

TOWNSHIP OF MIDDLESEX
Cumberland County, Pennsylvania

NO. 2 -95

AN ORDINANCE OF AND BY THE BOARD OF TOWNSHIP SUPERVISORS IN AND FOR MIDDLESEX TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA, AUTHORIZING AND REGULATING THE USE OF SMALL FLOW SEWAGE TREATMENT FACILITIES FOR SINGLE LOT (ONE EQUIVALENT DOMESTIC UNIT) RESIDENTIAL DWELLING UNITS FOR THE ON-SITE DISPOSAL OF DOMESTIC WASTE WATER, PROVIDING STANDARDS, CRITERIA AND LIMITATIONS FOR SUCH FACILITIES, CREATING A FORM OF AGREEMENT TO DOCUMENT SUCH AUTHORIZATION, AND PROVIDING ENFORCEMENT REMEDIES AND PENALTIES FOR VIOLATION HEREOF

BE IT HEREBY ORDAINED AND ENACTED and it is hereby ordained and enacted by the Board of Township Supervisors in and for the Township of Middlesex, Cumberland County, Pennsylvania, as follows:

SECTION 1. SHORT TITLE OF THIS ORDINANCE. This Ordinance shall be known as "Middlesex Township Small Flow Sewage Treatment Facility Ordinance" and may be cited and referred to as such.

SECTION 2. BACKGROUND AND LEGISLATIVE PURPOSE. The Board of Township Supervisors in and for the Township of Middlesex ("Board") hereby recognizes and establishes the following background facts and conditions:

a. The Township of Middlesex is in a state of transition from an almost entirely rural community to a community of varying uses and functions, thereby increasing municipal governmental concerns and responsibilities.

b. As an indication of such change is the relatively recent creation of a public water distribution system and a public sewage collection and disposal system, both of which systems are designed to enhance the quality of life and to protect public health and safety; however, it is fiscally impossible to provide such services to all areas of the Township.

c. It is further recognized that stringent rules have been enacted by the Commonwealth of Pennsylvania to control on-site sewage disposal facilities in the interest of protecting the waters of this Commonwealth and the health of citizens, which rules sometimes virtually prohibit the continued use of traditional sewage disposal facilities thereby depreciating values of property.

d. The Commonwealth of Pennsylvania permits (but does not require) the use of small flow sewage treatment facilities under certain circumstances, but places certain responsibility for oversight of such treatment facilities on the local municipality. Accordingly, the Board has traditionally refused to allow the use of small flow sewage treatment facilities.

e. In more recent times, the Board has observed the development of more strict rules on traditional sewage disposal systems with consequent hardship on

local residential owners. In an effort to provide relief for the latter, but being mindful of the need to protect public health and the quality of the waters of this Commonwealth, the Board has decided to modify its existing policy by permitting small flow sewage treatment facilities for certain residential properties where a traditional on-lot sewage disposal system has failed or cannot be installed under existing regulations. This Ordinance is intended to embody such modified policy.

SECTION 3. DEFINITIONS. The following words and phrases shall have the meanings set forth herein unless the context of the use thereof shall dictate another interpretation:

"Agreement": the written agreement between Township and Owner as authorized by this Ordinance.

"Board": the Board of Township Supervisors in and for the Township.

"DER": the Pennsylvania Department of Environmental Resources.

"Owner": the person, persons or entity owning the Residential Premises. Said term excludes the lessee, tenant or other non-owning occupant of a Residential Unit.

"Residential Premises": a parcel of real estate improved with a building used for human housing. Said term excludes any commercial or industrial use or any other non-residential use of real estate including a combination of residential and non-residential uses.

"Residential Dwelling Unit": a portion of a Residential Premises occupied by a single family or persons living as a family.

"S.E.O.": the Sewage Enforcement Officer appointed by the Board.

"Sewage": domestic wastewater originating from a residential use, and does not include industrial waste, hazardous or toxic materials or any other substance not generated from normal residential use.

"Small Flow Sewage Treatment Facility": a sewage treatment facility as further defined in Section 5 of this Ordinance.

"Township": the Township of Middlesex, Cumberland County, Pennsylvania.

"Township Engineer": a professional engineer appointed by the Board to review applications and plans for Small Flow Sewage Treatment Facilities.

