

HOLDING TANK ORDINANCE NO. 2-95 (as amended)

AN ORDINANCE OF THE TOWNSHIP OF MCKEAN, ERIE COUNTY, PENNSYLVANIA, ESTABLISHING PROCEDURES FOR THE PERMITTING, USE AND MAINTENANCE OF SEWAGE HOLDING TANKS IN CERTAIN ZONING DISTRICTS WITHIN MCKEAN TOWNSHIP, IMPOSING FEES AND PRESCRIBING PENALTIES AND REMEDIES FOR VIOLATION.

WHEREAS, the Board of Supervisors of McKean Township, Erie County, Pennsylvania, desires to provide for holding tanks as a sewage system alternative for institutional, recreational or commercial use with a sewage flow of 400 gallons per day or less located in specifically defined and geographically limited areas within the Township until such time as municipal sewage services are available in those areas; and

WHEREAS, pursuant to the Pennsylvania Sewage Facilities Act, as amended, 35 P.S. Section 750. 1, et seq., and the rules and regulations promulgated thereunder by the Department of Environmental Resources found in Title 25 of the Pennsylvania Code, the Township has the authority to provide for holding tanks and the duty to regulate them accordingly when they are allowed; and

WHEREAS, the Township has concluded that allowing for the use of holding tanks as a form of sewage disposal under limited circumstances is necessary for the protection and preservation of the environment and of the health, safety and welfare of the citizens of the Township; and

WHEREAS, the Township conducted a public hearing after due notice was given in accordance with the applicable laws of the Commonwealth of Pennsylvania regarding the matters referred to herein.

NOW, THEREFORE, be it ordained and enacted by the duly elected Supervisors of the Township of McKean, Erie County, Pennsylvania, and it is hereby ordained and enacted thereby as follows:

Section 1: Short Title

- A. This Ordinance shall be known and cited as the "McKean Township Holding Tank Ordinance".

Section 2: Authority for Ordinance

- A. This Ordinance and the provisions hereunder are authorized pursuant to the powers granted to the Township by the Second Class Township Code, as amended, (53 P.S. Section 65101, et seq.), and the Pennsylvania Sewage Facilities Act, as amended, (35 P.S. Section 750.1, et seq.), and the rules and regulations promulgated thereunder by the Department of Environmental Resources found in Title 25 of the Pennsylvania Code.

Section 3: Definitions

- A. For the purposes of this Ordinance, the following words and phrases when used in this Ordinance shall have the meanings given to them in this Section unless the context clearly indicates otherwise. All other definitions set forth in the Pennsylvania Sewage Facilities Act and the rules and regulations of the DER and their amendments are hereby incorporated herein by reference as if fully set forth at length. Moreover, those words and phrases not specifically defined in this Ordinance or incorporated herein by reference shall have the common meaning as expressed in Merriam Websters Collegiate Dictionary Tenth Addition 1993. Additionally, in this Ordinance, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and the neuter, and the word "shall" always mean mandatory.

- (1) **"Applicant"** shall mean any person, including his heirs, successors and assigns, who has filed an application for a holding tank certificate of use pursuant to this Ordinance.
- (2) **"Application for Holding Tank Certificate of Use"** shall mean every application, whether preliminary, tentative or final, required to be filed and approved prior to the start of constructing, maintaining or using a holding tank pursuant to this Ordinance.
- (3) **"B-1 Highway Plaza Commercial"** shall mean the Township's zoning district classified as B-1 Highway Plaza Commercial which is located only with Subarea 1 of User District 1 and Edinboro Road from McKean Borough line to Summit Township line. Whenever used in any provision of this Ordinance, the term "B-1 Highway Plaza Commercial" shall neither mean nor include any portion of the zoning district classified as B-1 Highway Plaza Commercial located in any area of the Township outside the Subarea 1 of User District 1 and Edinboro Road from McKean Borough line to Summit Township line.
- (4) **"Clean Streams Law"** shall mean The Clean Streams Law now in effect and as hereafter amended, supplemented, modified or re-enacted by the General Assembly of Pennsylvania, (35 P. S. Section 691.1. et seq.).

