STORMWATER MANAGEMENT

ORDINANCE

ORDINANCE NO. 67

Seven Fields, Butler COUNTY, PENNSYLVANIA

Adopted at a Public Meeting Held on
March 8, 2004

National Pollutant Discharge Elimination System (NPDES)
Stormwater Discharges
From
Municipal Separate Storm Sewer Systems (MS4s)

Guidance
on
MS4 Ordinance Provisions

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
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DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

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TITLE: Guidance on MS4 Ordinance Provisions
[*In relation to National Pollutant Discharge Elimination System (NPDES) Stormwater Discharges Permitting Requirements From Municipal Separate Storm Sewer Systems (MS4s)*]

EFFECTIVE DATE: August 2, 2003

POLICY: This guidance contains model ordinance provisions for municipalities to meet their permit obligations under the NPDES Phase II federal stormwater management regulations.

PURPOSE:

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

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INTRODUCTION

Purpose

This guidance contains model ordinance provisions for municipalities to meet their permit obligations under the NPDES Phase II federal stormwater management regulations.

Background

New federal regulations enacted in December 1999 require municipalities in urbanized areas to implement a stormwater management program beginning in March 2003, over the next five years. *See 40 CFR §§ 122.26 – 123.35.* The regulations apply to "municipal separate storm sewer systems (MS4s)," and mandate that MS4s adopt certain local legal requirements through an ordinance, or other regulatory mechanism, to effectuate the local stormwater management program.

The regulations require MS4s to have the following legal provisions:

- Prohibition of non-stormwater discharges (with certain exceptions)
- Requirement for erosion and sediment controls
- Requirement to address post-construction runoff from new development and redevelopment, including operations and maintenance of stormwater BMPs
- Sanctions to ensure compliance with the above provisions

The department developed a draft model ordinance and published it for public comment in the *Pennsylvania Bulletin* in October 2002. The draft ordinance was based on the department's existing model ordinance used in the program under the Stormwater Management Act, *32 P.S. §§ 680.1 et seq.* ("Act 167"), as well as various ordinances currently in use around the state. A copy of the draft model ordinance was sent to each of the approximately 940 MS4s, requesting comments. The draft ordinance was also distributed at various public meetings held by the department during November 2002 - January 2003.

Comments were received by 24 persons or organizations. The comments addressed various technical, scientific and legal issues, and were considered in the issuance of this guidance. In addition, a number of the comments indicated that many municipalities around the state already have ordinances or other regulations addressing stormwater, and that it would be preferable to simply augment the required provisions needed to meet the additional federal regulatory requirements. The department concurs with these comments, and therefore this guidance gives municipalities three options for meeting their legal requirements, described below.

DEP *Protocol* for Implementation of MS4 Permit Requirements

The department issued a General Permit ("PAG-13") for use by MS4s in meeting their permit requirements, in December 2002. The basic requirement for MS4s is to implement a program for minimizing stormwater impacts from their system over the 5-year permit term. The permit gives MS4s the option of using the department's Stormwater Management *Protocol*—a detailed plan for implementing a stormwater management program over the five-year permit term—or developing their own program. These same options apply to Individual Permit applicants (required in Special Protection Watersheds).

The *Protocol* contains the department's preferred and recommended program for MS4s to address the six required elements contained in the federal regulations:

- Public education and outreach
- Public participation and involvement
- Illicit discharge detection and elimination
- Construction site runoff control
- Post-construction stormwater management in new development and redevelopment
- Pollution prevention and good housekeeping for municipal operations and maintenance

The *Protocol* requirements also include use of the department's model stormwater ordinance. The department will consider that aspect of the *Protocol* to have been met when an MS4 adopts any of the three options contained in this guidance document. Ordinance provisions different from these model provisions can be acceptable, subject to department approval. Further guidance on the review and approval process for those determinations will be issued later in 2003.

THREE OPTIONS FOR MS4s

To satisfy the *Protocol* requirement to adopt the department's model ordinance, MS4s have three options:

1. Augment an existing ordinance, or regulations, by adopting model provisions in four key aspects
2. Adopt a complete stormwater ordinance, focusing on water quality, using the department's model ordinance
3. Adopt an ordinance under the Act 167 program which contains MS4-related provisions

Each one of these options is described below.

OPTION 1: Use Selected Model Provisions

There are four types of provisions which must be used. These are contained in Appendices 1-4 to this guidance, and are described briefly below:

Prohibition of non-stormwater discharges (*Appendix 1*): These provisions contain a basic prohibition against non-stormwater discharges into the MS4, with certain exceptions. The exceptions include discharges under a state or federal permit, and discharges in 14 categories specified in the federal regulations.

Erosion and sediment control requirement (*Appendix 2*): These provisions apply the requirements contained in existing state regulations at 25 Pa. Code Chapters 92 and 102, including the NPDES Construction Permit program administered by DEP and County Conservation Districts. Issuance of an NPDES Construction Permit can be used to satisfy this requirement.

Requirement to address post-construction runoff from new development and redevelopment, including operations and maintenance of stormwater BMPs (*Appendix 3*): These provisions apply the requirements contained in existing state regulations at 25 Pa. Code Chapter 93 (Water Quality Standards), and are consistent with the NPDES Construction Permit requirements of 25 Pa. Code Chapter 92 and the Stormwater Management Planning requirements of the Stormwater Management

Act, *32 P.S. § 680.1 et seq.* Issuance of an NPDES Construction Permit can be used to satisfy this requirement.

Sanctions to ensure compliance with the above provisions: (*Appendix 4*): The Ordinance needs to set forth sanctions for failure to comply with the above provisions in the Ordinance, and these are contained in Appendix 4.

The provisions for controls during and after construction in Appendices 2 and 3 apply to controls required for *surface water quality protection.* Municipalities may modify the provisions as shown in the Appendices to allow for use with other, related construction and post-construction control requirements of the Municipality.

OPTION 2: Adopt Complete Model Stormwater Ordinance

MS4s that wish to use a complete, comprehensive stormwater ordinance are provided a sample ordinance that can be used to meet the MS4 permit requirements. This ordinance (*Appendix 5*) contains the required provisions in Appendices 1-4, as well as other relevant provisions commonly used by municipalities in Pennsylvania to address water quality impacts of stormwater runoff.

