

ORDINANCE No .2006- 238

**AN ORDINANCE OF THE TOWNSHIP OF LONGSWAMP,  
BERKS COUNTY, PENNSYLVANIA, GOVERNING  
MUNICIPAL MANAGEMENT OF ON-LOT SUBSURFACE  
SEWAGE DISPOSAL FACILITIES IN THE TOWNSHIP  
OF LONGSWAMP, BERKS COUNTY**

WHEREAS, the Longswamp Township Board of Supervisors (the "Township") adopted a Sewage Facilities Plan pursuant to the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.1 et seq., (the "Act 537 Plan") which involves components for the Township's provision of public sewers in a portion of the Township and for an on-lot sewage management system within the Township; and

WHEREAS, this Ordinance seeks to re-enforce the regulations promulgated by the Pennsylvania Department of Environmental Protection ("DEP") which mandates that on-lot management ordinances shall include the "removal of septage or other solids from treatment tanks once every three (3) years or whenever an inspection program reveals that the treatment tanks are filled with solids in excess of 1/3 of the liquid depth of the tank or with scum in excess of 1/3 of the liquid depths of the tank." 25 Pa. Code § 71.73(b)(2)(i); and

BE IT ORDAINED AND ENACTED by the **Board of Supervisors of the Township of Longswamp**, Berks County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same as follows:

SECTION 1. Short Title; Introduction; Purpose.

A. This ordinance shall be known and may be cited as "A Sewage Management Program for Longswamp Township".

B. As mandated by the municipal code, the Clean Stream Law (35 P.S. Section 691.1 to 691.1001), and the Pennsylvania Sewage Facilities Act (Act of January 24, 1966, P.L. 1535 as amended, 35 P.S. Section 750.1 et seq., known as Act 537), municipalities have the power and the duty to provide for adequate sewage treatment

facilities and for the protection of the public health by preventing the discharge of untreated or inadequately treated sewage. The Township's Act 537 Plan indicates that it is necessary to formulate and implement a sewage management program to effectively prevent and abate water pollution and hazards to the public health caused by improper treatment and disposal of sewage.

C. The purpose of this Ordinance is to provide for the inspection, maintenance and rehabilitation of on-lot sewage disposal systems and to permit the municipality to intervene in situations which are public nuisances.

SECTION 2. Definitions.

A. Act 537. The Act of January 24, 1966, P.L. 1535 as amended, 35 P.S. Section 750.1 et. seq. known as the Pennsylvania Sewage Facilities Act. (As amended from time to time)

B. Authorized Agent. Any person who is delegated by the municipality to function within specified limits as the agent of the municipality to carry out the provisions of this ordinance.

C. Board. The Board of Supervisors, Longswamp Township, Berks County, Pennsylvania.

D. Codes Enforcement Officer/CEO. An individual employed by the municipality to administer and enforce this and other ordinances and codes in the municipality.

E. Community Sewage System. Any on-lot sewage disposal system, whether publicly or privately owned, for the collection of sewage from two or more lots or structures, and the treatment and/or disposal of the sewage on one or more lots or at any other site.

F. Department/DEP. The Department of Environmental Protection of the Commonwealth of Pennsylvania.

G. Individual Sewage System. Any on-lot disposal system consisting of

pipings, tanks or other facilities serving a single lot or structure and collecting and disposing of sewage, in whole or in part, into the soil or into any waters of this Commonwealth installation of which is permitted exclusively by the Township or DEP.

H. Malfunction. The condition which occurs when an on-lot sewage disposal system discharges sewage onto the surface of the ground, or into ground waters of this Commonwealth, or into surface waters of this Commonwealth, or back up into the building connected to the system or otherwise causes a nuisance or hazard to the public health or pollution of ground or surface water or contamination of public or private drinking water wells. Systems shall be considered to be malfunctioning if any of the conditions noted above occur for any length of time during any period of the year.

