

ARTICLE VI

CONSTRUCTION AND MAINTENANCE

Section 600 Financial Security

A. REQUIRED IMPROVEMENTS

The owner of the site or his authorized representative shall certify on the plan and shall agree in writing to construct all stormwater and erosion control measures and facilities in conformance with the stormwater and erosion control plan approved by the Township Engineer.

B. FINANCIAL SECURITY REQUIRED

Where proposed land disturbance activities are associated with a subdivision and land development, the applicant shall be subject to the requirements for financial security that are specified in the Marlborough Township Subdivision and Land Development Ordinance. The financial security shall provide for, and secure to the public, the completion of all stormwater and erosion control measures required under this Ordinance. Such financial security shall be required prior to issuing a land disturbance approval. The financial security shall be conditioned upon the faithful performance of the stormwater and erosion control measures (BMP's) and other improvements specified by the Township.

Section 601 Liability Insurance

- A. The Township Engineer shall determine whether any of the proposed land disturbance work may create a hazard to human life or property. Such hazards may be to adjoining property or property at a higher or lower elevation, to any street or street improvement, or to any other public property, including the deposit or washing of material onto public improvements.
- B. If, in the opinion of the Township Engineer, the work may create a hazard, then the Township may require the applicant to file a certificate of insurance before the land disturbance approval is issued. Such insurance shall be in an amount of not less than \$25,000 per occurrence, against claims for damages for personal injury and property damage which may arise from the performance of work covered by the permit. The amount of such insurance shall be prescribed by the Township based upon the risks involved and the insurance shall be written by a company licensed to do business in Pennsylvania.
- C. Neither the issuance of a land disturbance approval or compliance with the approval shall relieve any person from any responsibility for damage to persons or property otherwise imposed by law, nor shall the approval

impose any liability upon the Township for damages to persons or property.

Section 602 Removal of Unlawfully Deposited Materials

If any soil, bedrock or other material or water or liquid is caused to be deposited upon or to roll, flow or wash upon any public property or right-of-way in violation of the above sections of this Article, the person responsible shall be notified and shall cause the same to be removed from such public property or right-of-way within thirty-six (36) hours. In the event of an immediate danger to the public health or safety, notice shall be given by the most expeditious means and the material or liquid shall be removed immediately. In the event that it is not so removed, the Township shall cause such removal and the cost of such removal shall be paid to the Township of Marlborough by the said person responsible and shall be a debt due the Township of Marlborough. The Township shall submit a bill for all such costs to the said person responsible. All such costs incurred by the Township shall be a lien upon the premises of such person, and whenever a bill therefore remains unpaid for a period of sixty (60) days after it has been rendered by the Township, the Township shall file a municipal claim or an action of assumption for such costs in the manner provided by law for the collection of debts and municipal claims.

Section 603 Ownership of Stormwater and Erosion Control Measures

Stormwater and erosion control measures (BMP's) may be owned by the individual lot owners on which the facility is located, by a private entity such as a homeowner's association, or by the Township. In those cases where the Township deems it in the public interest for the Township to own the stormwater and erosion control facilities, such facilities shall be offered for dedication.

Section 604 Stormwater BMP Operation and Maintenance Requirements

- A. It shall be unlawful to alter or remove any permanent stormwater BMP required by an approved stormwater and erosion control plan, or to allow the facilities or property to remain in a condition which does not conform to an approved stormwater and erosion control plan, unless an exception is granted in writing by Marlborough Township.
- B. Operations and Maintenance Agreement for Privately Owned Stormwater BMPs
 - 1. If requested by Marlborough Township, the property owner and/or applicant shall sign an Operations and Maintenance Agreement ("Agreement") with Marlborough Township covering all stormwater BMPs that are to be privately owned. The Agreement shall be substantially the same as the agreement in Appendix A of this Ordinance.
 - 2. 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 Marlborough Township.

C. RECORDING OF APPROVED BMP OPERATIONS AND MAINTENANCE PLAN AND RELATED AGREEMENTS

1. The owner of any land upon which permanent BMPs will be placed, constructed or implemented, as described in the Plan, shall record the following documents in the Office of the Recorder of Deeds for Montgomery County, within 15 days of approval of the Plan, or a summary thereof previously approved by Marlborough Township:
 - a. a summary of the stormwater and erosion control plan,
 - b. the Agreement, and
 - c. any required easements.
2. Marlborough Township may suspend or revoke any approvals granted for the project site upon discovery of the failure of the owner to comply with this section.

D. MUNICIPAL STORMWATER BMP OPERATION & MAINTENANCE FUND

1. If stormwater BMPs are accepted by Marlborough Township for dedication, Marlborough Township may require persons installing stormwater BMPs to pay a specified amount to Marlborough Township to help defray costs of operations and maintenance activities. The amount may be determined as follows:
 - a. If the BMP is to be owned and maintained by Marlborough Township, the amount shall cover the estimated costs for operations and maintenance for ten (10) years, as determined by Marlborough Township.
 - b. The amount shall then be converted to present worth of the annual series values.
2. If a BMP is proposed that also serves as a recreation facility (e.g. ball field, lake), Marlborough Township may adjust the amount due accordingly.