SECTION 4. SMALL FLOW SEWAGE TREATMENT FACILITIES

PERMITTED. A Small Flow Sewage Treatment Facility may be installed, constructed and used only to serve a Residential Dwelling Unit on a Residential Premises where a traditional on-site sewage disposal system cannot be installed or maintained as evidenced by the S.E.O.'s denial of an on-lot sewage system permit under applicable regulations of DER and Township and where no municipal sewerage system is readily available to serve the Premises, whether by direct connection or reasonable extension. Small Flow Sewage Treatment Facilities are not permitted for any commercial, industrial or other non-residential premises or use. Small Flow Sewage Treatment Facilities may only be installed, constructed or used in accordance with all the provisions of this Ordinance. All costs and expenses of designing, constructing, installing, repairing and maintaining a Small Flow Sewage Treatment Facility shall be borne by and paid for by the Owner.

SECTION 5. SUPERVISION OF INSTALLING AND CONSTRUCTING SMALL FLOW SEWAGE TREATMENT FACILITIES. All Small Flow Sewage Treatment Facilities shall be installed and constructed under the supervision of the S.E.O. The S.E.O. is hereby authorized and empowered to administer and enforce the provisions of this Ordinance.

SECTION 6. SMALL FLOW SEWAGE TREATMENT FACILITY DEFINED AND LIMITED.

A. Definition. Small Flow Sewage Treatment Facility (hereinafter referred to as "Facility" in this Section 6) is an on-site sewage treatment facility as permitted by DER under guidelines and regulations promulgated by DER from time to time, but as limited or restricted by this Ordinance. In the event of conflict between the provisions of this Ordinance and DER regulations, it is the Board's intention to require the more restrictive provision.

B. Minimum Land Area. No Facility shall be installed, constructed or maintained on any Residential Premises having less than three (3) acres of land area as shown on a survey provided to Township. This minimum land area requirement shall be imposed by the Owner as an express restriction or condition of the Residential Premises as a covenant running with the land by instrument recorded in the Office of the Recorder of Deeds in and for Cumberland County,

Pennsylvania, to be enforceable by Township, said recording being an express condition precedent to the construction of such Facility. Such restriction or condition shall be subject to the prior approval and review by the Township's Solicitor.

C. Specific Limitations on Discharge.

(1) No wastewater emanating from a Facility shall be discharged into a dry stream. Dry stream discharge is prohibited.

(2) No wastewater emanating from a Facility shall be discharged into a stream having less than a minimum average annual flow of twenty (20) times the discharge from the Facility.

D. Design Requirements. Each Facility shall be designed, installed and operated in accordance with the terms, provisions and requirements of the Middlesex Township Small Flow Sewage Treatment Facilities Design, Installation and Operation Requirements Manual as adopted from time to time hereafter by the Board. Such Manual shall be incorporated herein by reference thereto.

SECTION 7. MAINTENANCE OF SMALL FLOW SEWAGE TREATMENT FACILITIES. The Owner shall be responsible to the Township for the maintenance of each Small Flow Sewage Treatment Facility in accordance with the Middlesex Township Small Flow Sewage Treatment Facilities Design, Installation and Operation

Requirements Manual.

SECTION 8. INDEMNIFICATION BY OWNER. Each Owner of a Residential Premises containing a Small Flow Sewage Treatment Facility installed, constructed or used pursuant to this Ordinance shall, by reason of such installation, construction or use, be deemed to have agreed to indemnify Township and hold it harmless of and from any and all liability, damages, costs, expenses, attorney's fees and any other obligation imposed upon it by reason of such Owner's failure to perform the obligations imposed hereunder or by otherwise violating this Ordinance, and further, shall be deemed to agree to reimburse Township for all costs, expenses and expenditures which it incurs by reason of such Owner's failure to perform the obligations imposed hereunder or in enforcing the provisions of this Ordinance against said Owner.

SECTION 9. MAINTENANCE SECURITY DEPOSIT. As a condition of permitting the installation, construction and/or use of a Small Flow Sewage Treatment Facility, the Owner shall deposit with Township the sum of Three Thousand Five Hundred (\$3,500.00) Dollars in cash for each Residential Unit served by a Small Flow Sewage Treatment Facility as partial security for the Township for reimbursement for any costs or expenses incurred in enforcing the provisions of this Ordinance against said Owner. Said deposit shall be retained by Township in an account to be known as "Small Flow Sewage Treatment Facility Maintenance Security Account", which shall be interest-bearing, which interest shall

be retained by Township and may be disbursed annually for general Township purposes including the sum of Twenty (\$20.00) Dollars per year per Small Flow Sewage Treatment Facility for Township's administrative cost in maintaining said account.