- (5) **"Commercial Use"** shall mean and include any building, structure or facility used or intended to be used for commercial, business, manufacturing, professional service or similar business purposes. Whenever used in any provision of this Ordinance, the term "commercial use" shall neither mean nor include any building, structure or facility used or intended to be used for residential purposes, and shall neither mean nor include any building, structure or facility used or intended to be used for schools, hospitals, sanitariums, nursing homes, group homes or similar uses.
- (6) **"Construct", "Construction", or "Constructing"** shall mean and include any derivative of the word "construct", and also shall mean and include any derivative of the words "install", "erect", "build" and "alter".
- (7) **"DEP"** shall mean the Department of Environmental Protection of the Commonwealth of Pennsylvania.
- (8) **"Holding Tank"** shall mean a watertight receptacle or tank, whether permanent or temporary, which receives and retains sewage conveyed by a water carrying system, and which is designed and constructed to facilitate ultimate disposal of the sewage at another site.
- (9) **"I-1 Industrial"** shall mean the Township's zoning district classified as I-1 Industrial which is located only within Subarea 1 of User District 1, Edinboro Road from McKean Borough line to Township line and Bargain Road. Whenever used in any provision of this Ordinance, the term "I-1 Industrial": shall neither mean nor include any portion of the zoning district classified as 1-1 Industrial located in any area of the Township outside of the Subarea 1 of User District 1, and Edinboro Road from McKean Borough line to Summit line and Bargain Road.
- (10) **"Institutional Use"** shall mean and include any building, structure or facility used or intended to be used for institutional purposes such as municipal buildings, fire halls, libraries, museums, grange halls, churches or other similar kinds of public uses. Whenever used in any provision of this Ordinance, the term "institutional use" shall neither mean nor include any building, structure or facility used or intended to be used for residential purposes, and shall neither mean nor include any building, structure or facility used or intended to be used for schools, hospitals, sanitariums, nursing homes, group homes or similar uses.

- (11) **"Landowner"** shall mean any person vested with ownership, legal or equitable, sole or partial, of any land or lot including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or any other person having a proprietary interest in any land or lot.
- (12) **"Lot"** shall mean a part of a subdivision or a parcel of land used, developed or built upon as a building site or intended to be used, developed or built upon for building purposes, whether immediate or future, and whether for human beings or animals, which would not be further subdivided.
- (13) **"Maintain", "Maintenance" or "Maintaining"** shall mean and include any derivative of the word "maintain", and also shall mean and include any derivative of the words "operate", "repair" and "fix".
- (14) **"Municipal Sewage Services"** shall mean the public sewer system and the sewage treatment facility owned, operated or maintained by the Township and/or the McKean Township Sewer Authority under approval from the DEP.
- (15) **"Municipality"** shall mean the Township.
- (16) **"Official Plan Revision"** shall mean the Township's comprehensive plan for the provision of adequate sewage systems, adopted by the Township, submitted to, and approved by, the DEP, pursuant to the Pennsylvania Sewage Facilities Act.
- (17) **"Pennsylvania Sewage Facilities Act"** shall mean The Pennsylvania Sewage Facilities Act now in effect and as hereafter amended, supplemented, modified or re-enacted by the General Assembly of Pennsylvania, (35 P. S. Section 750. 1, et seq.).
- (18) **"Person"** shall mean and be construed to include any natural person, or any individual, association, corporation for-profit or not-for-profit, company, partnership, firm, trust, estate or other legal entity which is recognized by law as the subject of rights and duties. Whenever used in any provision of this Ordinance prescribing and imposing a penalty, or imposing a fine and imprisonment, or both, the term "person" shall exclude neither the members of an association nor the directors, officers or agents of a corporation.

- (19) **"Pollution"** shall mean the contamination of any water in the Township such as will create or is likely to create a nuisance or to render such water harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor of such waters, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.
- (20) **"Recreational Use"** shall mean and include any building, structure or facility used or intended to be used for recreational purposes such as a DEP permitted campground, and outdoor public or private recreational areas such as playgrounds, baseball fields, picnic grounds or other similar kinds of recreational uses. Whenever used in any provision of this Ordinance, the term "recreational use" shall neither mean nor include any building, structure or facility used or intended to be used for residential purposes, and shall neither mean nor include any building, structure or facility used or intended to be used for hunting camps, fishing camps, seasonal cottages or similar uses.
- (21) **"Sewage"** shall mean any substance that contains any of the 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, or which constitutes pollution under the Clean Streams Law.
- (22) **"Subarea 1 of User District 1"** shall mean the western portion of the Township along Sterrettania, Road as identified in the official plan revision.
- (23) **"Supervisors"** shall mean the duly elected Board of Supervisors of the Township.
- (24) **"Township"** shall mean the Township of McKean, Erie County, Pennsylvania.

Section 4: Legislative Findings

- A. The Township hereby finds and determines that:

- (1) The discharge of sewage into the waters in the Township, which causes or contributes to pollution or creates a danger of such pollution, is neither a reasonable nor natural use of such waters, and any such discharge is hereby declared to be a nuisance.
- (2) Pursuant to the Pennsylvania Sewage Facilities Act, the Township has revised its official plan for sewage services for areas within the Township's jurisdiction.
- (3) DEP has approved the official plan revision of the Township.
- (4) The official plan revision identified Subarea 1 of User District 1 as generally being the western portion of the Township along Sterrettania Road.
- (5) Two (2) Township Zoning Districts identified as I-1 Industrial and B-1 Highway Plaza Commercial are located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (6) The Township anticipates that municipal sewage services will be provided to the Subarea 1 of User District 1 as the first stage of implementing the official plan revision.
- (7) According to a DEP approved User District I implementation schedule, the Township anticipates that work on municipal sewage services for Subarea 1 of User District 1 will be completed on or about May 31, 1998.
- (8) The Township anticipates that commercial, institutional or recreational uses with a sewage flow of 400 gallons per day or less within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1 will occur before May 31, 1998.
- (9) The handling, treatment, containment and ultimate disposal of sewage is critical to the future institutional, commercial and recreational development within the 1-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (10) There is a need for the limited use of holding tanks for institutional, recreational and commercial establishments with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts

located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.

- (11) The Township has determined that if properly allowed, constructed, maintained, used and regulated, then holding tanks should provide a suitable and safe means of facilitating the ultimate disposal of sewage for institutional, recreational and commercial establishments with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road only until such time as municipal sewage services may be provided thereto.
- (12) Pursuant to the Pennsylvania Sewage Facilities Act and the rules and regulations promulgated thereunder by the DEP, the Township has the authority to provide for holding tanks only for commercial, institutional and recreational uses with a sewage flow of 400 gallons per day or less and the duty to regulate them accordingly when they are allowed.
- (13) Holding tanks require regular service and maintenance to prevent their malfunction and overflow.
- (14) Specific restrictions are required to control the construction, maintenance and use of holding tanks so as to protect, benefit and otherwise preserve the environment and the health, safety and welfare of the citizens of the Township, and to prevent any nuisance or health hazard that may result from improper discharge of sewage.
- (15) Once municipal sewage services are provided to the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road, there shall be no need for the construction, maintenance and use of holding tanks in those zoning districts.
- (16) Unforeseen circumstances may prevent the Township from providing municipal sewage services to the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road; and, in such an event, holding tanks will not provide a suitable and safe

means of facilitating the ultimate disposal of sewage on a permanent basis.

- (17) Providing for the strictly controlled and regulated construction, maintenance and use of holding tanks under the provisions of this Ordinance is consistent with the official plan revision.
- (18) This Ordinance and its provisions are consistent with the Pennsylvania Sewage Facilities Act and the rules and regulations adopted thereunder by the DEP.

Section 5: Declaration of Intent and Purpose

A. Through the enactment, implementation and administration of this Ordinance, the following are hereby declared to be the intent and purpose of the Township:

- (1) To prevent and eliminate pollution of water in the Township.
- (2) To protect, benefit and otherwise preserve the environment and the health, safety and welfare of the inhabitants of the Township.
- (3) To provide for adequate sewage treatment through the use of holding tanks as authorized by this Ordinance so as to prevent the discharge of untreated or inadequately treated sewage into any water in the Township, and to otherwise provide for the safe and sanitary treatment of sewage.
- (4) To provide a suitable and safe means of facilitating the ultimate disposal of sewage for institutional, recreational or commercial uses with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located only within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (5) To allow the construction, maintenance and use of holding tanks for institutional, recreational and commercial uses with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located only within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road for a limited duration of time, and not as a permanent or long term sewage system alternative.

