

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 529

(Duly Adopted March 11, 2015)

AN ORDINANCE AUTHORIZING THE BOROUGH OF ALBURTIS TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE LEHIGH COUNTY CONSERVATION DISTRICT IN ORDER TO COMPLY WITH CERTAIN MINIMUM CONTROL MEASURES IN THE BOROUGH'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MUNICIPAL SEPARATE STORM SYSTEM (MS4) PERMIT REGARDING CONSTRUCTION SITE STORM WATER RUNOFF CONTROL AND POST-CONSTRUCTION STORM WATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT, AND TO SERVE AS A BASIS FOR STATING THE ROLE OF EACH PART IN ADMINISTERING EROSION, SEDIMENTATION, AND STORMWATER MANAGEMENT REGULATIONS.

WHEREAS the Lehigh County Conservation District (“**LCCD**”) Board has approved a Memorandum of Understanding (“**MOU**”) form on January 8, 2015 for county municipalities to utilize the services of LCCD to comply with certain minimum control measures in their National Pollutant Discharge Elimination System (“**NPDES**”) Municipal Separate Storm System (“**MS4**”) Permits regarding construction site storm water runoff control and post-construction storm water management in new development and redevelopments; and

WHEREAS the Borough of Alburdis, pursuant to requirements of state and federal law, has obtained an NPDES MS4 Permit which includes such minimum control measures; and

WHEREAS the LCCD's MOU form also states the commitment and roles of LCCD and the municipality in controlling erosion and sedimentation and in stormwater management; and

WHEREAS the Borough of Alburtis desires to enter into such an MOU with LCCD under the terms and conditions set forth in the document attached to this Ordinance as **Exhibit A**; and

WHEREAS this new MOU is intended to supersede and replace the previous Memorandum of Understanding between the Borough of Alburtis and LCCD approved by the Borough on August 31, 2005; and

WHEREAS intergovernmental cooperation between the parties is authorized under 53 PA. CONS. STAT. §§ 2301-2316;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Article V of Chapter 6 of the Alburtis Codified Ordinances (relating to Intergovernmental Cooperation—Erosion and Sediment Pollution Control) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**Article V — Erosion, and Sediment Pollution,
and Stormwater Management Control**

**§ 6-501 Memorandum of Understanding with the Lehigh County
Conservation District.**

The Borough of Alburtis shall enter into a Memorandum of Understanding with the Lehigh County Conservation District in the form attached to Ordinance 435 529 as **Exhibit A**, which is incorporated into this Article by reference, ~~provided that the Lehigh County Conservation District shall also approve the execution of the Agreement.~~ The President (or Vice President) of Borough Council is hereby authorized and directed to execute the ~~Agreement~~ Memorandum of Understanding on behalf on the Borough ~~upon the approval of the Agreement by the Lehigh County Conservation District.~~

SECTION 2. The attached **Exhibit A** is incorporated into this Ordinance by reference.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Albur-
tis, this 11th day of March, 2015, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Steven R. Hill, President

Attest:

Sharon Trexler, Borough Manager

AND NOW, this 11th day of March, 2015, the above Ordinance is hereby AP-
PROVED.

Kathleen Palmer, Mayor

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

Between the

**Lehigh County Conservation District
(hereinafter sometimes referred to as "District")**

And

**Borough of Alburdis
(hereinafter sometimes referred to as "Municipality")**

STATEMENT OF PURPOSE

This Memorandum made and executed the ____ day of _____, 2015, has been prepared jointly and agreed upon by each party, the same parties intending to be legally bound hereby, for the following purposes to the extent applicable:

To serve as a joint commitment by the signatory parties to control accelerated erosion and to minimize sediment pollution to the waters of the Commonwealth which may result from the conduct of earthmoving activities within the Borough of Alburdis and in accordance with Pennsylvania Department of Environmental Protection PA Code, Title 25. Chapter 102, Erosion and Sediment Control Regulations (Chapter 102).

To serve as a basis for stating the role of each party in administering the provisions of the Municipality's ordinances which relate to erosion and sediment pollution control and stormwater management control, including, without limitation, Chapters 22 (relating to Subdivision and Land Development), 24 (relating to Floodplain Management), and 25 (relating to Stormwater Management) of the Alburdis Codified Ordinances (collectively, the "Ordinance").