The Township shall have the right to use and consume said deposit to reimburse its costs and expenses in the enforcement of this Ordinance to include, but not be limited to the following: removing and disposing of Sewage from the Small Flow Sewage Treatment Facility; repairing the said Facility; inspecting the Facility; testing Sewage; attorney's fees, court costs and witness fees in any litigation required to enforce this Ordinance.

At any time such deposit falls below the original amount thereof, the Owner shall promptly deposit such additional funds to restore the full amount. Such further deposit shall be made within ten (10) calendar days after the date notice requiring such further deposit is mailed to Owner.

All deposits made hereunder shall be deemed to be in rem and appurtenant to the Residential Premises containing such Small Flow Sewage Treatment Facility. As such, the deposit shall be deemed to relate to the Owner of said Residential Premises at the time any question arises thereto. Said deposit shall be deemed to be transferred from Owner to Owner at each time the ownership of the Residential Premises is transferred.

Township shall return and refund to the then current Owner the Maintenance Security Deposit (or the remaining balance

thereof), without interest, upon the occurrence of any of the following events: (i) the Residential Unit is connected to a municipal sewage system, or (ii) the Residential Unit is discontinued as a dwelling place and the Small Flow Sewage Treatment Facility is discontinued and removed.

SECTION 10. VIOLATIONS CONSTITUTE A NUISANCE. The Owner's failure to comply with the maintenance provisions of this Ordinance (Section 7) shall be deemed to be a public nuisance because of the threat to public health and damage to the waters of this Commonwealth and may be abated by injunctive action. By installing, constructing or using a Small Flow Sewage Treatment Facility pursuant to this Ordinance, the Owner shall be deemed to agree with the foregoing sentence and further acknowledges that the Court of Common Pleas of Cumberland County, Pennsylvania, sitting in equity shall have jurisdiction of the Residential Premises and each Owner and that no adequate remedy at law exists.

SECTION 11. USE OF SMALL FLOW SEWAGE TREATMENT FACILITY IS A PRIVILEGE; REVOCATION OF PRIVILEGE. Township's permission for the installation, construction and/or use of a Small Flow Sewage Treatment Facility is hereby declared to be a privilege (as distinguished from a right) of the Owner of a Residential Premises. Therefore, the Owner's abuse of said privilege by failure to comply with the provisions of this Ordinance may be revoked, in which event, the Residential Unit served by any such Small Flow Sewage Treatment Facility shall be vacated and no

further Sewage shall be generated on or discharged from said Residential Unit, without liability to Township.

Township may revoke such privilege upon not less than five (5) days' written notice mailed to the Owner of the Residential Premises and posted conspicuously on each Residential Unit.

SECTION 12. ACCESS TO RESIDENTIAL PREMISES. Each Owner constructing, installing or using a Small Flow Sewage Treatment Facility shall be deemed to have authorized duly authorized officials of Township to enter upon the Residential Premises to inspect the facilities authorized by this Ordinance, to enforce the provisions of this Ordinance, abate any nuisances arising from delinquent maintenance of such facilities, enforce the revocation of the privilege of continued use of such facilities. Any such entry shall not constitute a trespass.

SECTION 13. APPLICATION AND PERMIT REQUIRED.

A. Application. An Owner of a Residential Premises seeking to use a Small Flow Sewage Treatment Facility shall submit an application therefor on a form to be provided by Township, which shall include the following information:

- (1) Name(s) and address(es) of each Owner.
- (2) Identification of Residential Premises to include (i) the Cumberland County Real Estate Tax Assessor's parcel number, (ii) street address, (iii) copy of current deed or other document

whereby the Owner(s) claim(s) title to said Premises.

(3) A true copy of the denial by the S.E.O. of the Owner's application for a traditional on-lot sewage system permit for the same Residential Premises.

(4) Description of the Residential Unit to include floor plan, room dimensions and nature of each room.

(5) A plot or map to scale of the Residential Premises accurately showing the location and description of all improvements, significant differences in surface grade or level and the location of the proposed Small Flow Sewage Treatment Facility.

(6) A detailed drawing and narrative specifications of the proposed Small Flow Sewage Treatment Facility and sufficient for adequate review by the S.E.O.

(7) True, complete and correct copies of all submissions to and communications from DER concerning Owner's application to DER for said Small Flow Sewage Treatment Facility, said obligation to supply materials shall be continuous until the Permit required herein.

