



Arman Fardanesh
Mayor

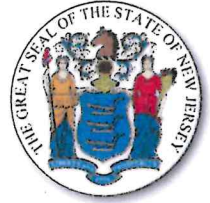
Theodore F. Preusch
Borough Administrator

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Borough Clerk

Borough of Upper Saddle River
County of Bergen
State of New Jersey

INCORPORATED
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The Borough has recently engaged Michael K. Burke, Esq. of the law firm Hodges, Walsh & Burke LLP., in White Plains, New York, to investigate and pursue potential Clean Water Act litigation.

In 2014, Mr. Burke prevailed on behalf of the Borough of Upper Saddle River after a protracted seven-year Clean Water Act litigation against the Rockland County Sewer District #1 for the sewer overflows that were repeatedly occurring at or near the New York/New Jersey border. In a detailed 38-page decision, United States District Court Judge Edgar Ramos ruled in favor of the Borough of Upper Saddle River and held Rockland County Sewer District responsible for the sewer spills at several sewer holes and pump stations near the Borough. Numerous spills flowed directly into the Saddle River, particularly the Saddle River Swim Club.

The lawsuit resulted in a \$900,00.00 Settlement award for the Borough and its residents.

As part of the current investigation and potential litigation, requests for information have been and will continue to be served on the NY DEC, RSSD #1, and the Department of Health for reports of spills, capacity-related issues, maintenance of the pump station, and

approvals for the water line that was to be installed as part of the Hillside Ave. project.

In particular, the plans for the Hillside Ave. project construction call for the installation of a water line to service the Mikvah. The excavation and water line construction has not begun but is required pursuant to the Hillside project engineer's reports and plans. Requests for information have already been and will continue to be made regarding permits and water line installation to ensure public health and safety.

Relatedly, the law firm of Bleakly Platt in White Plains is pursuing litigation regarding the Hillside development, which was appealed before the Second Department in *Eric Taylor and Tara Taylor v. Town of Ramapo Zoning Board of Appeals and Hillside Mikvah*.

The Borough is pursuing all legal remedies under the rule of law. The Borough could be considered a state actor in any zoning enforcement action or potential lawsuit if it were brought. As a state actor, the Borough could be exposed to prosecution by the United States Attorney's Civil Rights division or private law firms, as seen in the past with neighboring communities under the Religious Land Use and Institutionalized Persons Act (RLUIPA) or 1983 First Amendment actions. Some of these RLUIPA/1983 cases have resulted in civil penalties and costly attorney fees awarded against the municipality.

Currently, all piezometer installations are being reviewed, specifically those that are going to be installed on New York and New Jersey properties. As a first step and pursuant to direction from the Mayor

and Council certain piezometers are going to be installed, the exact locations cannot be revealed to protect the privacy of those parties involved. Baseline water testing has been conducted on eleven New Jersey and New York properties. To date, there has been no attributable groundwater contamination in New Jersey however, based upon the proximity of wells with elevated levels of Perfluoro octane Sulfonate and Perfluorooctanoic Acid, the State of New Jersey Department of Environmental Protection has forwarded letters to various residents requesting their permission to sample potable wells as part of their investigation. Well water heights have been taken by the utilization of private wells. The County of Bergen Department of Health has also been enjoined in this undertaking.

It should be noted that under New Jersey's Open Public Records Act (OPRA), all test results obtained by the NJ DEP (Department of Environmental Protection) become part of a public record. The State must make this information available should any interested party request it.

As the Borough is furthering an ongoing investigation, our attorneys have advised us not to discuss this matter specifically publicly.

In conclusion, the Mayor and Council are in consultation with the Borough Engineer (Boswell Engineering), hydrogeologic services by the firm of Weston & Sampson, and Special Consul Michael Burke, Esq.