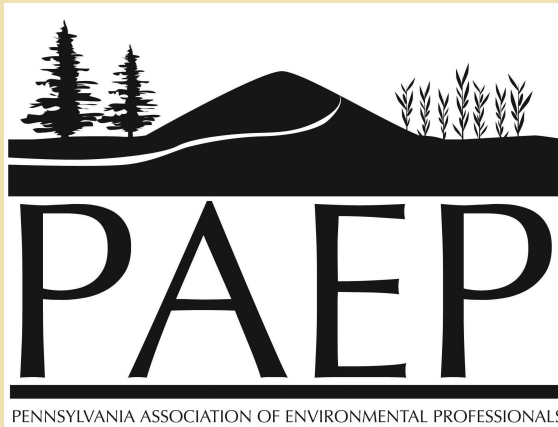


The purpose of the Pennsylvania Association of Environmental Professionals is to promote environmental education, research, planning, assessment, review, and management through the formation and operation of a nonpolitical multidisciplinary professional society.



PAEP Newsletter

PAEP
174 Crestview Drive
Bellefonte, PA 16823-8516
(814) 355-2467
Fax: (814) 355-2452

info@paep.org
www.paep.org

If you have any items for the next Newsletter, or if you would like to help with the Newsletter please contact Mike Kenawell at mkenawell@jmt.com.

Thoughts from the President...

I am hoping to see many of you at the PAEP Annual Conference, May 13th through May 15th at the Ramada in State College! We are excited about this year's conference and its theme, "The Future is Now." The conference begins on Wednesday with "green" traveling workshops around State College through the walking tour and/or biking tour, a golf outing at the White Course, and an opening conference reception followed by a special presentation, "Wild Pennsylvania" by Michael P. Gadomski, photographer.

On Thursday, we have a full day of great topics and speakers. The day's sessions will begin with a panel discussion from the Union of Concerned Scientists to discuss impacts and mitigation of climate change. Three concurrent tracks of seminars will then discuss a variety of topics - feel free to sit in on whichever sessions most interest you. The seminar portion of the day will conclude with a Marcellus shale formation panel discussion. Lunch will honor the 2009 recipients of the Karl Mason Awards - Devra Davis (individual) and the Montour Run Watershed Association (group). Congratulations to the award winners! Concluding the day, we are pleased to welcome the Secretary of PA Department of Environmental Protection, John Hanger, as the keynote speaker at the Thursday evening banquet. The conference will wrap up on Friday morning with breakfast and the Board of Directors meeting, followed by a group discussion led by Wayne Kober about the future of the environmental professional.

Thank you to this year's Conference Committee, lead by Mike Parrent and Tim Tuttle, and PAEP professional staff who have worked hard to make this conference happen. Thank you to our generous corporate sponsors, whose support is essential to produce such a great conference.

Additionally, the Board is working hard to reexamine and refocus the purpose and function of the organization to best serve its membership. We are excited about what lies ahead for PAEP in the coming months and years!

Virginia Bailey
PAEP President

Save The Date...

May

13-15

2009

*Make Plans to Attend the
2009 PAEP Annual Conference
Ramada Inn & Conference Center, State College, PA
“The Future is Now...”*

Please join PAEP in State College for a wonderful opportunity to meet colleagues, hear expert presentations, learn about new industry trends and policies, and enjoy some well-deserved fun!

New this year, ‘green’ traveling workshops with visits to sites of technical, ecological, and educational interest. Choose a Wednesday morning walking tour or afternoon biking tour. As an alternative to the workshops, spend the day on the ‘greens’ at the PAEP golf outing.

The Keynote Speaker for the Thursday evening banquet will be John Hanger, Secretary, PA Department of Environmental Protection.



Musil Elected Treasurer of the National Association of Environmental Professionals

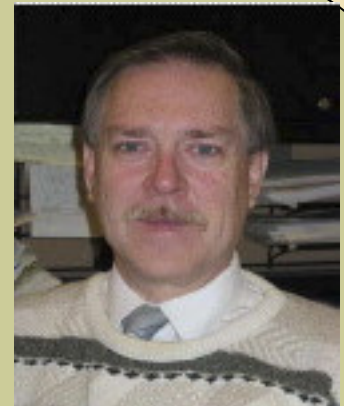
(Philadelphia, March 31, 2009): Urban Engineers’ Joseph F. Musil Jr, PE, PP, LEED® AP, has been elected Treasurer of the National Association of Environmental Professionals (NAEP) and will be serving on the NAEP’s five member Executive Committee in May.