I. Municipality/Township. Longswamp Township, Berks County, Pennsylvania. This definition may also apply to the Board as the governing body of the Township.

J. Official Sewage Facilities Plan. A comprehensive plan for the provision of adequate sewage disposal systems, adopted by the municipality and approved by the Pennsylvania Department of Environmental Protection, as described in and required by the Pennsylvania Sewage Facilities Act.

K. On-lot Sewage Disposal System (Septic System). Any system or piping, tanks, or other facilities for the treatment and disposal of sewage of the clarified sewage into the soil for final treatment and disposal or into any waters of this Commonwealth which is permitted exclusively by DEP; including both individual sewage systems and community sewage systems.

L. Person. Any individual, association, public or private corporation for profit or not for profit, partnership, firm, company, trust, estate, department, board, bureau or agency of the Commonwealth, political subdivision, municipality, district, authority, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. Whenever used in any clause prescribing and imposing a fine or imprisonment, the term Person shall include the members of an association, partnership

or firm and the officers of any local agency or municipal, public or private corporation for profit or not for profit.

M. Pumper/Hauler. Any person, company, partnership or corporation which engages in cleaning community or individual sewage systems and transports the septage cleaned from these systems, and who has registered with the Township.

N. Rehabilitation. The work done to modify, alter, repair, enlarge or replace an existing on-lot sewage disposal system.

O. Replacement Area. A portion of a lot or a developed property that has been tested sized to allow the installation of an on-lot sewage disposal system, which is reserved to allow that installation in the event of the malfunction of the presently installed on-lot sewage disposal system.

P. Septage. The sewage, residual scum and sludge pumped from on-lot disposal systems.

Q. Sewage. Any substance found within an on-lot sewage disposal system that contains any waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation of which constitutes pollution under the Act of June 22, 1937, (P.L. 1987, No. 394), known as "The Clean Streams Law", as amended.

R. Sewage Permit. A document issued for the local agency by the SEO when proper application, fees, test results, field investigations and other requested information to the Township and a suitable system design have all been provided to the SEO in accordance to PA Code Title 25, Chapter 72, Administration of Sewage Facilities Permitting Program.

S. Sewage Enforcement Officer/SEO. The official of the Municipality who issues and reviews sewage permit applications and conducts such investigations and inspections as are necessary to implement Act 537 and the rules and regulations promulgated thereunder.

T. Sewage Management District. Any area or areas of a municipality for which a sewage management program is recommended by the municipality's adopted Act 537 Official Sewage Facilities Plan. The sewage management district of Longswamp Township encompasses the entire municipality.

U. Sewage Management Program. A comprehensive set of legal and administrative requirements encompassing the requirements of this ordinance and other administrative requirements adopted by the Municipality to effectively enforce and administer the ordinance.

V. Sewage System Certification Form. A form provided by the Pumper/Hauler and approved by the Township which provides information and certification to the Township of on-lot sewage disposal system pumping, cleaning and certain repairs.

W. Subdivision. The division or re-division of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development.

X. Zoning Officer. An individual employed by the Municipality to administer and enforce the Township Zoning Ordinance.

### SECTION 3. Applicability; Municipal Powers.

A. From the effective date of this Ordinance, its provisions shall apply throughout Longswamp Township. The provisions of this Ordinance shall apply to all Persons owning or occupying any property serviced by an on-lot sewage disposal system and to all Persons installing or rehabilitating on-lot sewage disposal systems.

B. There may arise geographic areas within the Municipality where numerous on-lot sewage disposal systems are malfunctioning. A resolution of these area-wide problems may necessitate detailed planning and Municipally sponsored

revision to that area's Act 537 Plan. When a DEP authorized Official Sewage Facilities Plan Revision has been undertaken by the Municipality, mandatory repair or replacement of individual on-lot sewage disposal systems that are malfunctioning within the study area may be delayed, at the discretion of the Municipality, pending the outcome of the plan revision process. However, the Municipality may compel immediate corrective action whenever a malfunction, as determined by municipal officials, represents a serious public health or environmental threat.

