

**TOWNSHIP OF UPPER SAUCON  
LEHIGH COUNTY, PENNSYLVANIA  
ORDINANCE NO. 42-U**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF UPPER SAUCON  
TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA, REQUIRING TESTING,  
INSPECTION, REPAIR, AND REPLACEMENT OF SEWER LATERALS AND  
PROVIDING STANDARDS THEREFORE, AND PROVIDING REMEDIES AND  
PENALTIES FOR NON-COMPLIANCE**

**PART 1. LEGISLATIVE FINDINGS**

**WHEREAS**, pursuant to both Federal and State laws and regulations, the Township of Upper Saucon (hereinafter, "Township") operates and maintains a municipal sanitary sewer system consisting of a series of collection lines, interceptors, a waste water treatment plant (hereinafter, "WWTP") and appurtenances related thereto; and

**WHEREAS**, pursuant to the Federal Clean Water Act (formerly the Water Pollution Control Act), 33 U.S.C. Section 1251, *et seq.*, (hereinafter, "Act") the Upper Saucon Sewage Treatment Authority (hereinafter, "USSTA") is the Part 1 NPDES Permittee for the WWTP under a duly issued NPDES Permit, No. PA 005314 (hereinafter, "NPDES Permit"); and

**WHEREAS**, pursuant to the Act, the Upper Saucon Township Municipal Authority (hereinafter, "USTMA") is the Part II Permittee for the municipal sanitary sewer collection system; and

**WHEREAS**, the Township operates, maintains, repairs, funds, and improves the municipal sanitary sewer collection system and the WWTP as lessee; and

**WHEREAS**, the NPDES Permit requires, among other things, that the USSTA, as Permittee, and the Township, as Lessee, regulate and control the characteristics of the wastewater entering the municipal sanitary sewer system, which system is also referred to as a Publicly Owned Treatment Works (hereinafter, "POTW"); and

**WHEREAS**, infiltration and inflow (hereinafter, "I/I") from various sources, including sanitary sewer laterals and sanitary sewer mains, utilize hydraulic capacity in the POTW and may cause hydraulic overloading and overflows as well as violations of the performance standards required by the NPDES Permit; and

**WHEREAS**, the Township's Board of Supervisors (hereinafter, "Board") has determined that privately owned and maintained sanitary sewer laterals are potential significant contributors of I/I into the POTW; and

**WHEREAS**, Section 1506 of the Second Class Township Code, *as amended*, 53 P.S. Section 66506, authorizes the Board to adopt ordinances, rules, and regulations not inconsistent with or restrained by the Constitution and laws of the Commonwealth of Pennsylvania necessary for the maintenance of the health and welfare of the Township and its citizens; and

**WHEREAS**, Subsection 607(1) of the Second Class Township Code, *as amended*, 53 P.S. Section 65607(1), requires that the Board execute its legislative authority to secure the health, safety, and welfare of the citizens of the Township; and

**WHEREAS**, the Board considers the introduction of I/I into the POTW through privately owned laterals to be contrary to the public health, safety, and general welfare; and

**WHEREAS**, reducing the introduction of I/I into the POTW will avoid or delay the need for costly capital expenditures on the behalf of the Township and USSTA to increase capacity in the POTW; and

**WHEREAS**, the Supervisors have determined that it is necessary to implement a program to inspect and ensure the proper maintenance of sewer laterals to reduce or eliminate I/I in the POTW, to reduce capital expenditures, cause positive environmental impacts, and to reduce stress on the POTW.

**NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED** by the Board of Supervisors of Upper Saucon Township, Lehigh County, Pennsylvania, as follows:

## **PART 2. ORDINANCE TEXT**

**A. Purpose and Objectives.** The purpose and intent of this Ordinance is to provide for the operation and maintenance of the Township/Municipal Authority Sanitary Sewer System in a reliable and serviceable condition, to eliminate or minimize Sewage overflows by eliminating or minimizing stoppages or blockages and to reduce sources of I/I into the Township/Municipal Authority Sanitary Sewer System to comply with all applicable legal requirements pertaining to that system.

**B. Definitions.** Unless a provision explicitly states otherwise, the following abbreviations, phrases, and terms, as used in this Ordinance, shall have the meanings hereinafter designated.