Musil, who joined Urban in 1993, has over 34 years of professional experience in the environmental arena. He is a registered professional engineer in three states, a professional planner in New Jersey, and maintains LEED® AP accreditation.

In addition to NAEP, Musil is a member of the American Society of Civil Engineers, New Jersey Society of Municipal Engineers, Pennsylvania Association of Environmental Professionals, and the Society of American Military Engineers.

He holds a Master of Science Degree in Environmental Engineering from the New Jersey Institute of Technology and Bachelor of Science Degree in Mechanical Engineering from the Newark College of Engineering.

Philadelphia-based Urban Engineers, established in 1960, provides planning, design, environmental and construction management services for buildings, transit, railroads, bridges, highways, airports, ports and building systems. An ISO 9001:2000-registered firm, Urban provides its services through ten offices in the Mid-Atlantic and New England regions.



Section Updates

Central Section

Save the Date

PAEP Central Section Event **June 6th!**

PAEP Central Section will be helping the Shermans Creek Conservation Association with their annual stream cleanup this year. The cleanup is mainly completed via canoe or kayak (if you don't own one, SCCA will find one for you to use the day of the event). We'll also need some volunteers on land. The cleanup is scheduled for June 6th (weather permitting). Everyone meets at Dromgold's Corner in Shermans Dale at 8:30AM. Cleanup is on a 3-4 mile stretch on Shermans Creek this year, down to the Mt. View Bridge. After the clean-up, lunch will be provided (around 1:00 PM).

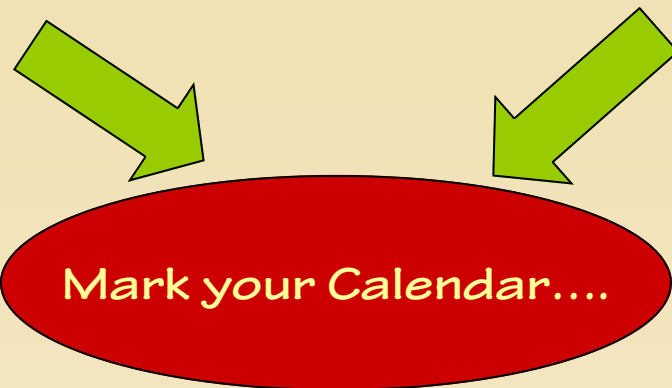
Any questions, contact Angela Schreffler (aschreffler@mbakercorp.com or (717) 221-2049) - More details to come to your inbox soon!

Eastern Section

PAEP Eastern Section has scheduled a program for **June 16, 2009**, entitled,

“Update on the Chapter 105 and Section 404 Program—Top 10 Permit Application Issues”.

The program will be held at the DEP office in Norristown starting at 9:30 am, with probable registration and social time beginning at 9am and probable end time around 11:30am. Speakers will include Zahra Nucci (SE Region chief of Dams and Waterways section) and Sam Reynolds (Army Corps Regulatory Branch section chief). A formal notice will be distributed shortly, confirming registration time, availability of continental breakfast, and any other details. Thanks to Joe Musil, for setting up this program. Hope you can join us!



The Pocono Northeast Resource Conservation and Development (RC&D) Council and its partners will be hosting the Northeast PA Energy Solutions Expo on **June 13-14th, 2009** at the Luzerne County Fairgrounds in Dallas, PA. The event will focus on alternative and renewable energy opportunities as well as energy conservation for residents, landowners, municipalities, regional governments, and local businesses. The intent of the Expo is a forum where people can come to see, witness, and learn about potential conservation and alternative energy solutions. We are hoping that this event could be used as an opportunity to educate and inform the public.

The Pocono Northeast Resource Conservation and Development (RC&D) Council is a 501(c)(3) non-profit organization that has been active within northeast Pennsylvania since 1980. The Pocono Northeast RC&D is a regional organization that encompasses and serves the following ten counties: Carbon, Columbia, Lackawanna, Luzerne, Monroe, Montour, Northumberland, Pike, Schuylkill, and Wayne.

For your information, we are partnering with the Times Leader to create a “Magazine” like document for this event. This document will be distributed to over 42,000 homes prior to the event.

Thanks for your time and consideration.

