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TOWNSHIP OF PENN ORDINANCE NO. ___/2011

AN ORDINANCE OF THE TOWNSHIP OF PENN, WESTMORELAND COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 659, CHAPTER 190 OF THE TOWNSHIP CODE OF ORDINANCES, SPECIFICALLY § 190-6 “DEFINITIONS”, ARTICLE IV, USE REGULATIONS; § 190-21 “SPECIAL EXCEPTIONS; SPECIAL EXCEPTIONS”; SAID ORDINANCE ESTABLISHES THE ZONING CLASSIFICATION WITHIN WHICH OIL AND GAS DEVELOPMENT AND OIL AND GAS DEVELOPMENT FACILITY MAY BE DRILLED; AND FURTHER ESTABLISHES THE PERFORMANCE STANDARDS FOR OIL AND GAS DEVELOPMENT AND OIL AND GAS DEVELOPMENT FACILITY AS A SPECIAL EXCEPTION

WHEREAS, the Township of Penn has the authority to adopt zoning ordinances that promotes the public health, safety and welfare of its residents; and

WHEREAS, the Township of Penn finds that the recovery and removal of subsurface gas and oil deposits drilled with the intent to explore or produce oil or natural gas from a shale reservoir or source rock, without proper regulation potentially poses public health and safety hazards to the residents of the Township; and,

WHEREAS, the Township of Penn deems it appropriate to enact regulations regulating such activities which are not otherwise within the jurisdiction of federal and state regulations and from which the Township is not preempted; and,

NOW, THEREFORE, be it ordained and enacted by the Board of Commissioners of the Township of Penn, and it is hereby ordained and enacted by and with the authority of same as follows:

Section 1.

§ 190-6

Definitions.

is amended by adding the following:

As used in this ordinance, the following terms shall be interpreted or defined as follows:

1. **Ambient Noise Level:** The all encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environmental noise at a given location. The noise level shall be established based on a test performed during a continuous seventy-two (72) hour time span which shall include at least one twenty-four (24) hour reading during either a Saturday or Sunday. The testing

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shall be done by a qualified Noise Control Engineer or other qualified person approved by the Township and shall be in accordance with specifications ANSI S12.18-1994 Method II and ANSI S1.4-1971. The Township reserves the right to hire a third party consultant to witness testing and review the results. The third party costs will be deducted from the facility operator's escrow deposit. The sound level meters used shall meet the American National Standard Institute's standard for a Type I sound level meter.

2. **Disposal Well** - A non-producing gas well used for the storage of waste water.
3. **Decibel (db)** – A unit for measuring the intensity of a sound/noise and is equal to 10 times the logarithm to the base 10 of the ratio of the measured sound pressure squared to a reference pressure which is 20 micropascals.
4. **Deep Well** – Oil and gas development sites from the Elk formation to below the Tully formation shall only be permitted to occur on property that has a minimum of twenty (20) acres or larger.
5. **Derrick** – Any portable framework, tower, mast and/or structure which is required or used in connection with drilling or re-working a well for the production of gas.
6. **Drilling** – Means any digging or boring of a new well to explore, develop, or produce oil, gas or other hydrocarbons, or to inject gas, water or any other fluid or substance into the earth.
7. **Drilling Equipment** – Means the derrick, all parts and appurtenances to such structure, and every piece of apparatus, machinery, or equipment used, erected, or maintained for use in connection with drilling.
8. **Exploration** - Temporary geologic or geophysical activities, such as drilling in context with the zoning definition in this ordinance, including seismic surveys, related to the search for natural gas or other subsurface hydrocarbons.
9. **Facility** – The primary building(s), support structure(s) and associated appurtenances designed constructed and maintained to operate an Oil and Gas Development or Oil and Gas Development Facility.
10. **Facility Operator** – Any person or entity partnership, company, corporation and its subcontractors and agents who will install and/or operate an Oil and Gas Development or Oil and Gas Development Facility.

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11. **Facility Work** – The construction of, alteration, improvement, upgrade, or expansion to a Natural Gas Compressor Station or Processing Plant that results in a increase of the gross floor area of the primary building and the paved area of the pad area which, in combination, totals 2,000 square feet or more. The term “Facility Work” shall include the initial construction of the facility, but shall not include typical maintenance to or operation of an existing facility. Any construction of, alteration, improvement, upgrade, or expansion to a facility that results in less than 2000 square feet figure presented shall not be considered Facility Work.
12. **Flowback** – The process of flowing a completed/fractured well for the purpose of recovering water and residual sand from the gas stream prior to sending gas down a sales line.
13. **Fracture or Fracking:** The process of injecting water, sand, customized fracking fluid, steam, or gas into a gas well under pressure to improve gas recovery.
14. **Freshwater Fracture Pit** – A pit used for the collection and storage of Fresh Water for the purpose of fracture stimulation of Gas Wells.
15. **Gas** – Any fluid, either combustible or noncombustible which is produced in a natural state from the earth and which maintains a gaseous or rarified state.
16. **Gas Well:** Any well drilled for the intent of extracting gas or other hydrocarbons from beneath the surface of the earth.
17. **Lift Compressor** – A device that raises the pressure of a compressible fluid (gas) in order to lift gas from the well.
18. **Line Compressor** – A device that raises the pressure of a compressible fluid (gas) in order for the gas to be transported through a pipeline.
19. **Mobilization** – Those activities when the drilling rig and related equipment and personnel arrive at the well site and are conducting activities to rig up or position the rig equipment at the well and prepare for drilling. This includes all activities and services prior to the drill bit being lowered below the rotary table and entering the conductor pipe in an attempt to make hole (“spud in”) for the first time at the pad site.
20. **Multiple Well Site Permit** – The permit issued for the sole purpose of allowing future wells to be drilled on an existing pad site and within one thousand (1000’) feet of Protected Uses without obtaining waivers and/or variances.
21. **Township:** Township of Penn, Westmoreland County, Pennsylvania.

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22. **Oil and Gas:** Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling a well of any depth into, through, and below the surface of the earth.
23. **Oil and Gas Development or Development.** The Well Site preparation, Well Site construction, drilling, fracturing, and/or site restoration associated with an oil and gas well of any depth; water and other fluid storage, gas reservoir; impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters, and other equipment and structures whether permanent or temporary; and the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and all other equipment and activities associated with the exploration for, production and transportation of oil and gas including Natural Gas Compressor Stations and Natural Gas Processing Plants, and structures defined as other support facilities or structures performing similar functions that operate as midstream facilities.
24. **Oil and Gas Development Facility or Facility:**
 - a. **Natural Gas Compressor Station:** A facility designed and constructed to compress natural gas that originates from an oil and gas well or collection of such wells operating as a midstream facility for delivery of oil and gas to a transmission pipeline, distribution pipeline, Natural Gas Processing Plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.
 - b. **Natural Gas Processing Plant:** A facility designed and constructed to remove materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow the natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets, but not including facilities or equipment that are/is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from natural gas.
 - c. **Gathering System Facility:** A facility associated with a gathering system or water collection line such as a drip station, vent station, pigging facility, chemical injection station, or transfer pump station.
 - d. **Production Facility:** A facility related to the production of gas which utilizes motors and/or engines.
25. **Operator or Well Operator:** The operator and, if a separate entity from the operator, the owner of the Oil and Gas Development or Facility which is the subject of the application.