This ordinance contains useful provisions to ensure long-term operations and maintenance of post-construction Best Management Practices (BMPs), which is required by the federal regulations.

OPTION 3: Adopt Stormwater Ordinance Containing MS4-required Provisions, as Part of Approved Act 167 Watershed Plan

Many municipalities will be using the existing Act 167 process to help meet their permit requirements. This can occur with updates of current plans, or development of new plans. This process is administered by the Bureau of Watershed Management in the department.

Under the Act 167 planning process, counties and municipalities in watersheds around the state develop watershed-based plans to address three main aspects of stormwater impacts—flooding, water quality and groundwater recharge. While flooding is not required to be addressed by the federal MS4 permit requirements, there are obvious benefits to addressing flooding.

The Act 167 model ordinance used in that program can be easily modified to contain MS4 provisions. The department will work with municipalities who wish to achieve compliance with the MS4 requirements as part of an Act 167 planning effort. Therefore, no appendix for this purpose is provided in this guidance.

APPENDIX 1

Prohibition Against Non-Stormwater Discharges

Prohibited Discharges

A. No person in the Municipality shall allow, or cause to allow, stormwater discharges into the Municipality's separate storm sewer system which are not composed entirely of stormwater, except (1) as provided in subsection B below, and (2) discharges allowed under a state or federal permit.

B. Discharges which may be allowed, based on a finding by the Municipality that the discharge(s) do not significantly contribute to pollution to surface waters of the Commonwealth, are:

- Discharges from fire fighting activities
- Potable water sources including dechlorinated water line and fire hydrant flushings
- Irrigation drainage
- Routine external building washdown (which does not use detergents or other compounds)
- Air conditioning condensate
- Water from individual residential car washing
- Springs
- Water from crawl space pumps
- Uncontaminated water from foundation or from footing drains
- Flows from riparian habitats and wetlands
- Lawn watering
- Pavement washwaters 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
- Dechlorinated swimming pool discharges
- Uncontaminated groundwater

C. In the event that the Municipality determines that any of the discharges identified in Subsection B significantly contribute to pollution of waters of the Commonwealth, or is so notified by DEP, the Municipality will notify the responsible person to cease the discharge.

D. Upon notice provided by the Municipality under subsection C, the discharger will have a reasonable time, as determined by the Municipality, to cease the discharge consistent with the degree of pollution caused by the discharge.

E. Nothing in this Section shall affect a discharger's responsibilities under state law.

Prohibited Connections

The following connections are prohibited, except as provided in Section B above:

A. Any drain or conveyance, whether on the surface or subsurface, which allows any non-storm water discharge including sewage, process wastewater, and wash water, to enter the separate storm sewer system, and any connections to the storm drain system from indoor drains and sinks; and

B. Any drain or conveyance connected from a commercial or industrial land use to the separate storm sewer system which has not been documented in plans, maps, or equivalent records, and approved by the Municipality.

APPENDIX 2

Requirement for Erosion and Sediment Controls

Erosion and Sediment Control

A. No Regulated Earth Disturbance activities within the Municipality shall commence until approval by the Municipality of an Erosion and Sediment Control Plan for construction activities.

B. The Pennsylvania Department of Environmental Protection (DEP) has regulations that require an Erosion and Sediment Control Plan for any earth disturbance activity of 5,000 square feet or more, under 25 Pa. Code § 102.4(b).

C. In addition, under 25 Pa. Code Chapter 92, a DEP "NPDES Construction Activities" permit is required for any earth disturbance one acre of more with a point source discharge to surface waters or the Municipality's storm sewer system, or five acres or more regardless of the planned runoff (hereinafter collectively referred to as "Regulated Earth Disturbance Activities"). This includes earth disturbance on any portion of, part of, or during any stage of, a larger common plan of development.

D. Evidence of any necessary permit(s) for Regulated Earth Disturbance activities from the appropriate DEP regional office or County Conservation District must be provided to the Municipality. The issuance of an NPDES Construction Permit (or permit coverage under the statewide General Permit (PAG-2)) satisfies the requirements subsection A. [*]

E. A copy of the Erosion and Sediment Control plan and any required permit, as required by DEP regulations, shall be available at the project site at all times.

* This sentence is optional -- if the municipality has additional or more stringent requirements than those in state regulations, then this sentence should not be used.

APPENDIX 3

Post-Construction Stormwater Runoff Controls for New Development and Redevelopment, Including Operations and Maintenance of Stormwater BMPs

Post-Construction Runoff Control Requirements

A. No Regulated Earth Disturbance activities within the Municipality shall commence until approval by the Municipality of a plan which demonstrates compliance with State Water Quality Requirements after construction is complete.

B. The BMPs must be designed to protect and maintain existing uses (e.g., drinking water use; cold water fishery use) and maintain the level of water quality necessary to protect those uses in all streams, and to protect and maintain water quality in "Special Protection" streams, as required by statewide regulations at 25 Pa. Code Chapter 93 (collectively referred to herein as "State Water Quality Requirements").

C. To control post-construction stormwater impacts from Regulated Earth Disturbance activities, State Water Quality Requirements can be met by BMPs, including site design, which provide for replication of pre-construction stormwater infiltration and runoff conditions, so that post-construction stormwater discharges do not degrade the physical, chemical or biological characteristics of the receiving waters. As described in the DEP Comprehensive Stormwater Management Policy (#392-0300-002, September 28, 2002), this may be achieved by the following:

1. Infiltration: replication of pre-construction stormwater infiltration conditions,
2. Treatment: use of water quality treatment BMPs to ensure filtering out of chemical and physical pollutants from the stormwater runoff, and
3. Streambank and Streambed Protection: management of volume and rate of post-construction stormwater discharges to prevent physical degradation of receiving waters (e.g., from scouring and erosion).

D. DEP has regulations that require municipalities to ensure design, implementation and maintenance of Best Management Practices ("BMPs") that control runoff from new development and redevelopment (hereinafter "development") after Regulated Earth Disturbance activities are complete. These requirements include the need to implement post-construction stormwater BMPs with assurance of long-term operations and maintenance of those BMPs.

