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the Built Environment

The Newsletter of the New Jersey Chapter of the Construction Specification Institute, Inc.  
Volume One Number 2

## Two Construction Cases Before High Court

The Supreme Court will wrestle with two important construction cases during the 2003 term, which began Oct. 6. One case addresses construction permitting rules under the Clean Air Act and the other deals with a provision in the Americans with Disabilities Act.

In *Alaska Department of Environmental Conservation v. Environmental Protection Agency*, the justices were asked during Oct. 8 arguments to consider when EPA may issue a "stop-construction and noncompliance order" under the Clean Air Act. EPA has delegated authority to some states under the clean air law to make decisions about granting construction permits, including determining the best available control technology for reducing emissions for new or modified major pollutant-emitting facilities.

In the Alaska case, a local mining facility wanted to add a seventh generator that the state regulator approved even though it acknowledged that emissions reductions would be limited. The state agency cited global competitiveness issues to support its approval. EPA did not agree and issued a stop-construction order, arguing that the generator should not be built without new state-of-the-art technology. A federal appeals court agreed that EPA could issue a stop-work order.

There are strong arguments on both sides, says Roy T. Englert, a partner in the Washington, D.C., law firm of Robbins, Russell, Englert, Orseck & Untereiner. "It's a close case," claims Englert. He notes that the high court agreed to hear the case despite fierce opposition by EPA. There is a "strong chance for reversal," he adds. A decision could come latter this year or early in 2004.

Another case addressing federalism issues is *Tennessee v. Lane*. When the case is argued in January, the justices will look at an ADA provision that requires public services, programs or activities to

**Alaska environmental case questions when EPA can issue a stop-work order on clean air permitting projects**

be accessible to persons with disabilities. Tennessee argues that it has constitutional immunity from lawsuits that challenge its failure to make courthouses accessible to wheelchair users. Tennessee points to an earlier Supreme Court ruling that prohibits state employees from suing the state under ADA. A federal appeals court ruled, however, that access to court is a fundamental right that overrules the state's claim of immunity.

The case deals with county courthouses, and could have broader implications for ADA compliance in public, but nonfederal, construction. If the court rules that a state can be held responsible for monetary damages for ADA noncompliance, "that is the day we'll see an explosion of construction and remodeling," says William J Brown, the attorney representing plaintiff George Lane in the case. Brown says state and county arguments that they do not have the resources to comply with ADA will not be valid. It will be cheaper to pay for construction than for damages, he says.

Eighteen of the 37 cases scheduled for argument at the court so far this term deal with business issues, says Englert. "It's an average term," he says.

As reported in the October 20, 2003 issue of ENR Engineering News-Record, written by Sherrie Winston.

November 2003

### Mark Your Calendars

**November 3, 2003**

**Hanover Manor**

Chapter Meeting  
Security Access  
Control  
Inersoll Rand  
Safety and Security

**December 5, 2003**

NJCSI Annual  
Holiday Party  
Black Horse Tavern  
Mendham, NJ

**January 5, 2004**

Chapter Meeting  
Topic to be  
announced

**March 18, 2004**

Joint AIA Meeting  
Topical Presentation  
CADD

**April 21-23, 2004**

The 48th Annual CSI  
Show & Convention  
McCormick Place  
Chicago

**Sept. 10, 2004**

4th Annual  
Golf Outing  
**Gamblers Ridge**  
Cream Ridge



**Chapter Meetings are the first Monday of the Month @6:30 at The Hanover Manor.**

**New Jersey Chapter  
FY 2003  
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**Awards, Certification, Student Liaison, Newsletter Editor, and Finance, committees still have open Chairs. If you are interested please contact Mike Debiak @ 718-777-6809**



**Presidential Specs**

Another month has come and gone, the days are getting shorter, the nights longer, and the air cooler. But things are still heating up at New Jersey CSI.

We had another great monthly program topic in October, Green Roofing – “Not Just A Hue” provided by Barrett Roofing. The program discussed the design options and installation choices for green roofs. The presentation peaked a lot of interest. If you missed the meeting contact [www.barrettroofs.com](http://www.barrettroofs.com) for more information. There were also two table top displays presented by Benjamin Moore Paints and Barrett Roofing.

November 3<sup>rd</sup>'s topic, Egress Success, is presented by Ingersoll-Rand and as with all our monthly programs offers one (1) hour of credit for CSI and AIA. The discussion will be focused on life safety and code issues involved with door opening and hardware. If you would like to participate in a table top for this program please contact [michael.debiak@dmjmharris.com](mailto:michael.debiak@dmjmharris.com) for information.

