

**SOUTH ABINGTON TOWNSHIP**

**ORDINANCE 232 OF 2015**

**LACKAWANNA COUNTY, PENNSYLVANIA**

**ORDINANCE ENTITLED MS4 OPERATION AND MAINTENANCE ORDINANCE;  
PROVIDING STANDARDS TO MEET NPDES PERMIT REQUIREMENTS AND  
WATER QUALITY REQUIREMENTS, PROVIDING FOR PRESERVATION OF  
NATURAL DRAINAGE SYSTEMS AND PRESERVATION OF EROSION OF STREAM  
BANKS AND STREAMBEDS.**

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**WHEREAS**, the Township of South Abington desires to enact a new Ordinance entitled MS4 Operation and Maintenance as herein set forth.

**NOW, THEREFORE**, be it ordained and enacted by the Supervisors of the Township of South Abington, Lackawanna County, Pennsylvania, that the following new Ordinance MS4 Operation and Maintenance be enacted.

Article I – General Provisions.

Section 101.	Short Title
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## ARTICLE 1 – GENERAL PROVISIONS

### Section 101. Short Title

This Ordinance shall be known and may be cited as the South Abington Township MS4 Operation and Maintenance Ordinance.

### Section 102. Statement of Findings

The governing body of the municipality finds that:

- A. Inadequate maintenance of stormwater facilities contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, increases the cost of public facilities to carry and control stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, threatens public health and safety, and increased pollution of water resources.
- B. Reasonable regulation of connections and discharges to municipal separate stormsewer systems is fundamental to the public health, safety, and welfare and the protection of people of the Commonwealth, their resources, and the environment.
- C. Stormwater is an important water source, which provides groundwater recharge for water supplies and base flow of stream, which also protects and maintains surface water quality.
- D. Federal and state regulations require certain municipalities to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES). Permittees are required to enact, implement, and enforce a prohibition of non-stormwater discharges to the permittees regulated small municipal separate stormsewer systems (MS4s).

### Section 103. Purpose

The purpose of this Ordinance is to promote health, safety, and welfare within the municipality and its watershed by minimizing the harms and maximizing the benefits described in Section 102 of this Ordinance, through provisions designed to:

- A. Provide standards to meet NPDES MS4 permit requirements.
- B. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code 93 to protect, maintain, reclaim, and restore the existing and designated uses of the water of this Commonwealth,
- C. Preserve the natural drainage systems as much as possible.
- D. Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.

- E. Reduce or prevent scour, erosion, aggradation and degradation of stream banks and streambeds.
- F. Provide proper operation and maintenance of all facilities and all SWM BMPs that are implemented within the municipality.

#### **Section 104. Statutory Authority**

The Municipality is empowered to regulate these activities by the authority of the Act of October 4, 1978, P.S. 864 (Act 167), the "Storm Water Management Act" and The Second Class Township Code, 53 P. S. §65101, et seq., as amended. The municipality also is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended.

#### **Section 105. Applicability**

- A. All activities related to proper operation and maintenance of approved stormwater management facilities and BMPs and all activities that may contribute non-stormwater discharges to a regulated small MS4 within South Abington Township are subject to regulation by this Ordinance.
- B. Nothing herein shall create a duty by the Municipality to comply with any of the provisions hereof.
- C. In addition to all other immunity which exists at law or in equity, nothing contained in this Ordinance shall create an obligation or duty upon the Municipality. No owner of property or any person claiming an interest or otherwise effected by provision of this Ordinance shall have any claim against the Municipality for the failure to perform any duty or for performance in a negligent manner. This provision shall also extend to, by explanation and not limitation, all officers, agents, consultants, engineers, inspectors or other professionals, employees, officers or elected officials of the Municipality or performing or related to said entity.

#### **Section 106. Repealer**

Any other ordinance provision(s) or regulation of the municipality inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only. Notwithstanding the aforesaid all obligations of owners and developers their successors and assigns under prior approvals and or permits and or agreements remain enforceable by the Municipality and other appropriate bodies having jurisdiction.

#### **Section 107. Severability**

In the event that a court of competent jurisdiction declares any section or provision of this Ordinance invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

## **Section 108. Compatibility with Other Requirements**

Actions taken under this Ordinance do not affect any responsibility, permit or approval for any activity regulated by any other code, law, regulation, or ordinance.

## **Section 109. Erroneous Permit**

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency or employee of the Borough purporting to validate such a violation.