E. Evidence of any necessary permit(s) for Regulated Earth Disturbance activities from the appropriate DEP regional office or County Conservation District must be provided to the Municipality. The issuance of an NPDES Construction Permit (or permit coverage under the statewide General Permit (PAG-2)) satisfies the requirements subsection A. [*]

* This sentence is optional -- if the municipality has additional or more stringent requirements than those in state regulations, then this sentence should not be used.

APPENDIX 4

Sanctions

[The municipality may already have sanctions and enforcement provisions. However, the municipality must ensure that at a minimum, the provisions equivalent to the following are included to enforce the three other categories of provisions in Appendices 1-3]

Public Nuisance

A. The violation of any provision of this ordinance is hereby deemed a Public Nuisance.

B. Each day that a violation continues shall constitute a separate violation.

Enforcement

A. Whenever the Municipality finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Municipality may order compliance by written notice to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of prohibited discharges;
3. Cessation of any violating discharges, practices, or operations;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of a fine to cover administrative and remediation costs;
6. The implementation of stormwater BMPs; and
7. Operation and maintenance of stormwater BMPs.

B. Failure to comply within the time specified shall also subject such person to the penalty provisions of this Ordinance. All such penalties shall be deemed cumulative and shall not prevent the Municipality from pursuing any and all other remedies available in law or equity.

Suspension and Revocation of Permits and Approvals

Any building, land development or other permit or approval for Regulated Earth Disturbance Activities issued by the Municipality may be suspended or revoked by the governing body for:

A. Non-compliance with or failure to implement any provision of the permit,

B. A violation of any provision of this Ordinance, or

C. The creation of any condition or the commission of any act during construction or development which constitutes or creates a hazard or nuisance, pollution or which endangers the life or property of others.

Penalties

A. Any person violating the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $ 100 for each violation, recoverable with costs, or imprisonment of not more than 10 days, or both. Each day that the violation continues shall be a separate offense.

B. In addition, the Municipality, through its solicitor, may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

APPENDIX 5

MODEL STORMWATER ORDINANCE (For MS4 Municipalities)

This is a complete model ordinance for use by municipalities that operate "municipal separate storm sewer systems (MS4s)." It is one of three options available to municipalities using the DEP Stormwater Management *Protocol*, or who otherwise wish to follow DEP guidance on implementing the new federal stormwater regulations (which are incorporated into state regulations by reference).

Therefore, this model ordinance contains the requirements under the federal regulations at 40 CFR 122.26 – 123.35

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ARTICLE I - GENERAL PROVISIONS

Section 101. Short Title

This Ordinance shall be known and may be cited as the "Seven Fields Stormwater Management Ordinance."

Section 102. Statement of Findings

The governing body of the Municipality finds that:

A. Stormwater runoff from lands modified by human activities threatens public health and safety by causing decreased infiltration of rainwater and increased runoff flows and velocities, which overtax the carrying capacity of existing streams and storm sewers, and greatly increases the cost to the public to manage stormwater.

B. Inadequate planning and management of stormwater runoff resulting from land development and redevelopment throughout a watershed can also harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream-beds and stream-banks thereby elevating sedimentation), destroying aquatic habitat and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals and pathogens. Groundwater resources are also impacted through loss of recharge.

C. A program of stormwater management, including reasonable regulation of land development and redevelopment causing loss of natural infiltration, is fundamental to the public health, safety, welfare, and the protection of the people of the Municipality and all the people of the Commonwealth, their resources, and the environment.

D. Stormwater can be an important water resource by providing groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality.

E. Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater.

F. Federal and state regulations require certain municipalities to implement a program of stormwater controls. These municipalities are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES).

G. Non-stormwater discharges to municipal separate storm sewer systems can contribute to pollution of waters of the Commonwealth by the Municipality.

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. Manage stormwater runoff impacts at their source by regulating activities that cause the problems.

B. Provide review procedures and performance standards for stormwater planning and management.

C. Utilize and preserve the existing natural drainage systems as much as possible.

D. Manage stormwater impacts close to the runoff source, which requires a minimum of structures and relies on natural processes.

E. Focus on infiltration of stormwater, to maintain groundwater recharge, to prevent degradation of surface and groundwater quality and to otherwise protect water resources.

F. Maintain existing flows and quality of streams and watercourses.

G. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code Chapter 93.4a to protect and maintain "existing uses" and maintain the level of water quality to support those uses in all streams, and to protect and maintain water quality in "special protection" streams.

H. Prevent scour and erosion of streambanks and streambeds.

I. Provide for proper operations and maintenance of all permanent stormwater management BMPs that are implemented in the Municipality.

J. Provide a mechanism to identify controls necessary to meet the NPDES permit requirements.

K. Implement an illegal discharge detection and elimination program to address non-stormwater discharges into the Municipality's separate storm sewer system.

Section 104. Statutory Authority

The Municipality is empowered to regulate land use activities that affect stormwater impacts by the authority of the [*cite relevant sections of the applicable municipal code (e.g., 53 P.S. §§ 55101 et seq.—First Class Township Code) and/or the Municipalities Planning Code—confer with municipal solicitor*].

Section 105. Applicability

A. This Ordinance applies to any Regulated Earth Disturbance activities within the Municipality, and all stormwater runoff entering into the Municipality's separate storm sewer system from lands within the boundaries of the Municipality.

B. Earth Disturbance activities and associated stormwater management controls are also regulated under existing state law and implementing regulations. This Ordinance shall operate in coordination with those parallel requirements; the requirements of this Ordinance shall be no less restrictive in meeting the purposes of this Ordinance than state law.

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.

Section 107. Severability

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

Section 108. Compatibility with Other Requirements

A. Approvals issued and actions taken under this Ordinance do not relieve the Applicant of the responsibility to secure required permits or approvals for activities regulated by any other code, law, regulation or ordinance. To the extent that this Ordinance imposes more rigorous or stringent requirements for stormwater management, the specific requirements contained in this Ordinance shall be followed.