SECTION 4. Permit Requirements.

A. No Person or land owner shall install, rehabilitate, modify, construct or request bid proposals for construction or alteration of any individual sewage system or community sewage system or construct or request bid proposals for construction or installation or occupancy of any building or structure for which an individual sewage system or community sewage system is to be installed without first obtaining a Sewage Permit from the Township indicating that the site and the plans and specifications of such on-lot sewage disposal system is in compliance with the provisions of the Pennsylvania Sewage Facilities Act and the standards adopted pursuant to that Act.

B. No on-lot sewage disposal system or structure designed to provide individual or community sewage disposal shall be covered from view until approval to cover the same has been given by the Sewage Enforcement Officer.

C. The Municipality requires persons issued a Sewage Permit, to notify the Sewage Enforcement Officer of the schedule for construction of the permitted on-lot sewage disposal system so that any inspection(s), in addition to the final inspection required by Act 537, may be scheduled and performed by the Sewage Enforcement Officer.

D. No building or zoning permit shall be issued by the Municipality or its Zoning Officer or building official, or CEO for a new building which will generate sewage until a valid Sewage Permit has been obtained from the Sewage Enforcement Officer.

E. No building or zoning permit shall be issued and no work shall begin on any addition, alteration or conversion of any existing structure, if said addition, alteration or conversion will result in the increase or potential increase of sewage flowing from the structure, until the Municipality's Zoning Officer and the structure's owner receive from the Municipality's Sewage Enforcement Officer either a Sewage Permit for alteration, rehabilitation or replacement of the existing on-lot sewage disposal system or written notification that such a Sewage Permit will not be required. The Municipality's Sewage Enforcement Officer shall determine whether the proposed addition, alteration or conversion of the structure will result in increased sewage flows.

F. No building permit shall be issued by the Municipality, its Zoning Officer or Building Official, or CEO for the occupancy of any new building, addition, alteration or the change of use of any building, addition or alteration until the Sewage Enforcement Officer has informed the Municipality or said official that the existing on-lot sewage disposal system or rehabilitated, altered, or newly constructed on-lot sewage disposal system is complete, operating and has had final inspection, and has been given final approval for use.

G. Sewage Permits may be issued only by the Municipality's Sewage Enforcement Officer or by DEP.

H. No contractor or person may proceed to install, construct, rehabilitate or alter an on-lot sewage disposal system without verifying that the land owner has complied with this section of the Ordinance.

#### SECTION 5. Replacement Areas.

A. Any revisions to the Municipality's Official Sewage Facilities Plan which are prepared pursuant to the applicable regulations of the Department for subdivision or development of land within an identified sewage management district or any Township building, subdivision ordinance, etc., shall provide for the testing, identification and reservation of a replacement area of each lot or developed property suitable for the installation of a replacement on-lot sewage disposal system. This

requirement is in addition to the testing, identification and reservation of an area for the primary on-lot

sewage disposal system. This requirement will not apply when the entire development is to be served by public sanitary sewers.

B. No Sewage Permit shall be issued for any proposed on-lot sewage disposal system on any newly created or subdivided property in any Sewage Management District unless and until a replacement area is tested, approved and reserved. All subdivision plans must show the location of two approved on-lot disposal sewage system sites on each lot.

SECTION 6. Inspections.

A. Any on-lot sewage disposal system may be inspected by the Municipality's Authorized Agent between 7:00 A.M. through 7:00 P.M. as of the effective date of this Ordinance.

B. The Municipality's Authorized Agent shall have the right to enter upon land for the purposes of inspection described herein.

C. In addition to routine inspections, the Municipality's Authorized Agent shall inspect systems known to be, or alleged to be, malfunctioning. Should said inspections reveal that the on-lot disposal system is indeed malfunctioning, the Municipality and its Authorized Agent shall notify the land owner of the malfunction and the repairs required and take action to require the correction of the malfunction.