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26. **Outer Boundary Surface Property Line** – The outer boundary of any property for which a preliminary plat or concept plan has been filed with the Township.
27. **Pipeline** – All parts of those physical facilities through which gas, hazardous liquids, fresh water, salt water, or chemicals move in transportation, including but not limited to, pipe, valves and other appurtenance attached to pipe, whether or not laid in public or private easement or public or private right-of-way within the Township, including but not limited to gathering lines, production lines and transmission lines. This definition does not include pipelines associated with franchise utilities.
28. **Pipeline Construction** – The initiation of any excavation or other disturbance of property for the purpose of installation, construction, maintenance, repair, replacement, modification or removal of a pipeline
29. **Pipeline Permit** – A permit for the movement of gas, oil, water or other products.
30. **Pipeline Operator** – Any person owning, operating or responsible for operating a pipeline.
31. **Protected Structure** - Any occupied structure measured horizontally within 600 feet of the nearest portion of the Oil and Gas Development or Facility. The term shall not include any structure whose owner has signed a waiver relieving the Operator from implementation of the measures established in this ordinance. In the waiver, the owner must acknowledge that the Operator is explicitly relieved from complying with the regulations applicable to a Protected Structure.
32. **Re-Drill** - Deepening or sidetrack/horizontal drilling of the existing well bore extending more than one hundred fifty (150) feet from said well bore.
33. **Re-Work** - Re-entry of existing well within the existing bore hole or by deepening or sidetrack/horizontal operations (which do not extend more than one-hundred fifty (150) feet horizontally from the existing well bore) or replacement of well liners or casings.
34. **Shallow Well:** Oil and gas development sites from the surface to the Elk formation shall only be permitted to occur on property that has a minimum of two (2) acres or larger.
35. **Stream:** Any river, run, creek or other drainage course draining surface water, in which standing or flowing water is clearly visible throughout most of the year.
36. **Well Site:** The well site shall consist of the area occupied by any of the facilities, structures, and equipment associated with or incidental to the construction, drilling, fracturing, production, or operation of an oil or gas well. This definition

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shall exclude natural gas compressor stations. If multiple areas are used, then the total combined areas shall be considered the Well Site.

37. All other terms will be as defined in Pennsylvania's Oil and Gas Act (Act 223) Title 58. Oil and Gas, Chapter 11, Oil and Gas Act

Section 2. Ordinance No. 659, Chapter 190 of the Township Code of Ordinances is hereby amended to add the following:

Article XIV

Oil and Gas Development and Oil and Gas Development Facility

Section 190-140. Application

A person or entity desiring approval of a special exception application pursuant to this ordinance shall submit a written application. The application shall not be considered to be complete and properly filed unless and until all items required by this section, including the application fee, have been received. Such application shall include the following information and plans:

1. Payment of an application fee as follows:
 - a. Deep Well \$3000.00;
 - b. Shallow Well \$1000.00

The applicant for a deep well shall also provide to the Township the sum of \$12,000.00 to be deposited into an escrow account from which the Township may draw from/be reimbursed for administrative expenses and engineering costs and fees for review and inspections to ensure compliance with this ordinance.

The applicant for a shallow well shall also provide to the Township the sum of \$500.00 to be deposited into an escrow account from which the Township may draw from/be reimbursed for administrative expenses and engineering costs and fees for review and inspections to ensure compliance with this ordinance.

The Township may adjust the escrow amount from time to time as may reasonably be required to cover administrative and engineering expenses.

2. Five (5) paper copies and one electronic copy of the completed application form supplied by the Township along with supporting documentation as identified in this section.
3. Copies of any and all permits and applications submitted to the various local, county, state and federal agencies. Permits and plans shall include but not be

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limited to the Pennsylvania Department of Environmental Protection well application and permit, ESCGP-1 or other erosion and sedimentation permits and all air, water and waste management permits.

4. Applicant shall comply with all applicable Township Codes including but not limited to the subdivision and land development code.
5. Written authorization from the property owner(s) who has legal or equitable title in and to the surface of the proposed Development or Facility.
- 6a. A site plan prepared by a licensed engineer shall be provided to establish compliance with all applicable regulations. All drilling and production operations, including derricks, vacuum pumps, storage tanks, vehicle parking, structures, machinery, temporary housing, ancillary equipment and Facilities for deep wells shall be located not less than 600 feet from any Protected Structure and not less than 500 feet from the nearest property line and any stream within or abutting the property.
- 6b. All drilling and production operations, including derricks, vacuum pumps, storage tanks, vehicle parking, structures, machinery, temporary housing, ancillary equipment and Facilities for shallow wells shall be located not less than 200 feet from any Protected Structure and not less than 200 feet from the nearest property line and any stream within or abutting the property.
7. Traffic Impact Study

The applicant shall provide a traffic impact study which shall include the following:

- a. A description of plans for the transportation and delivery of equipment, machinery, water, chemicals, products, materials and other items to be utilized in the siting, drilling stimulating, completion, alteration and operation of the Development or Facility. Such description shall include a map showing the planned vehicular access route to the development site, indicating all state, county, and local roads, and transportation infrastructure that may be used and an estimate of the type, weight, number of trucks and delivery schedules necessary to support each phase of the development.
 - b. An inventory and evaluation of existing road conditions on Municipal roads along the proposed transportation route identified by the applicant, including photography, video and core boring as determined to be necessary by the Municipal Engineer.
8. To the extent that the same is not otherwise included or provided on copies of applications for permits from the Commonwealth of Pennsylvania or other governmental units and herewith submitted or where no such permit is required

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the applicant shall provide a water withdrawal plan for the Development identifying the source of water, how many gallons will be used and withdrawn each day, the origination of the water, proposed truck routes and all permits issued by the Commonwealth of Pennsylvania or any other governmental body. If the Development is to be supplied by way of water lines, the locations of all proposed water lines are to be identified. The site for the treatment and disposal of the water will also be identified.

9. To the extent that the same is not otherwise included or provided on copies of applications for permits from the Commonwealth of Pennsylvania or other governmental units and herewith submitted or where no such permit is required the applicant shall identify the means and availability of the site for disposal of cuttings, fracturing fluids, oil, toxic materials, hazardous materials and other waste products.
10. The applicant shall provide a plan for the transmission of gas from the Development. The plan will identify but not be limited to gathering lines, compressors and other mid and downstream facilities located within the Township and extending 800 ft beyond the Municipal boundary.
11. The applicant shall provide to the Township a Preparedness, Prevention and Contingency (“PPC”) Plan as defined in the PADEP document Guidelines for the Development and Implementation of Environmental Emergency Response Plans or the most recent applicable guidance document.
12. The applicant shall provide the GIS location and 911 address of the Well Site.
13. Noise Management Plan

The Noise Management Plan shall detail how the equipment used in connection with the Development or Facility, including but not limited to the drilling, transportation, or production of a well complies with the maximum permissible noise levels as defined in Section I (Noise). The Noise Management Plan must:

- a. Identify the sound power level of all major equipment and/or processes including the identification of maximum sound power levels at all points designated by the Township; and
- b. Provide documentation establishing the Ambient Noise Level; and
- c. Provide documentation including computer modeling in form and substance satisfactory to the Township and performed by a qualified person approved by the Township, establishing compliance with this section during the construction and operation of the applicable Development or Facility.

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- d. Detail how noise impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - (1) Nature and proximity of adjacent development, location, and type;
 - (2) Seasonal and prevailing weather patterns, including wind directions;
 - (3) Vegetative cover on or adjacent to the site;
 - (4) Topography;
 - (5) Operation and site noise management measures, which may include, but not be limited to: Use of critical grade mufflers on generators and motors; equipment or process substitution with a lower sound power level; use of structural noise curtains, walls, or enclosures; and best management practices by utilizing best available control technology to limit or eliminate noisier operations, such as tripping, deliveries of pipe, casing and heavy loads, use of horns for communication, and operation of vehicle audible back-up alarms at night.
 - (6) Ability to increase setbacks
 - (7) Erection of sound barriers; and
 - (8) Altering the direction, size, proximity, duration and extent of the operations associated with the applicable Development or Facility.

14. The applicant shall provide any and all waivers from owners of Protected Structures.

Section 3. §190-21 Conditional Use; Special Exception

is amended as follows:

§190-21 (B)(29)

Oil and Gas Development or Oil and Gas Development Facility, subject to the following:

A. Standards

1. General

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- a. Junk, refuse, waste, trash or abandoned material shall not be disposed of on-site. All refuse stored on site for final off-site disposal shall be stored indoors, in a dumpster or other permitted enclosure.
- b. Any hazardous or toxic material shall be securely contained, stored and removed in accordance with applicable state or federal regulations. On-site disposal is prohibited. All hazardous materials stored must be clearly marked identifying the contents, chemicals, and hazards as required by the OSHA Hazard Communication Standard 29 CFR 1910.1200 and National Fire Protection Association Code 704-Standard System for the Identification of the Hazards of Materials for Emergency Response.
- c. Fresh water storage ponds are permitted.
- d. All operations shall be in accordance with all applicable federal laws and regulation; the Pennsylvania Oil and Gas Act (58 P.S. 601.101 et seq.), as amended and pursuant to all other applicable rules, regulations and procedures adopted thereto.
- e. Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections, and any other areas or structures that could potentially leak, discharge, or spill hazardous liquids. The Operator shall be responsible for prevention and prompt removal of spills involving waste materials, oil and toxic or hazardous materials.
- f. Multiple well pad sites on any one Oil and Gas Development shall be prohibited, unless the Operator proves to the satisfaction of the Township the underlying geology makes using a single well pad impractical.
- g. Changes in the site plan including but not limited to any expansion of the ground surface area used and/or devoted towards drilling operations or changes in depth, type or extent of drilling requires further conditional use approval pursuant to the terms and conditions of this ordinance.
- h. Except when reported to the Township of Penn of any emergency activities or during drilling and fracturing operations, hours of operation are limited to Monday through Saturday, 7:00 a.m. to 9:00 p.m. All deliveries and pickups incidental to the Oil and Gas Development or Facility must occur during the defined hours of operation.
- i. At least 30 days prior to any development activity at the Development or Facility, the Operator shall provide the following information to each

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property owner within one thousand (1,000') feet of the Outer Boundary Surface Property Line:

- (1) A copy of the site plan submitted as part of the special exception application;
 - (2) A general description of the planned operations at the Development or Facility and associated equipment to be used;
 - (3) The contact information for the Operator; and
 - (4) The availability of the Operator to hold a meeting locally with such residents to present Operator's plans for the Development or Facility and to allow for questions and answers. The meeting(s) shall be held prior to the commencement of development activity.
- j. If permissible under the Pennsylvania Oil and Gas Act, a duly authorized representative of the Township shall have the authority, at any time, both in relation to the enforcement of this ordinance and pursuant to the Township's enforcement rights under the Pennsylvania Oil and Gas Act, to enter upon the property of a Development or Facility for the purpose of inspecting the site, equipment and all other aspects of the site necessary to assure compliance with this ordinance.
- k. Only essential safety and emergency personnel shall be permitted to occupy any trailer, or temporary living quarters at the site overnight.

B. Setback Requirements

1. **Deep Wells** - All drilling and production operations, including derricks, vacuum pumps, storage tanks, vehicle parking, structures, machinery, temporary housing, ancillary equipment and Facilities for deep wells shall be located not less than 1000 feet from any Protected Structure and not less than 500 feet from the nearest property line.
2. **Shallow Wells** - All drilling and production operations, including derricks, vacuum pumps, storage tanks, vehicle parking, structures, machinery, temporary housing, ancillary equipment and Facilities for shallow wells shall be located not less not less than 200 feet from any Protected Structure and not less than 200 feet from the nearest property line.

C. Traffic Routing

1. The proposed routes must be designed to minimize the impact on streets within the Township. The Township reserves the right to designate alternate routes in

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the event the applicant's proposed routes are deemed inadequate, unsafe or overly disruptive to normal vehicular traffic by the Municipal Engineer. Vehicles are to operate on state routes and may only use municipal roads when the use of state routes is not feasible.

2. The operator shall take the necessary safeguards to ensure that the Municipal roads utilized remain free of dirt, mud and debris resulting from development activities and/or shall ensure such roads are promptly swept and cleaned if dirt, mud and debris occur.
3. The Operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossing and/or adjacent to roadways (for example, persons waiting for public or school transportation). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with the Development or Facility, Operator will provide flagmen to ensure the public safety and include adequate signs and/or other warning measures for truck traffic and vehicular traffic; or, in the alternative, provide a rerouting plan.

D. Visual

1. The Oil and Gas Development or Facility shall be located, designed and constructed to minimize the removal of trees and shrubs, protect all natural resources, and minimize the amount of surface disturbance.
2. Operator shall not clear brush or trees by way of burning, and shall chip, grind or remove all tree stumps from properties it clears for development purposes.
3. The location and design of structures and site improvements shall be integrated with the natural color, form and texture of the surrounding area.

E. Lighting

1. The illumination projected from the Development or Facility to a property used for residential purposes shall at no time exceed 0.1 foot-candle, measured line-of-sight from any point on the receiving property.
2. The illumination projected from the Development or Facility to a nonresidential use at no time shall exceed 1.0 foot-candle, measured line-of-sight from any point on the receiving property.
3. All lighting shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting objectionable light or glare onto a neighboring use or property.

