

The
MAYOR AND BOROUGH COUNCIL
of the
BOROUGH OF GLEN RIDGE
County of Essex
State of New Jersey



Monday, February 25th, 2013.

RESOLUTION NO. 43 – 13

Offered By Councilperson LEFKOVITS
Seconded By Councilperson _____

RESOLUTION SUPPORTING A BILL TO AMEND THE DEFINITION OF HAZARDOUS
SUBSTANCES WITHIN THE SPILL COMPENSATION AND CONTROL ACT, N.J.S.A.
58:10-23.11(b)

WHEREAS, the [MUNICIPAL GOVERNMENT] the Borough of Glen Ridge is a public body corporate and politic of the State of New Jersey; and

WHEREAS, the Borough of Glen Ridge is a named Third Party Defendant in the pending environmental litigation captioned NJDEP v. Occidental Chemical et al., bearing Docket No. ESX-L-9868-05; and

WHEREAS, in the pending litigation the Third Party Plaintiffs are seeking contribution, among other things, from the Borough of Glen Ridge as a result of various alleged discharges of sewage and/or sewage sludge into the Arthur Kill, the Passaic River Basin, and Newark Bay Complex; and

WHEREAS, the Spill Compensation and Control Act (the "Act"), N.J.S.A. 58:10-23.11(b), currently contains a definition of hazardous substances that reads as follows:

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 [33 U.S.C. 1321] of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. § 1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 [33 U.S.C. 1317] of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. § 9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.); and

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WHEREAS, this definition has been held by the New Jersey Courts to only apply to domestic sewage and sewage sludge from a public sewer system or publicly operated sewerage treatment plant; and

WHEREAS, the legislative history for this section of the Act suggests that the Legislature intended for the definition to include all sewage and sewage sludge from a public sewer system or publicly operated sewerage treatment plant, whether domestic or commercial; and

WHEREAS, the Legislature is now proposing an Amendment to Act that would clarify the definition of hazardous substance to read as follows:

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 [33 U.S.C. 1321] of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. § 1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 [33 U.S.C. 1317] of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. § 9601 et seq.); provided, however, that sewage and sewage sludge, including, but not limited to, any domestic, commercial, or industrial wastewater, sewage, or sewage sludge collected by or expelled from a sanitary sewer system or a public sewage treatment plant, shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.); and

WHEREAS, the Legislature is also proposing an Amendment to Act that would define "Public sewage treatment plant" to read as follows:

"Public sewage treatment plant" means any publicly owned structure, device, or facility used to treat or process domestic, commercial, or industrial sewage, sewage sludge, or wastewater;

WHEREAS, the Borough of Glen Ridge is in full support of the adoption of the proposed Amendment to the definition of hazardous substances under the Act and inclusion of a definition of "Public sewer treatment plant";

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Glen Ridge, that the Mayor and Council be and hereby supports the adoption of the amendment to N.J.S.A. 58:10-23.11(b), which clarifies the definition of hazardous substance by excluding any domestic, commercial and/or industrial sewage and sewage sludge discharged to or through a public sewage system or to or through a public sewage treatment plant from the definition; and

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BE IT FURTHER RESOLVED that the Borough Clerk be and hereby is authorized to distribute copies of this Resolution to all appropriate officials and agencies including its Legislative Representatives, the Governor, and the Lieutenant Governor.

BE IT FURTHER RESOLVED that no further action of the Mayor and Council shall be required in connection with this matter and this resolution shall take effect immediately.

APPROVED TO FORM:

APPROVED

John Malyska
Borough Attorney

Peter A. Hughes
Mayor

Certified as a true copy of the Resolution adopted by the Borough Council on this 25th day of February, 2013.

Michael J. Rohal,
Borough Administrator / Clerk