D. A schedule of routine inspections may be established by the Municipality, if necessary, to assure the proper function of the systems in the Sewage Management District. Such routine inspections shall be conducted after twenty-four (24) hour notice is given to the property owner.

E. The inspection may include a physical tour of the property, the taking of water samples from surface water, wells, or other ground water sources, the sampling of the contents of the on-lot sewage disposal system itself and/or the introduction of a traceable substance into the interior plumbing of the structure, served to ascertain the



path and ultimate destination of sewage generated in the structure.

F. An inspection may be conducted by the Municipality's Authorized Agent after the effective date of this Ordinance for the purpose of determining the type and functional status of each On-lot Sewage Disposal System in the Sewage Management District. A written report detailing the inspection and required actions by the land owner shall be furnished to the land owner of each property inspected and a copy of said report shall be maintained in the Municipality's records.

SECTION 7. Operation; Use.

A. Only normal domestic wastes shall be discharged into any on-lot sewage disposal system. The following shall not be discharged into the on-lot sewage disposal system.

1. Industrial waste.
2. Automobile oil and other non-domestic oil.
3. Toxic or hazardous substances or chemicals, including, but not limited to, drugs, antibiotics, pesticides, disinfectants, acids, paints, paint thinners, herbicides, gasoline and other solvents.
4. Clean surface or ground water, including water from roof or cellar drains, springs, basement sump pumps and french drains.

SECTION 8. Maintenance Operation and Scheduling.

A. Any person owning, occupying, renting or leasing a property served by an individual sewage disposal system shall have the system tank cleaned out by pumping by a registered pumper/hauler. The hauling and pump out shall take place no later June 30 of the year for the cycle in which the property/land is designated for pumping as below in Section 8(F) of this document.

B. In the event any person or land owner desires a determination as to an exemption from pumping/maintenance requirements because he believes the tank to be filled with solids less than 1/3 of the liquid depth of the tank or with scum less than 1/3 of the liquid depth of the tank, he may hire a qualified professional to inspect the tank for a determination in accordance with this section and 25 Pa. Code § 71.73(2)(1). The person or land owner shall be responsible for contacting the Municipality so that the

Municipality's Authorized Agent is present at the time the tank inspection is being conducted. The person or land owner shall be responsible for paying the fees for the township's authorized agent as prescribed by the Township's fee resolution.

C. Any person or land owner owning a building served by an Individual Sewage Disposal system which contains an aerobic treatment tank shall follow the operation and maintenance recommendations of the equipment manufacturer. In no case may the cleaning and pumping intervals for aerobic treatment tanks exceed the requirements set forth below in Section 8 (F). Such persons shall maintain the aerobic system as required by the manufacturer's operation manual.

D. Any person or land owner owning a building served by a cesspool or drywell shall have that on-lot disposal system cleaned and pumped according to the requirements set forth below in Section 8 (F). As an alternative to this scheduled pumping of the cesspool or drywell, the land owner may secure a Sewage Permit from the sewage enforcement officer for a septic tank to be installed preceding the cesspool or drywell. For a system consisting of a cesspool or drywell preceded by an approved septic tank, only the septic tank must be pumped at the prescribed interval. Any on-lot septic system cleaning and pumping of the cesspool or drywell shall include an inspection of the sidewalls of the cesspool or drywell. If the side walls are in need of repair as determined by the Hauler, the property owner is responsible to obtain a permit from the SEO for a replacement system.

E. The Municipality's Authorized Agent may require additional maintenance activity as needed including, but not necessarily limited to, cleaning and unclogging of piping, servicing and the repair of mechanical equipment, leveling of distribution boxes, tanks and lines, removal of obstruction roots or trees, the diversion of surface water away from the sewage disposal area, etc.