- (6) To temporarily meet the sewage disposal needs of institutional, recreational and commercial establishments with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located only within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (7) Nothing in this Ordinance shall be interpreted to impose or otherwise create any duty, obligation or requirement on or of the Township to provide municipal sewage services to any lot or use in the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (8) To establish procedures, standards, restrictions and regulations for the construction, maintenance and use of existing and new holding tanks by institutional, recreational and commercial establishments with a sewage flow of 400 gallons per day or less only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located only within the Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- (9) To assure that the persons and lots being served by holding tanks assume the financial burden caused to the Township as a result of the provisions of this Ordinance.
- (10) To assume full responsibility for maintaining existing and new holding tanks as specifically required under 25 Pa. Code Section 71.63(c)(3) and to otherwise comply with the applicable provisions of Title 25 of the Pennsylvania Code.
- (11) To establish fines, penalties and remedies for any violation of the provisions of this Ordinance.
- (12) To provide additional and cumulative remedies to abate nuisances, health hazards and pollution of water in the Township.

Section 6: Standards for Holding Tanks

- A. All holding tanks authorized under this Ordinance shall be designed, constructed, maintained and used to meet all of the following minimum standards and specifications:

- (1) The holding tank shall be watertight and constructed of sound and durable material not subject to excessive corrosion or decay.
 - (a) Precast concrete tanks shall have a minimum wall thickness of two and one-half (2-1/2) inches and be adequately reinforced.
 - (b) Precast slabs used as covers shall have a thickness of at least three (3) inches and be adequately reinforced.
 - (c) Holding tanks having a liquid capacity of five thousand (5,000) gallons or less shall not be constructed of blocks, bricks, or similar masonry construction.
 - (d) Holding tanks having a liquid capacity in excess of five thousand (5,000) gallons may be constructed onsite and, in such an event, shall meet the standards of the National Concrete Masonry Association for reinforcement and waterproofing as listed in the publication "Concrete Masonry Foundation Walls", copyright 1957 NCMA.
 - (e) Steel holding tanks shall meet United States Department of Commerce Standards 177-62.
- (2) The depth of liquid in any holding tank or its compartments shall be:
 - (a) Not less than two and one-half (2-1/2) feet nor more than five (5) feet for holding tanks having a liquid capacity of six hundred (600) gallons or less.
 - (b) Not less than three (3) feet. nor more than seven (7) feet for holding tanks having a liquid capacity of more than six hundred (600) gallons.
- (3) No holding tank nor compartment therein shall have an inside horizontal dimension less than thirty-six (36) inches.
- (4) If a holding tank has more than one (1) compartment, then the first compartment shall have at least the same capacity as the second compartment but shall not exceed twice the capacity of the second compartment.
- (5) Holding tanks or compartments shall be connected in series and shall not exceed four (4) in number in any single installation.

- (6) The minimum capacity of a holding tank shall be one thousand (1,000) gallons or a volume equal to the quantity of waste generated in three (3) days, whichever is larger.
- (7) The holding tank shall be equipped with a warning device to indicate when the holding tank is filled to within seventy-five percent (75 %) of its capacity. The warning device shall create an audible and visual signal at a location frequented by the owner or responsible individual.
- (8) Disposal of waste from a holding tank shall be at a site approved by the DEP.

Section 7: Holding Tanks Allowed

- A. The construction, maintenance or use of holding tanks for sewage disposal purposes shall be allowed only for the following uses and areas, under and subject, nevertheless, to the requirements and regulations set forth in this Ordinance to which strict compliance shall be required:
 - (1) commercial, institutional or recreational uses with a sewage flow of 400 gallons per day or less located only within the I-1 Industrial and B-1 Highway Plaza Commercial zoning districts located only within Subarea 1 of User District 1, Edinboro Road from the McKean Borough line to the Summit Township line and Bargain Road.
- B. In all other areas of the Township and for any other uses, holding tanks shall not be allowed, unless the Township, in its sole discretion, deems it a necessary and emergency condition to allow the temporary use of holding tanks to abate a nuisance or health hazard; in which event, strict compliance with all provisions of this Ordinance shall be required.
- C. At such time as municipal sewage services are provided and available to a lot upon which a holding tank is located or for which a holding tank serves, and notwithstanding any exemption that may otherwise be provided to the landowner under any applicable law, the landowner shall:
 - (1) take all action necessary to connect to the municipal sewage service system within sixty (60) days of receiving notice from the McKean Township Sewer Authority and/or the Township that such municipal sewage services are available to the lot in question; and
 - (2) accept and become a customer of the municipal sewage services so provided and available to the lot in question; and

