

SOUTH FAYETTE TOWNSHIP

ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2 -2012

AN ORDINANCE OF SOUTH FAYETTE TOWNSHIP, ALLEGHENY COUNTY, PENNSYLVANIA, PROVIDING FOR THE REGULATION OF GEOPHYSICAL/SEISMIC TESTING

In order to deal with energy source operations in connection with exploration activities, and in order to provide for the safety of South Fayette residents, personal property, and real property, the South Fayette Township Board of Commissioners hereby adopts this Ordinance for the health, safety and welfare of its residents.

Section 1- Definitions

“Energy Source Operation.” Operations that involve the transmittal of seismic waves to model the geophysical or **geophysical** properties of the Earth’s crust.

Section 2 – Permit required.

It shall be unlawful for any person to conduct any exploration activities within South Fayette Township regarding oil, gas, and/or other materials by the use of energy source operations, including without limitation weight drops, and/or vibrating machines, thumper trucks or any other vehicles or equipment that causes vibrations, without first obtaining a permit therefore from South Fayette Township. Use of explosives for such activities is prohibited.

Section 3– Permit application; fee procedure.

Application for a permit hereunder shall be made with the South Fayette Township’s Code Enforcement Officer. Such application shall contain the following information: (1) name of the applicant; (2) address of the applicant; (3) 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; (4) a traffic control plan for any operations or testing that will impede traffic on a public right-of-way; and (5) the applicant’s insurance information, including the name of applicant’s insurance carrier, the types and amount of insurance covering its proposed operations, the name and telephone number of an individual to contact in case of a claim for personal injury or property damage, a copy of applicant’s certificate of insurance naming the Township as an additional insured. A non-refundable permit fee of five hundred dollars (\$500.00) for processing the application and preparing the permit shall accompany each such application. An escrow of four thousand (\$4000.00) will be included with the application to pay for the Township staff, solicitor, and consultant time to process the application, coordination, inspections and other tasks as described in the

Township Fee Resolution. On receipt of such application, the Code Enforcement Officer or his designee shall prepare a report showing all Municipal 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 the Township Manager with the recommendations of the Code Enforcement Officer or his designee.

Section 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 by the Township Manager, and all energy source operations shall be completed within said term. The applicant shall notify the Code Enforcement Officer or his designee a minimum of three (3) business days in advance of the actual commencement of energy source operations. Once 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 Township Manager or his designee, 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 5- Operations in general.

- (a) All geophysical operations shall be limited to the areas identified in the application. A copy of such map shall be attached to any permit issued by South Fayette Township. If, during the course of operations, any utility line must be relocated to maintain compliance with the terms and conditions set forth herein or to ensure the safety of the general population, the applicant shall notify the Code Enforcement Officer or his designee at least (3) business days prior to embarking on such relocation, which shall be performed in compliance with South Fayette Township Standards.
- (b) The applicant shall employ a licensed engineer or geologist specializing in or vibration analysis to be approved by South Fayette Township, who shall be on the job site during the entire period of testing to mitigate any potential damage to public or private property. The applicant shall also designate a point of contact who will respond within twenty-four (24) hours to any request from the Township Manager or his designee 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.

- (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 operations under this permit and shall handle all such claims in an expedient manner.

Section 6-Notice required.

- (a) The applicant shall notify each owner of property, in writing by U.S. mail to or personal delivery at the 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 test or as required by law if a greater distance is specified. Said notice will include the anticipated start date of energy source operations and the energy source planned to be used. The applicant will offer to provide and will provide if requested, to such owner, in writing, the insurance information required by Section 3 to be included in its application.
- (b) The applicant shall notify each owner of property, in writing by U.S. mail to or personal delivery at the property, located within one hundred twenty-five (125) feet of vibroseis or weight drop tests, a minimum of ten (10) working days prior to the conducting of any test, 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 for water wells. The applicant shall perform the offered inspections if requested by the property owner before commencing any testing and shall provide a copy of the test results to 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 South Fayette Township.
- (c) The applicant shall place newspaper advertisements in the newspaper of record in South Fayette Township of not less than three (3) inches by four (4) inches explaining the work to be performed, the location of the proposed work, and a toll-free telephone number where residents may call for more information. Said advertisements shall be placed in all publication days during the two-week period prior to the issuance of the permit, and again during the two-week period immediately before actual operations commence in the testing area. The toll-free telephone number provided by the applicant shall be answered during hours of operation as set forth in Section 5 while work is ongoing in South Fayette Township, and an answering machine shall be installed to receive after-hour calls.

Section 7 - Energy level restrictions.

- (a) The applicant shall engineer all source locations (vibrator source seep frequency and drive levels or other geophysical sources) so that no structure, subject to limitations contained in subsection 10(d) herein, shall be subject to any peak particle velocity greater than six-tenths-inch per second.