B. Nothing in this Ordinance shall be construed to affect any of the Municipality's requirements regarding stormwater matters which do not conflict with the provisions of this Ordinance, such as local stormwater management design criteria (e.g. inlet spacing, inlet type, collection system design and details, outlet structure design, etc.). Conflicting provisions in other municipal ordinances or regulations shall be construed to retain the requirements of this ordinance addressing State Water Quality Requirements.

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 the 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.

Accelerated Erosion - The removal of the surface of the land through the combined action of human activities and the natural processes, at a rate greater than would occur because of the natural process alone.

Applicant - A landowner, developer or other person who has filed an application for approval to engage in any Regulated Earth Disturbance activity at a project site in the Municipality.

BMP (Best Management Practice) - Activities, facilities, designs, measures or procedures used to manage stormwater impacts from Regulated Earth Disturbance activities, to meet State Water Quality Requirements, to promote groundwater recharge and to otherwise meet the purposes of this Ordinance.

BMPs include but are not limited to infiltration, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, forested buffers, sand filters and detention basins.

Conservation District - The Butler County Conservation District.

DEP - The Pennsylvania Department of Environmental Protection.

Developer - A person that seeks to undertake any Regulated Earth Disturbance activities at a project site in the Municipality.

Development - See "Earth Disturbance Activity." The term includes redevelopment.

Development Site - The specific tract of land where any Earth Disturbance activities in the Municipality are planned, conducted or maintained.

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.

Erosion - The process by which the surface of the land, including channels, is worn away by water, wind, or chemical action.

Erosion and Sediment Control Plan - A plan for a project site which identifies BMPs to minimize accelerated erosion and sedimentation.

Groundwater Recharge - Replenishment of existing natural underground water supplies.

Impervious Surface - A surface that prevents the infiltration of water into the ground. Impervious surface includes, but is not limited to, any roof, parking or driveway areas, and any new streets and sidewalks. Any surface areas designed to initially be gravel or crushed stone shall be assumed to be impervious surfaces.

Municipality - Seven Fields, Butler County, Pennsylvania.

NPDES - National Pollutant Discharge Elimination System, the federal government's system for issuance of permits under the Clean Water Act, which is delegated to DEP in Pennsylvania.

Outfall - "Point source" as described in 40 CFR § 122.2 at the point where the Municipality's storm sewer system discharges to surface waters of the Commonwealth.

Person - An individual, partnership, public or private association or corporation, or a governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Point Source - any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, or conduit from which stormwater is or may be discharged, as defined in State regulations at 25 Pa. Code § 92.1.

Project Site - The specific area of land where any Regulated Earth Disturbance activities in the Municipality are planned, conducted or maintained.

Redevelopment - Earth Disturbance activities on land which has previously been disturbed or developed.

Regulated Earth Disturbance Activity - Earth disturbance activity one acre or more with a point source discharge to surface waters or the Municipality's storm sewer system, or five acres or more regardless of the planned runoff. This includes earth disturbance on any portion of, part, or during any stage of, a larger common plan of development. This only includes road maintenance activities involving 25 acres or more or earth disturbance.

Road Maintenance - earth disturbance activities within the existing road cross-section, such as grading and repairing existing unpaved road surfaces, cutting road banks, cleaning or clearing drainage ditches and other similar activities.

Separate Storm Sewer System - A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains) primarily used for collecting and conveying stormwater runoff.

State Water Quality Requirements - As defined under state regulations -- protection of *designated* and *existing* uses (See 25 Pa. Code Chapters 93 and 96)--including:

A. Each stream segment in Pennsylvania has a "designated use," such as "cold water fishery" or "potable water supply," which are listed in Chapter 93. These uses must be protected and maintained, under state regulations.

B. "Existing uses" are those attained as of November 1975, regardless whether they have been designated in Chapter 93. Regulated Earth Disturbance activities must be designed to protect and maintain existing uses and maintain the level of water quality necessary to protect those uses in all streams, and to protect and maintain water quality in special protection streams.

C. Water quality involves the chemical, biological and physical characteristics of surface water bodies. After Regulated Earth Disturbance activities are complete, these characteristics can be impacted by addition of pollutants such as sediment, and changes in habitat through increased flow volumes and/or rates as a result of changes in land surface area from those activities. Therefore, permanent discharges to surface waters must be managed to protect the stream bank, streambed and structural integrity of the waterway, to prevent these impacts.

Stormwater - The surface runoff generated by precipitation reaching the ground surface.

Surface Waters of the 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 water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Watercourse - A channel or conveyance of surface water, such as a stream or creek, having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

Watershed - Region or area drained by a river, watercourse or other body of water, whether natural or artificial.

ARTICLE III - STORMWATER MANAGEMENT FOR WATER QUALITY

Section 301. General Requirements for Stormwater Management

A. All Regulated Earth Disturbance activities within the Municipality shall be designed, implemented, operated and maintained to meet the purposes of this Ordinance, through these two elements:

1. Erosion and Sediment control during the earth disturbance activities (e.g., during construction), and

2. Water quality protection measures after completion of earth disturbance activities (e.g., after construction), including operations and maintenance.

B. No Regulated Earth Disturbance activities within the Municipality shall commence until the requirements of this Ordinance are met.

C. Erosion and sediment control during Regulated Earth Disturbance activities shall be addressed as required by Section 303.

D. Post-construction water quality protection shall be addressed as required by Section 304. Operations and maintenance of permanent stormwater BMPs shall be addressed as required by Article IV.

E. All Best Management Practices (BMPs) used to meet the requirements of this Ordinance shall conform to the State Water Quality Requirements, and any more stringent requirements as determined by the Municipality.

F. Techniques described in Appendix A (Low Impact Development) of this Ordinance are encouraged, because they reduce the costs of complying with the requirements of this Ordinance and the State Water Quality Requirements.

Section 302. Permit Requirements by Other Government Entities

The following permit requirements may apply to certain Regulated Earth Disturbance activities, and must be met prior to commencement of Regulated Earth Disturbance activities, as applicable:

A. All Regulated Earth Disturbance activities subject to permit requirements by DEP under regulations at 25 Pa. Code Chapter 102.

B. Work within natural drainageways subject to permit by DEP under 25 Pa. Code Chapter 105.

C. Any stormwater management facility that would be located in or adjacent to surface waters of the Commonwealth, including wetlands, subject to permit by DEP under 25 Pa. Code Chapter 105.