The Application shall be accompanied by:

- a. A filing and processing fee of Five Hundred (\$500.00) Dollars.
- b. The Maintenance Security Deposit required under Section 9 hereof.
- c. An Acknowledgment/Agreement signed by each Owner in the following form:

ACKNOWLEDGMENT AND AGREEMENT BY OWNER(S)

The undersigned, being all the Owners of the following Residential Premises: _____

in Middlesex Township, Cumberland County, Pennsylvania, and in consideration of being granted permission by the Township of Middlesex to install, construct and the privilege to use a Small Flow Sewage Treatment Facility to serve the Residential Unit on said Premises known as

_____, do hereby acknowledge receipt of a copy of Middlesex Township Small Flow Sewage Treatment Ordinance ("Ordinance") and the Middlesex Township Small Flow Sewage Treatment Facilities Design, Installation and Operations Requirements Manual ("Manual") and, intending to be legally bound hereby, agree to comply with each and all provisions of said Ordinance and Manual and to otherwise be legally bound thereby. We further acknowledge, understand and agree that said Ordinance, Manual and this Acknowledgment/Agreement shall be binding upon all successive and future owners of said Residential Premises.

IN WITNESS WHEREOF, I/we, jointly and severally, have hereunto set my/our hand(s) and seal(s) this _____ day of _____, 199 .

_____(SEAL)
Owner (Individual)

_____(SEAL)
Owner (Individual)

_____(SEAL)
Owner (Individual)

Name of Corporate Owner

ATTEST:

By _____
President of Corporation

Corporate Secretary
(Corporate Seal)

- - - - -

Name of Partnership Owner

By _____
Partner

By _____
Partner

By _____
Partner

B. Permit. It shall be unlawful for any Owner, person, corporation or other entity to construct, install or maintain a Small Flow Sewage Treatment Facility on any land in this Township without first obtaining a Permit under this Ordinance.

A Permit shall be issued by the Township's Secretary upon the applicant's fulfillment of the following matters in the order indicated:

(1) Submission of a properly completed Application, Acknowledgment and Agreement and payment/deposit of all sums required under Subsection A of this Section 13.

(2) Receipt of true, complete and correct

copies of all DER required and duly issued permits, licenses or other evidence of permission to construct a Small Flow Sewage Treatment Facility on the Residential Premises under DER regulations.

(3) Receipt of a certificate from S.E.O. indicating that all pre-construction/pre-installation requirements of this Ordinance have been fulfilled. Such Permit shall be issued within ten (10) business days after receipt of the S.E.O. certificate.

SECTION 14. CIVIL ENFORCEMENT. The S.E.O., with the consent of the Chairman of the Board and Township Solicitor, is hereby authorized to take all appropriate action at law or in equity to abate any violation of this Ordinance where the continued violation is believed to be a threat to the health of the inhabitants of this Township or deleterious to the quality of the waters of this Commonwealth.

SECTION 15. VIOLATIONS; PENALTY. Any Owner, person, corporation or other entity who fails to comply with any provision of this Ordinance shall be in violation thereof. Any Owner, person, corporation or other entity violating any provision of this Ordinance shall, upon conviction thereof by summary proceedings before a District Justice, be sentenced to pay a fine of not less than Two Hundred Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) and the costs of the proceeding; and, in default of payment of such fine and costs, to undergo imprisonment in the Cumberland County Prison for a term

not to exceed thirty (30) days.

Each day's violation of this Ordinance shall constitute a separate offense.

SECTION 16. REPEALER. All Ordinances or Resolutions or parts of Ordinances or Resolutions insofar as they are inconsistent herewith, be and the same are hereby repealed.

SECTION 17. SEVERABILITY. If any sentence, clause, phrase or part of this Ordinance is determined by a court of competent jurisdiction to be unconstitutional, unlawful or invalid, such determination shall not affect or impair any of the remaining provisions hereof. It is hereby declared as the intention of the Board that this Ordinance would have been enacted had such unconstitutional, unlawful or invalid portion hereof not been included herein.

SECTION 18. EFFECTIVE DATE. This Ordinance shall become effective in accordance with prevailing law.

ENACTED AND ORDAINED by the Board of Township Supervisors this 31st day of March, 1995, in public lawful session duly assembled.

TOWNSHIP OF MIDDLESEX

By Robert McEgley
Chairman, Board of Township
Supervisors

ATTEST:

Gary J. Smith
Township Secretary
(SEAL)