- (b) Using industry standard equipment and techniques, the licensed engineer required by Section 5 shall monitor and record, during operations, all pertinent locations to ensure compliance with the maximum peak particle velocity established by subsection (a). If peak particle velocity for any test exceeds said maximum, the engineer shall notify the Township Manager or his designee 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 South Fayette 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 teams and operations manager to ensure compliance with the terms and conditions of this permit and that safe operating distances are maintained. If requested by the applicant, South Fayette Township shall make available for inspection and copying, maps, if any, prepared by or on the applicant's reliance on any information furnished by South Fayette Township, its agents, representatives, and employees, whether written or verbal, shall be at the sole risk of the applicant and the following disclaimer shall be placed on and shall apply to any and all such information:

APPLICANT ACKNOWLEDGES THAT SOUTH FAYETTE 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 SOUTH FAYETTE 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 South Fayette Township owned structures and other owned structures, including but not limited to susceptible underground utilities (water mains, sewer mains, etc.) shall have pre- and post-testing inspections paid for by the applicant if it may be subjected to a peak particle velocity greater than thirty-five-hundredths-inch per second. South Fayette Township shall have the option of receiving reimbursement of its actual cost of performing said inspection or having the inspection done by a third-party firm hired by the applicant. Any reimbursement provided by this section shall be paid to South Fayette Township

within thirty (30) days following the applicant's receipt of an invoice from South Fayette Township.

Section 8 - Hours of operation.

Energy source testing 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 Sunday.

Section 9 - Lands, Streets, right-of-ways, and easements.

- (a) The applicant shall restore, at its own cost, South Fayette Township-owned lands or rights-of-way used in its operations to the original condition just prior to the testing operations, free of damage, including ruts or any injury to landscaping.
- (b) The applicant shall ensure 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. The applicant shall adhere to all applicable PennDOT traffic standards.
- (c) The applicant shall notify the Township Manager or his designee of any equipment to be operated on South Fayette Township streets that will exceed a maximum load limit of twenty-thousand (20,000) 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 shall furnish at its cost adequate signs, barricades, flares, flagmen, etc., as necessary, to protect the traveling public.

Section 10 – Testing

- (a) The applicant shall furnish to South Fayette Township's Township Manager, or designee, a schedule of each week's test plans. The Municipal Engineer shall inspect the road before and after testing. Applicant shall pay any and all costs incurred by South Fayette Township as a result of these inspections.
- (b) All vibroseis or weight drop operations shall be conducted a minimum distance of 150 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.

- (c) The applicant shall maintain and make available upon request to South Fayette Township, for a period of two (2) years, the daily log of energy source tests showing date, location, energy source used, drive level, operator, and all other related information including seismic and pre- and post-test survey.
- (d) No energy source operation 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 per second.
- (e) The applicant shall notify the Township Manager, or designees, within twenty-four (24) hours after the occurrence of any violation of these permit requirements.

Section 11- Bond, insurance, and indemnity.

- (a) The applicant shall submit to South Fayette Township a performance bond in the amount of five hundred thousand dollars (\$500,000.00) from a surety authorized to do business in Pennsylvania. 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 South Fayette 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 geophysical operations within the Township. The bond shall contain the following endorsement: "it is hereby understood and agreed that this bond may not be canceled by the surety company until sixty (60) days after receipt by South Fayette Township, by registered mail or written notice, of such intent to cancel or not to renew." The rights reserved to South Fayette Township with respect to the bond are in addition to all other rights of South Fayette Township and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights of South Fayette Township.
- (b) Prior to conducting any operations hereunder, the applicant and/or its contractors shall furnish a certificate of insurance to South Fayette Township showing the Township as an "additional insured" with respect to operations conducted within South Fayette Township and showing liability insurance coverage covering commercial, personal injury, and general liability in amounts not less than five million dollars (\$5,000,000.00) property damage.
- (c) The applicant shall protect, indemnify, defend and hold South Fayette Township, its officers, employees, agents, and representatives harmless from 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 its or its contractors', agents', or representatives' operations under this permit, including attorneys' fees, and any other costs and expenses incurred by South Fayette

Within thirty (30) days of receipt of same, the applicant shall notify South Fayette Township, in writing, of each claim for injuries to, or death or, 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. At South Fayette Township's discretion, the Township may conduct an independent investigation, monitor, and review the processing of any such claim to ensure that such claim is handled as required herein.

- (d) Any permit granted hereunder may be revoked upon breach of any term or condition contained herein.
- (e) 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 Manager.

Section 12- Penalties.

A person who knowingly violates any provision of this Article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed two thousand dollars (\$2,000). Each day of violation shall constitute a separate offense.

Section 13- Effective Date.

This ordinance shall take effect immediately upon passage.

THIS ORDINANCE ORDAINED AND ENACTED AT A REGULARLY CONSTITUTED, DULY CONVENED MEETING OF THE BOARD OF COMMISSIONERS OF SOUTH FAYETTE TOWNSHIP, THIS 19th DAY OF SEPTEMBER, 2012.

BOARD OF COMMISSIONERS OF SOUTH FAYETTE TOWNSHIP



Deron Gabriel, Board President



Ryan T. Eggleston, Township Manager

(Seal)