**B.1. Act or The Act** – The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

**B.2. Certificate of Compliance** – A certificate from the Superintendent or his or her designee that the Privately Owned and Maintained Sewer Lateral on a Property conforms to the requirements set forth in this Ordinance.

**B.3. Infiltration** – Water entering the Sanitary Sewer System, including Privately Owned and Maintained Sewer Laterals, from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, Inflow.

**B.4. Inflow** – Water discharged into the Sanitary Sewer System, including Privately Owned and Maintained Sewer Laterals from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

**B.5. I/I** – Collectively, Infiltration and Inflow with respect to the terms defined above.

**B.6. NOV** – Notice of Violation.

**B.7. Property** – Any real property that is located within the Township limits of Upper Saucon Township and connects to, or is connected to, the Township Sanitary Sewer System.

**B.8. Property Owner** – The owner of legal title to a Property. In the context of a Transfer, the term Property Owner shall mean the person or entity owning the Property being conveyed as determined immediately prior to the Transfer, unless the context of the use of the phrase Property Owner indicates otherwise.

**B.9 Publicly-Owned Treatment Works (POTW)** – A Sewage treatment plant owned by a state or municipality as defined by Section 212 of the Act, including any devices and systems used in the storage, treatment, recycling, and reclamation of municipal Sewage or industrial wastes of a liquid nature. The POTW includes also the sewers, pipes, and other conveyances that convey wastewater to the Sewage treatment plant. The term also includes municipality as defined in Section 212 of the Act having jurisdiction over the indirect discharges to, and the discharges from, such a treatment works. For purposes of this Ordinance, the phrase “Township/Municipal Authority Sanitary Sewer System” and “POTW” may be used interchangeably.

**B.10. Superintendent** – The Director of Water Sewer Resources as designated by the Township to supervise the operation of the Township Sanitary Sewer System, and who is charged with certain duties and responsibilities by this Ordinance, including his or her duly authorized representative or designee.

**B.11. Township** – The Township of Upper Saucon, Lehigh County, Pennsylvania.

**B.12. Transfer** – The conveyance of an interest in Property which results in a change in the title to that Property. The term includes, but is not limited to, conveyances by sale, devise, donation, gift, and operation of law.

**B.13. Sewage** – Human excrement and gray water (including by way of example household shower and dishwashing operations, etc.).

**B.14. Privately Owned and Maintained Sewer Lateral** – A privately owned and maintained sanitary sewer facility that connects the Property to the Township/Municipal Authority Sanitary Sewer System.

**B.15. Township/Municipal Authority Sanitary Sewer System** – The portion of the sanitary sewer system which is located within the Township right-of-way, sanitary sewer easement or utility easement. The Township/Municipal Authority Sanitary Sewer System ends at the curblines, edge of pavement, easement boundary, or right-of-way line.

**B.16. WDP** – A Wastewater Discharge Permit issued by the Superintendent pursuant to Township Ordinance No. 42-R, as the same may be amended from time to time.

**C. Prohibitions.** It shall be unlawful for any owner of Property connected, or to be connected to, the Township/Municipal Authority Sanitary Sewer System to fail to perform required testing or to construct, operate, or maintain a Privately Owned and Maintained Sewer Lateral in a Defective Condition. As used in this Ordinance, “Defective Condition” includes, but is not limited to:

- (1) displaced joints;
- (2) root obstruction;
- (3) substantial deterioration;
- (4) damaged or missing cleanout;
- (5) damaged or missing backwater overflow prevention device required pursuant to applicable law, ordinances, orders, rules, and regulations;
- (6) any condition which will allow Infiltration and Inflow of extraneous water or exfiltration of Sewage;
- (7) any condition that materially increases the possibility of a blockage or overflow;
- (8) constructed without a proper permit or with materials not approved by the Township;

- (9) lack of a manufactured connection to the Township/Municipal Authority Sanitary Sewer System;
- (10) otherwise in violation of Township requirements; or
- (11) in such a condition that the tests required by this Ordinance cannot be accomplished to the satisfaction of the Township.

