

**ORDINANCE NO.5 of 2015
AMENDING ORDINANCE NO. 7 OF 2014**

BOROUGH OF THROOP

LACKAWANNA COUNTY, PENNSYLVANIA

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

*WHEREAS, the Borough of Throop desires to enact Ordinance #7 of 2014 entitled
Throop Borough MS4 Operation and Maintenance Ordinance as herein set forth.*

*NOW, THEREFORE, be it ordained by the Borough Council of the Borough of Throop,
Lackawanna County, Pennsylvania, that the following MS4 Operation and Maintenance
Ordinance be enacted.*

Article I – General Provisions.

Section 101.	Short Title
Section 102.	Statement of Findings
Section 103.	Purpose
Section 104.	Statutory Authority
Section 105.	Applicability
Section 106.	Repealer
Section 107.	Severability
Section 108.	Compatibility with Other Requirements

Article II – Definitions

Article III – Stormwater Management Requirements

Section 301.	General Requirements
--------------	----------------------

Article IV – Operation and Maintenance

Section 401.	Responsibilities of Developers and Landowners
Section 402.	Operation and Maintenance Agreements

Article V – Prohibitions

Section 501.	Prohibited Discharges and Connections
Section 502.	Roof Drains and Sump Pumps

Article VI – Enforcement and Penalties

Section 601.	Right-of- Entry
Section 602.	Inspection
Section 603.	Enforcement
Section 604.	Suspension and Revocation
Section 605.	Penalties
Section 606.	Appeals

Article VI - References

ARTICLE 1 – GENERAL PROVISIONS

Section 101. Short Title

This Ordinance shall be known and may be cited as the Throop Borough MS4 Operation and Maintenance Ordinance.

Section 102. Statement of Findings

The governing body of the municipality finds that:

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

Section 103. Purpose

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

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

- D. Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.
- E. Reduce or prevent scour, erosion, aggradation and degradation of stream banks and streambeds.
- F. Provide proper operation and maintenance of all facilities and all SWM BMPs that are implemented within the municipality.

Section 104. Statutory Authority

The municipality also is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended.

Section 105. Applicability

All activities related to proper operation and maintenance of approved stormwater management facilities and BMPs and all activities that may contribute non-stormwater discharges to a regulated small MS4 within Throop Borough are subject to regulation by this Ordinance.

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

Section 108. Compatibility with Other Requirements

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

Section 109. Erroneous Permit

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

ARTICLE II – DEFINITIONS

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

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

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

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

DEP - The Pennsylvania Department of Environmental Protection.

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

Municipality – Throop Borough, Lackawanna County, Pennsylvania.

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

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

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

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

USDA – United States Department of Agriculture.

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

ARTICLE III – STORMWATER MANAGEMENT REQUIREMENTS

Section 301 – General Requirements

- A. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual (E&S Manual)*², No. 363-2134-008 (April 15, 2000), as amended and updated.
- B. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated, or otherwise altered without written notification of the adjacent property owner(s) by the developer. Such stormwater flows shall be subject to the requirements of this Ordinance.
- C. For all regulated activities, SWM BMPs shall be implemented, operated, and maintained to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code, the Clean Streams Law, and the Storm Water Management Act.
- D. Various BMPs and their design standards are listed in the BMP Manual¹.

- E. Proper long-term operation and maintenance of stormwater management BMP's including responsible parties and minimum O&M requirements.

ARTICLE IV – OPERATION AND MAINTNEANCE

Section 401. Responsibilities of Developers and Landowners

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

Section 402. Operation and Maintenance Agreements

- A. Prior to completing construction of a SWM Site Plan, the property owner shall sign and record an Operation and Maintenance (O&M) Agreement covering all stormwater control facilities which are to be privately owned.
 - 1. The owner, successor and assigns shall operate and maintain all facilities in accordance with the approved schedule(s) in the O&M Plan.
 - 2. The owner shall convey to the Municipality conservation easements to assure access for periodic inspections by the Municipality and maintenance, as necessary.
 - 3. The owner shall keep on file with the Municipality the name, address, and telephone number of the person or company responsible for operation and maintenance activities. In the event of a change, new information shall be submitted by the owner to the Municipality within ten (10) working days of the change.
- A. The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Municipality may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.

ARTICLE V – PROHIBITIONS

Section 501. Prohibited Discharges and Connections

- A. Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter a regulated small MS4 or to enter the waters of this Commonwealth is prohibited.
- B. No person shall allow, or cause to allow, discharges into a regulated small MS4, or discharges into waters of this Commonwealth, which are not composed entirely of stormwater, except (1) as provided in Subsection C below and (2) discharges allowed under a state or federal permit.
- C. The following discharges are authorized unless they are determined to be significant contributors to pollution a regulated small MS4 or to the waters of this Commonwealth:
- | | |
|---|--|
| - Discharges from firefighting activities wetlands. | - Flows from riparian habitats and |
| - Potable water sources including water line flushing | - Uncontaminated water from foundations or from footing drains |
| - Irrigation water | - Lawn watering |
| - Air conditioning condensate | - Dechlorinated swimming pool discharges |
| - Springs | - Uncontaminated pumped groundwater |
| - Water from crawl space pumps | - Water from individual residential car |
| - Street wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used | - Routine external building wash down (which does not use detergents or other compounds) |
| - Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)) | - Landscape irrigation |
| | - Rising ground waters |
| | - Diverted Stream flows |
- A. In the event that the Municipality or DEP determines that any of the discharges identified in Subsection C significantly contribute pollutants to a regulated small MS4 or to the waters of this Commonwealth, the Municipality or DEP will notify the responsible person(s) to cease the discharge.

Section 502. Roof Drains and Sump Pumps

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

ARTICLE VI – ENFORCEMENT AND PENALTIES

Section 601. Right-of-Entry

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

Section 602. Inspection

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

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

Section 603. Enforcement

It is unlawful for any person to modify, remove, fill, landscape or alter any approved SWM BMPs, facilities, areas, or structures without the written approval of DEP or a delegated County Conservation District, and the Municipality.

Section 604. Suspension and Revocation

A. Any approval or permit issued by the Municipality may be suspended or revoked for:

1. Non-compliance with or failure to implement any provision of an approved SWM Site Plan or O&M Agreement.
2. A violation of any provision of this Ordinance or any other applicable law, ordinance, rule, or regulation relating to a Regulated Activity.
3. The creation of any condition or the commission of any act which constitutes or creates a hazard, nuisance, pollution, or endangers the life or property of others.

A. A suspended approval may be reinstated by the Municipality when:

1. The Municipality has inspected and approved the corrections to the violations that caused the suspension.

2. The Municipality is satisfied that the violation has been corrected.
 - A. An approval that has been revoked by the Municipality cannot be reinstated. The applicant may apply for a new approval under the provisions of this Ordinance.
 - B. If a violation caused no immediate danger to life, public health, or property, at its sole discretion, the Municipality may provide a limited time period for the owner to correct the violation. In these cases, the Municipality will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for the owner to correct the violation. If the owner does not correct the violation within the allowed time period, the Municipality may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Ordinance.

Section 605. Penalties

- A. Anyone violating the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction, shall be subject to a fine of not more than \$500.00 for each violation, recoverable with costs. Each day that the violation continues shall be a separate offense and penalties shall be cumulative.
- B. In addition, the Municipality 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 606. Appeals

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

ARTICLE VII – REFERENCES

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

ENACTED AND ORDAINED this 14th day of July, 2014

Thomas Lukasewicz
Council President

Attest:

Wayne Williams
Mayor

Renee O'Malley
Secretary