

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 01/11/21 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano
Initiator: Sallie Graziano
Sponsors:

SCHEDULED

RESOLUTION 2021-38

DOC ID: 3401

**Authorizing the Filing of an Amicus Brief in the Matter of the
Adoption of Amendments to N.J.A.C. 7:9B, Docket No. A-
003545-19**

Borough of Flemington, County of Hunterdon

WHEREAS, the Borough of Flemington discharges wastewater to the Raritan Township Municipal Utilities Authority (RTMUA) pursuant to a 2013 Wastewater Service Agreement (“the 2013 Agreement”) providing for the treatment of the Borough’s wastewater and payment to the RTMUA for such services. Pursuant to the 2013 Agreement, the RTMUA treats the wastewater from Flemington and discharges highly treated wastewater into the South Branch of the Raritan River; and

WHEREAS, the New Jersey Department of Environmental Protection adopted amendments to the Surface Water Quality Standards at N.J.A.C. 7:B, effective April 6, 2020 (52 N.J.R. 7-11 (a)), establishing surface water quality standards for approximately 600 miles of rivers and streams and designating said waterways as Category One (C-1) waterways; and

WHEREAS, a C-1 designation means that no measurable lowering of existing water quality can occur; and

WHEREAS, included in the waterways designated as C-1, is the South Branch of the Raritan River, into which the Raritan Township Municipal Utilities Authority (RTMUA) discharges; and

WHEREAS, while the water quality of the South Branch has been enhanced through the extensive efforts of RTMUA and Flemington to discharge highly treated wastewater, any new or expanded discharge will be restricted, not just to discharges that meet surface water quality standards, but to only where it can be demonstrated that no measurable change to the existing level of water quality will result, thus requiring technology which would be costly or, at times, non-existent; and

WHEREAS, Flemington Borough strives for an exceptional quality of life for Borough residents and the community and supports many environmental initiatives and health, wellness and sustainability objectives, and Flemington is also undergoing an exciting revival, and these may be negatively impacted by significant increases in treatment fees, or restrictions on desirable growth, with little or no environmental benefit; and

WHEREAS, as a result of the designation of the South Branch of the Raritan River as C-1 waters, RTMUA and the County of Hunterdon have filed litigation opposing the designation on the grounds that NJDEP did not meet the established statutory and regulatory criteria for stream classification based upon the current quality of the South Branch, that the NJDEP erred in its evaluation of the regulatory impact of the rules by stating in both the proposal and the

adoption publications that the rule making would have little or no impact on the existing discharge from RTMUA and the Flemington community served thereby, and that the designation is arbitrary, capricious and unreasonable; and

WHEREAS, Flemington has determined that the designation of the South Branch as C-1 is arbitrary, capricious and unreasonable, and that alternative avenues exist to continue to protect and improve the environment that would not create impediments to the goals of Flemington and that would not increase the financial burden on the community, and further that Flemington desires to file as Amicus in the instant litigation representing those issues unique to Flemington.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that Diane Alexander, Esq., Maraziti Falcon, LLP, Special Counsel, is hereby authorized and directed to file an Amicus Brief on behalf of Flemington Borough in the Appellate Division litigation contesting the designation of the South Branch of the Raritan River as C-1 (In The Matter of the Adoption of Amendments to N.J.A.C. 7:9B, Docket No. A-003545-19). Such legal services shall be at the rates on file with the Borough and shall not exceed \$10,000.00 without prior authorization.

Adopted: January 11, 2021

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk