

**TOWNSHIP OF HAMPTON
ALLEGHENY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 825

**AN ORDINANCE OF THE TOWNSHIP OF HAMPTON,
ALLEGHENY COUNTY, PENNSYLVANIA, PROVIDING
FOR THE REGULATION OF GEOPHYSICAL/SEISMIC
TESTING WITHIN THE TOWNSHIP OF HAMPTON.**

WHEREAS, Hampton Township Council finds that the proposed Ordinance will provide for geophysical/seismic testing to take place within the Township, while preserving the public health, safety and welfare of citizens and promoting practical community development in Hampton Township.

NOW THEREFORE, be it Ordained and Enacted, in order to establish reasonable regulations regarding geophysical/seismic testing activities, and in order to provide for the public health, safety and welfare of Township residents and their property, the Hampton Township Council hereby adopts this Ordinance, as follows:

SECTION 1. AMENDMENTS

A. The Hampton Township Code shall be amended, to add and include, as follows:

Chapter 159 - Geophysical/Seismic Testing

Section 159-1 Definitions.

APPLICANT (GEOPHYSICAL/SEISMIC TESTING) - A person, entity, business or corporation seeking to perform Energy Source Operations within the municipal boundaries of Hampton Township.

ENERGY SOURCE OPERATIONS - Operations that involve the transmittal of seismic waves to model the geophysical properties of the Earth's crust and/or subsurface conditions.

Section 159-2 Permit required.

It shall be unlawful for any person to conduct any exploration activities within the Township regarding oil, gas, and/or other materials by the use of Energy Source

Operations, including without limitation, weight drops, explosives, and/or vibrating machines, thumper trucks or any other vehicles or equipment that cause measurable vibrations or seismic waves, without first obtaining a permit therefore from the Township.

Section 159-3 Permit application; fee procedure.

A. Application for a permit hereunder shall be made with the Township of Hampton Land Use Administrator. Such application shall contain the following information:

- (1) Name and address of the Applicant;
- (2) Name and address of the property owner (if different than the Applicant);
- (3) Type of explosives or other geophysical methods of exploration to be used and the purpose for testing;
- (4) A map designating a testing area and showing the location of all points of use and the energy source to be used at each point;
- (5) A traffic control plan for any operations or testing that will impede traffic on a public right-of-way;
- (6) The Applicant's insurance information, including a copy of Applicant's certificate of insurance, the types and amount of insurance covering its proposed operations, and the name and telephone number of an individual to contact in the event of a claim; and
- (7) Proof of the right or license to handle explosives in the Commonwealth of Pennsylvania (if applicable).

B. A non-refundable permit fee of Five Hundred (\$500.00) Dollars, or other amount as may be adopted by Resolution, for processing the application and preparing the permit shall accompany each such application submitted to the Township. The Applicant shall be responsible for any additional costs incurred by the Township arising from the review of the application. Within 15 business days of receipt of such application, the Land Use Administrator or his/her designee shall prepare a report showing all Township facilities or infrastructure that may be negatively affected by the proposed exploration activity located in the testing area shown in such application. Such report and the application shall then be submitted to Township Council with the recommendations of the Land Use Administrator or his/her designee and shall be considered at the next regular meeting of Township Council. Township Council hereby reserves the authority to require the presence of the Applicant at the meeting and may postpone its decision to allow the Applicant to attend or to obtain more information where it deems necessary. No permit shall be issued except upon approval of Township Council.

C. Appeals from determinations of Township Council shall be governed by the Pennsylvania Local Agency Law.

Section 159-4 Term of permit.

The term of a permit issued under this article shall be for one (1) year beginning on the date of approval of the permit, and all Energy Source Operations shall be completed within said term. The Applicant shall provide the Township with a minimum of five (5) business days' notice in advance of the actual commencement of Energy Source Operations. Once Energy Source Operations have commenced, in the event Applicant is rendered unable, wholly or in part, by circumstances beyond the Applicant's control, to complete operations within the remaining term of the permit, then the time for completion may be extended, at the sole discretion of the Land Use Administrator, for a period of time not to exceed six (6) months, upon written request by the Applicant setting forth full particulars of the circumstances causing the delay which were not within the control of the Applicant and which the Applicant could not have avoided by the exercise of due diligence and care.

Section 159-5 Professional fees.

The Applicant shall agree to pay professional fees incurred by the Township pursuant to the issuance of the permit and required for Applicant's compliance with the permit, including any legal and engineering fees.

Section 159-6 Operations in general.