**D. Sewer Lateral Inspections.**

**D.1. Events Requiring Inspection of Privately Owned and Maintained Sewer Laterals.**

All Privately Owned and Maintained Sewer Laterals serving Properties connected to the Township/Municipal Authority Sanitary Sewer System, shall be cleaned and inspected at the Property Owner's expense upon the occurrence of any of the following events:

- (1) The Transfer of Property. A formal, written waiver of the requirements of this Subsection D.1.(1) may be obtained from the Superintendent if the Property Owner can prove to the satisfaction of the Township that an approved inspection was conducted within the previous two (2) years of the Transfer.
- (2) A change of use of the Property that produces a significant increase in Sewage flow from the Property, as determined in the sole discretion of the Superintendent or his or her designee.
- (3) The installation of additional, or modification of existing, plumbing facilities that produces a significant increase in Sewage flow from the Property, as determined in the sole discretion of the Superintendent or his or her designee.
- (4) Upon repair or replacement of all or part of a Privately Owned and Maintained Sewer Lateral.
- (5) Upon a determination by the Superintendent or his or her designee that the cleaning, inspection, repair, or replacement is required for the protection of the public health, safety, and welfare.

**D.2. Time for Inspection.**

**D.2.1.** Inspections required by this Ordinance shall be performed within the sixty-day (60-day) period preceding any of the events specified in Subsection D.1., above. Any Property Owner who fails to cause to be performed a required

Inspection within the sixty-day (60-day) period preceding any of the events specified in Subsection D.1., above, shall be subject to the penalties and enforcement provisions contained in Subsections K and L of this Ordinance, provided, however, that said penalties and enforcement provisions shall not be the Township's sole remedy for a violation of this Subsection D.2.

**D.2.2.** In the event of a Transfer occurring by operation of law, such as a devise, the recipient of title to the Property shall be responsible for causing an inspection to be performed within sixty (60) days of receiving title.

**D.2.3.** Any Property Owner who causes a Transfer of Property (other than a Transfer listed in Subsection D.3., below) and fails to cause to be performed a required Inspection within the timeframes prescribed in this Subsection D.2., as applicable, shall be subject to the penalties and enforcement provisions contained in Subsections K and L of this Ordinance, provided, however, that said penalties and enforcement provisions shall not be the Township's sole remedy for a violation of this Subsection D.2.

**D.2.4.** In the event of a Transfer other than the kind described in Subsection D.2.2., above, and provided that an exemption described in Subsection D.3., below, is not applicable, if a required Inspection is not performed within the timeframe prescribed in Subsection D.2.1., then the Township may seek enforcement actions and penalties against the Property Owner conveying title to the transferred Property or against the Property Owner receiving title to the transferred Property or both.

**D.3. Exemptions.** The inspection provisions of this Ordinance shall not apply to:

- (1) A Transfer occurring prior to the effective date of this Ordinance;
- (2) A Transfer occurring within ten (10) years of the completion of construction, or complete replacement, of a Privately Owned and Maintained Sewer Lateral, provided that the Property owner shall prove entitlement to the exemption to the satisfaction of the Superintendent; and
- (3) A Transfer of Property without full consideration between direct relatives (limited to include Transfers between mothers, fathers, sons, daughters, brothers, sisters, step parents, step children, and spouses).

The availability of an exemption hereunder shall not relieve the Property Owner from compliance with all the remaining requirements of this Ordinance or other applicable Township Ordinances including, but not limited to, Township Ordinances No. 42-R, 42-S, 42-T, and 154, as amended.

**D.4. Inspection Criteria for Sewer Laterals.** All inspections of Privately Owned and Maintained Sewer Laterals performed in accordance with this Ordinance shall comport with the following:

- (1) A Property Owner or an agent of a Property Owner shall notify the Superintendent at least twenty-four (24) hours prior to inspection so that the Superintendent or his or her designee may witness the same. A failure to provide notice hereunder may render the inspection void at the option of the Superintendent, who may order a re-inspection at the Property Owner's expense.
- (2) All Privately Owned and Maintained Sewer Laterals shall be inspected by television video inspection method in accordance with all requirements imposed by the Township. When cleaning and inspection of a Privately Owned and Maintained Sewer Lateral is required hereunder, the Privately Owned and Maintained Sewer Lateral shall first be cleaned and then inspected using an internal video inspection for the full length of the Privately Owned and Maintained Sewer Lateral. Video recordings of the inspection shall be submitted to the Superintendent for verification of the condition of the Privately Owned and Maintained Sewer Lateral.