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4. The lighting system shall be designed with cutoff luminaries that have a cutoff angle of 60° or less.
5. An applicant may request a modification to these lighting requirements to be approved by the Township, subject to meeting the following standards:
 - a. All general performance standards as noted above, including maximum foot-candles at property lines, shall be maintained.

Proper cutoff angles shall be maintained in an effort to eliminate or minimize glare.
 - c. The applicant shall demonstrate a need to vary from the prescribed standards based upon safety and security issues, the general design of the site and other factors that may shield the proposed lighting and minimize glare, or the ability to meet or exceed the general performance standards outlined above.
 - d. The applicant shall submit a photometric plan, construction details, and a narrative which demonstrate achievement of the above criteria.

F. Air and Water Quality

1. Air contaminant emissions shall be in compliance with all municipal, county, state and federal regulations.
2. Operator shall take the necessary safeguards to ensure appropriate dust control measures are in place to prevent visible plumes of dust from crossing the property line or adversely impacting neighboring properties.
3. Sixty (60) days prior to drilling, the Operator shall notify residents with water wells within one thousand (1,000') feet of the gas well of their intentions to drill. The operator shall provide proof of notice to the Municipality.
4. All condensate tanks, Compressor Stations, Processing Plants and other Production Facilities shall be equipped with vapor recovery and/or vapor destruction units.

G. Noise

Township recognizes and acknowledges that Oil and Gas Development is accompanied by inherent noise. However, the Operator shall take the following steps to minimize, to the extent practicable, the noise resulting from the Development:

- a. Prior to drilling of an Oil and Gas Well, the Operator shall establish a continuous seventy – two (72) hour ambient noise level at the nearest

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Protected Structure property line or one hundred (100') feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure or, alternatively, and in lieu of establishing the above seventy-two (72) hour ambient noise level, the Operator may assume and use, for the purposes of compliance with this Ordinance, a default ambient noise level of 55 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

- b. The Operator shall provide documentation of any established, seventy-two (72) hour evaluation, relied upon to establish an ambient noise level greater than 65 dBA to the Township's Zoning Officer within three (3) business days of such a request from the Zoning Officer.
- c. The noise generated during drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line or one hundred (100') feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the average ambient noise level (as determined by the seventy-two (72) hour evaluation) or default level, whichever is higher:
 - i. during drilling activities by more than seven (7) decibels during the hours of 6:00 a.m. to 10:00 p.m.;
 - ii. during drilling activities by more than five (5) decibels during the hours of 10:00 p.m. to 6:00 a.m.; or
 - iii. by more than ten (10) decibels during hydraulic fracturing operations.

The Operator shall inform the Township of which level (average ambient noise level or default level) is being used.

- d. Adjustments to the foregoing noise limits may be permitted in accordance with the following:

Permitted Increase (dBA)	Duration of Increase (minutes)*
5.....	15
10.....	5
15.....	1
20.....	1

* Cumulative minutes during any one hour

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- e. If a complaint is received by the Township from any person, whether a resident or otherwise using the Protected Structure as defined herein for any lawful purpose, regarding noise generated during drilling or hydraulic fracturing activities, the Operator shall, within twenty-four (24) hours of receipt of the complaint from the Township, continuously monitor for a forty-eight (48) hour period at a point which is the closer to the complainant's building of:
 - i. the complainant's Protected Structure property line nearest to the well site or equipment generating the noise, or
 - ii. One Hundred (100') Feet from the Protected Structure.
- f. If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary data to the Township no later than 10 business days following completion of the noise testing. Once the monitoring is complete, Operator will meet with Township representatives and affected residents to discuss whether possible noise abatement measures are warranted, if the permitted levels set forth herein were exceeded.
- g. Exhaust from any internal combustion engine or compressor used in connection with the drilling of any well or for use on any production equipment or used in Development shall not be discharged into the open air unless it is equipped with (i) an exhaust muffler or (ii) an exhaust box. The exhaust muffler or exhaust box shall be constructed of non-combustible materials designed and installed to suppress noise and disruptive vibrations. Moreover, all such equipment with an exhaust muffler or exhaust box shall be maintained in good operating condition according to manufacturer's specifications.
- h. All workover operations shall be restricted to the hours of 6:00 a.m. to 10:00 p.m., except in the extent of an emergency, as reasonably determined by the Operator. "Workover operations" shall mean work performed in a well after its completion in an effort to secure production where there has been none, restore production that has ceased, or increase production.
- i. Operator shall notify the Penn Township Manager and Zoning Officer no later than three (3) days before "fracking" or flaring activities are set to begin at the well site. Operator will notify 911 of both fracking and flaring activities pursuant to the same time frame.