Brian Oram
Chairperson
Organization Website
<http://www.pnercd.org>

Expo Website
<http://www.pnesolutions.org>

****Please see attached flier for more information.**

LEGAL/REGULATORY INFORMATION

Welcome to the latest addition to our Newsletter. The goal of this column is to provide periodic legal insight on existing and developing regulations and regulatory policy, as well as contract and liability issues affecting PAEP members. New regulations and policies, both final and draft, will often be discussed; but it is not our goal to be a regulatory update checklist source per se. Future columns will also include any questions or comments sent to mburack1@verizon.net.

Today's column will focus on environmental service contracting issues (Part I of II). The next column, in our summer newsletter, will include Part II of Contracting Issues, a comment on the proposed revision to the Solid Waste regulations that is currently being worked on by the Solid Waste Advisory Committee (with emphasis on the definition of solid waste and impact on reclamation and recycling) the recently revised DEP policy on considering local planning and zoning in the permit review process, and some suggestions for complying with the Uniform Environmental Covenants Act of 2008.

The Six most Common Mistakes Made by Environmental Consultants in Contracting with Clients (Part I of II)

Psychology studies have now proven what we already suspected--that no one likes to read incomprehensible multi-page legal documents, and that a majority of people end up skimming contract documents if they read them at all. Before denying the "contract aversion" label, ask yourself how thoroughly you read your current mortgage agreement or apartment lease, or major appliance warranty, and whether you have subscribed to something on line and checked the "accept" box without downloading the lengthy terms and conditions. No need to feel inadequate or defensive—we all do it from time to time—even lawyers who should know better.

In the world of environmental professional (EP) services, contract aversion can be found on both sides of the contract, resulting in soured business relations and/or actual legal disputes over the scope and price of work. A related and common dynamic (which I call "tunnel contracting") is the tendency for EPs to derive false security from the act of signing a contract without considering whether the document needs to be customized for the project, or how to make other documents such as proposals, cost estimates and work orders operate in concert with the contract. Tunnel contracting in conjunction with contract aversion can cause the following situations which set the stage for an unnecessary legal dispute:

- 1) Clients who don't read or understand your service agreement, and are later surprised and angry over what they signed;
- 2) EP service agreements that are overly generic, difficult to understand for laymen, and/or do not clearly address foreseeable points of controversy for the particular project; and
- 3) Misunderstandings about the extent to which the original and/or modified project scope and costs have been approved by the client.

The six most common EP contract mistakes that cause these problems are:

6. Making it the Client's responsibility to "obtain access" if necessary for project work.
5. Using an overly simple service agreement that does not address a number of important potential sources of future dispute; [Usually small firms and contractors]
4. Using a lengthy generic agreement that is not properly customized for the specific project.
3. Failing to assure that the client understands basic legal terms of the agreement and the limitations of the scope of work;
2. Submitting a scope of work and cost estimate that does not clearly identify reasonably possible contingencies for expansion of scope and increased costs, based on field conditions or future data.
1. Modifying the scope of work and project costs, while work is ongoing, without detailed documentation, written client approval, and client discussion to assure comprehension;

LEGAL/REGULATORY INFORMATION

Mistake #6

Third-party site access is a potential delay and/or liability issue for EPs. Many service agreements simply make it the Client's responsibility to "obtain access". This risks scenarios where third-parties seek to impose unfair terms and seek to have the EP be a signatory to such terms. Most consultants would benefit from having a standard form access agreement to which any agreement obtained by Client must conform. To avoid protracted negotiations, the agreement should reasonably balance the rights and obligations of third-party site owners and the consultant and/or client, and should be easily customized for a particular site. The agreement must account for the fact that most neighboring property owners do not want you on their property in the first place, while also considering that in many cases, the grantor is actually Client's landlord, or the party selling property to Client. Approaches to site access will be discussed in more detail in Part II.

Mistakes #4 and 5

Whether your service agreement is too short or too generic, curing the problem begins with a simple objective evaluation—Make a list of the most likely legal/payment issues that could arise, and see how many are clearly and appropriately addressed. Then ask whether a reasonably prudent client, having actually read the provision, would likely agree to it. You may be surprised to find how many generic agreement terms are potentially inadequate for specific projects, or are so one-sided as to risk client rejection and/or non-enforceability. There are also several types of useful provisions that are often missing, even from legally reviewed contracts. An example that come to mind is an effective warranty provision covering remediation equipment installed by the EP (I define "effective" as something more than just saying no warranties are made). Another example is a workable procedure for dealing with delays and short pays by a client's insurer—whether private or public (e.g., the Underground Storage Tank Indemnity Fund) (I define "workable" as something other than just saying that client is responsible no matter what). We will explore these and other specific contract provisions in more detail in Part II.

