

RUSH TOWNSHIP, CENTRE COUNTY

ORDINANCE NO. _____ of 2011 SOURCE WATER PROTECTION ORDINANCE

An Ordinance Enacted pursuant to the Pennsylvania Municipalities Planning Code (MPC), title 53 P. S. §10101, as amended, which amends the Subdivision & Land Development Ordinance of Rush Township (SALDO), modifies the definition of Land Disturbance, defines and identifies Zones of Contribution to Discharging Water Wells, and prohibits within the Township such Land Disturbance within any Zone of Contribution for a Municipal or Community Public Water Supply, and providing Penalties for Violation.

Section 621.5

WHEREAS, it is the intention of this Ordinance to establish a plan for the protection of the quality and quantity of the natural flow of ground and surface water within, over and through the lands of Rush Township, Centre County, Pennsylvania for the use, consumption and enjoyment of the residents, citizens, and neighbors of Rush Township; and

WHEREAS, in order to protect these water sources, this Ordinance intends to prohibit within any "zone of contribution to a discharging well" any activity which involves drilling, land disturbance, water injection, extraction or removal, or any other practice, industry or activity which has the potential to impair, injure or degrade any of the natural sources of water, whether in the ground or on the surface within Rush Township because it poses a significant risk to threaten the health, safety, and welfare of the residents, citizens, and neighbors of Rush Township; and

WHEREAS, this Ordinance shall be known and may be cited as "Rush Township's Source Water Protection Ordinance".

Section 621.5.1 – Findings and Intent

The Board of Supervisors of Rush Township, Centre County, Pennsylvania, finds that Rush Township is home to the source water of multiple individual, private, public and/or municipal water supplies for communities within Centre County and neighboring Clearfield, Blair and Cambria Counties. It is the intent of the Board of Supervisors of Rush Township to prohibit any activity which involves drilling, land disturbance, water injection, extraction or removal, or any other practice, industry or activity within any "zone of contribution to a discharging well" which has the potential to impair, injure or degrade any of the natural sources of water within Rush Township because it threatens the health, safety, and welfare of the residents, citizens, and neighbors of Rush Township.

The Board of Supervisors of Rush Township believes that the protection of the water

supplies which can be identified as being within the “zone of contribution to a discharging well” within its borders is vested initially in the Board of Supervisors, and the protection of the citizens and residents of the Township, along with their neighbors and the progeny of each and every one of them as well as the progeny of future generations in the protection of those natural communities, ecosystems, and the natural environment, constitutes a legitimate exercise of the police power of Rush Township.

The Board of Supervisors of Rush Township also believes that local regulation and local control of the local supplies of natural water is permitted by and based upon the Pennsylvania Constitution of 1968, Article I, Section 27, which reads as follows:

Natural Resources and the Public Estate – Section 27: The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The Board of Supervisors of Rush Township hereby adopts this Ordinance prohibiting drilling, land disturbance, water injection, extraction or removal, or any other practice, industry or activity which has the potential to impair, injure or degrade any of the natural sources of water in any area identified as an “zone of contribution to a discharging well” for any public water supply.

Section 621.5.2 – Definitions

“Zone of contribution to a discharging well” (or the shorter form “zone of contribution”) is defined as the three-dimensional volumetric part of an aquifer through which ground water flows to a discharging well from the area contributing recharge. The zone of contribution can be visualized as a three-dimensional streamtube through the aquifer.

“Aquifer” shall mean a highly productive aquifer presently being utilized as a source of water supply by a major municipal supply system or an aquifer known to be highly productive or whose genealogy suggests abundant potential water supply, but which is not intensively used as a source of water supply by a major municipal supply system.

“Public water supply” shall mean either a community or non-community well system which provides piped water to the public for human consumption if the system has a minimum of fifteen (15) service connections, or regularly serves a minimum average of 25 individuals per day at least 60 days per year.

“Water well” shall mean any well from which water is extracted, piped, pumped or diverted and used to supply potable water for off-site use.

"Well" shall mean a vertical bore hole drilled or being drilled for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid related to oil & gas production or storage, including brine disposal, but excluding drill and bore holes drilled to produce potable water to be used as such.

"Well pad" shall mean any area directly disturbed during the drilling and operation of a gas well.

"Well site" shall mean the well pad and access roads, equipment storage and staging areas, vehicle turnarounds, and any other areas directly or indirectly involved or impacted by activities involving a gas well.

The definition of **"land development"** in this section shall be amended to include and incorporate the following:

"Any activity which involves land disturbance or the drilling or boring below the surface of the earth within any identified 'zone of contribution'."

Section 621.5.3

621.5.3.1 *Right to Water.* All residents, natural communities and ecosystems in Rush Township possess a fundamental and inalienable right to access, use, consume, protect and preserve a sustainable level of water drawn from natural water cycles that provide water necessary to sustain life within Rush Township.

621.5.3.2 *Right to Natural Communities.* All residents, citizens, neighbors and the progeny of each possess a fundamental and inalienable right to enjoy the natural communities and ecosystems, including, but not limited to wells and springs, wetlands, streams and rivers, and aquifers and other water systems, which depend upon and clean, fresh, pure and abundant water found in the Rush Township in order to exist, grow and flourish within Rush Township. Residents of the Township, along with the municipality, shall possess legal standing to enforce those rights on behalf of themselves, their fellow citizens and residents, as well as neighbors and the progeny of each and every one of them as well as the progeny of future generations in the protection of those natural communities and ecosystems.

Section 621.5.4

Within any "zone of contribution to a discharging well" it shall be unlawful for any individual, partnership, limited liability company, corporation or other person or entity

621.5.4.1 to engage in drilling, earth disturbance, water injection, extraction

and/or removal, or any other practice, industry or activity which has the potential to impair, injure or degrade any of the natural sources of water within the Township of Rush because it threatens the health, safety, and welfare of the residents, citizens, and neighbors of Rush Township.

621.5.4.2 to engage in the extraction of water from any surface or subsurface source within Rush Township for use in the extraction of subsurface natural gas, or the release and extraction of subsurface natural gas within any identified "area contributing recharge to a discharging well", "zone of contribution to a discharging well", or "the areal extent of the zone of contribution to a discharging well" within Rush Township for use in the extraction of subsurface natural gas.

Section 621.5.5 - Identification of Zone of Contribution

621.5.5.1 The Board of Supervisors shall have the authority to approve, conditionally approve, or disapprove any requests for designation within Rush Township of a "zone of contribution" pursuant to the terms of this Ordinance.

621.5.5.2 The owner and/or operator of any "public water supply" which claims to have its source of water within Rush Township may request a designation of a zone of contribution for such public water supply. This zone of contribution shall be one or more zones of contribution as the public water supply may designate and identify in a Source Water Protection Plan for a public water supply approved by the Department of Environmental Protection (DEP).

Section 621.5.6 – Enforcement

621.5.6.1 Any individual, partnership, limited liability company, corporation or other person or entity or the members, officers, directors or managers of any of the same that violates any prohibitions of this Ordinance and any individual which knowingly permits the violation of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

621.5.6.2 Rush Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Centre County. In such an action, Rush Township shall be entitled to recover all costs of litigation, including, without limitation, expert and attorneys' fees.

621.5.6.3 Any Rush Township resident shall have the authority to enforce this Ordinance through a private action in equity brought in the Court of Common Pleas of Centre County for injunctive and other relief. In such an action, the resident shall be entitled to recover all costs of litigation, including, without

limitation, expert and attorneys' fees, along with any monetary or other damages.

Section 621.5.7 – Effective Date

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all earth disturbance, drilling, or other land development in Rush Township.

Section 621.5.8 – Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction determines that any section, clause, sentence, part or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Board of Supervisors of Rush Township hereby declares that in the event of such a decision it shall be deemed to have enacted this Ordinance without the section, clause, sentence, part or provision that the court determines is illegal, invalid, or unconstitutional.

Section 621.5.9 – Repealer

All inconsistent provisions of prior Ordinances adopted by the Rush Township are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this _____ day of _____, 2011, by the Board of Supervisors of Rush Township.