H. Hazards

- 1. Upon request of the Emergency Management Coordinator, the Operator shall, prior to drilling its first gas well in the Township, make available with at least 30 days' notice, at the applicant's sole cost and expense, one appropriate group training program for emergency responders. Such training shall be made available at least annually during any year that drilling activities take place at the Oil and

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Gas Development or Facility. If additional wells are drilled at the site, the Operator and Emergency Management coordinator will determine if additional training is required.

2. Activities or structures proposed within a floodplain shall independently meet the floodplain provisions of the prevailing ordinance and shall be carried out in a manner that does not increase flood hazards upstream or downstream, nor reduces the efficiency with which flood waters are carried through the site.
3. The applicant shall maintain at the property and on file with the Township, a current list and the Material Safety Data Sheets (MSDS) for all chemicals used in the drilling operations (including but not limited to types of additives, polymers, salts, surfactants and solvents) and in any fracturing operations.

I. Access

1. Beginning with its intersection with a public street, any ingress or egress point for the Development or Facility shall be paved from the edge of the paved cartway to the edge of the Township right – of – way by materials approved by the Township. Further, from the edge of the road right-of-way, the access road shall consist of 100' of clean stone to keep mud from being deposited on the Township street.
2. Ingress and egress points for all public and private driveways or roadways shall be located and improved in order to:
 - a. Meet Pennsylvania Code 67 Chapter 441 “Access to and Occupancy of Highways by Driveway and Local Roads, PennDot Design Manual 2.
 - b. Ensure adequate capacity for existing and projected traffic volume.
 - c. Provide efficient movement of traffic, including appropriate turning radii and transition grade
 - d. Minimize hazards to highway users and adjacent property and human activity.
3. All applicable permits or approvals must be obtained, including without limitation:
 - a. Access or driveway permits to state or county roads.
 - b. Overweight or oversize loads.
4. Use of streets in an approved residential subdivision are prohibited.

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5. All weather access roads, suitable to handle emergency equipment, shall be provided to within 50 feet of any structure, improvement, or activity area.

J. Storage of Equipment

1. It shall be illegal to park or store any vehicle or item of machinery on any street, right-of-way or in any driveway, alley or on the Development or Facility which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for the maintenance of the Well Site or for gathering or transportation of hydrocarbon substances from the site.

K. Structure Height

Permanent Structures (both principal and accessory) associated with the development shall comply with the height restrictions for each zoning classifications.

L. Additional Requirements

1. A special exception application shall be accompanied with written permission from the property owner(s) who has legal or equitable title in and to the surface of the drill site or a court order recognizing the applicant's authority to occupy the surface for the purpose of Oil and Gas Development and/or Oil and Gas Development Facility.
2.
 - a. Multiple property owners can combine adjoining parcels to achieve the minimum two (2) acres required.
 - b. Multiple property owners can combine adjoining parcels to achieve the minimum twenty (20) acres required
3. Prior to beginning the drilling site construction, the applicant shall submit to the Township a copy of all permits (General, ESCGP-1) issued by the Pennsylvania Department of Environmental Protection (PA DEP). In addition, the Township shall be provided copies of all plans (erosion and sedimentation control, grading, etc) required by PA DEP. All required permits shall be maintained throughout the duration of the drilling operation. Any suspension or revocation of permits by PA DEP shall be reported to the Township and shall constitute a violation of Township zoning approval and may result in the suspension or revocation of zoning approval.