**D.5. Sewer Lateral Compliance Criteria.** A Privately Owned and Maintained Sewer Lateral will comply with the provisions of this Ordinance if video inspection verifies all of the following conditions:

- (1) The Privately Owned and Maintained Sewer Lateral is free of roots, grease deposits, and other solids which may impede or obstruct in whole or in part the transmission of Sewage.
- (2) There are no illicit or illegal connections to the Privately Owned and Maintained Sewer Lateral such as roof or yard drainage facilities or sump pumps.
- (3) All joints in the Privately Owned and Maintained Sewer Lateral are tight and sound to prevent the exfiltration of Sewage and the infiltration of groundwater or stormwater.
- (4) The Privately Owned and Maintained Sewer Lateral is free of structural defects, cracks, breaks, or missing portions, and the grade is reasonably uniform without major sags or offsets.
- (5) The Privately Owned and Maintained Sewer Lateral is equipped with at least one (1) cleanout located within five (5) feet of the building. If a

cleanout does not exist, the owner will be required to install a cleanout if other repairs are required, however, if it is determined that a cleanout is the sole repair required, it shall not be mandatory to install a cleanout.

**E. Authorized Inspectors.** The Property Owner shall select a qualified inspector to perform the inspection work. The inspector must be a licensed contractor in good standing in the Commonwealth of Pennsylvania experienced in sanitary sewer construction and testing. The Property Owner may also authorize the Township to perform the inspection work. In such instance, the Property Owner shall pay a fee, as set forth in the Township's fee schedule, as may be adopted by resolution from time-to-time. If the Township solicits proposals for inspection services, the Property Owner may select, at its own discretion, the selected inspector and pay the fee as agreed upon by the Township. In all cases, inspection results shall be submitted to the Superintendent for review and approval or determination of required remedial mitigation by the Superintendent.

**F. Duties to Repair and Replace.** When an existing Privately Owned and Maintained Sewer Lateral fails to meet the conditions required by this Ordinance, the Superintendent shall determine the repairs necessary to bring the Privately Owned and Maintained Sewer Lateral into compliance with Township Ordinances or order replacement of the Privately Owned and Maintained Sewer Lateral. When so ordered, the Property Owner shall make all repairs necessary to bring the Privately Owned and Maintained Sewer Lateral into compliance with this Ordinance or replace the Privately Owned and Maintained Sewer Lateral in accordance with all Township requirements. The Property Owner shall be responsible for all costs of repair or replacement of the Privately Owned and Maintained Sewer Lateral.

**G. Repair or Replacement of Sewer Lateral Upon Transfer of Title to Property.** In the case of Transfers of Property, the repair or replacement of Privately Owned and Maintained Sewer Laterals ordered by the Superintendent shall be completed prior to the transfer of title to a new owner of the Property.

**H. Issuance of Certificate of Compliance.** The Superintendent shall review the final, submitted video inspection for compliance with this Ordinance. When all conditions are met to the satisfaction of the Superintendent, the Privately Owned and Maintained Sewer Lateral shall be certified as complying with the provisions of this Ordinance. The Superintendent shall thereupon issue a Certificate of Compliance to the Property Owner, noting that the Privately Owned and Maintained Sewer Lateral is properly equipped, structurally sound, meets the service conditions of the Township and will not require testing for a two (2) year period from the date of issuance. The foregoing notwithstanding, if the Superintendent has reason to believe that a Privately Owned and Maintained Sewer Lateral may have become defective within two (2) years of the issuance of a Certificate of Compliance, the Superintendent may order a re-inspection be performed.



**I. Timing For Issuance of Certificate of Compliance.** A Certificate of Compliance may be issued:

- (1) immediately after inspection if no repairs are required;
- (2) when all required repairs have been made, approved, and all applicable fees have been paid; or
- (3) if the proceeds of a Transfer are necessary for the repair, within sixty (60) days after finalization or closing of the Transfer or occupancy under an agreement to lease or transfer the Property, provided the required funds have been placed into escrow for purposes of Privately Owned and Maintained Sewer Lateral repair or replacement.

**J. Escrowed Funds and Post Closing Certificate.** If weather or other conditions beyond the control of the Property Owner prevent required repairs from being performed prior to a Transfer or other specified event listed in Subsection D.1., above, or at the time of occupancy under an agreement to Transfer Property, a sum sufficient to pay for such repairs as determined by the Superintendent shall be paid to the Township, along with all applicable fees, and a Certificate of Compliance shall then be issued. If the proceeds of a Transfer are needed to make the required repair(s), a Certificate of Compliance may be obtained within sixty (60) days after the Transfer or occupancy under an agreement to Transfer, provided that the funds have been escrowed in an amount sufficient to make the required repairs. Escrowed funds shall be used to make and complete the required repairs and approve the same, all within ninety (90) days of the date of the transfer of title in the case of a Transfer or occupancy under an agreement to Transfer, or within ninety (90) days of the posting of escrow in all other situations.

**K. Enforcement.**

**K.1. General Enforcement Procedures.**

**K.1.1.** The remedies set forth in this Ordinance are not exclusive. The Township reserves the right to take any, all, or a combination of the actions listed in this Ordinance against a noncompliant Property Owner. Enforcement of pretreatment violations will generally be in accordance with this Ordinance or Township Ordinance No. 42-R, however, the Township reserves the right to take other action against any Property Owner when, in the sole discretion of the Township, the circumstances warrant. Further, the Township, or the Superintendent as the case may be, are empowered to take more than one enforcement action against a noncompliant Property Owner or to take concurrent actions.

**K.1.2.** In any civil, criminal, or administrative action instituted hereunder, the Township shall be entitled to recover from a Property Owner all of its costs of litigation, including but not limited to filing fees, witness fees, document costs, expert witness fees, court costs, and reasonable attorneys fees. Where an action is

commenced by the issuance of a Notice of Violation, the litigation costs which the Township may recover shall extend back to the commencement of any investigation resulting in the issuance of the Notice of Violation. Recoverable costs shall include costs incurred by the Township for sampling, testing, monitoring, and actual damages.

## **K.2. Administrative Enforcement Procedures.**

**K.2.1. Notice of Violation.** When the Superintendent finds that a Property Owner has violated or continues to violate any provisions of this Ordinance, a WDP, an order issued hereunder or any other pretreatment standard or requirement, the Superintendent may serve upon that Property Owner a written NOV. The NOV shall include an explanation of the violation, a remediation plan for the satisfactory correction of the violation and future prevention thereof, a statement of the required actions and any other relevant information. Submission of the remediation plan shall not relieve the Property Owner of liability for violations occurring before or after receipt of the NOV. Within thirty (30) days of the date of the NOV, the Property Owner shall provide to the Superintendent an explanation as to the cause of the violation. Nothing in this Section (K) shall limit the authority of the Superintendent to take any action, including emergency actions or any other enforcement action, without first issuing a NOV.

**K.2.2. Consent Orders.** The Superintendent may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with a noncompliant Property Owner. Such agreements shall include, among other things, a statement of the specific action to be taken by the Property Owner to correct the noncompliance together with a specific date for compliance. Such agreements shall have the same force and effect as administrative orders issued pursuant to Subsections K.2.4. and K.2.5. of this Ordinance and shall be judicially enforceable.

**K.2.3. Show Cause Hearing.** The Superintendent may order a Property Owner which has violated, or continues to violate, any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement to appear before the Superintendent and show cause why the proposed enforcement action should not be taken. Notice shall be served on the Property Owner or its authorized representative specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the Property Owner show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least twenty (20) days prior to the meeting. Whether or not the Property Owner appears as ordered, immediate enforcement action may be

taken thereafter. A show cause hearing shall not be a bar against, nor a prerequisite for, the taking of any other action against the Property Owner.

**K.2.4. Compliance Orders.** When the Superintendent finds that a Property Owner has violated, or continues to violate, any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may issue an order to the responsible Property Owner directing that the Property Owner come into compliance within a specified time. If the Property Owner does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order shall not extend the deadline for compliance established for a pretreatment standard or requirement, and it does not relieve the Property Owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, nor a prerequisite for, the taking of any other action against the Property Owner.

**K.2.5. Cease and Desist Order.** When the Superintendent finds that a Property Owner has violated, or continues to violate, any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement, or if he finds the Property Owner's past violations are likely to recur, the Superintendent may issue an order to the Property Owner directing it to cease and desist all such violations and to:

- (1) Immediately comply with all requirements; and
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, nor a prerequisite for, the taking of any other action against the Property Owner.

**K.2.6. Administrative Fines.**

**K.2.6.1.** When the Superintendent finds that a Property Owner has violated, or continues to violate, any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may fine such Property Owner in an amount not to exceed \$1,000.00 per day. A fine shall be assessed on a per-violation, per-day basis. In the case of monthly or other long term average discharge limits, fines

shall be assessed for each day during the period of violation. The Superintendent may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

**K.2.6.2.** Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of one-and-one-half percent (1.5%) per month. A lien against the Property Owner's Property may be filed for unpaid charges, fines, and penalties.

**K.2.6.3.** A Property Owner desiring to dispute a fine must first file a written request to the Superintendent to reconsider the fine together with full payment of the fine and related charges within thirty (30) days of being notified of the fine. Where the Superintendent determines that the request may have merit, he or she may convene a hearing on the matter. If, following the hearing, the Superintendent determines that the request is meritorious, the payment (or applicable portion thereof), together with any interest accruing thereon, shall be returned to the Property Owner.

**K.2.6.4.** Issuance of an administrative fine shall not be a bar against, nor a prerequisite for, taking any other action against the Property Owner.

**K.2.7. Emergency Suspensions.**

**K.2.7.1.** The Superintendent may immediately suspend a Property Owner's discharge after informal notice to that Property Owner whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the public health, safety, or welfare. In addition, after notice and opportunity to respond, the Superintendent may immediately suspend a Property Owner's discharge which threatens to interfere with the operation of the POTW or which presents, or may present, an endangerment to the environment.

**K.2.7.2.** Any Property Owner notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a Property Owner's failure to immediately comply voluntarily with the suspension order, the Superintendent may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize danger to the POTW, its receiving stream or endangerment to individuals. The Superintendent may permit the Property Owner to recommence its discharge when the Property Owner has demonstrated to the satisfaction of the Superintendent that the period of endangerment has

passed, unless termination proceedings pursuant to Subsection K.2.8. of this Ordinance are initiated.

**K.2.7.3.** A Property Owner that is responsible, in whole or in part, for any discharge actionable hereunder shall submit to the Superintendent a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence. The written statement shall be submitted prior to the date of any show cause or termination hearing under Subsections K.2.3. and K.2.8. of this Ordinance.

**K.2.7.4.** Nothing in this Subsection K.2.7. shall be interpreted to require a hearing prior to any emergency suspension.

**K.2.8. Termination of Discharge.**

**K.2.8.1.** Any Property Owner who violates the following is subject to discharge termination:

- (1) Violation of WDP conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- (4) Refusal of reasonable access to the Property Owner's Property for the purposes of inspection, monitoring, or sampling; or
- (5) Violation of any pretreatment standards contained in any Township Ordinance relating to the same.

**K.2.8.2.** Such Property Owner will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Subsection K.2.3. of this Ordinance as to why the proposed action should not be taken. Exercise of this remedy by the Superintendent shall not be a bar to, nor a prerequisite for, the taking of any other action against the Property Owner.

### **K.3. Judicial Enforcement Remedies.**

**K.3.1. Equitable Relief.** When the Superintendent finds that a Property Owner has violated, or continues to violate, any provision of this Ordinance, a WDP, or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may petition the court through the Township's Solicitors for the issuance of a temporary or permanent injunction, or other equitable relief as appropriate, to restrain activities or compel the specific performance of the WDP, order, or other requirement imposed by this Ordinance on the Property Owner. The Superintendent may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement that the Property Owner perform environmental remediation. The Superintendent may recover reasonable attorneys fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Township. A petition for injunctive relief shall not be a bar against, nor a prerequisite for, the taking of any other action against a Property Owner.

### **K.3.2. Civil Penalties.**

**K.3.2.1.** A Property Owner who has violated, or continues to violate, any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Township for a maximum civil penalty of not less than \$1,000.00 per violation, per day. In the case of a monthly or long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

**K.3.2.2.** In determining the amount of civil liability, the court may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Property Owner's violation, corrective actions by the Property Owner, the compliance history of the Property Owner and any other factors as justice requires.