- (3) timely pay all fees imposed, levied and/or assessed by the Township and/or the McKean Township Sewer Authority for the provision of the said municipal sewage services to the lot in question; and
- (4) within sixty (60) days of receiving notice from the McKean Township Sewer Authority and/or the Township that such municipal sewage services are available to the lot in question, take all action necessary to adequately and safely render the holding tank inoperable and otherwise non-functional for the purpose of receiving and/or retaining, whether permanent or temporary, sewage or any other substance defined as hazardous under local, state or federal law, statute, ordinance, resolution, rule or regulation; and
- (5) within sixty (60) days of receiving notice from the McKean Township Sewer Authority and/or the Township that such municipal sewage services are available to the lot in question, cease, desist and otherwise stop using the holding tank as a receptacle or tank, whether permanent or temporary, to receive and/or retain sewage or any other substance defined as hazardous under local, state or federal law, statute, ordinance, resolution, rule or regulation.

Section 8: Required Permit and Certificate of Use

- A. No person shall construct, maintain or use a holding tank, or construct, use or occupy any building or structure for which a holding tank is to be constructed, maintained or used without first obtaining both of the following:
 - (1) A holding tank certificate of use duly issued by the Supervisors in strict accordance with the provisions of this Ordinance; and
 - (2) The appropriate permit duly issued by the Erie County Department of Health in strict accordance with the provisions of the Pennsylvania Sewage Facilities Act and the rules and regulations promulgated thereunder by the DEP.

Section 9: Application for Certificate of Use

- A. A completed and duly signed application for a holding tank certificate of use shall be submitted in writing to the Supervisors, which application shall include the following minimum information:
 - (1) The name, address and telephone number of the applicant.

- (2) The name, address and telephone number of the landowner of the lot upon which the holding tank is proposed to be constructed, maintained or used.
- (3) The precise location, legal description and tax identification number of the lot upon which the holding tank is proposed to be constructed, maintained or used.
- (4) The precise location and description of the buildings, structures or facilities located upon the lot upon which the holding tank is proposed to be constructed, maintained or used.
- (5) A description of the existing and proposed uses of the lot upon which the holding tank is proposed to be constructed, maintained or used.
- (6) The precise location, legal description and tax identification number of the lot proposed to be served by the holding tank.
- (7) The precise location and description of the buildings, structures or facilities to be served by the holding tank.
- (8) A description of the existing and proposed uses of the lot to be served by the holding tank.
- (9) A description of the existing and proposed uses of the buildings, structures or facilities to be served by the holding tank.
- (10) A description of the size and type of holding tank being proposed, including any and all information necessary to determine whether the holding tank meets the minimum standards set forth in this Ordinance as well as the standards established by the DEP.
- (11) A statement of the number of gallons estimated to be the average daily sewage flow and a description of the methods and means of calculating or otherwise arriving at the said estimate.
- (12) A description of the arrangements that have been made for the collection, transportation and disposal of the sewage contents of the proposed holding tank, which description shall include the following minimum information:
 - (a) The name, address and telephone number of the person who will provide the said collection, transportation and disposal services.

- (b) Proof that the person providing the said collection, transportation and disposal services has been duly authorized and licensed to perform such services.
 - (c) A copy of the agreement or contract under which the person is obligated to provide the said collection, transportation and disposal services.
 - (d) The precise location of the site at which the said sewage will be disposed.
 - (e) Proof that the DEP has duly approved the said disposal site.
 - (f) Proof that adequate insurance covering the said collection, transportation and disposal services is in full force and effect, such as but not limited to workmen's compensation, liability and property insurance.
- (13) A copy of the appropriate permit issued by the Erie County Department of Health as required under this Ordinance; or, if the permit has not yet been issued at the time of submitting the application to the Supervisors, a copy of the application submitted to the Erie County Department of Health.
- (14) A duly signed and notarized statement capable of being recorded in the Erie County Courthouse, that the landowner and applicant are fully aware of and understand all of the provisions of this Ordinance and all other applicable local, state and federal laws, statutes, ordinances, resolutions, rules and regulations in any way pertaining to sewage systems and sewage disposal, and that:
- (a) by submitting the required application, the landowner and applicant, for themselves and their respective heirs, successors and assigns, agree to indemnify and hold harmless the Township, the Supervisors and their authorized agents, employees and representatives from and against any and all causes of action, whether at law or equity, costs, damages, fines, losses or penalties, whether liquidated or unliquidated, that may be suffered or incurred by the Township, the Supervisors and their authorized agents, employees and representatives resulting from or in any way connected to the issuance of the Township's holding tank certificate of use being sought by the applicant; and

