

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - NEW JERSEY**

### **Borough of Upper Saddle River, N.J. v. Rockland County Sewer Dist. No. 1**

**United States District Court, S.D. New York - April 22, 2014 - Slip Copy - 2014 WL 1621292**

Borough of Upper Saddle River and citizens brought suit under the Federal Water Pollution Control Act, [33 U.S.C. §§ 1251-1376 \(2006\)](#) and state common law, alleging that, in the course of operating a sewage treatment facility, Rockland County Sewer District # 1 had polluted-and will likely continue to pollute-the Saddle River. Plaintiffs brought four causes of action: continuing violations under section 301 of the Clean Water Act; and private nuisance, public nuisance and trespass claims under state common law. Plaintiffs sought civil penalties, injunctive and declaratory relief.

Both sides moved for summary judgment. “The issue now before the Court is to what extent Defendant can be held liable for its sewage spills through a citizen suit brought under the Clean Water Act and state common law.”

The District Court held that:

- Plaintiffs had adduced sufficient evidence of injury-in-fact to defeat summary judgment;
- Plaintiffs had Article III standing;
- Plaintiffs had demonstrated “on-going” violations;
- Plaintiffs may pursue relief for violations *not* covered by the 2006 Consent Order;
- The 2006 Consent Order did not render plaintiffs’ claims moot;
- Defendant was strictly liable for the sewage spills that they had not contested reached the Saddle River, as well as for sewage spills into the Saddle River that their own internal reports confirm;
- The record was insufficiently established with respect to key factors bearing on the appropriateness of civil penalties;
- Plaintiffs were not subject to injunctive relief, given the uncertainty concerning current and future spills;
- Genuine issues of material fact precluded summary judgment for either party on private nuisance claim;
- Genuine issues of material fact precluded summary judgment for either party on public nuisance claim; and
- Individual plaintiffs had failed to establish trespass claim.