Mistakes #1-3

Inadequate client communication, both up front and during project implementation is the major cause of clients withholding payment, and the legal disputes which follow. Inadequate communication often starts with the mechanical creation of a scope of work without considering the likely evolution of the project and its costs over time. Whether it be failure of vision or of communication, the result may be a client who thinks he or she is signing on to a specific set of tasks and cost estimate, and does not really understand that some of the stated caveats and assumptions will become the basis for change orders. This type of problem transcends contract length or quality issues, and relates primarily to the daily work practices of project managers and any senior manager reviewing their proposals or work progress.

Mistakes #1-3 (continued)

Consider the consultant who proposes a \$25,000 site investigation in support of client's effort to get refinancing. Consultant believes that groundwater is probably "clean" and proposes installation of 3 wells, with one sampling event, in order to prove it. After doing some soil borings, it is realized that additional monitoring wells will be necessary, at an additional cost of \$15,000, and that there is an old UST that will have to be removed, at a cost of \$5,000-15,000 depending on how far the apparently contaminated soil goes. Client says: "Do whatever you have to do". Now imagine that the UST is a real mess and will cost \$50,000 and require DEP approved corrective action. The Client says: "I would never have started down this road if I knew it would cost this much. You misled me". EP says: "Sorry about that—but paragraph 7 of our contract warns you not to rely on our cost estimates and paragraph 8 clearly states that our work is time and materials. We write it that way because you never really know what is going to happen once you start poking holes in a site.

The EP in this hypothetical did not sensitize the client to the potential for project expansion once the work begins, and did not consider how the client would react to the news that the project has doubled in cost and morphed from a Phase II into a site clean up.

The way to avoid this scenario is to ask yourself the same question about the scope of work and costs, that you should ask about the service contract: "How might this project actually play out, and does this document chart a reasonable path for handling contingencies? For a scope of work/cost estimate, this means expressing estimated costs as a range, if actual costs depend upon unknown facts A or B. It also means identifying up front, the contingent costs of expanded or new project work items that may potentially become necessary. This enables you to present the estimated costs for a project as \$20,000-40,000 (depending on specific facts that play out) with contingent costs of \$50,000-75,000 if the rumored UST is located, and the damp vegetated area turns out to be a wetland requiring a permit application, etc. Communicating contingencies up front may scare the client, but it will also help avoid "sticker shock" later on, when it is time for the client to pay.

Learning to take this approach with clients may require unlearning old habits for some of us; but the reward of reducing legal and business disputes is well worth the effort.

Coming up in the next issue:

- Part II of EP contracting issues;*
- Draft Proposed solid waste regulations;*
- DEP Policy on consideration of land use and zoning in permit approvals;*
- Compliance with Uniform Environmental Covenants Act of 2008*

What's in the News....

Endangered Northern Flying Squirrel Populations Identified

(by Matthew Elsasser, McCormick Taylor, Inc.)

The northern flying squirrel (*Glaucomys sabrinus*) has been present in the state of Pennsylvania for some time now. However, since they are not common and are nocturnal, they received little attention from wildlife managers in the past. It was not until a group of biologists started trapping the northern flying squirrels for research purposes that they noticed just how few of them there were. Pennsylvania Game Commission biologists and the Pennsylvania Biological Survey's Mammal Technical Committee added the northern flying squirrel to the state endangered species list on December 22, 2007. (PGC Press Release)

Northern flying squirrels do not actually fly; rather they glide from tree to tree. They are equipped with a fur-covered membrane that runs from their front paw to their rear ankle. They are able to use their tail and legs to guide their "flight". These limited populations of northern flying squirrels are recently being threatened by the presence of the wooly adelgid, a European insect that strips and kills the hemlock trees that the squirrels inhabit. Another threat to the northern flying squirrel is its close relative the southern flying squirrel. It has recently been discovered by wildlife biologists that these two distinct species are sharing habitat and living quarters, and the slightly larger northern flying squirrel is being pushed out of its habitat by the rapidly expanding range and density of the southern flying squirrel. The southern flying squirrel is also known to carry a parasite (*Strongyloides robustus*) that can be detrimental to the health of the northern flying squirrel. The parasite is believed to suppress the ability of the northern flying squirrel to put on much needed winter fat, while it has no effect on the southern flying squirrel. Fecal samples from captured northern flying squirrels have confirmed that they are indeed contracting this parasite.

