

MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2668

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE,
ALLEGHENY COUNTY, PENNSYLVANIA, REGULATING
GEOPHYSICAL/SEISMIC TESTING ACTIVITIES.

WHEREAS, the Municipality desires to regulate Geophysical/Seismic Testing activities to be conducted within the Municipality in a manner that protects the health, safety and welfare of the citizens of the Municipality;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED AS FOLLOWS:

Section 1. Definitions.

“Energy Source Operations” means operations that involve the transmittal of seismic waves to model the geophysical properties of the earth’s crust and/or subsurface.

“Municipality” means the Municipality of Monroeville.

“PPV” means the peak particle velocity, which is a measurement of delivered energy and is measured in tenths of inches per second (in/sec).

“Permit” means the permit issued by the Municipality to allow the conduct of Energy Source Operations subject to the terms and conditions set forth herein.

“Permit Holder” means the person, firm, corporation or other entity to whom the Permit is issued.

Section 2. Permit Required.

It shall be unlawful for any person, firm, corporation or other entity to conduct any Energy Source Operations within the Municipality, including without limitation, explosive charges, weight drops, vibrating machinery or vehicles, or any other equipment that causes vibrations and seismic activity without first obtaining a Permit for such activities from the Municipality.

Section 3. Permit Application and Fees.

An application for a Permit hereunder shall be made to the Municipality Department of Engineering and Community Development on a form prescribed by the Municipality. Such application shall contain, at a minimum, the following information:

- (a) Name, address and contact information of the applicant.

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- (b) A map designating the proposed testing area, including the location of all testing points and the energy source and method to be used at each testing point.
- (c) A traffic control plan for any activities that will impede the flow of traffic on public rights-of-way.
- (d) A non-refundable Permit fee of One Thousand Dollars (\$1,000.00).
- (e) The name, address and contact information of the licensed engineer or geologist who will serve as the on-scene contact person for the Permit Holder during Energy Source Operations.

Following the Municipality's approval of the application for a Permit, no Permit shall actually be issued until the prospective Permit Holder shall provide:

- (i) An escrow deposit to the Municipality in the amount of Five Thousand and No/100 Dollars (\$5,000.00) to reimburse the Municipality for the reasonable costs of review, Permit issuance and inspection activities associated with the Permit, including engineering and legal costs. If the actual costs of review exceed the escrow deposit, the Permit Holder shall pay the excess costs upon demand from the Municipality.
- (ii) A certificate of insurance which evidences the insurance coverage, terms and conditions set forth in Section 11(c) below.

Section 4. Permit Term.

The term of a Permit issued pursuant to this Ordinance shall be for one (1) year from the date of issuance. All Energy Source Operations must be completed within the Permit term. The Permit Holder shall notify the Municipality of its intention to commence Energy Source Operations at least ten (10) days prior to actual commencement. The time for completion of Energy Source Operations which have already commenced may be extended in the sole discretion of the Municipality for good cause shown, provided that the Permit Holder requests such extension of time in writing at least fifteen (15) days prior to the expiration of the Permit. No extension of time granted shall exceed ninety (90) days.

Section 5. Conduct of Operations.

- (a) All Energy Source Operations shall be limited to the areas identified in the Permit application documents. A copy of the map depicting the areas of operation shall be attached to the Permit.

- (b) The Permit Holder shall employ a licensed engineer or geologist specializing in vibration analysis, who shall be present in the testing area during the entire period in which testing operations are active to mitigate any potential damage to public or private property
- (c) The Permit Holder, and anyone acting on behalf of the Permit Holder shall not enter onto any property for any reason (including to gain access to other properties) without obtaining the prior written permission of the owner of such property. and
- (d) The Permit Holder shall be responsible for all damage to the property of third parties arising out of its operations.

Section 6. Notification

- (a) Not less than thirty (30) days prior to the commencement of operations authorized by the Permit, the Permit Holder shall notify, either by United States Mail or personal delivery at the property, all property owners within one-hundred (100) feet of the planned Energy Source Operations, or a greater distance if required by law, of the Permit Holder's anticipated date of commencement of such operations, and the type of testing to be utilized.
- (b) Not less than thirty (30) days prior to the commencement of operations authorized by the Permit, the Permit Holder shall notify, either by United States Mail or personal delivery at the property, all property owners: (i) within one-hundred (100) feet of vibroseis or weight drop tests; and/or (ii) all property owners within three hundred (300) feet of any explosive charge tests of the ability, at no cost to the property owner, of pre-test and post-test inspections of all structures located on or under said property, including appropriate lab tests for water wells. The Permit Holder shall perform the offered inspections if requested by the applicable property owner before commencing any testing, and shall provide a copy of the test results to the property owner when such tests are completed.
- (c) In addition to the notice to be provided to individual property owners required in sub-section (a) above, the Permit Holder shall provide such notice information to the Municipality, so that the Municipality may make such information available to the general public via social media, cable television and conspicuous posting of the affected roadways.
- (d) All notices provided under this sub-section shall include a 24 hour contact telephone number of the Permit Holder.

Section 7. Energy Level Restrictions.

- (a) The Permit Holder shall layout all testing source locations (vibrator source sweep frequency and drive levels, explosive charge size and depth or other geophysical sources) so that no structure, subject to limitations set forth in sub-section 10(d) herein, shall be subject to any PPV greater than 0.50 (in/sec).
- (b) Using industry standard equipment and techniques, the licensed engineer or geologist required to be provided by the Permit Holder in Section 5 above shall monitor and record, during operations, all pertinent locations to ensure compliance with the maximum PPV established herein. If the PPV for any test exceeds the maximum permitted level, the Permit Holder shall notify the Municipality and cease all Energy Source Operations until the required corrections are made.
- (c) The Permit Holder 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 not to damage, interrupt or otherwise interfere with such structures. Information obtained by the Permit Holder shall be used by surveying teams and operations personnel to ensure compliance with the terms and conditions of the Permit and assure that safe operating distances are maintained. If requested by the Permit Holder, the Municipality shall make available for inspection and reproduction, maps and other data in possession of the Municipality provided, however, that the Permit Holder's reliance on any information provided by the Municipality, its agents representatives or employees, whether written or verbal, shall be at the sole risk of the Permit Holder and all other parties acting on its behalf. The Permit Holder and all other parties acting on its behalf acknowledge that the Municipality makes no express or implied warranties with respect to the accuracy, fitness or completeness of the information provided.
- (d) All Municipality and Monroeville Municipal Authority structures and other owned structures including, but not by way of limitation, susceptible underground utilities (water mains, sewer lines, etc.) shall have pre and post testing inspections conducted at the Permit Holder's sole cost and expense, if such structures are subject to a PPV of greater 0.35 (in/sec). The Municipality and the Monroeville Municipal Authority shall have the option of receiving reimbursement for the actual cost of performing such inspections, or having the inspections undertaken by a third party hired by the Permit Holder.

Section 8. Hours of Operation.

Energy Source Operations may be conducted from 8:00 AM to 6:00 PM prevailing local time on Monday through Friday, excluding holidays. No Energy Source Operations may be conducted on weekends.

Section 9. Lands, Streets, Rights of Way and Easements.

- (a) The Permit Holder shall restore at its sole cost and expense, all Municipality owned lands, streets and/or rights of way used in connection with its Energy Source Operations to their condition prior to the commencement of such operations.
- (b) The Permit Holder shall at all times ensure that its Energy Source Operations minimize disruption to the safe flow of traffic. In no event shall such operations simultaneously occupy more than one (1) lane of traffic. The Permit Holder shall adhere to PennDOT traffic standards with respect to its disruption of traffic (include appropriate signage, flagmen and other warning procedures), and coordinate its traffic control activities with the Municipality's Police Department and Department of Engineering and Community Development.
- (c) The Permit Holder shall at all times adhere to the existing weight limitations on Municipality's streets and roadways. If such compliance is not possible, the Permit Holder shall obtain the appropriate special permits from the Municipality and post the requisite financial surety to exceed such limitations.
- (d) The Municipality may suspend or deny the Permit Holder's right to conduct Energy Source Operations when it is determined in the Municipality's discretion that such activities would result in damage to the lands, streets and/or rights-of-way which cannot be readily remediated. Additionally, the Permit Holder shall be required to keep all roadways clear of mud, dirt, snow, ice and other debris, and promptly remove the same when such conditions result from Energy Source Operations.
- (e) The Permit Holder shall not create any hazardous conditions to pedestrians or vehicular traffic in connection with its Energy Source Operations. This restriction shall include, but not by way of limitation, the placement of cables, spikes, anchors, monitoring devices or other equipment used in such operations.

Section 10. Testing.