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4. Access directly to State roads shall require Pennsylvania Department of Transportation (PADOT) Highway Occupancy Permit approval. Prior to initiating any work at a drill site, the Township shall be provided a copy of the Highway Occupancy Permit.
5. As required by Chapter 180 – Vehicles and Traffic, specifically, Article II, Traffic Regulations, § 180-18 of the Township Code, the Oil and Gas Development and/or Oil and Gas Development Facility of the oil or gas well shall execute an excess maintenance agreement with the Township for a Type 2 permit and post a bond at the paved highway rate in favor of the Township in a form acceptable to the Township prior to beginning any work on a drill site. The bond is to guarantee restoration of Township roads damaged as a result of hauling associated with the drilling operation. The excess maintenance agreement shall identify the responsibilities of the applicant to prepare, maintain, and repair Township roads before, during and immediately after drilling operations associated with the Development or Facility. The applicant shall take all necessary corrective action and measures as directed by the Township pursuant to the agreement to ensure the roadways are repaired and maintained during and at the conclusion of all development activities.
6. Access from the oil and gas drilling site onto Township roads shall be in compliance with Chapter 83 of the Township Code, “Driveways and Access Roads”.
7. Compliance with Chapter 144 (Stormwater Management and Land Disturbance Activity) with respect to those stormwater and land disturbance activities not regulated by the Pennsylvania Oil and Gas Act (Act 223), Title 58, Oil and Gas, Chapter 11, Oil and Gas Act and the rules and regulations of the Pennsylvania Department of Environmental Protection promulgated thereunder.
8. A public street entrance to the property on which a drill site is located shall at all times be kept free of mud, debris, trash or other waste materials.
9. The facility and/ or its operation shall comply with all applicable permits and requirements of the PA DEP, the United States Environmental Protection Agency, and any other governmental authority having jurisdiction over its operations and with all federal, state and local laws, ordinances and regulations promulgated to protect the environment or otherwise relating to environmental matters.
10. The Township of Penn reserves the right to impose any other additional conditions necessary to protect the public health, safety and welfare of its residents in order to address any unique characteristics of a particular drilling site

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which are not otherwise within the jurisdiction of federal and state regulations in accordance with the Pennsylvania Municipalities Planning Code (PAMPC).

11. Indemnification and Express Negligence Provisions – The operator shall fully defend, protect, indemnify, and hold harmless The Township of Penn, its departments, officials, officers, agents, employees and contractors from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the Township of Penn including, without limitation, personal injuries and death in connection therewith which may be made or asserted by any third parties on account of, arising out of, or in any way incidental to or in connection with the performance by the operator.

M. Exemptions for Shallow Wells.

Shallow wells shall be exempt from the following provisions:

1. Section 190-21 (B)(29)(C) - Traffic Routing
2. Section 190-21 (B)(29)(D) – Visual
3. Section 190-21 (B)(29)(E) – Lighting
4. Section 190-21 (B)(29)(F) – Air and Water Quality
5. Section 190-140 (7) – Traffic Impact Study

Section 4.

Article IV, Use Regulations

is hereby amended to permit by special exception Oil and Gas Development and/or Oil and Gas Development Facility in the following zoning classifications:

Deep Wells:

A-1 (Agriculture – Rural District)

R-1 (Residential – Low – Density Single Family) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

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R-2 (Residential – Medium – Density Single Family) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

R-3 (Residential – Multifamily) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

R-4 (Residential – Mobile Home Parks) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

B-1 (Business – Neighborhood) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

B-2 (General Business) provided that the surface ownership or leasehold of the property to be developed hereunder contains a minimum of twenty (20) acres in single ownership or leasehold as of the date of adoption of this Ordinance.

M-1 (Light Industrial District)

M-2 (Heavy Industrial District)

Shallow Wells – All zoning classifications

Section 5:

Any violation of the within Ordinance shall be enforced pursuant to Section 190-83 (**Violations and Penalties**) and Section 190-84 (**Other Remedies**) of the Code of the Township of Penn

Section 6:

That if any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect validity of the remaining portions thereof.

Section 7:

That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

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Section 8:

That this ordinance shall be in full force and effect from and after its passage and approval.

BE IT ORDAINED AND ENACTED BY the Township of Penn, Westmoreland
County, Pennsylvania this _____ day of _____ 2011.

ATTEST:

TOWNSHIP OF PENN

Secretary

By: _____
Chairman