December 5<sup>th</sup> will bring another New Jersey CSI Annual Holiday Party at the Black Horse Tavern in Mendham. A detailed announcement will be sent shortly. Anyone interested in advertising in the Program can send requests to [michael.debiak@dmjmharris.com](mailto:michael.debiak@dmjmharris.com) or [briteytes93@msn.com](mailto:briteytes93@msn.com). Business card ads are \$45, half-page is \$80, and full page is \$125. This party has always been a success so please respond early.

In Chapter news, it is with great regret that I must announce that Ron Davenport has left the New Jersey Chapter and is relocating to South Carolina. Ron, a past-president, has been a great supporter of NJ CSI. He has done a lot to help the Chapter grow and stepped up to the plate when the ranks of leadership were getting thin. Ron encouraged me to get involved, and for that, I thank him. I wish Ron much luck and happiness as I am sure we all do. **Ron — you will be missed!**

It is with great sorrow that I must announce the passing of Herbert Githens. Herbert was an award-winning historic architect and had twenty five years of experience in building-related fields and oversaw the restoration, stabilization, and relocation of numerous cultural resources; the identification and nomination of hundreds of historic properties to the National Register of Historic Places and recordination of structures to Historic American Building Survey and Historic American Engineering Record standards. He was a recognized expert witness in architecture, historic architecture and historic preservation planning.

There are two new members to our Chapter leadership. Please join me in welcoming, Diane Rattazzi as Treasurer, replacing Ron Davenport, and Roma Som, as Technical Chair. Both Diane and Roma are new to the Chapter leadership, but have great enthusiasm and knowledge for the job. With this we have nearly rounded out the leadership rooster, but there are still positions available – just two of which are Newsletter Editor and Student Liaison. In addition, the Northeast Region is looking for members interested in getting involved in the NER. Several positions are available to become a committee Chair or member. Please consider these opportunities, CSI is a great organization, and you can help keep it going. Contact George Rosamond [grosamond@LothropAssociates.com](mailto:grosamond@LothropAssociates.com) or myself for details. As a special note, New Jersey CSI made a commitment earlier this year to get more involved in the NER and this would be a great way of keeping on top of the development of the region. It is cliché, but you can make a difference.

Respectively —  
**Mike Debiak,**

# In Memory of Herbert Githens



Herbert Githens was an award-winning historic architect and had twenty five years of experience in building-related fields and oversaw the restoration, stabilization, and relocation of numerous cultural resources; the identification and nomination of hundreds of historic properties to the National Register of Historic Places and recordation of structures to Historic American Building Survey and Historic American Engineering Record standards. He was a recognized expert witness in architecture, historic architecture and historic preservation planning.

In 1983, Herbert founded his own architecture firm in Montclair, New Jersey, where he continued to practice until his death. From the modest former residence just off the town's main street, Githens firm produced thoughtful and meticulously crafted plans for such noted New Jersey landmarks as the Ridgewood Avenue Rail Road Station, Glen Ridge; Immaculate Conception Church, Montclair; Our Lady of Grace Church, Hoboken; Fosterfields Living Historical Farm and Historic Speedwell, both in Morristown; the Morris Canal in Warren County; and the Bergen County Justice Complex, Hackensack.

Mr. Githens was awarded many honors over his meaningful career recognizing his contribution to the fields of architecture and historic preservation. He was a member and past president of the New Jersey Chapter of the Society of American Registered Architects (SARA). In 2001, the National Chapter awarded him a Fellowship, its highest honor. Among his memberships in other professional and history organizations was the Construction Specification Institute which he joined in 2000. We extend our condolences to his family, friends, and colleagues at HJGA.

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## Contractor Pleads Guilty to Manslaughter in Scaffold Collapse

Philip Minucci, owner of Tri State Scaffold & Equipment Supplies Inc., pleaded guilty to second degree manslaughter in State Supreme Court in Manhattan for the deaths of five construction workers in an Oct. 24, 2001, scaffold collapse in Manhattan. New York City's building code requires that a licensed engineer design any scaffold taller than 75 ft. Instead, Minucci designed the 130-ft-tall scaffold himself, even though he had no engineering background. Minucci admitted he did not know the load capacity of the scaffold, which had 16 workers on it at the time of collapse. Most of the workers were undocumented aliens being paid \$7 per hour in cash. Judge Rena Uviller indicated would sentence Minucci to 4 to 12 years in prison.

As reported in the October 20, 2003 issue of ENR Engineering News Record.

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