule-sized particles that have cutting-edge health, manufacturing and other applications], are also coming to the fore." ■

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