F. Every person shall have the tank cleaned out by pumping at least once every three years as required by 25 Pa. Code § 71.73. The Township employs a Cycle

system for pumping to include staggered deadlines for various areas of the Township for maintenance in accordance with the aforementioned section. The year 2007 (commencing January 1, 2007 to June 30, 2007) shall involve a “pumping” requirement for Cycle No. 1. Generally, pumping cycles shall commence on July 1 through June 30. The following Cycles shall be repeated at the expiration of the previous cycle as outlined in sequential order (i.e., Cycle 2 shall follow Cycle 1, Cycle 3 shall follow Cycle 2 and Cycle 1 shall follow Cycle 3. For instance, Cycle 2 shall commence on July 1, 2007 and shall expire on June 30, 2008). As such, a different Cycle will have a pumping requirement each and every year and each cycle area is described as follows:

Cycle 1 is generally described as the area on the north side of State Street and Mountain Road bounded by the township line on the east and bounded by the Township line and the Borough of Topton on the West.

Cycle 2 is generally described as (1) the area on the north side of State Street bounded by the Borough of Topton on the east and bounded by the Township line on the west and (2) the area on the south side of State Street bounded on the east by Centennial Road (from State Street to Woodside Avenue) and Woodside Avenue (from Centennial Road south to the Township line) and bounded on the west by the Township line.

Cycle 3 is generally described as the area on the south side of State Street and Mountain Road bounded on the east by the Township Line and bounded on the west by Centennial Road (from State Street to Woodside Avenue) and Woodside Avenue (from Centennial Road south to the Township line).

A depiction of the pumping cycle areas is also attached hereto as Exhibit “A”.

G. The required cleaning pumping frequency may be increased at the discretion of the Municipality’s Authorized Agent if the septic tank, cesspool, drywell or tank is undersized, if solid build-up in the tank is above average, if the hydraulic load on the on-lot disposal system increases significantly above average, if a garbage grinder is

used in the building, if the on-lot disposal system malfunctions or for other good cause shown.

H. An on-lot sewage disposal system certification form as established by DEP shall be submitted to the Municipality immediately after each pumpout from the pumper/hauler . The person or land owner of the on-lot sewage disposal system shall provide the Municipality with a copy of the pumping invoice and certification form if pumping date is disputed.

I. Any septic tank cleaning and pumping shall include an inspection of the baffles within the septic tank. If the baffles are in deteriorated condition, the land owner is responsible to ensure replacement of the baffles with sanitary tees. A Sewage Permit shall be required to replace deteriorated baffles with sanitary tees.

J. The Municipality's Authorized Agent may require installation of water conservation devices and other methods to improve on-lot disposal system operations or become a requirement by adoption of ordinance regarding such devices and methods.

#### SECTION 9. System Rehabilitation.

A. No person or land owner shall operate and maintain an on-lot sewage disposal system in such a manner that it malfunctions. All liquid wastes, including kitchen and laundry wastes and water softener backwash, shall be discharged to an on-lot sewage disposal system. No sewage system shall discharge untreated or partially treated sewage to the surface of the ground or into the waters of the Commonwealth unless a permit to discharge has been obtained from the Pennsylvania Department of Environmental Protection.

B. The Municipality shall issue a written notice of violation to any person who is the land owner of a property in the Municipality which is found to be served by a malfunctioning on-lot sewage disposal system or which is discharging raw or partially treated sewage without a Sewage Permit.

C. Within thirty (30) days of notification by the Municipality that a

malfunction has been identified, the land owner shall make application to the Sewage Enforcement Officer for a Sewage Permit to repair or replace the malfunctioning on-lot sewage disposal system. Within sixty (60) days of the issuance for a Repair Permit by the Municipality, the construction must be completed unless seasonal or unique conditions mandate a longer period. In this case, the municipality shall set an extended completion date.

D. The Municipality's Authorized Agent shall have the authority to require the remediation of any malfunction under the regulations set forth in 25 Pa Code Chapters 71, 72, and 73.

E. In lieu of, or in combination with, the remedies described in Section 9(D) above, the Municipality's Authorized Agent may require the installation of water conservation equipment and the institution of water conservation practices in structures served.