D. Any stormwater management facility that would be located on a State highway right-of-way, or require access from a state highway, shall be subject to approval by the Pennsylvania Department of Transportation (PENNDOT).

E. Culverts, bridges, storm sewers or any other facilities which must pass or convey flows from the tributary area and any facility which may constitute a dam subject to permit by DEP under 25 Pa. Code Chapter 105.

Section 303. Erosion and Sediment Control During Regulated Earth Disturbance Activities

A. No Regulated Earth Disturbance activities within the Municipality shall commence until approval by the Municipality of an Erosion and Sediment Control Plan for construction activities.

B. DEP has regulations that require an Erosion and Sediment Control Plan for any earth disturbance activity of 5,000 square feet or more, under 25 Pa. Code § 102.4(b).

C. In addition, under 25 Pa. Code Chapter 92, a DEP "NPDES Construction Activities" permit is required for Regulated Earth Disturbance activities.

D. Evidence of any necessary permit(s) for Regulated Earth Disturbance activities from the appropriate DEP regional office or County Conservation District must be provided to the Municipality. The issuance of an NPDES Construction Permit (or permit coverage under the statewide General Permit (PAG-2) satisfies the requirements subsection 303.A. [*]

[This sentence is optional -- if the municipality has additional or more stringent requirements than those in state regulations, then this sentence should not be used.]*

E. A copy of the Erosion and Sediment Control plan and any required permit, as required by DEP regulations, shall be available at the project site at all times.

Section 304. Water Quality Requirements After Regulated Earth Disturbance Activities Are Complete

A. No Regulated Earth Disturbance activities within the Municipality shall commence until approval by the Municipality of a plan which demonstrates compliance with State Water Quality Requirements after construction is complete.

B. The BMPs must be designed, implemented and maintained to meet State Water Quality Requirements, and any other more stringent requirements as determined by the Municipality.

C. To control post-construction stormwater impacts from Regulated Earth Disturbance activities, State Water Quality Requirements can be met by BMPs, including site design, which provide for replication of pre-construction stormwater infiltration and runoff conditions, so that post-construction stormwater discharges do not degrade the physical, chemical or biological characteristics of the receiving waters. As described in the DEP Comprehensive Stormwater Management Policy (#392-0300-002, September 28, 2002), this may be achieved by the following:

1. Infiltration: replication of pre-construction stormwater infiltration conditions,
2. Treatment: use of water quality treatment BMPs to ensure filtering out of the chemical and physical pollutants from the stormwater runoff, and
3. Streambank and Streambed Protection: management of volume and rate of post-construction stormwater discharges to prevent physical degradation of receiving waters (e.g., from scouring).

D. DEP has regulations that require municipalities to ensure design, implementation and maintenance of Best Management Practices ("BMPs") that control runoff from new development and redevelopment after Regulated Earth Disturbance activities are complete. These requirements include the need to implement post-construction stormwater BMPs with assurance of long-term operations and maintenance of those BMPs.

E. Evidence of any necessary permit(s) for Regulated Earth Disturbance activities from the appropriate DEP regional office must be provided to the Municipality. The issuance of an NPDES Construction Permit (or permit coverage under the statewide General Permit (PAG-2)) satisfies the requirements of subsection 304.A. [*]

[This sentence is optional -- if the municipality has additional or more stringent requirements than those in state regulations, then this sentence should not be used.]*

F. BMP operations and maintenance requirements are described in Article IV of this Ordinance.

ARTICLE IV – STORMWATER BMP OPERATIONS AND MAINTENANCE PLAN REQUIREMENTS

Section 401. General Requirements

A. No Regulated Earth Disturbance activities within the Municipality shall commence until approval by the Municipality of BMP Operations and Maintenance plan which describes how the permanent (e.g., post-construction) stormwater BMPs will be properly operated and maintained.

B. The following items shall be included in the BMP Operations and Maintenance Plan:

1. Map(s) of the project area, in a form that meets the requirements for recording at the offices of the Recorder of Deeds of Butler County, and shall be submitted on 24-inch x 36-inch or 30-inch x 42-inch sheets. The contents of the maps(s) shall include, but not be limited to:

   a. Clear identification of the location and nature of permanent stormwater BMPs,
   b. The location of the project site relative to highways, municipal boundaries or other identifiable landmarks,
   c. Existing and final contours at intervals of two feet, or others as appropriate,
   d. Existing streams, lakes, ponds, or other bodies of water within the project site area,
   e. Other physical features including flood hazard boundaries, sinkholes, streams, existing drainage courses, and areas of natural vegetation to be preserved,

f. The locations of all existing and proposed utilities, sanitary sewers, and water lines within 50 feet of property lines of the project site,
g. Proposed final changes to the land surface and vegetative cover, including the type and amount of impervious area that would be added,
h. Proposed final structures, roads, paved areas, and buildings, and
i. A fifteen-foot wide access easement around all stormwater BMPs that would provide ingress to and egress from a public right-of-way.

2. A description of how each permanent stormwater BMP will be operated and maintained, and the identity of the person(s) responsible for operations and maintenance,

3. The name of the project site, the name and address of the owner of the property, and the name of the individual or firm preparing the Plan, and

4. A statement, signed by the landowner, acknowledging that the stormwater BMPs are fixtures that can be altered or removed only after approval by the Municipality.

Section 402. Responsibilities for Operations and Maintenance of BMPs

A. The BMP Operations and Maintenance Plan for the project site shall establish responsibilities for the continuing operation and maintenance of all permanent stormwater BMPs, as follows:

1. If a Plan includes structures or lots which are to be separately owned and in which streets, sewers and other public improvements are to be dedicated to the Municipality, stormwater BMPs may also be dedicated to and maintained by the Municipality;

2. If a Plan includes operations and maintenance by a single ownership, or if sewers and other public improvements are to be privately owned and maintained, then the operation and maintenance of stormwater BMPs shall be the responsibility of the owner or private management entity.

B. The Municipality shall make the final determination on the continuing operations and maintenance responsibilities. The Municipality reserves the right to accept or reject the operations and maintenance responsibility for any or all of the stormwater BMPs.