Northern flying squirrels are currently only known to exist in Pennsylvania in eight populations. The Pennsylvania Natural Diversity Inventory (PNDI) database recognizes northern flying squirrel populations in the following areas of the state:

County	Township	USGS Quad.
Carbon	Kidder Twp.	Blakeslee
Luzerne	Foster Twp.	White Haven
Monroe	Coolbaugh Twp.	Tobyhanna
Monroe	Tobyhanna Twp.	Blakeslee
Monroe	Tobyhanna Twp.	Blakeslee
Monroe	Tobyhanna Twp.	Pocono Pines
Potter	West Branch Twp.	Galeton
Warren	Watson Twp.	Cherry Grove



Thank You....

2009 Corporate Members

To all the Corporate Members for the Pennsylvania Association of Environmental Professionals. Without their support which helps with the overall costs of the meetings and help PAEP deliver a quality program. The Board of Directors gratefully acknowledges the commitment the Corporate Members that have made to strengthening the industry and developing the skills of all PAEP members. To learn how your company can become a corporate member and support education go to the PAEP website www.paep.org or email info@paep.org.

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If you would like more information about any of these corporate sponsors see our website www.paep.org



PENNSYLVANIA ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS



PAEP Central Section Event Saturday, June 6, 2009 Shermans Creek Clean Up



Sponsored by the Shermans Creek Conservation Association



**When: 8:30 AM – 1:00 PM
Saturday June 6th**

**Where: Meet behind Dromgold's
Corner in Shermans Dale by
8:30AM**

Come join SCCA with their annual clean up! The clean up will be done mainly by canoe or kayak. If you don't have one, SCCA can get one for you. Bring gloves & sturdy creek shoes or boots. Some volunteers also needed on land. Lunch provided by SCCA after the event.

Must register – please register with Angela Schreffler at (717) 221-2049 or aschreffler@mbakercorp.com by June 1st. Please indicate whether you are volunteering on land or by boat and if you need a canoe! Non-members and families are welcome.

Directions: From Harrisburg take 81 across the river to exit 11-15 north to Marysville; go left on 850 west to first stop sign @ Sherman's Dale. Take right turn staying on 850 west, go 2 1/2 miles to Dromgold's Corner



Northeast PA Energy Solutions Expo

June 13-14th, 2009

Luzerne County Fairgrounds, Dallas, PA

During these tough economic times it is difficult for families to make ends meet – especially when it comes to heating their homes. And to make matters worse, rate caps on electricity suppliers will be expiring in 2010 and 2011. Families are looking for solutions to these pressing needs – looking to alternative energies.



The Pocono Northeast Resource Conservation & Development (RC&D) Council and its partners will be hosting the Northeast PA Energy Solutions Expo on June 13-14th, 2009 at the Luzerne County Fairgrounds in Dallas, PA. This Expo will highlight exhibitors and vendors who will be showcasing technology, products, and innovations to reduce your energy use and provide locally developed alternative and renewable energy options. The Expo will highlight presentations and seminars on the following topics:

- ▶ Energy opportunities with Solar, Wind, Biomass, Geothermal
- ▶ What are Biofuels?
- ▶ Green Building Design
- ▶ Saving energy and while supporting locally developed energy solutions
- ▶ How an Energy Audit can save you \$\$
- ▶ Transportation

Don't miss this great opportunity to explore new technologies that are being developed to address the need for locally produced energy. These new technologies include options that are good for your wallet, have less of an impact on the environment and can provide a sustainable economy for Pennsylvania.

The Pocono Resource Conservation & Development Council is a 501(c)3 nonprofit organization, whose Vision is to become a recognized leader and advocate of natural resource and community sustainability in northeastern Pennsylvania.

Council's Mission is to enhance and improve the ecological, cultural, and economic characteristics of the area through projects and programs that promote the management, protection, and sustainable utilization of the area's resources. The Council encompasses and serves the ten counties: Carbon, Columbia, Lackawanna, Luzerne, Monroe, Montour, Northumberland, Pike, Schuylkill, and Wayne.



Join us at the *Northeast PA Energy Solutions Expo on June 13-14th!*

If you have questions about our Expo, please visit www.pnesolutions.org or contact the Pocono Northeast RC&D Council 570-282-8732 ext.4 or sue@pnercd.org.

www.pnercd.org