F. Should none of the remedies described above prove totally effective in eliminating the malfunction of an existing on-lot sewage disposal system, the Land Owner is not absolved of responsibility for that malfunction. The Municipality may require whatever action is necessary to mitigate the malfunction. This may include a requirement to connect to a community or public sewer system regardless of distance to such system or the vacating of a structure.

G. In the event that the rehabilitation measures in Sections 9(A) through (G) are not feasible or do not prove effective, the Municipality may require the Land Owner to apply to the Pennsylvania Department of Environmental Protection for a DEP Sewage Permit to install a system to remedy the situation. Upon receipt of said DEP Sewage Permit, the land owner shall complete construction of the system within sixty (60) days, unless seasonal or unique conditions mandate a longer period. The Municipality shall determine the construction period in this case.

H. In areas that have been designated by the Municipality for future

sewage service by public sanitary sewer lines, the Municipality's Authorized Agent may design a program of interim remedial actions to be implemented until public sanitary sewer is available to the effected property.

SECTION 10. Emergency Situations.

The Municipality, upon written notice from the Municipality's Authorized Agent that an imminent health hazard exists due to failure of a Land Owner to maintain, repair or replace an on-lot sewage disposal system, as provided under the terms of this ordinance, shall have the authority to perform or contract to have performed, the work required by the Municipality's Authorized Agent. The Land Owner shall be charged for the work performed and, if necessary, a lien shall be entered therefore in accordance with the law.

SECTION 11. Disposal of Septage.

A. All septage originating within the Municipal Sewage Management District shall be disposed of at sites or facilities approved by the Pennsylvania Department of Environmental Protection.

B. Septage pumper/haulers operating within the Municipal Sewage Management District shall operate in a manner consistent with the provisions of the Pennsylvania Solid Waste Management Act (Act 97 of 1980, 35 P.S. subsections 6018.101-6018.1003).

C. All pumper/haulers must register with the Municipality to pump septage within or from the municipality. A list of registered pumpers/haulers is maintained at the Township Building.

D. The Municipality shall establish rules and regulations for the registration procedure and shall set fees for the registration by way of resolution.

SECTION 12. Violations. In addition to violations of other portions of this Ordinance or violations of the Act, the following shall constitute violations.

A. The Municipality shall issue a written notice of violation to any person who is the land owner of property in the Municipality, if the Municipality has not

received from the landowner and hauler on-lot sewage system certification forms proving that their septic tank, cesspool or drywell or tank has been cleaned and pumped within the time limits as specified by the Township's time table.

B. Within thirty (30) days of notification by the municipality that a septic tank, cesspool or drywell or tank has not been pumped within the time limits set by this Ordinance, the land owner shall have said septic tank, cesspool or drywell or tank cleaned and pumped. The pumper/hauler and land owner must provide the Municipality with the on-lot sewage system certification form showing that the on-lot sewage disposal system has been cleaned and pumped or this shall also be considered a violation of this Ordinance. Any person or land owner interfering with the pumper's/hauler's responsibility to notify the Municipality under this Ordinance shall be in violation and susceptible to all penalties herein. As with the previous notification sections set forth in this Ordinance, the land owner of the building shall ensure that the pumper/hauler supplies the Municipality with the certification form of pumping for each property and/or on-lot disposal system.

SECTION 13. Administration.

A. The Municipality shall fully utilize those powers it possesses through enabling statutes and ordinances to effect the purposes of this ordinance.

B. The Municipality may employ qualified individuals to carry out the provisions of this ordinance. Those employees may include a certified SEO and may include a CEO, secretary, engineer, solicitor, administrator or other persons as required. The Municipality may also contract with private qualified persons or firms as necessary to carry out the provisions of this ordinance.

C. All permits, records, reports, files and other written material relating to the installation, operation and maintenance and malfunction of on-lot sewage disposal systems in the Municipality shall become the property of the Municipality. Existing and future records shall be available for public inspection pursuant to the terms and limitations of the Pennsylvania Open Records law. All records pertaining to Sewage

Permits, building permits, occupancy permits and all other aspects of the Municipality's Sewage Management Program shall be made available, upon request, for inspection by representatives of the Pennsylvania Department of Environmental Protection.

D. The Municipality's Board of Supervisors shall establish all administrative procedures necessary to properly carry out the provisions of this Ordinance.

E. The Municipality may establish a fee schedule by Resolution and subsequently collect fees by any appropriate method including the use of municipal liens to cover the cost to the municipality of administering this program.

SECTION 14. Enforcement Actions.

A. In addition to remedies available under the Pennsylvania Sewage Facilities Act as it relates to nuisances, violations of the Act or interference with any officer, agent or the Municipality itself, the Municipality may assess civil penalties after providing notice of such penalties or assessments.

B. Available Damages. The Municipality may assess the cost of damages caused by violations of this Ordinance or the Pennsylvania Sewage Facilities Act, applicable fines and penalties, the cost of correcting such violation(s), as well as legal fees, costs of enforcement and fees incurred to hold hearings as set forth in Section 14 (C).

C. Enforcement Notice. The Authorized Agent, including but not limited to the CEO or SEO, shall provide notice of violations of this Ordinance or the Sewage Facilities Act and the proposed assessment of penalty, if applicable, which includes the following information:

(1) The name of the land owner of record or any other person in violation of this Ordinance and/or against whom the Municipality intends to take action.

(2) The location of the land/property in violation.

(3) The specific violation with the description of the requirements



which have not been met, citing in each instance the applicable provisions of the Ordinance.

(4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed, and/or the date on which action had to occur.

(5) That the land owner or other persons named on the Notice has the right to request a hearing before a hearing officer other than the Authorized Agent who issued the notice of violation within a prescribed period of time in accordance with the procedures set forth in the Ordinance. The appeals period accrues as of the date of the first violation.

(6) The deadline for requesting a hearing is set for in Section 12.

(7) That failure to comply within the time specified on the notice, unless extended by appeal to the Municipality, constitutes a violation with possible sanctions clearly described in the Notice of Violation.

(8) The Notice shall also provide the violator notice of proposed assessment of penalties as set forth in Section 14(F).

D. Penalty. The civil penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not be less than Three Hundred (\$300.00) Dollars and not more than Two Thousand Five Hundred (\$2,500.00) Dollars for each violation. In determining the penalty the Municipality shall consider:

1. The wilfulness of the violation;
2. Damage to water, land or other natural resources or their uses, cost of restoration and abatement;
3. Savings resulting to the person in consequence of the violation;
4. Deterrence of future violations; and
5. Other relevant factors.

E. Manner of Providing Notice . The Enforcement Notice shall be sent

to the land owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive Enforcement Notices regarding that parcel, or to any person requested in writing by the land owner of record in the following manner:

The civil enforcement notice shall be sent by certified mail and first class mail, prepaid, to the owner of record of the property or parcel on which the violation has occurred, to any person who has filed a written request to receive civil enforcement notices regarding the property or parcel, or to any other person requested in writing by the owner of record.

F. Violation Hearing. After receipt of a Notice of Violation the land owner has a right for a hearing before a hearing officer, as set forth in this Section, to evaluate the violation and the amount of the penalty or cost:

1. Formal rules of Evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

2. It is not necessary to keep a stenographic record of the proceedings. However, any party desiring to keep a stenographic record will be allowed to do so at their expense. Said stenographic record to be compiled by a properly recognized stenographer. Any parties ordering stenographic records shall pay their own costs.

3. The hearing officer shall provide a written decision including amount of penalty, if any within fifteen (15) days of the conclusion of the hearing and advise the right to an additional appeal per Section 15.