**K.3.2.3.** Filing a suit for civil penalties shall not be a bar against, nor a prerequisite for, the taking of any other action against the Property Owner.

### **K.3.3. Criminal Prosecution.**

**K.3.3.1.** Any Property Owner who willfully, recklessly, or negligently violates any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00

per violation, per day, or imprisonment for not more than one (1) year, or both.

**K.3.3.2.** Any Property Owner who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$1,000.00 or be subject to imprisonment for not more than one (1) year, or both. This penalty shall be in addition to any other cause of action available under law.

**K.3.3.3.** Any Property Owner who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed or required to be maintained pursuant to this Ordinance, a WDP, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than two (2) years, or both.

**K.3.3.4.** Nothing contained herein shall limit the authority of law enforcement officials to charge a Property Owner with other, appropriate criminal offenses and seek punishment commensurate therewith.

## **L. Supplemental Enforcement Remedies.**

**L.1. Performance Bonds.** The Superintendent may decline to issue or reissue a WDP to any Property Owner who failed to comply with any provision of this Ordinance, a previous WDP, order issued hereunder, or any other pretreatment standard or requirement, unless such Property Owner first provides a satisfactory bond, payable to the Township, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

**L.2. Liability Insurance.** The Superintendent may decline to issue or reissue a WDP to any Property Owner who has failed to comply with any provision of this Ordinance, a previous WDP, order issued hereunder, or any other pretreatment standard or requirement, unless the Property Owner first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

**L.3. Water Supply Severance.** Whenever a Property Owner has violated or continues to violate any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement, water service to the Property Owner may be severed. Service will only commence, at the Property Owner's expense, after it has satisfactorily demonstrated its ability to comply.

**L.4. Public Nuisances.** A violation of any provision of this Ordinance, a WDP, order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be subject to the applicable provisions of the Township ordinances governing such nuisances or activities, including reimbursing the Township for any costs incurred in removing, abating, or remedying said nuisance.

**L.5. Contractor Listing.** Property Owners which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the Township. Existing contracts for the sale of goods or services to the Township held by a Property Owner found to be in significant noncompliance with the pretreatment standards or requirements may be terminated at the discretion of the Superintendent.

**L.6. Payment of Outstanding Fees and Penalties.** The Superintendent may decline to issue or reissue an individual WDP to any Property Owner who has failed to pay any outstanding fees, fines, or penalties incurred as a result of any provision of this Ordinance, a previous individual WDP, or order issued hereunder.

### **PART 3. PROTANTO REPEAL.**

All existing Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

### **PART 4. SAVINGS CLAUSE.**

To the extent that any word, phrase, portion, or provision of the text herein is found by any court of competent jurisdiction to be invalid, void, or unconstitutional; such word, phrase, portion, or provision shall, to the extent possible, be deemed to be repealed and those remaining valid portions of the text shall remain in full force and effect, provided that the same can be accomplished without the structure of this Ordinance having been destroyed by elimination of that word, phrase, portion, or provision found to be invalid or void.

### **PART 5. EFFECTIVE DATE.**

This Ordinance shall become effective five (5) days after enactment by the Board of Supervisors.

[SIGNATURE PAGE FOLLOWS]



(Signature Page to Ordinance No. 42-U)

**DULY ENACTED AND ORDAINED** this 20th day of November, 2023, by the Board of Supervisors of the Township of Upper Saucon, Lehigh County, Pennsylvania, in lawful session duly assembled.

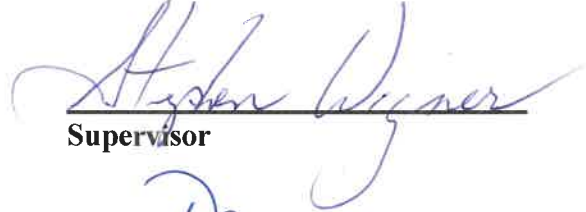
**BOARD OF SUPERVISORS  
UPPER SAUCON TOWNSHIP**



**Chairman**



**Vice Chairman**



**Supervisor**



**Supervisor**



**Supervisor**

**ATTEST:**



**Secretary**