- (a) The Permit Holder shall furnish the Municipality with a schedule of each week's Energy Source Operations test plans no later than Wednesday of the prior week, to facilitate the Municipality's pre-inspection of any affected roadways and subsequent post-inspection. Such inspection costs shall be borne by the Permit Holder.
- (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, or personal property of any kind. No explosive charge test shall be conducted within three hundred (300) feet of any building, water well or underground hazardous waste storage/disposal site. The Permit Holder shall provide multiple monitoring sites of any explosive charge testing activities within three hundred (300) feet of any inhabited building.
- (c) 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 PPV greater than 0.50 (in/sec).
- (d) The Permit Holder shall notify the Municipality within twenty-four (24) hours of the occurrence of any violation of the requirements set forth in this Ordinance.

Section 11. Bonding, Insurance & Indemnity.

- (a) Prior to the commencement of any Energy Source Operations, the Permit Holder shall submit to the Municipality, in the form of a performance bond, letter of credit, escrow deposit or other surety in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) in a form and from a surety acceptable to the Municipality. The bond or other form of surety shall be effective for a period of two (2) years from the date of issuance of the Permit, and shall protect the Municipality from any and all loss, damages and costs arising from the Permit Holder's Energy Source Operations. The bond or other form of surety shall provide for not less than thirty (30) days' notice to the Municipality of cancellation, and shall be in addition to, and not a limitation of the Municipality's right to recover damages resulting from the Permit Holder's Energy Source Operations.

- (b) The Municipality, in its sole discretion, shall have the right to require the Permit Holder to post additional surety in the event that the planned Energy Source Operations would pose a potential risk of damage to property or infrastructure in excess of the surety required in Section 11(a) above.
- (c) Prior to the commencement of any Energy Source Operations, the Permit Holder, and any third party acting on behalf of or for the benefit of the Permit Holder shall submit to the Municipality a certificate of insurance naming the Municipality as an additional insured, and evidencing commercial general liability coverage of not less than Two Million and No/100 Dollars (\$2,000,000.00).
- (d) The Permit Holder agrees to protect, indemnify, defend and hold the Municipality, its officers, agents, employees 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 the Permit, including attorneys' fees and any other costs and expenses incurred by the Municipality. Within ten (10) days of receipt of a claim related to the Energy Source Operations, the Permit Holder shall notify the Municipality in writing of the claimant, nature and location of any injury to persons or property. The Municipality, at its option, may undertake an independent investigation of such event.
- (e) Any Permit granted pursuant to this Ordinance may be revoked by the Municipality upon the breach of any term or condition set forth herein.
- (f) No Permit shall be effective until and unless the Permit Holder has complied with all of the requirements of this Ordinance.

Section 12. Records.

For a period of two (2) years from the date of the last test conducted within the Municipality pursuant to the applicable Permit, the Permit Holder shall maintain and make available upon request: (i) complete records of all testing activity, including daily logs and reports of all energy source tests which document the date, location, energy source and intensity of all Energy Source Operations conducted within the Municipality; and (ii) shall retain all records related to the pre and post testing of structures and infrastructure related to such Energy Source Operations.

Section 13. Appeals.

The appeal of the denial or limitation of any Permit issued pursuant to this Ordinance shall be subject to the provisions of the Pennsylvania Local Agency Law.

Section 14. Penalties.

Any person, firm or entity which knowingly violates any provision of this Ordinance shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00). Each day of violation shall constitute a separate offense.

Section 15. Interpretation and Severability.

If any section, sub-section, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by the adoption of pre-emptive legislation of any kind, such determination shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 16. Effective Date.

This Ordinance shall take effect immediately upon adoption.

Section 17. Construction of Ordinance.

The enactment and existence of this Ordinance, and the grant of any Permit pursuant to this Ordinance shall not be construed as creating nor expanding any right or entitlement whatsoever in any individual, group or business entity to perform Energy Source Operations on the property of the Municipality, or any other property, private or public.

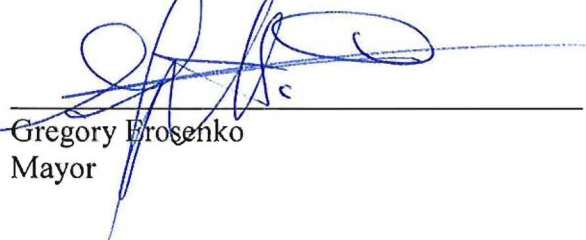
ORDAINED AND ENACTED this 12th day of September, 2017.

ATTEST:



Timothy J. Little
Municipal Manager

MUNICIPALITY OF MONROEVILLE



Gregory Brosenko
Mayor

ENTERED INTO LEGAL BOOK: September 22, 2017