- (b) notwithstanding any exemption that may otherwise be provided to the landowner and/or applicant under any applicable law, the landowner and/or applicant and their respective heirs, successors and assigns shall fully and completely comply with Section 7(C) of this Ordinance; and
 - (c) the landowner and/or applicant will strictly comply with the provisions of this Ordinance.
- (15) Any and all other information as may be required to adequately assure that the proposed construction, maintenance and use of the holding tank:
 - (a) strictly complies with the standards set forth in this Ordinance and meets all other requirements of the applicable rules and regulations promulgated by the DEP; and
 - (b) does not and shall not cause or otherwise create an undue risk or threat of pollution or harm to the public health, safety and welfare.
- B. The application shall be submitted on forms prescribed by the Township and the DEP. Any additional information shall be provided by the applicant as may be required by the Township to determine the landowner's and applicant's compliance with this Ordinance and all other applicable local, state and federal laws, statutes, ordinances, resolutions, rules and regulations.
- C. At the time of application, the applicant shall pay an application fee as established by resolution of the Supervisors from time to time.

Section 10: Standards for Issuing Certificate of Use

- A. A holding tank certificate of use shall be issued only if all of the following requirements are strictly met:
 - (1) The proposed use is a use allowed under this Ordinance and under all other applicable local, state and federal laws, statutes, ordinances, resolutions, rules and regulations.
 - (2) The proposed use and holding tank are to be located in the areas allowed under this Ordinance.

- (3) It is determined that the average daily sewage flow will not exceed 400 gallons per day based upon regulations set by the DEP.
- (4) The applicant has submitted a written, completed and duly executed application and application fee pursuant to Section 9 of this Ordinance.
- (5) Satisfactory proof that the applicant has the appropriate authority from the landowner to make the application.
- (6) Satisfactory proof that the size and type of the proposed holding tank strictly complies with the minimum standards set forth in this Ordinance as well as the standards established by the DEP.
- (7) Satisfactory proof that the applicant has made adequate and proper arrangements for the collection, transportation and disposal of the sewage contents of the proposed holding tank.
- (8) Satisfactory proof that the person contractually responsible for collecting, transporting and disposing of the said sewage has adequate insurance coverage in full force and effect.
- (9) Satisfactory proof that the DEP has approved the site proposed by the applicant for disposing of the said sewage.
- (10) The Supervisors' receipt of the applicable permit issued by the Erie County Department of Health.
- (11) The Supervisors' receipt of the statements required under Section 9(A)(14) of this Ordinance.
- (12) Satisfactory proof and assurances that the proposed construction, maintenance and use of the holding tank does not and shall not cause or otherwise create an undue risk or threat of pollution or harm to the public health, safety and welfare.
- (13) Satisfactory proof that the applicant and/or landowner have satisfied each and every condition that the Supervisors deem necessary for the construction, maintenance and use of the proposed holding tank to protect and preserve the environment and the public health, safety and welfare, and to prevent pollution, nuisances or public health hazards.
- (14) The posting of a bond, if the same is required as a condition for the issuance of a holding tank certificate of use.

- B. The Supervisors may issue a holding tank certificate of use subject to such conditions as they, in their sole discretion, deem necessary for the protection and preservation of water courses, ground water, water supplies, environment, the public health, safety and welfare, and to prevent pollution, nuisances or public health hazards.

Section 11: Prohibited Activity

- A. No person shall construct, maintain or use a holding tank except in strict conformity with the provisions of this Ordinance and as may be required under other applicable local, state and federal laws, statutes, ordinances, resolutions, rules and regulations.
- B. The construction, maintenance or use of a holding tank either without a holding tank certificate of use, or contrary to the terms and conditions of a holding tank certificate of use, or contrary to the provisions of this Ordinance, or contrary to any other applicable local, state and federal law, statute, ordinance, resolution, rule or regulation, shall be a violation of this Ordinance.
- C. The construction, maintenance or use of a holding tank either without a holding tank certificate of use, or contrary to the terms and conditions of a holding tank certificate of use, or contrary to the provisions of this Ordinance, or contrary to any other applicable local, state and federal law, statute, ordinance, resolution, rule or regulation, is hereby declared to be a nuisance.