I. In carrying out the intent of this memorandum, the Lehigh County Conservation District (District) shall:

- A. If required by a municipal ordinance, receive erosion and sediment control plans (E&S Plans) for earth disturbance less than one acre. In accordance with District policies and procedures and Fee Schedule, complete an initial review of the E&S Plan and any subsequent reviews of E&S Plan submissions (revisions). (Not applicable in the Borough of Alburdis).
- B. Within ten (10) working days of completion of review, notify in writing, the consultant, the applicant, and the municipality of all E&S Plan approvals or deficiencies, if deficient, and determinations that an E&S Plan cannot be approved because of inadequate information and/or a failure of the applicant to develop an E&S Plan in compliance with the provisions of the ordinance and in compliance with Chapter 102.
- C. Upon request, provide all applicants with a Department of Environmental Protection (DEP) Erosion and Sediment Pollution Control Program Manual, PA Stormwater Best Management Practices Manual, Notice of Intent and related forms, worksheets, checklists and other documents necessary to successfully prepare an E&S Plan, NPDES Permit and Post-Construction Stormwater Management Plan (PCSM).
- D. Upon request for a pre-application meeting, the District shall notify the Municipality of the date and time of the scheduled meeting.

- E. Upon request for a pre-construction meeting, the District shall notify the Municipality of the date and time of the scheduled meeting.
- F. In accordance with a routine inspection schedule, and/or upon the request of the municipality, and/or upon the receipt of request from a third party, inspect ongoing earth disturbance projects and complete a standard DEP site inspection report. In conjunction with this responsibility, the District shall:
 - 1. Advise the municipality of all third party complaints within 10 calendar days of their receipt.
 - 2. Provide a copy of all inspection reports to the affected and responsible party(ies) and municipality within 10 calendar days of the inspection.
- G. Serve as the repository for all received E&S Plans, PCSM Plans, NPDES Permits, complaints, inspection reports, correspondence and other documents that involve earth disturbance activities. All such information shall be contained in a filing system which shall be available for inspection by the municipal officials for a time frame that is consistent with the DEP Records Retention Policy.
- H. Commit the necessary staff time and provide information to assist the municipality in conducting enforcement proceedings as requested.
- I. As part of and as stated in a Delegation Agreement with DEP, the District shall administer and implement the Commonwealth's Erosion, Sediment, and Stormwater Control Programs by reviewing and approving E&S and PCSM Plans in accordance with PA Code, Title 25. Chapter 102. The District will also as part of and as stated in a Delegation Agreement with DEP conduct earth disturbance inspection in accordance with PA Code, Title 25. Chapter 102.
- J. Through the Delegation Agreement with DEP and this MOU the District shall assist the Municipality in maintaining compliance with: Minimum Control Measures (MCM) #4 and #5 (BMP #1, #2 and #3) of the Municipality's NPDES Municipal Separate Storm Sewer System (MS4) Permit.
- K. Assist, as staffing allows, the Municipality in maintaining compliance with Minimum Control Measures (MCM) # 1; #2 and #6 of the Municipality's MS4 Permit.
- L. Annually, prepare and send to the Municipality a summary of District activities related to MS4 MCM's.
- M. Upon receiving a request from the municipal officials and after appropriate municipal representatives have received the required training, the District, with respect to the municipal's MS4 and E&S Programs will provide technical assistance and financial support to the limit of its allocation approved by the State Conservation Commission for projects qualifying for the Dirt and Gravel Road and Low Volume Road Program. The District will provide the Municipality with this service via a separate agreement with the Municipality.
- N. Conduct inspections in response to complaints regarding agricultural earth disturbance activities, including agricultural plowing and tilling or animal heavy use areas. Copies of the inspection report will be supplied to the Municipality within ten (10) days of completion.