Section 403. Municipality Review of BMP Operations and Maintenance Plan

A. The Municipality shall review the BMP Operations and Maintenance Plan for consistency with the purposes and requirements of this ordinance, and any permits issued by DEP.

B. The Municipality shall notify the Applicant in writing whether the BMP Operations and Maintenance Plan is approved.

C. The Municipality may require an "As-Built Survey" of all stormwater BMPs, and an explanation of any discrepancies with the Operations and Maintenance Plan.

Section 404. Adherence to Approved BMP Operations and Maintenance Plan

It shall be unlawful to alter or remove any permanent stormwater BMP required by an approved BMP Operations and Maintenance Plan, or to allow the property to remain in a condition which does not conform to an approved BMP Operations and Maintenance Plan, unless an exception is granted in writing by the Municipality.

Section 405. Operations and Maintenance Agreement for Privately Owned Stormwater BMPs

A. The property owner shall sign an operations and maintenance agreement with the Municipality covering all stormwater BMPs that are to be privately owned. The agreement shall be substantially the same as the agreement in Appendix B of this Ordinance.

B. Other items may be included in the agreement where determined necessary to guarantee the satisfactory operation and maintenance of all permanent stormwater BMPs. The agreement shall be subject to the review and approval of the Municipality.

Section 406. Stormwater Management Easements

A. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Municipal Engineer.

B. Stormwater management easements shall be provided by the property owner if necessary for (1) access for inspections and maintenance, or (2) preservation of stormwater runoff conveyance, infiltration, and detention areas and other BMPs, by persons other than the property owner. The purpose of the easement shall be specified in any agreement under Section 405.

Section 407. Recording of Approved BMP Operations and Maintenance Plan and Related Agreements

A. The owner of any land upon which permanent BMPs will be placed, constructed or implemented, as described in the BMP Operations and Maintenance Plan, shall record the following documents in the Office of the Recorder of Deeds for Butler County, within 15 days of approval of the BMP Operations Plan by the Municipality:

1. The Operations and Maintenance Plan, or a summary thereof,

2. Operations and Maintenance Agreements under Section 405, and

3. Easements under Section 406.

B. The Municipality may suspend or revoke any approvals granted for the project site upon discovery of the failure of the owner to comply with this Section.

Section 408. Municipal Stormwater BMP Operation and Maintenance Fund

A. If stormwater BMPs are accepted by the municipality for dedication, the Municipality may require persons installing stormwater BMPs to pay a specified amount to the Municipal

Stormwater BMP Operation and Maintenance Fund, to help defray costs of operations and maintenance activities. The amount may be determined as follows:

1. If the BMP is to be owned and maintained by the Municipality, the amount shall cover the estimated costs for operations and maintenance for ten (10) years, as determined by the Municipality.

2. The amount shall then be converted to present worth of the annual series values.

B. If a BMP is proposed that also serves as a recreation facility (e.g. ball field, lake), the Municipality may adjust the amount due accordingly.

ARTICLE V-INSPECTIONS AND RIGHT OF ENTRY

Section 501. Inspections

A. DEP or its designees (e.g., County Conservation Districts) normally ensure compliance with any permits issued, including those for stormwater management. In addition to DEP compliance programs, the Municipality or its designee may inspect all phases of the construction, operations, maintenance and any other implementation of stormwater BMPs.

B. During any stage of the Regulated Earth Disturbance activities, if the Municipality or its designee determines that any BMPs are not being implemented in accordance with this Ordinance, the Municipality may suspend or revoke any existing permits or other approvals until the deficiencies are corrected.

Section 502. Right of Entry

A. Upon presentation of proper credentials, duly authorized representatives of the Municipality may enter at reasonable times upon any property within the Municipality to inspect the implementation, condition, or operation and maintenance of the stormwater BMPs in regard to any aspect governed by this Ordinance.

B. BMP owners and operators shall allow persons working on behalf of the Municipality ready access to all parts of the premises for the purposes of determining compliance with this Ordinance.

C. Persons working on behalf of the Municipality shall have the right to temporarily locate on any BMP in the Municipality such devices as are necessary to conduct monitoring and/or sampling of the discharges from such BMP.

D. Unreasonable delays in allowing the Municipality access to a BMP is a violation of this Article.

ARTICLE VI - FEES AND EXPENSES

Section 601. General

The Municipality may charge a reasonable fee for review of BMP Operations and Maintenance Plans to defray review costs incurred by the Municipality. The Applicant shall pay all such fees.

Section 602. Expenses Covered by Fees

The fees required by this Ordinance may cover:

A. Administrative/clerical Costs.

B. The review of the BMP Operations and Maintenance Plan by the Municipal Engineer.

C. The site inspections including, but not limited to, pre-construction meetings, inspections during construction of stormwater BMPs, and final inspection upon completion of the stormwater BMPs.

D. Any additional work required to monitor and enforce any provisions of this Ordinance, correct violations, and assure proper completion of stipulated remedial actions.

ARTICLE VII- PROHIBITIONS

Section 701. Prohibited Discharges

A. No person in the Municipality shall allow, or cause to allow, stormwater discharges into the Municipality's separate storm sewer system which are not composed entirely of stormwater, except (1) as provided in subsection B below, and (2) discharges allowed under a state or federal permit.

B. Discharges which may be allowed, based on a finding by the Municipality that the discharge(s) do not significantly contribute to pollution to surface waters of the Commonwealth, are:

- Discharges from fire fighting activities
- Potable water sources including dechlorinated water line and fire hydrant flushings
- Irrigation drainage
- Routine external building washdown (which does not use detergents or other compounds)
- Air conditioning condensate
- Water from individual residential car washing
- Springs
- Water from crawl space pumps
- Uncontaminated water from foundation or from footing drains
- Flows from riparian habitats and wetlands
- Lawn watering
- Pavement washwaters 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
- Dechlorinated swimming pool discharges
- Uncontaminated groundwater

C. In the event that the Municipality determines that any of the discharges identified in Subsection B significantly contribute to pollution of waters of the Commonwealth, or is so notified by DEP, the Municipality will notify the responsible person to cease the discharge.

D. Upon notice provided by the Municipality under subsection C, the discharger will have a reasonable time, as determined by the Municipality, to cease the discharge consistent with the degree of pollution caused by the discharge.

E. Nothing in this Section shall affect a discharger's responsibilities under state law.

Section 702. Prohibited Connections

A. The following connections are prohibited, except as provided in Section 701.B above:

1. any drain or conveyance, whether on the surface or subsurface, which allows any non-storm water discharge including sewage, process wastewater, and wash water, to enter the separate storm sewer system, and any connections to the storm drain system from indoor drains and sinks; and

2. Any drain or conveyance connected from a commercial or industrial land use to the separate storm sewer system which has not been documented in plans, maps, or equivalent records, and approved by the Municipality.

Section 703. Roof drains

A. Roof drains shall not be connected to streets, sanitary or storm sewers or roadside ditches, except as provided in Section 703.B.

B. When it is more advantageous to connect directly to streets or storm sewers, connections of roof drains to streets or roadside ditches may be permitted by the Municipality.

C. Roof drains shall discharge to infiltration areas or vegetative BMPs to the maximum extent practicable.

Section 704. Alteration of BMPs

A. No person shall modify, remove, fill, landscape or alter any existing stormwater BMP, unless it is part of an approved maintenance program, without the written approval of the Municipality.

B. No person shall place any structure, fill, landscaping or vegetation into a stormwater BMP or within a drainage easement, which would limit or alter the functioning of the BMP, without the written approval of the Municipality.

ARTICLE VIII - ENFORCEMENT AND PENALTIES

Section 801. Public Nuisance

A. The violation of any provision of this ordinance is hereby deemed a Public Nuisance.

B. Each day that a violation continues shall constitute a separate violation.

Section 802. Enforcement Generally

A. Whenever the Municipality finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Municipality may order compliance by written notice to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of prohibited connections or discharges;
3. Cessation of any violating discharges, practices, or operations;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of a fine to cover administrative and remediation costs;
6. The implementation of stormwater BMPs; and
7. Operation and maintenance of stormwater BMPs.

B. Such notification shall set forth the nature of the violation(s) and establish a time limit for correction of these violations(s). Said notice may further advise that, if applicable, should the violator fail to take the required action within the established deadline, the work will be done by the Municipality or designee and the expense thereof shall be charged to the violator.

C. Failure to comply within the time specified shall also subject such person to the penalty provisions of this Ordinance. All such penalties shall be deemed cumulative and shall not prevent the Municipality from pursuing any and all other remedies available in law or equity.

Section 803. Suspension and Revocation of Permits and Approvals

A. Any building, land development or other permit or approval issued by the Municipality may be suspended or revoked by the Municipality for:

1. Non-compliance with or failure to implement any provision of the permit;
2. A violation of any provision of this Ordinance; or
3. The creation of any condition or the commission of any act during construction or development which constitutes or creates a hazard or nuisance, pollution or which endangers the life or property of others.

B. A suspended permit or approval shall be reinstated by the Municipality when:

1. The Municipal Engineer or designee has inspected and approved the corrections to the stormwater BMPs, or the elimination of the hazard or nuisance, and/or;
2. The Municipality is satisfied that the violation of the Ordinance, law, or rule and regulation has been corrected.

C. A permit or approval which has been revoked by the Municipality cannot be reinstated. The applicant may apply for a new permit under the procedures outlined in this Ordinance.

Section 804. Penalties

A. Any person violating the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $ 100 for each violation, recoverable

with costs, or imprisonment of not more than 10 days, or both. Each day that the violation continues shall be a separate offense.

B. In addition, the Municipality, through its solicitor, may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

Section 805. Appeals

Any person aggrieved by any action of the Municipality or its designee, relevant the provisions of this ordinance, may appeal to the relevant judicial or administrative body according to law, within the time period allowed.

ENACTED and ORDAINED at a regular meeting of the Borough Council of Seven Fields on the 8th of March, ~~19~~ 2004. This Ordinance shall take effect immediately.

Jack Maurer
[Name]
Borough Council President
[Title]

Joette Carlson
[Name]
Borough Council Vice President
[Title]

Anita Ackerman
[Name]
Borough Council Member
[Title]

Bill Detwiler
[Name]
Borough Council Member
[Title]

Brian Shuttleworth
[Name]
Borough Council Member
[Title]

ATTEST:

Thomas B. Smith, Secretary

I hereby certify that the foregoing Ordinance was advertised in the Butler Eagle on Feb. 26, ~~19~~ 2004, a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at a regular meeting of the municipality's governing body held on March 8, ~~19~~ 2004.

Thomas B. Smith, Secretary

APPENDIX A

LOW IMPACT DEVELOPMENT PRACTICES

ALTERNATIVE APPROACH FOR MANAGING STORMWATER RUNOFF

Natural hydrologic conditions may be altered radically by poorly planned development practices, such as introducing unneeded impervious surfaces, destroying existing drainage swales, constructing unnecessary storm sewers, and changing local topography. A traditional drainage approach of development has been to remove runoff from a site as quickly as possible and capture it in a detention basin. This approach leads ultimately to the degradation of water quality as well as expenditure of additional resources for detaining and managing concentrated runoff at some downstream location.

The recommended alternative approach is to promote practices that will minimize post-development runoff rates and volumes, which will minimize needs for artificial conveyance and storage facilities. To simulate pre-development hydrologic conditions, forced infiltration is often necessary to offset the loss of infiltration by creation of impervious surfaces. The ability of the ground to infiltrate depends upon the soil types and its conditions.

Preserving natural hydrologic conditions requires careful alternative site design considerations. Site design practices include preserving natural drainage features, minimizing impervious surface area, reducing the hydraulic connectivity of impervious surfaces, and protecting natural depression storage. A well-designed site will contain a mix of all those features. The following describes various techniques to achieve the alternative approach:

- **Preserving Natural Drainage Features**. Protecting natural drainage features, particularly vegetated drainage swales and channels, is desirable because of their ability to infiltrate and attenuate flows and to filter pollutants. However, this objective is often not accomplished in land development. In fact, commonly held drainage philosophy encourages just the opposite pattern -- streets and adjacent storm sewers typically are located in the natural headwater valleys and swales, thereby replacing natural drainage functions with a completely impervious system. As a result, runoff and pollutants generated from impervious surfaces flow directly into storm sewers with no opportunity for attenuation, infiltration, or filtration. Developments designed to fit site topography also minimizes the amount of grading on site.

- **Protecting Natural Depression Storage Areas**. Depressional storage areas have no surface outlet, or drain very slowly following a storm event. They can be commonly seen as ponded areas in farm fields during the wet season or after large runoff events. Traditional development practices eliminate these depressions by filling or draining, thereby obliterating their ability to reduce surface runoff volumes and trap pollutants. The volume and release-rate characteristics of depressions should be protected in the design of the development site. The depressions can be protected by simply avoiding the depression or by incorporating its storage as additional capacity in required detention facilities.

- **Avoiding introduction of impervious areas**. Careful site planning should consider reducing impervious coverage to the maximum extent possible. Building footprints, sidewalks, driveways and other features producing impervious surfaces should be evaluated to minimize impacts on

runoff.

- **Reducing the Hydraulic Connectivity of Impervious Surfaces.** Impervious surfaces are significantly less of a problem if they are not directly connected to an impervious conveyance system (such as storm sewer). Two basic ways to reduce hydraulic connectivity are routing of roof runoff over lawns and reducing the use of storm sewers. Site grading should promote increasing travel time of stormwater runoff, and should help reduce concentration of runoff to a single point in the development.

- **Routing Roof Runoff Over Lawns.** Roof runoff can be easily routed over lawns in most site designs. The practice discourages direct connections of downspouts to storm sewers or parking lots. The practice also discourages sloping driveways and parking lots to the street. By routing roof drains and crowning the driveway to run off to the lawn, the lawn is essentially used as a filter strip.

- **Reducing the Use of Storm Sewers.** By reducing use of storm sewers for draining streets, parking lots, and back yards, the potential for accelerating runoff from the development can be greatly reduced. The practice requires greater use of swales and may not be practical for some development sites, especially if there are concerns for areas that do not drain in a "reasonable" time. The practice requires educating local citizens and public works officials, who expect runoff to disappear shortly after a rainfall event.

- **Reducing Street Widths.** Street widths can be reduced by either eliminating on-street parking or by reducing roadway widths. Municipal planners and traffic designers should encourage narrower neighborhood streets which ultimately could lower maintenance.

- **Limiting Sidewalks to One Side of the Street.** A sidewalk on one side of the street may suffice in low-traffic neighborhoods. The lost sidewalk could be replaced with bicycle/recreational trails that follow back-of-lot lines. Where appropriate, backyard trails should be constructed using pervious materials.

- **Using Permeable Paving Materials.** These materials include permeable interlocking concrete paving blocks or porous bituminous concrete. Such materials should be considered as alternatives to conventional pavement surfaces, especially for low use surfaces such as driveways, overflow parking lots, and emergency access roads.

- **Reducing Building Setbacks.** Reducing building setbacks reduces driveway and entry walks and is most readily accomplished along low-traffic streets where traffic noise is not a problem.

- **Constructing Cluster Developments.** Cluster developments can also reduce the amount of impervious area for a given number of lots. The biggest savings is in street length, which also will reduce costs of the development. Cluster development clusters the construction activity onto less-sensitive areas without substantially affecting the gross density of development.

In summary, a careful consideration of the existing topography and implementation of a combination of the above mentioned techniques may avoid construction of costly stormwater control measures. Other benefits include reduced potential of downstream flooding, water quality degradation of receiving streams/water bodies and enhancement of aesthetics and reduction of development costs. Beneficial results include more stable baseflows in receiving streams, improved groundwater recharge, reduced flood flows, reduced pollutant loads, and reduced costs for conveyance and storage.

APPENDIX B

STORMWATER BEST MANAGEMENT PRACTICES OPERATIONS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 200__, by and between _____, (hereinafter the "Landowner"), and _____, _____ County, Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of Butler County, Pennsylvania, Deed Book _____ at Page _____, (hereinafter "Property").

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the stormwater management BMP Operations and Maintenance Plan approved by the Municipality (hereinafter referred to as the "Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Municipality, provides for management of stormwater within the confines of the Property through the use of Best Management Practices (BMP's); and

WHEREAS, the Municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:

- BMP – "Best Management Practice;" activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Municipal Stormwater Management Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters and detention basins.

- Infiltration Trench – A BMP surface structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer,

- Seepage Pit – An underground BMP structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer,

- Rain Garden – A BMP overlain with appropriate mulch and suitable vegetation designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or underground aquifer, and

WHEREAS, the Municipality requires, through the implementation of the Plan, that stormwater management BMP's as required by said Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, his successors and assigns. and

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The BMPs shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.

2. The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with the specific maintenance requirements noted on the Plan.

3. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property.

4. In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality, the Municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). This provision shall not be construed to allow the Municipality to erect any permanent structure

on the land of the Landowner. It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

5. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality.

6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

7. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the Municipality's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Municipality. In the event that a claim is asserted against the Municipality, its designated representatives or employees, the Municipality shall promptly notify the Landowner and the Landowner shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the Municipality's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.

8. The Municipality shall inspect the BMP(s) at a minimum of once every three years to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Butler County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL) For the Municipality:

_____

(SEAL) For the Landowner:

_____

ATTEST:

_____ (City, Borough, Township)

County of _____, Pennsylvania

I, _____, a Notary Public in and for the County and State aforesaid, whose commission expires on the _____ day of _____, 20__, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20__, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 200_.

_____ _____

NOTARY PUBLIC **(SEAL)**

SECTION III - CERTIFICATION

CERTIFICATION STATEMENT

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

MAURER
Jack ~~Mauer~~, Council President
Name and official title

Signature

6/8/04
Date

Sworn and subscribed to before me, this 8 day of June, 2004

Notary Public

My commission expires _____

(Notary Public Seal and Stamp)

Notarial Seal
David V. Pascaralla, Notary Public
Seven Fields Boro, Butler County
My Commission Expires Feb. 18, 2006
Member, Pennsylvania Association Of Notaries