## **ARTICLE II – DEFINITIONS**

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense; the singular number includes the plural, and plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.
- B. The word “includes” or “including” shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.
- C. The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.

**Best Management Practice (BMP)** – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one of two broad categories or measures: “structural” or “nonstructural”. In this Ordinance, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands, to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site.

**Conservation District** – A conservation district, as defined in Section 3 (c) of the Conservation District Law 93 P.S. § 851 (c) that has the authority under a delegation agreement executed with DEP to administer and enforce all or a portion of the regulations promulgated under 25 Pa. Code 102.

**DEP** - The Pennsylvania Department of Environmental Protection.

**Earth Disturbance Activity** – a construction or other human activity which disturbs the surface of the land, including, but not limited to: clearing and grubbing; grading; excavations; embankments; road maintenance; building construction; and the moving, depositing, stockpiling, or storing of soil, rock or earth materials. Earth disturbance activity is subject to regulation under 25 Pa. Code 92, 25 Pa. Code 102, or the Clean Streams law.

**Municipality** – South Abington Township, Lackawanna County, Pennsylvania.

**NRCS** – USDA Natural Resources Conservation Service (previously SCS).

**Regulated Activities** – Any activities that may affect stormwater runoff and any activities that may contribute non-stormwater discharges to a regulated small MS4.

**State Water Quality Requirements** – The regulatory requirements to protect, maintain, reclaim, and restore water quality under Title 25 of the Pennsylvania Code and the Clean Streams Law.

**Stormwater** – Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

**Stormwater Management Ordinance** - South Abington Township Ordinance of 2015, Stormwater Management, providing a comprehensive program of Stormwater Management, regulation of development and activities causing accelerated run off; providing procedures and performance standards for Stormwater Management and standards to meet NPDES permit requirements.

**USDA** – United States Department of Agriculture.

**Waters of this Commonwealth** – Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

## **ARTICLE III – STORMWATER MANAGEMENT REQUIREMENTS**

### **Section 301 – General Requirements**

- A. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (E&S Manual)<sup>2</sup>, No. 363-2134-008 (April 15, 2000), as amended and updated.

- B. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated, or otherwise altered without written notification of the adjacent property owner(s) by the developer. Such stormwater flows shall be subject to the requirements of this Ordinance.
- C. For all regulated activities, SWM BMPs shall be implemented, operated, and maintained to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code, the Clean Streams Law, and the Storm Water Management Act.
- D. Various BMPs and their design standards are listed in the BMP Manual<sup>1</sup>.
- E. Proper long-term operation and maintenance of stormwater management BMP's including responsible parties and minimum O&M requirements.

#### **ARTICLE IV – OPERATION AND MAINTNEANCE**

##### **Section 401. Responsibilities of Developers and Landowners**

- A. Facilities, areas, or structures used as Stormwater Management BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions, deed covenants, or conservation easements that run with the land.
- B. Stormwater O&M Plans and Agreements for stormwater management approved pursuant to 25 Pa Code §102 after the date of this Ordinance shall be recorded as a restrictive deed covenant that runs with the land.
- C. The Municipality may take enforcement actions against an owner for any failure to satisfy the provisions of this Ordinance.
- D. The Municipality may perform O&M when the owner or other responsible party does not.
- E. The Municipality may charge the owner or other responsible party and place a lien against the property if owners don't reimburse the Municipality.

##### **Section 402. Operation and Maintenance Agreements**

- A. Prior to completing construction of a SWM Site Plan, the property owner shall sign and record an Operation and Maintenance (O&M) Agreement covering all stormwater control facilities which are to be privately owned.
  - 1. The owner, successor and assigns shall operate and maintain all facilities in accordance with the approved schedule(s) in the O&M Plan.

2. The owner shall convey to the Municipality conservation easements to assure access for periodic inspections by the Municipality and maintenance, as necessary.
  3. The owner shall keep on file with the Municipality the name, address, and telephone number of the person or company responsible for operation and maintenance activities. In the event of a change, new information shall be submitted by the owner to the Municipality within ten (10) working days of the change.
- B. The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Municipality may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.
  - C. The owner is responsible for consulting the Stormwater Management Ordinance, as defined here and above, and incorporated herein by references for additional criteria for the Operation and Maintenance (O&M) Agreement.