A. All Energy Source Operations shall be limited to the areas approved by permit.

B. The Applicant shall designate a qualified representative who shall be on the job site during the entire period of testing to mitigate any potential damage to public or private property. The qualifications of the designated point of contact shall be provided to the Township. The Applicant shall also designate a point of contact who will respond within twenty-four (24) hours to any request from the Township for information regarding the Applicant's testing operations, including a request for maps of the testing area that show the points of use as planned by the Applicant at the time of the request.

C. The Applicant shall obtain written permission, as required by law, from property owners before entering upon or crossing their property. The Applicant shall make such records available upon request by the Township.

D. The Applicant shall be responsible for and shall settle all reasonable and legitimate claims, demands, and causes of actions relating to property or

persons arising out of or as a result of the Applicant's operation under this permit and shall handle all such claims in an expedient manner.

Section 159-7 Notice required.

A. The Applicant shall notify each owner of property located within two hundred fifty (250) feet of its planned Energy Source Operations, a minimum of ten (10) working days prior to the conducting of any tests in writing by U.S. Mail or personal delivery at the property. Said notice will include the anticipated start date of Energy Source Operations and the energy source to be used. The Applicant shall provide to each owner, if requested the insurance information required to be included in its application.

B. The Applicant shall notify each owner of property, in writing, within four hundred (400) feet of the charge tests or one hundred (100) feet of vibroseis or weight drop tests, a minimum of ten (10) working days prior to the conducting of any tests, of the availability, at no cost to the property owner, of pre- and post-test inspections of all structures located on or under said property, including appropriate testing and lab tests for water wells by U.S. Mail or personal delivery at the property. The Applicant shall perform the offered inspections if requested by the property owner. The Applicant shall maintain records of such inspections for a period of two (2) years and shall make such records available upon request by the Township.

C. The Applicant shall place newspaper advertisements in the newspaper of record in the Township explaining the work to be performed, the location of the proposed work, and a telephone number where residents may call for more information. Said advertisement shall be placed during the two (2) consecutive week period immediately before the permit application is scheduled to be considered by the Township Council, and again during the two (2) consecutive week period immediately before actual Energy Source Operations commence in the testing area. The telephone number provided by the Applicant shall be answered during hours of operation while work is ongoing in the Township, and an answering machine shall be installed to receive after-hour calls.

Section 159-8 Energy level restrictions.

A. The Applicant shall engineer all source locations (explosive charge size and depth, and vibrator source sweep frequency and drive levels or other geophysical sources) so that no structure, subject to limitations contained herein, shall be subject to any peak particle velocity greater than six tenths-inch (6/10 in.) per second. The Applicant shall conduct all the necessary engineering tests and shall provide all reports to the Township in an appropriate format for evaluation at the time of application by a professional engineer or geologist registered in the Commonwealth of Pennsylvania.

B. Using industry standard equipment and techniques, the engineer shall monitor and record, during operations, all pertinent locations to insure compliance with the maximum peak particle velocity established by this Ordinance. If peak particle velocity for any test exceeds said maximum, the Applicant shall notify the Township and cease all operations until corrections are made. The Applicant shall maintain all documentation of monitoring activities for a period of at least two (2) years and make said documentation available upon request for inspection by the Township.

C. The Applicant shall obtain location maps for all water wells, underground hazardous waste storage/disposal sites, and water, sewer, oil, gas and chemical pipelines located in the testing area and conduct all Energy Source Operations in a manner so as to not damage, interrupt, or otherwise interfere with said structures. Information obtained by the Applicant shall be used by the surveying team and the operations manager to insure compliance with the terms and conditions of this permit and that safe operating distances are maintained. If requested by the Applicant, the Township may make maps available for inspection and copying that have been prepared by or on behalf of the Township and that indicate subsurface structures or facilities; provided, however that the Applicant's reliance on any information furnished by the Township, its agents, representatives, and employees, whether written or verbal, shall be at the sole risk of the Applicant and the following disclaimer shall apply to any and all such information:

APPLICANT ACKNOWLEDGES THAT THE TOWNSHIP HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF INFORMATION REGARDING SUBSURFACE STRUCTURES AND FACILITIES FURNISHED TO APPLICANT AND MAKES NO REPRESENTATION OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. APPLICANT EXPRESSLY ACKNOWLEDGES THAT THE TOWNSHIP MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR USE OR PURPOSE OF SUCH SUBSURFACE INFORMATION.