Section 12: Expiration of Holding Tank Certificate of Use

- A. If the construction, maintenance or use of a holding tank has not commenced within three (3) years after the issuance of a holding tank certificate of use, then the said certificate of use shall expire, and a new certificate of use shall be obtained pursuant to the requirements of this Ordinance.
- B. If the construction or occupancy of any building, structure or facility to be served by a holding tank has not commenced within three (3) years after the issuance of a holding tank certificate of use, then the said certificate of use shall expire, and a new certificate of use shall be obtained pursuant to the requirements of this Ordinance.
- C. Unless otherwise extended in writing, a holding tank certificate of use shall expire within sixty (60) days of the applicant's receipt of written notice from the McKean Township Sewer Authority and/or the Township that municipal sewage services are available to the lot in question; and, in

such an event, the applicant shall comply with Section 7(C) of this Ordinance.

- D. Notwithstanding any provision of this Ordinance to the contrary, a holding tank certificate of use shall expire on availability of municipal sewer services by a municipal authority or other entity having jurisdiction thereover. Upon the expiration of the said holding tank certificate of use, the applicant shall:
- (1) take all actions necessary to provide a duly approved sewage system alternative to take the place of the holding tank; and
 - (2) take all action necessary to adequately and safely render the holding tank inoperable and otherwise non-functional for the purpose of receiving and/or retaining, whether permanent or temporary, sewage or any other substance defined as hazardous under local, state or federal law, statute, ordinance, resolution, rule or regulation; and
 - (3) cease, desist and otherwise stop using the holding tank as a receptacle or tank, whether permanent or temporary, to receive and/or retain sewage or any other substance defined as hazardous under local, state or federal law, statute, ordinance, resolution, rule or regulation.

Section 13: Fees and Expenses

- A. The Supervisors are hereby authorized to establish by resolution from time to time an application fee for the certificate of use.
- B. The Supervisors are hereby authorized to establish by resolution from time to time an administration fee necessary to cover the costs of administering the provisions of this Ordinance with respect to each approved holding tank; and the applicant shall pay the said fees upon receipt of a written notice of the amount thereof.
- C. In addition to the said application fee and administration fee, the Supervisors are hereby authorized to assess the applicant and/or landowner, who shall pay to the Township, any and all other actual and necessary expenses incurred by the Township to assure compliance with the provisions of this Ordinance. Such expenses shall include, but shall not be limited to, all actual and necessary expenses required to compensate Township subcontractors, professional consultants, attorneys and/or engineers who rendered services at the request of the Supervisors to assist in assuring compliance with the provisions of this Ordinance. The assessment shall be a debt due and payable to the Township and shall be a

lien on the lot upon which a holding tank is situated and on the lot being served by the holding tank.

Section 14: Bond

- A. As a condition for the approval and issuance of a holding tank certificate of use, the Supervisors may require either the applicant or the landowner, or both, to post a bond or such other financial security acceptable to the Supervisors in an amount established by resolution of the Supervisors from time to time. The said bond or such other financial security shall be for the purpose of assuring the payment of any and all costs likely to be incurred for environmental clean-up or other form of necessary procedure to correct any accident, overflow, malfunction or any other problem associated with the holding tank or with the collection, transportation or disposal of its contents. The Township shall return the said bond or such other financial security only after all such costs have been paid accordingly and the holding tank is removed from the lot upon which it is located.

Section 15: Duties of Landowner and Applicant

- A. In addition to all other duties imposed upon an applicant and landowner by the provisions of this Ordinance, they shall be jointly and severally responsible, along with the person in possession, custody or control of the construction, maintenance and use of a holding tank, for strictly complying with all applicable local, state and federal ordinances, laws, statutes, resolutions, rules and regulations relating to holding tanks and the collection, transportation and disposal of the sewage therein.
- B. In addition, the said applicant, landowner and person in possession, custody or control of the construction, maintenance and use of a holding tank shall:
 - (1) construct, maintain and use the holding tank in accordance with any conditions set forth on the certificate of use;
 - (2) at all times keep the holding tank in good working condition, and so that it does not leak, break, overflow, malfunction or otherwise create or cause to be created a nuisance, pollution or health hazard;
 - (3) allow the Supervisors and/or their designated agent to inspect the holding tank as necessary and at least once per year;
 - (4) pump and collect the contents of the holding tank regularly and as necessary to maintain a proper working sewage system;