## ARTICLE V – PROHIBITIONS

### Section 501. Prohibited Discharges and Connections

- A. Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter a regulated small MS4 or to enter the waters of this Commonwealth is prohibited.
- B. No person shall allow, or cause to allow, discharges into a regulated small MS4, or discharges into waters of this Commonwealth, which are not composed entirely of stormwater, except (1) as provided in Subsection C below and (2) discharges allowed under a state or federal permit.
- C. The following discharges are authorized unless they are determined to be significant contributors to pollution a regulated small MS4 or to the waters of this Commonwealth:
 

<ul style="list-style-type: none"> <li>- Discharges from firefighting activities</li> <li>- Potable water sources including water line flushing</li> <li>- Irrigation water</li> <li>- Air conditioning condensate</li> <li>- Springs</li> <li>- Water from crawl space pumps</li> <li>- Street wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used</li> <li>- Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20))</li> </ul>	<ul style="list-style-type: none"> <li>- Flows from riparian habitats and wetlands.</li> <li>- Uncontaminated water from foundations or from footing drains</li> <li>- Lawn watering</li> <li>- Dechlorinated swimming pool discharges</li> <li>- Uncontaminated pumped groundwater</li> <li>- Water from individual residential car washing</li> <li>- Routine external building wash down (which does not use detergents or other compounds)</li> <li>- Landscape irrigation</li> <li>- Rising ground waters</li> <li>- Diverted Stream flows</li> </ul>
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- D. In the event that the Municipality or DEP determines that any of the discharges identified in Subsection C significantly contribute pollutants to a regulated small MS4 or to the waters of this Commonwealth, the Municipality or DEP will notify the responsible person(s) to cease the discharge.

### **Section 502. Roof Drains and Sump Pumps**

Roof drains and sump pumps shall discharge to infiltration or vegetative BMPs.

## **ARTICLE VI – ENFORCEMENT AND PENALTIES**

### **Section 601. Right-of-Entry**

Upon presentation of proper credentials, the Municipality may enter at reasonable times upon any property within the Municipality to inspect the condition of the stormwater structures, facilities, and BMP's in regard to any aspect regulated by this Ordinance.

### **Section 602. Inspection**

SWM BMPs should be inspected by the landowner, or the owner's designee (including the Municipality for dedicated and owned facilities), according to the following list of minimum frequencies:

1. Annually for the first 5 years following construction.
2. Once every 3 years thereafter.
3. During or immediately after the cessation of a 10-year or greater storm.

### **Section 603. Enforcement**

- A. It is unlawful for any person to modify, remove, fill, landscape or alter any approved SWM BMPs, facilities, areas, or structures without the written approval of DEP or a delegated County Conservation District, and the Municipality.
- B. Unless otherwise designated herein, the Township Manager or other designee of the Municipality or as otherwise designated by law shall have enforcement authority, as appropriate under this Ordinance.

### **Section 604. Suspension and Revocation**

- A. Any approval or permit issued by the Municipality may be suspended or revoked for:
  1. Non-compliance with or failure to implement any provision of an approved SWM Site Plan or O&M Agreement.

2. A violation of any provision of this Ordinance or any other applicable law, ordinance, rule, or regulation relating to a Regulated Activity.
  3. The creation of any condition or the commission of any act which constitutes or creates a hazard, nuisance, pollution, or endangers the life or property of others.
- B. A suspended approval may be reinstated by the Municipality when:
1. The Municipality has inspected and approved the corrections to the violations that caused the suspension.
  2. The Municipality is satisfied that the violation has been corrected.
- C. An approval that has been revoked by the Municipality cannot be reinstated. The applicant may apply for a new approval under the provisions of this Ordinance.
- D. If a violation caused no immediate danger to life, public health, or property, at its sole discretion, the Municipality may provide a limited time period for the owner to correct the violation. In these cases, the Municipality will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for the owner to correct the violation. If the owner does not correct the violation within the allowed time period, the Municipality may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Ordinance.