D. All Township owned structures, including but not limited to, susceptible underground utilities (water mains, sewer mains, etc.) shall have pre-testing and post-testing inspections paid for by the Applicant and subjected to a peak particle velocity greater than thirty-five hundredths-inch (35/100 in.) per second. The Township shall have the option of receiving reimbursement of its actual cost of performing said inspections or having the inspections done by a third-party firm hired by the Applicant with Township's approval. Any reimbursement provided by this Section shall be paid to the Township within thirty (30) days following the Applicant's receipt of an invoice from the Township.

Section 159-9 Hours of operation.

Energy Source Operations may be conducted from 8:00 a.m. until the earlier of sunset or 7:00 p.m. local time, on Mondays through Fridays, and from 9:00 a.m. until the earlier of sunset or 7:00 p.m. local time, on Saturday. Testing shall not be permitted on Sundays or on federal holidays.

Section 159-10 Lands, streets, rights-of-way, and easements.

A. The Applicant shall restore, at its own cost, all lands or rights-of-way used in its operation to the original condition just prior to the testing operations, free of damage, including ruts or any injury to the landscaping.

B. The Applicant shall insure that its operations will not interfere with the free and safe flow of traffic. When operations are immediately adjacent to the pavement, all equipment shall be parked and/or operated in one (1) lane of traffic.

C. The Applicant shall notify the Township of any equipment to be operated on Township streets that will exceed the maximum load limit of fifty-two thousand (52,000) pounds and obtain any special permitting required.

D. Cables placed on the pavement within rights-of-way must be arranged so they do not create a hazardous condition or rumble strip effect. All cables must be securely anchored to the roadway with materials that will not damage and/or puncture the pavement. Nails, spikes, and similar materials used for anchors shall not be placed inside the pavement edge.

E. Each testing crew performing work that impedes the flow of traffic, such as testing on Township streets or rights-of-way, shall be accompanied by adequate signs, barricades, flares, flagmen, etc., as necessary, to protect the traveling public.

Section 159-11 Testing.

A. The Applicant shall furnish to the Township, or its designee, a schedule of each week's test plans. If Thumper Trucks are utilized on Township roads, which will require permission of the Township, the Township shall inspect the road before and after testing. Applicant shall pay any and all costs incurred by the Township as a result of these inspections.

B. All vibroseis or weight drop operations shall be conducted a minimum distance of one hundred (100) feet from any building, which shall mean a structure built for the support, shelter, or enclosure of persons, chattel, or movable property of any kind and which is affixed to the land. No charge tests shall be detonated within three hundred (300) feet of any building, water well, or underground hazardous waste storage/disposal site. The Applicant will provide

monitoring of any charge testing within six hundred (600) feet of any occupied building.

C. For a period of two (2) years, the Applicant shall maintain and make available upon request to the Township the daily log of Energy Source Operations tests showing date, location, energy source used, drive level, operator, and all other related information including seismic and pre-test and post-test survey.

D. No Energy Source Operations shall subject any building intended for human habitation, utility line, water well, or underground hazardous waste storage/disposal site to a peak particle velocity greater than five tenths-inch (5/10 in.) per second.

E. Explosives shall be transported in and constantly attended by Type 3 magazines, as defined by Section 1902.4.7 of the 1994 Standard Fire Prevention Code. All vehicles transporting explosives will be placarded according the U.S. Department of Transportation Hazardous Materials Regulations, 49 C.F.R. Parts 171-177. Only the necessary amount of explosives for each day's operations shall be transported within the Township at any given time during such period as the permit is in effect. No explosives shall be stored within the corporate Township limits unless approved by the Township's Fire Chief. If such storage is approved, explosives must be stored in a locked and secured, constantly attended Type 2 magazine, as defined by Section 1902.4.6 of the 1994 Standard Fire Prevention Code, at a single, isolated and sparsely populated location.

F. The Applicant shall notify the Land Use Administrator or other designee within twenty-four (24) hours after the occurrence of any violation of these permit requirements.

Section 159-12 Bond, insurance or indemnity.

A. The Applicant shall submit to the Township a performance bond (i.e. bond, letter of credit or other form of financial security, in a form satisfactory to the Township Solicitor) in the amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars from a surety authorized to do business in the Commonwealth. The performance bond shall be valid for a period of two (2) years from the date that the permit is issued. The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the Township, jointly and severally, from the principal and surety any and all damages, loss, or costs suffered by the Township in connection with the Applicant's Energy Source Operations within the Township. The bond shall contain the following endorsements: "It is hereby understood and agreed that this bond may not be cancelled by the surety company until sixty (60) days after receipt by the Township, by registered mail or written notice, of such intent to cancel or not to renew." The rights reserved to the Township with respect to the bond are in addition to all other rights of the Township and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights of the Township.