- (5) properly transport the contents of the holding tank to a DER approved disposal site in accordance with applicable regulations;
- (6) immediately notify the Supervisors of any accident, overflow, malfunction or any other problem associated with the holding tank or with the collection, transportation or disposal of its contents, and take all necessary action to correct the said condition in strict accordance with all applicable local, state and federal ordinances, laws, statutes, resolutions, rules and regulations, and submit a complete written and signed report to the Supervisors explaining the actions taken or to be taken to correct the said condition;
- (7) immediately report to the Supervisors any change and/or modification to the holding tank or of the use served by the holding tank;
- (8) immediately report to the Supervisors any change in ownership of the lot upon which a holding tank is situated or which is being served by the holding tank;
- (9) immediately report to the Supervisors any change in the person responsible for the holding tank or for the collection, transportation and disposal of the sewage;
- (10) immediately report to the Supervisors any change of the site at which the sewage is being disposed;
- (11) at least monthly submit to the Supervisors any and all pumping receipts; and
- (12) submit to the Supervisors any and all reports regarding the inspection of holding tank.

C. The failure to strictly comply with any one or more of the duties and responsibilities set forth in this Section is hereby declared to be a nuisance.

Section 16: Powers and Functions of the Supervisors

In addition to any powers and functions now possessed, the Supervisors shall have the following powers and functions:

- (1) review applications and issue holding tank certificates of use as appropriate;

- (2) impose conditions to the issuance of a holding tank certificate as appropriate;
- (3) inspect holding tanks at least annually and as otherwise necessary to determine compliance with the provisions of this Ordinance;
- (4) provide and retain written reports regarding inspections of holding tanks;
- (5) receive, review and retain any and all records, investigative reports and complaints regarding holding tanks and the collection, transportation and disposal of the contents of the holding tanks;
- (6) receive, review and retain any and all pumping receipts from the holding tanks;
- (7) limit the duration of any holding tank certificate of use issued;
- (8) after notice and opportunity for hearing has been given, revoke for cause any holding tank certificate of use issued.
- (9) except as otherwise prohibited by law, subcontract or otherwise delegate any duty, responsibility, power or function provided to the Supervisors under the provisions of this Ordinance; and
- (10) adopt by resolution from time to time such rules and regulations they deem necessary to implement and effectuate the provisions of this Ordinance, provided that all such rules and regulations so adopted shall be in conformity with the provisions of this Ordinance and all other applicable local, state and federal ordinances, laws, statutes, resolutions, rules and regulations.

Section 17: Remedies and Penalties for Violation

A. Any person who shall violate any provision of this Ordinance, or who resists or interferes with any designated officer, agent or employee of the Township, in the performance of his duties in accordance with the provisions of this Ordinance, shall be subject to the following penalties and/or remedial actions:

- (1) Revocation of the holding tank certificate of use.
- (2) Upon conviction of a violation of this Ordinance, in a summary proceeding before a district justice, a person shall be sentenced to pay a fine of not less than \$100.00 and costs, and not more than \$300.00 and costs, and upon default thereof, shall be confined in

the county jail for a period of not more than 30 days. Each day a violation of this Ordinance continues shall be a separate violation.

(3) Any other remedy allowed by law, whether equitable or legal relief, in a court of competent jurisdiction, including but not limited to an action to abate a nuisance and an action to restrain or prevent further violation of this Ordinance.

B. Nothing in this Ordinance shall be construed as estopping the Township from proceeding in courts of law or equity to abate nuisances.

Section 18: Certificate of Use Denial or Revocation

A. Any person denied a certificate of use or whose certificate of use has been revoked may take an appeal in accordance with the provisions of Section 16 of the Pennsylvania Sewage Facilities Act and the rules and regulations promulgated thereunder.

Section 19: Severability

A. The provisions of this Ordinance are severable and if any sentence, clause, section, provision or part thereof is for any reason found and held invalid, illegal, unconstitutional or inapplicable to any person or circumstance, then such invalidity, illegality, unconstitutionality or inapplicability shall not affect or impair the remaining sentences, clauses, sections, provisions or parts thereof. It is hereby declared as the intent of the Supervisors that this Ordinance would have been adopted had such invalid, illegal, unconstitutional or inapplicable sentence, clause, section, provision or part thereof not been included herein.

Section 20: Section Headings

A. Section headings set forth in this Ordinance are merely for convenience purposes, and they shall not be taken to govern or limit the scope of the sections set forth in this Ordinance.

Section 21: Repealer

A. All Ordinances or resolutions, whether in whole or in part, insofar as they are inconsistent with the provisions of this Ordinance, are hereby repealed.