

# JournalNews

## Tarrytown, now facing potential lawsuits, found liable in workers' deaths

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TARRYTOWN - During the three frenzied minutes after Public Works foreman Anthony Ruggiero collapsed at the bottom of a cramped 20-foot-deep manhole, volunteer firefighter John Kelly decided to go down and save him.

Halfway there, Kelly looked up, his eyes rolled back and he fell the rest of the way down.

Both men were pronounced dead later that day, due to asphyxiation from low oxygen levels.

The Sept. 6 incident and an ensuing investigation by the state Department of Labor exposed a series of failures by the village to provide necessary training, programs and policies for its workers that the village knew were required by law.

The village was cited for four "willful" and/or "serious" violations by the department's Public Employee Safety and Health Bureau, or PESH, which released its report this month.

While first paying respect to the "two brave men" who died, Village Administrator Michael Blau said the village was reviewing the report and "fully intends to be in compliance with the violations within the timeframe established by PESH."

Tarrytown hired Pro Safety Services, a New Rochelle safety and environmental consulting firm, in late October to review not only confined-spaces issues, but also identify other potential hazards.

The village has until Feb. 22 to fully abate the violations. After that, it can be fined \$200 a day per violation.

Ruggiero's and Kelly's estates submitted separate wrongful-death notices of claim - a first step in filing lawsuits - against the village and several other government bodies this month.

The claims allege negligence and recklessness by the village and other agencies in failing to train village workers or provide a safe work environment.

Ruggiero went down the manhole to unclog a sewer pipe.

Daniel A. Seymour, the Ruggiero family lawyer, blasted the village for its actions.

"It was outrageous for the village to defame and malign the good character and name of these two men" by trying to place blame on "these two dead heroes" for their actions, the White Plains attorney said.

He and Jeff Korek, the Kelly family lawyer, said they were encouraged by the PESH report.

"Our hope is now that those responsible will take ownership for this tragic event," Korek said, "and that Brianna, the 16-year-old daughter of John Kelly, can finally get some answers."

Kelly, 51, of Sleepy Hollow, was a village firefighter for 33 years and a state Department of Transportation worker. Ruggiero, 47, of Tarrytown, was a village firefighter and village employee for nearly 30 years, most recently the road maintenance foreman.

He was survived by his wife and two daughters.

The 24-page investigation, which began a day after the incident, revealed that village workers entered permit-required confined spaces - which they were not authorized nor trained to go into - not only on Sept. 6, but on repeated prior occasions and that superiors were aware of the activity.

The village had a written confined spaces program from the 1990s, which fell into disuse after the last employee trained in the program retired in 2004.

In recent years, instead of allowing or training workers to enter confined spaces, which neither Ruggiero nor Kelly were trained to do, the village purchased two water jet trucks, which allow village employees to remain outside of manholes and blast out sewage clogs using powerful streams of water.

The village was cited for not communicating to employees that they could not enter the confined spaces. It also failed to implement written confined-spaces and respirator programs and failed to provide written certifications for hazardous jobs, PESH wrote.

The report also provided a detailed narrative of what happened on Sept. 6, mentioning that Scott Weaver, the Public Works general foreman, did not tell Ruggiero or Kelly to go down the manhole, but he did not stop either of them as he watched them descend.

Fire Chief Peter Saracelli was "only several feet away from the manhole" as Kelly descended, but, as well, did not stop him, PESH wrote.

Additionally, two more firefighters were allowed to save Kelly and Ruggiero while using the wrong equipment for the job, the report said.

"We're hopeful that these set of circumstances will serve as a nice reminder and a good wake-up call to all the localities to take a long, hard look at their plans," said Maureen Cox, director of the state Division of Safety and Health, "to make sure that their plans are living documents and not just pieces of paper that are up on a shelf that nobody is really paying attention to."