ARTICLE VII

PROHIBITION AGAINST NON-STORMWATER DISCHARGES

Section 700 Prohibited Discharges

- A. No person in Marlborough Township shall allow, or cause to allow, stormwater discharges into Marlborough Township'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 Marlborough Township 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 de-chlorinated 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)
 - de-chlorinated swimming pool discharges
 - uncontaminated groundwater
- C. In the event that Marlborough Township determines that any of the discharges identified in Subsection B significantly contribute to pollution of waters of the Commonwealth, or is so notified by PA DEP, Marlborough Township will notify the responsible person/party to cease the discharge.
- D. Upon notice provided by Marlborough Township under Subsection C, the person/party creating the discharge will have a reasonable time, as determined by Marlborough Township, to cease the discharge consistent with the degree of pollution caused by the discharge.
- E. Nothing in this Section shall affect the responsibilities under state law of a person/party creating a discharge.

Section 701 Prohibited Connections

The following connections are prohibited, except as provided in Section 700.B above:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows any non-stormwater 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 Marlborough Township.

ARTICLE VIII

INSPECTIONS AND CERTIFICATES

Section 800 Inspection

No work shall proceed unless inspected and approved by the Township Engineer which shall file a report thereon. Inspections of any earth-disturbing activities covered by this Ordinance shall be the responsibility of the Township Engineer or his designee and will be carried out on a random basis or on the basis of a schedule approved by the Township. The Township Engineer shall either approve that portion of the work which has been completed or notify the permit holder in what respect there has been a failure to comply with the requirements of this Ordinance. Any portion of the work which does not comply shall be promptly corrected by the permit holder. The Township Engineer shall maintain a permanent file of his inspections.

Section 801 Conditions on Site

Where it is found by inspection that the soil or other conditions are not as stated or shown in the application, the Township Engineer may refuse to approve further work until approval is obtained for a revised stormwater and erosion control plan conforming to existing conditions.

Section 802 Plans on Site

The approved Stormwater and Erosion Control Plan shall be maintained at the site during the progress of the improvements construction and until the work has been approved.

Section 803 Notice

The permit holder shall notify the Township Engineer in accordance with the following schedule and at least twenty-four (24) hours prior to the completion of each stage, to enable the Township to schedule inspections as needed:

- A. Initial Inspection: When work on the excavation or fill is about to be commenced.
- B. Rough grading: When all rough grading has been completed.
- C. Drainage facilities: When drainage facilities are to be installed and before such facilities are backfilled.

- D. Special structures: When excavations are complete for retaining and crib walls and when reinforcing steel is in place and before concrete is poured.
- E. Final inspection: When all work, including the installation of all drainage and other structures, has been completed.

Section 804 Hazardous Conditions

If at any stage of the work the Township Engineer shall determine by inspection that the nature of the formation is such that further work as authorized by an existing permit is likely to endanger property or streets or alleys, or create hazardous conditions, the Township Engineer may require as a condition to allowing the work to be done that such reasonable safety precautions be taken as the Township Engineer considers advisable to avoid such likelihood of danger.

Section 805 Access

No person shall interfere with or obstruct the ingress or egress to or from any such site or premises by an authorized representative or agent, of any surety or of the Township of Marlborough engaged in completing the work required to be performed under the permit or in complying with the terms of conditions thereof.

Section 806 Final Inspection

A. NOTIFICATION

Immediately upon completion of the project, the permit holder shall notify the Township Engineer who shall make a final inspection and shall prepare a final inspection report.

B. COMPLETION CERTIFICATE

If, upon final inspection of a grading, excavation or fill, it is found that the work authorized by the permit has been satisfactorily completed in accordance with the requirements of this ordinance and any other requirements imposed, a completion certificate covering such work and stating that the work is approved shall be issued to the permit holder by the Township.

C. REVOCATION OF COMPLETION CERTIFICATION

The Township Engineer shall have the power to revoke any completion certificate whenever he finds that the work covered by the certificate has been materially extended or altered without a permit to do so, or that any retaining wall, cribbing, drainage structure, fence or other protective device shown on the approved plan and specifications submitted with the application for a permit have not been maintained in good order and repair.

D. NOTICE OF DEFECTIVE CONDITIONS

Before such revocation, the Township Engineer shall first give written notice to the permit holder and to the owner of the property involved, specifying the defective condition and stating that unless such defective condition is remedied satisfactorily, the completion certificate may be revoked. If the defective condition is remedied, the certificate shall not be revoked. If the Township Engineer determines that full compliance with the land disturbance permit has not been achieved, the Township may invoke, any or all of the penalties authorized by Section 803 of the Township's Subdivision and Land Development Ordinance.

ARTICLE IX

ADMINISTRATION

Section 900 Permit Application Fee

- A. When land disturbance activities are to be undertaken as part of a subdivision or land development, review of the stormwater and erosion control plan shall be included in the fees and escrow deposits submitted to the Township with the preliminary subdivision or land development plan.
- B. When land disturbance activities are to be undertaken as part of building construction or other land disturbance activities, a fee shall be provided for review of the stormwater and erosion control plan per the Township Schedule of Fees as adopted and amended by the Board of Supervisors. The applicant for a land disturbance permit shall pay a fee for each site as set forth in the Township Schedule of Fees.
- C. The applicant shall agree in writing to reimburse the Township for all costs of administration and review of the application by the Township staff, Engineer and Solicitor and an escrow deposit for this purpose may be required. The Board of Supervisors shall specify by resolution the amount of the escrow deposit. The escrowed funds shall be used as follows:
 - 1. The applicant shall be charged for time actually expended and detailed in bills from the Township Engineer and Solicitor.
 - 2. Any inexpedient balance of the deposit shall be returned to the applicant following issuance of the land disturbance permit.
 - 3. If the actual time required exceeds the deposited amount, the Township shall require an additional deposit to complete review prior to the issuance of the completion certificate.

Section 901 Inspection Fees

- A. Inspection fees for activities associated with subdivision and land development shall be paid according to the Township Subdivision and Land Development Ordinance.
- B. The cost of inspections of land disturbance activities not related to subdivision and land development shall be paid by the applicant.
- C. Inspections shall be conducted in accordance with Article VIII of this Ordinance.

Section 902 Violations

- A. All land disturbance activities conducted pursuant to this Ordinance shall be performed in strict compliance with the terms of this Ordinance. Any portion of the work which the Township Engineer or his designee has determined does not comply with the ordinance shall be promptly corrected by the property owner.
- B. The Township Engineer shall notify the property owner in writing of any work which does not comply with the Ordinance. Such notice shall specify the nature of corrections required and the time within which corrections shall be made.
- C. Failure by the property owner to comply with this Ordinance and to correct deficiencies in the work within the time specified in a notification from the Township Engineer shall be considered a violation of this ordinance. When a violation of this Ordinance occurs, the Township shall issue a cease and desist order on all work on the site until corrections of any violations are made.
- D. When the land disturbance activity is associated with a subdivision or land development, violations of this Ordinance shall be considered a violation of the Township Subdivision and Land Development Ordinance. In such cases, violations of the Ordinance shall be grounds for the forfeiture of the financial security required under the Subdivision and Land Development Ordinance.
- E. When the land disturbance activity is associated with construction authorized by a building permit issued by Marlborough Township, violations of this Ordinance shall be considered a violation of the building permit. In such cases, the applicable building permit may be revoked.
- F. If corrections are not undertaken within the time specified or the property owner violates the cease and desist order, penalties shall be imposed under Section 903 below and/or the work shall be completed by the Township and the costs charged to the violator. If the Township causes the work to be corrected, the Township may lien all costs against the property.

Section 903 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 \$1,000 for each violation, recoverable with costs, or imprisonment of not more than 90 days, or both. Each day that the violation continues shall be a separate offense.

- B. The Township may also invoke any or all of the penalties authorized by the Township's Subdivision and Land Development Ordinance.
- C. In addition, Marlborough Township, 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 A

STORMWATER BMP OPERATIONS AND MAINTENANCE SAMPLE AGREEMENT

**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 Marlborough Township, Montgomery County, Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the titled owner of certain property as recorded by deed in the Office of the Recorder of Deeds in and for Montgomery County, Pennsylvania, in Deed Book _____, Page _____, and as further identified by the Board of Assessment Appeals of Montgomery County, Pennsylvania as Parcel No(s) _____ (hereinafter "Property"); and

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 (BMPs); 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 Marlborough Township Stormwater and Erosion Sedimentation Pollution Control Ordinance of 2005, 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.

WHEREAS, the Municipality requires, through the implementation of the Plan, that stormwater management BMPs as required by said Plan and the Marlborough Township Stormwater and Erosion Sedimentation Pollution Control Ordinance of 2005 be constructed and adequately operated and maintained by the Landowner, his successors and assigns.

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 Montgomery 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__ . has acknowledged the same before me in my said
County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 20__ .

NOTARY PUBLIC

(SEAL)

ENACTED AND ORDAINED this 14th day of September, A.D., 2005 by the Board of Supervisors of Marlborough Township, Montgomery County, Pennsylvania.

**BOARD OF SUPERVISORS OF
MARLBOROUGH TOWNSHIP**

By: _____
James W. Maza



Joy M. Leach

Robert Mensch

Attest: Eleanor F. Sadorf
Eleanor Sadorf, Township Manager