- O. As part of a Delegation Agreement with the State Conservation Commission, the District will review all nutrient management plans submitted under Act 38 (PA Nutrient Management Act), approve those plans that meet Act 38 standards and monitor implementation of these plans. In addition, the District will provide information on Federal nutrient management initiatives or confined animal feeding operation (CAFO) regulations. The District will upon request evaluate and determine if an individual operation is subject to Act 38.
- P. Upon written request by a landowner or operator, the District will facilitate conservation planning technical assistance to farm owners and or operators. Within the limits of the District resources, the District will provide cost share assistance to eligible landowners or operators.
- Q. As part of a Delegation Agreement with the DEP, the District's Watershed Specialist will assist municipal officials and citizen groups with the formation and development of watershed associations, as well as support existing watershed organizations for the purpose of addressing local water resource issues on a watershed basis. The Watershed Specialist will also be available to assist municipal planners that wish to incorporate watershed protection into zoning and land planning.
- R. The District will, in a timely manner, provide municipalities with current information relating to changes in fee schedules, regulations, program requirements, or permits for those program areas that are discussed in this Memorandum of Understanding.

II. In carrying out the intent of this Memorandum, the Municipality shall:

- A. A municipality which issues building/grading or other permits shall notify the District within 5 days of receipt of an application for any permit or approval that could involve earth disturbance activities consisting of 1 acre or more, pursuant to Chapter 102.
- B. Pursuant to Chapter 102, the Municipality shall not issue building or other permits or approvals to those proposing or conducting earth disturbance activities requiring a DEP permit until DEP or the Conservation District has issued the E&S or individual NPDES Permit, or approved coverage under a general NPDES Permit for Stormwater Discharges Associated with Construction Activities under Chapter 102.
- C. Shall provide instructions to have E&S Plans submitted to the District and forward all questions pertaining to the preparation of E&S Plans and Applications and tracking forms to the District.
- D. Forward all third party complaints about ongoing earth disturbance projects to the District for their inspection.
- E. Upon notification by the District, withhold any building, grading, or other permits that apply as specified in the municipal ordinances or Chapter 102, when and where it has been determined that an applicant has failed to secure E&S Plan approval from the District for earth disturbance of less than one acre.
- F. Contact the District seeking services of the regional PA Agricultural Ombudsman Program to assist in public relations, education and conflict management resulting from the interface of agriculture and other non-agricultural uses, and to provide liaison services to communities on issues affecting agriculture, land use, environment and planning.
- G. Disseminate natural resource conservation information and written materials provided by the District to the general public.

- H. Seek assistance from the District when natural resource protection concerns arise in the Municipality.
- I. Encourage and support appropriate local watershed activities and invite the District's Watershed Specialist to participate in watershed-related projects, planning activities, and educational programs.
- J. Inform permit applicants of new or updated permit requirements or program information as the District provides such information.
- K. Consult with the District before referring to or assigning responsibilities to the District in any proposed ordinances.
- L. Chapter 102 requires all farming operations that disturb over 5,000 sq ft to have a conservation plan/Ag E&S plan. This also includes no-till as an earth disturbing practice. Along with the conservation plans, the Commonwealth also requires farmers to have a manure management plan, Chapter 91, developed for every farm that produces or spreads manure on the ground, no limit on size or scope of operation. Once farm size reaches certain thresholds based on livestock, further requirements for nutrient management may be required (such as Act 38 or CAFO). These plans must be available from the District upon request.
- M. Rely upon the Commonwealth's Erosion, Sediment, and Stormwater Control program through this MOU to comply with MCM #4 and MCM #5 of the Municipality's NPDES MS4 program.

III. This Memorandum of Understanding shall become effective immediately upon signature of the parties. It shall be reviewed annually, as the need arises by either or both parties, and may be amended by mutual consent of both parties. This MOU may be terminated at any time, by either party, following a 60 day written notice to the other party. This MOU supersedes and replaces all previous MOUs between the parties, including the MOU approved by the Borough of Alburtis on August 31, 2005.

FOR THE BOROUGH OF ALBURTIS:

By: _____ March 11, 2015
 Steven R. Hill, President of Borough Council (DATE)

Attest: _____
 Sharon L. Trexler, Borough Manager

FOR THE LEHIGH COUNTY CONSERVATION DISTRICT:

 BOARD CHAIR (DATE)