B. Prior to conducting any operations hereunder, the Applicant and/or its contractor shall furnish a certificate of insurance to the Township showing the Township as an "additional insured" with respect to the operations conducted within the Township and showing liability insurance coverage covering commercial, personal injury, and general liability in an amount not less than One Million (\$1,000,000.00) Dollars per person, Three Million (\$3,000,000.00) Dollars per occurrence, and One Million (\$1,000,000.00) Dollars property damage.

C. If the Township Engineer concludes that testing will cause substantial damage to a Township road, then the Applicant must, before operations begin, enter into an agreement with the Township undertaking the responsibility to repair the road to the extent determined in the reasonable discretion of the Township Engineer, which agreement may provide for bond to be posted in excess of otherwise applicable Pennsylvania Department of Transportation ("PennDOT") limits when the Township Engineer has reasonably estimated that the cost of repair will exceed PennDOT limits.

D. Should the Township Engineer reasonably determine that preventative measures, such as shoring of bridges or putting protective mats over utility lines, should be taken to prevent damage to Township roads, bridges or utilities, then the Applicant shall install such protective measures as directed by the Township Engineer, prior to beginning Energy Source Operations.

E. The Applicant shall protect, indemnify, defend, and hold the Township, its officers, employees, agents, and representatives harmless from any and against all claims, demands, and causes of action of every kind and character for injury to, or death of, any person or persons, damages, liabilities, losses, and/or expenses occurring or in any way incident to, arising out of, or in connection with it or its contractors, agents, or representatives operations under this permit, including attorney's fees, and any other costs and expenses incurred by the Township in defending against any such claims, demands, and causes of action. Within thirty (30) days of receipt of same, the Applicant shall notify the Township, in writing, of each claim for injuries to, or death, persons, or damages or losses to property occurring or in any way incident to, arising out of, or in connection with its or its contractors, agents, or representatives' operations conducted under this permit.

F. Any permit granted hereunder may be revoked upon breach of any term or condition contained herein.

G. Notwithstanding anything contained herein to the contrary, any permit granted hereunder shall not be effective unless and until a copy of the permit signed by an authorized officer of the Applicant, the performance bond and the certificates of insurance have been filed with the Township Land Use Administrator.

Section 159-13 Penalties.

Any owner, operator, or other person who violates or permits a violation of this ordinance, upon being found liable therefore in a civil enforcement proceeding before a Magisterial District Judge, shall pay to the Township a fine in an amount not to exceed Two Thousand (\$2,000.00) Dollars, plus all court costs, including, but not limited to, reasonable attorney's fees incurred by the Township on account of such violation. No penalty or cost shall be imposed until the date the determination of the violation by the Magisterial District Judge becomes final. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment as provided by law. Each day a violation exists after final judgment shall constitute a separate offense. The amount of the fine imposed shall be multiplied by the number of such days and may be charged and collected as judgment by the Township without further judicial proceedings. Further, the appropriate officers or agents of the Township are hereby authorized to issue a cease and desist notice and/or seek equitable relief, including injunction, to enforce compliance herewith or revocation of any permit issued by the Township. No bond shall be required of the Township if the Township seeks injunctive relief.

SECTION 2. INTERPRETATION AND SEVERABILITY

This Ordinance is interpreted to be applied so that it meets all federal and state constitutional and statutory requirements. The provisions of this Ordinance are severable. If any provision or part thereof is held to be illegal or invalid, the remaining provisions shall remain in full force and effect.

SECTION 3. EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage or as soon thereafter as allowed by law.

SECTION 4. CONSTRUCTION OF ORDINANCE

This Ordinance shall not be construed as rendering on behalf of the Township any statement, assertion, warranty or guarantee concerning the scope, methods, and/or safety of Energy Source Operations by any individual, group, or entity permitted by the Township Council under this Ordinance. Accordingly, the Township shall not, as a result of any decision to grant or deny any permit under this Ordinance, be held liable for any harm directly or indirectly related to Energy Source Operations performed in the Township.

ORDAINED AND ENACTED into law this 26th day of June, 2019.

ATTEST:



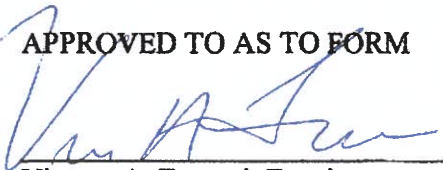
Township Manager

TOWNSHIP OF HAMPTON

By: 

President of Council

APPROVED TO AS TO FORM



Vincent A. Tucceri, Esquire
Township Solicitor