G. Additional Penalties. If a person against whom costs or a civil penalty has been assessed after the notice and hearing, if such hearing is requested, pursuant to this Ordinance fails to pay the assessed costs or penalty in full or to perfect an appeal de novo under the next Section 14(I) herein, within thirty days following assessment of the civil penalty, such failure to pay or perfect an appeal shall constitute a separate violation for which an additional civil penalty may be assessed pursuant to Section 14 (D).

Additional violations shall be deemed to occur and additional civil penalties may be assessed pursuant to Section 14 (D) each time a person fails to pay or perfect an appeal under Section 15.

H. Weekly Penalties. In any case where the Authorized Agent/hearing officer determines that damage resulting from the violation is of continuing nature, the Authorized Agent/hearing officer, on behalf of the Municipality, may impose a weekly assessment of no more than Two Thousand Five Hundred (\$2,500.00) Dollars per week for each week the violation continues unabated by the violator. The weekly assessment shall accrue indefinitely after the date of the assessment to the violator.

I. Payment of Penalties. Costs and civil penalties shall be payable to the Municipality and shall be collectable in any manner provided by law for the collection of debts. If any person liable to pay these costs or penalties neglects or refuses to pay the same after demand, the amount of costs or civil penalty, together with interest and any costs that may accrue, shall constitute a judgement in favor of the Municipality upon the real property of the person in the form of a lien from the date it has been entered and docketed on the record of the Berks County Prothonotary.

SECTION 15. Administrative Appeals. When the Municipality has assessed costs or a civil penalty pursuant to this Ordinance, the person assessed with the costs or penalties shall then have thirty (30) days to pay the costs or penalty in full. If the person wishes to contest the penalty or the fact of the violation, the person shall have a right to an appeal de novo pursuant to the "Local Agency Law," P.L. 1133, No. 353, before the Board of Supervisors of the Municipality. In order to file an Administrative Appeal, the person shall forward the amount of the civil penalty to the Municipality within the thirty (30) day appeal period for placement in an escrow account in such manner as is acceptable pursuant to the Sewage Facilities Act. If through administrative or final judicial review of the proposed assessed penalty it is determined that no violation occurred or that the amount of the penalty is reduced, the Municipality shall, within thirty (30) days, remit the appropriate amount, less costs of appeal, to the person.

SECTION 16. Subsequent appeals of any order or penalty set forth pursuant to Section 15 of this Ordinance shall be to the Court of Common Pleas of Berks County.

SECTION 17. Nothing in this Ordinance shall be construed or interpreted to prohibit the Municipality from filing a Petition for Injunction or similar court action if the Municipality shall determine that immediate or irreparable harm would come to persons or property from violations of this ordinance. A violation of this Ordinance in itself shall be evidence of immediate and irreparable harm for purposes of enforcement of this Ordinance.

SECTION 18. Nothing contained in this section shall be construed or interpreted to grant any person or entity other than the Municipality the right to commence an action for enforcement pursuant to this section.

SECTION 19 . In the event that any provision, section, sentence, clause or portion of this ordinance shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any of the remaining ordinance. It is hereby declared to be the intent of the Board of Supervisors of the Township of Longswamp that the remainder of this Ordinance shall be and remain in full force and effect notwithstanding the fact that such portion thereof shall be invalid or unconstitutional.

SECTION 20. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance, are hereby repealed insofar, but only insofar, as the same are inconsistent herewith.

SECTION 21. This Ordinance shall take effect five (5) days subsequent to its passage.

ORDAINED and ENACTED as an Ordinance by the **Board of Supervisors of the**

**Township of Longswamp**, Berks County, Pennsylvania, in lawful session duly assembled this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BOARD OF SUPERVISORS OF LONGSWAMP  
TOWNSHIP, BERKS COUNTY, PA

\_\_\_\_\_  
Donald C. Siegfried, Chairman

\_\_\_\_\_  
Bruce E. Hall, Vice Chairman

\_\_\_\_\_  
Steven C. Wyka, Supervisor

Attest:

\_\_\_\_\_  
Township Secretary