## **Section 605. Penalties**

Section 1, Any person who shall violate or fail to conform to any provision of this Ordinance shall be subject to the following;

- i. It shall be illegal for any person, partnership, corporation or other legal entity (collectively "person") to violate the terms of this Ordinance and a person violating same shall be prosecuted under the rules of procedure for summary proceedings before district justice. Any conviction of a violation of any section or subsection of this Ordinance shall result in the imposition of a fine of One Hundred Dollars (\$100.00) for the first offense, Two Hundred Dollars (\$200.00) for the second offense, Three Hundred Dollars (\$300.00) for a third and Five Hundred Dollars (\$500.00) for all subsequent offense(s), plus costs or in default of payment of said fine and costs the offender may be sentenced to a term of imprisonment subject to Pa R. Crim P. 456 (c) and 42 Pa C.S. 9730 (b). Nothing herein is intended to impede or restrict the prosecution of any criminal offense for any person continuing to violate the terms of this ordinance or any order to stop or desist from any illegal conduct or from being charged with any separate offense under the criminal codes or otherwise. Each day that a violation continues shall be deemed as a separate offense and shall be punishable as such. In addition to the penalties provided herein, the Municipality may sue at law or in equity to enjoin violations herein and in addition to damages may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate suit at law or in

equity against the person, partnership, corporation, or other legal entity found to have violated this ordinance, or the orders, rules, regulations, and permits issued hereunder.

ii. In addition to assessment penalties and liens, under subsection (i), any person who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a district justice or magisterial district judge, shall pay a fine and/or penalty of per violation of One Hundred Dollars (\$100.00) for the first offense, Two Hundred Dollars (\$200.00) for the second offense, Three Hundred Dollars (\$300.00) for a third and Five Hundred Dollars (\$500.00) for all subsequent offense(s), plus all court costs, including reasonable attorney's fees incurred by the Municipality in the enforcement of this Ordinance. Each day the violation exists shall constitute a separate offense. In any case where a penalty for a violation has not been timely paid, and the person against whom the penalty was imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for attorney's fees incurred by the Municipality in the enforcement proceedings. If the violator neither pays nor timely appeals the judgment, the Municipality may enforce the judgment pursuant to the applicable rules of civil procedure.

iii. In addition to all of the remedies, the Municipality is authorized to exercise and reserves all rights of enforcement and remedies for Municipal Claims and Tax Liens as permitted by law.

iv. In addition to or in lieu of a civil action before a district justice or magisterial district judge, or Court, the Municipality may enforce this Ordinance in equity. The appropriate officers or agents, including Board of Supervisors, Municipality Manager, Municipality Engineer or Code Officer of the Municipality are hereby authorized to seek all legal, statutory, mandamus or equitable relief, including injunctions (temporary/permanent or other appropriate relief), to enforce compliance herewith.

v. The Municipality shall be exempt from the payment of costs in any civil case brought to enforce this ordinance.

vi. Each day a violation occurs shall be a separate offense.

vii. The reasonable attorney's fees shall be at the rate of one hundred and twenty-five (\$125) dollars per hour. Said sum may be amended by Resolution of the Municipality, from time to time.

viii. By way of explanation and not limitation Owners and Developer shall be jointly and severely liable as permitted by law for violations.

**Section 606. Appeals**

- A. Any person aggrieved by any action of the Municipality or its designee, relevant to the provisions of this Ordinance, may appeal to the South Abington Township Zoning Hearing Board within 30 days of that action.
  
- B. Any person aggrieved by any decision of the Municipality, relevant to the provisions of this Ordinance, may appeal to the County Court of Common Pleas in the county where the activity has taken place within 30 days of the Municipality's decision.

**ARTICLE VII - REFERENCES**

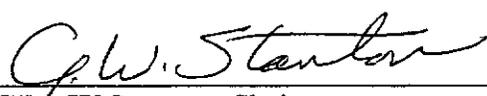
- 1. Pennsylvania Department of Environmental Protection. No. 363-0300-002 (December 2006), as amended and updated. *Pennsylvania Stormwater Best Management Practices Manual*. Harrisburg, PA
  
- 2. Pennsylvania Department of Environmental Protection. No. 363-2134-008 (April 15, 2000), as amended and updated. *Erosion and Sediment Pollution Control Program Manual*. Harrisburg, PA.

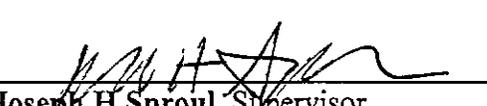
**ENACTED AND ORDAINED** as an Ordinance of Township of South Abington  
this 13 day of April 2015

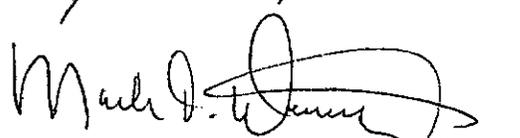
ATTEST:

  
Christine Griswold, Secretary

TOWNSHIP OF SOUTH ABINGTON

by:   
Giles W Stanton, Chairman

  
Joseph H Sproul, Supervisor

  
Mark T Dougherty, Supervisor