



East Hampton Town Board

159 Pantigo Road
East Hampton, NY 11937

Michael Hansen

Town Clerk

www.ehamptonny.gov

DRAFT

Meeting: 10/01/26 06:00 PM

DOC ID: 35380

RESOLUTION (ID # 35380)

**Resolution Authorizing the Commencement of Litigation
Regarding the Battery Energy Storage Facilities Located at 3
Cove Hollow Road, East Hampton, New York and 10 North
Shore Road, Montauk, New York, and Approving an Attorney
Retainer Arrangement**

WHEREAS, the Town of East Hampton has been notified of contamination of environmental media caused by per- and polyfluoroalkyl substances ("PFAS") at and around the battery energy storage facilities located at 3 Cove Hollow Road, East Hampton, New York ("Cove Hollow Facility") and 10 North Shore Road, Montauk, New York ("Montauk Facility" and together the "Facilities") and contamination in public drinking water supply wells operated by the Suffolk County Water Authority; and

WHEREAS, in 2026, the New York State Department of Environmental Conservation ("DEC") sampled the soil and groundwater at and around the Cove Hollow Facility for PFAS and has determined that perfluoropropanoic acid ("PFPrA"), a manmade PFAS contaminant, is contained in soil and groundwater at and south of the facility; and

WHEREAS, DEC has determined that the likely source of the soil and groundwater contamination is the Cove Hollow Facility's use of Novec 1230 a/k/a FK-5-1-12 ("Novec") with water to fight a 2023 thermal runaway fire at the Cove Hollow Facility; and

WHEREAS, the Montauk Facility's fire suppression system is substantially similar to the Cove Hollow Facility's fire suppression system; and

WHEREAS, both Facilities continue to have Novec on their premises for use in connection with their automatic fire suppression systems such that in the event of a future thermal runaway fire, which can happen at any time, the Novec and water may be released, causing the same contamination event that occurred from the 2023 fire; and

WHEREAS, the Supervisor has written several letters to the Facilities requesting various actions be taken by certain deadlines; and

WHEREAS, the Facilities have satisfied none of those deadlines; and

WHEREAS, the Supervisor's latest letter dated September 29, 2026 demanded that both Facilities shut down by October 2, 2026 until (i) the Facilities remove the Novec from service such that it will not dispense in response to any fire, (ii) the Facilities submit, and the Town approves, a safe fire suppression system without Novec 1230 that has complete capability to suppress a thermal runaway fire without causing contamination, and (iii) the Cove Hollow Facility excavates contaminated soil at its site and disposes of it at a licensed disposal facility outside the Town of East Hampton; and

WHEREAS, the Town has not received a response to the Supervisor's September 29, 2026 letter from either Facility; and

WHEREAS, in the event the Facilities fail to comply with the directives set forth in the Supervisor's September 29, 2026 letter, the Town wishes to commence litigation against

the Facilities to, among other things, obtain such compliance and, in the interim, shut the Facilities down until that compliance occurs; and

WHEREAS, such litigation would name defendants, including, but not limited to, East Hampton Energy Storage Center LLC, Montauk Energy Storage Center LLC, and, as defendants or necessary parties, the property owners of the Facilities, and such other parties as the Town Attorney's Office deems necessary to obtain all relief (collectively, the "Targets"); now therefore be it,

RESOLVED that the Town Board of the Town of East Hampton hereby authorizes the Town Attorney's Office to commence and prosecute litigation against the Targets and other targets identified by the Town Attorney and counsel for declaratory and injunctive relief and recovery of damages, under any and all causes of action deemed appropriate by the Town Attorney and counsel; and be it further

RESOLVED, that Rigano LLC shall act as outside counsel for the Town of East Hampton and the Town Board on said matter on the terms of the retainer agreement with billing rates of \$375 per hour for Partners and Of Counsel, \$295 per hour for Associates and \$125 per hour for paralegals, in an amount not to exceed \$50,000.00 to be paid from Budget Account A1420-54520; and be it further

RESOLVED, that Rigano LLC, in consultation with the Town Attorney, shall be authorized to retain experts to assist Rigano LLC and testify in the litigation, in an amount not to exceed \$10,000.00 to be paid from Budget Account A1420-54520.