

ORDINANCE NO. 129

AN ORDINANCE OF MILFORD TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, AMENDING THE MILFORD PORTION OF THE QUAKERTOWN AREA ZONING ORDINANCE TO ESTABLISH A NEW USE G-17 RADIOACTIVE MATERIALS FACILITY AND TO AMEND SECTION 650 OF THE ZONING ORDINANCE TO ELIMINATE THE REFERENCE TO WETLANDS

BACKGROUND

A. The Milford Township Board of Supervisors duly enacted the Milford Township portion of the Quakertown Area Zoning Ordinance (“Zoning Ordinance”) July 18, 1995, and since that date has, from time to time, amended same.

B. Milford Township is a predominantly residential and agricultural community with commercial and industrial uses concentrated along PA Route 663 between the Township boundary with Quakertown Borough and the Quakertown Interchange of the Northeast Extension of the Pennsylvania Turnpike. (The Route 663 Corridor) Commercial uses in the vicinity of the Quakertown Interchange include four (4) motels/hotels, service stations and convenience stores. Industrial uses include medical offices, business offices, light manufacturing, warehouse facility, and certain retail uses. The Route 663 Corridor is zoned PI – Planned Industrial, with PC – Planned Commercial, on the southern portion. Concentrated residential development exists in the Spinnerstown area west of the Northeast Extension, including Spinnerstown Crossing abutting the Turnpike having 72 residences and Valley View having 165 residences in close proximity.

C. The Milford Township Board of Supervisors has determined that there are no specific regulations in the PI Zoning District or in any other part of the Zoning Ordinance providing regulations for facilities which use, manufacture, produce, process, store or otherwise handle radioactive materials.

D. As the result of a recent application to the United States Nuclear Regulatory Commission (“NRC”) for a permit to establish a facility using and storing radioactive materials in the PI District on the east side of the Northeast Extension, the Board of Supervisors has determined the following:

1. Owners of residential homes in the vicinity of the use may experience difficulty in selling their homes.

2. Builders are reluctant to construct new residences on vacant land in the vicinity of the use.

3. There is a perception among the citizens of Milford Township that facilities which use, store, manufacture or process radioactive materials pose

significant risk in terms of health, safety and welfare including, but not limited to, risks from potential radiation exposure, terrorist activities, especially in the post 9-11 environment, response costs which would be incurred by the Township in the event of a radiation release, adverse impacts on property values and a sense of lack of well being resulting from the presence of such a facility in the community.

4. The Board of Supervisors of Milford Township has determined that a radioactive materials facility is a land use which, left unregulated, has a high degree of likelihood of the impacts described will occur.

5. Section 603 of the Pennsylvania Municipalities Planning Code (MPC) permits townships to adopt zoning ordinances which regulate the intensity of land uses.

6. Section 604 of the MPC provides that the purposes of a zoning ordinance include preventing blight and the loss of life or property and providing for coordinated and practical development. Additionally, it is a purpose of a zoning ordinance to facilitate emergency management preparedness.

E. The Milford Township Board of Supervisors has determined that adoption of this Zoning Ordinance amendment furthers the following community development objectives:

1. Regulating the size and intensity of radioactive materials facilities such that their size will not result in impairing the likelihood of other commercially viable land uses locating near them.

2. Providing regulations of radioactive materials facilities which will protect areas surrounding such facilities from blight.

3. Providing for coordinated and practical development of radioactive materials facilities together with other permitted land uses in the PI – Planned Industrial District.

4. Providing regulations for radioactive materials facilities which will minimize the possibility of loss of life or property including the value of real property and will facilitate emergency management preparedness.

5. Establishing regulations permitting industrial uses with due regard for the protection of neighboring land uses as stated at Section 105.D(3) of the Zoning Ordinance. In addition, the Milford Township Board of Supervisors has determined that the establishment of specific regulations for radioactive materials facilities furthers the community development objective of assuring adequate protection for the health, safety and general welfare of the citizens of Milford Township and the protection of the environmental quality of the Township.

F. The Board of Supervisors finds that the riparian corridor established for waterways and floodplains provides adequate protection for wetlands by requiring that the riparian corridor encompass the 100 year floodplain and extend a minimum of 75 feet from each defined edge of an identified waterway. By reason thereof, the Board has determined that it is appropriate to eliminate the specific reference to wetlands contained at Section 650 of the Zoning Ordinance.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Milford Township after a public hearing duly advertised and held on September 24, 2003, as follows:

SECTION 1. Amend Article 2. Definitions to add a new section, Section 293, titled Additional Definitions to provide as follows:

a. Ionizing Radiation: Gamma rays and x-rays, alpha and beta particles; but not sound or radio waves, or visible, infrared or ultraviolet light.

b. Person: Any individual, corporation, partnership, firm association, trust, estate, public or private institution, group, agency, including Milford Township or any other political subdivision or agency of the Commonwealth of Pennsylvania or United States, and any legal successor, representative, agent or agency of the foregoing.

c. Radiation: Gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons and other nuclear particles and electromagnetic radiation consisting of associated and interacting electric magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wave lengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters.

d. Radiation Machine: Any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated.

e. Radioactive Material: Any solid, liquid or gas which emits ionizing radiation spontaneously.

SECTION 2. Article 4, Use Regulations is amended to add a new section, Section 404.G.17 to provide as follows:

G-17 Radioactive Materials Facility

A Radioactive Materials Facility shall mean any building, structure, land or other place or establishment where any radioactive material is used, manufactured, produced, processed, stored, buried, transported, transferred,

received, acquired, owned or possessed except those facilities directly involved in the use of radiation machines or radioactive materials for medical diagnosis and treatment.

It shall be unlawful for any person to use, manufacture, produce, process, store, bury, transport, transfer, receive, acquire, own or possess radioactive material in Milford Township except in compliance with the provisions hereof. Any expansion of an existing Radioactive Materials Facility or increase in the amount or intensity of Radioactive Materials stored, used or otherwise present in an existing Radioactive Materials Facility beyond the amount previously approved by the Township or the amount present on the property on the effective date of this ordinance shall comply with the provisions hereof, including, but not limited to, the requirement to obtain conditional use approval for any expansion or increase.

a. A Radioactive Materials Facility shall be permitted only in the PI – Planned Industrial Zoning District as a conditional use.

b. No Radioactive Materials Facility shall contain more than 400,000 curies of radioactive material at any given time.

In addition to compliance with the provisions of Section 1108 of the Zoning Ordinance, an applicant for conditional use approval for a Radioactive Materials Facility shall demonstrate compliance with the provisions hereafter stated.

c. Dimensional Requirements.

1. The minimum lot area shall be 10 acres.

2. The minimum setback for this use shall be 200 feet from any lot line or street line.

3. A Radioactive Materials Facility shall not be located closer than one (1) mile to a school or 1,000 feet to a church or dwelling unit.

d. Parking. One off street parking space for each employee on the largest shift plus one off street parking space for each employee vehicle normally stored on the premises plus one off street parking space for every 10 employees on the largest shift for visitor parking. Also, the applicant must demonstrate that there is sufficient area on site to accommodate parking based on one space for every 500 square feet of gross floor area to ensure that a sufficient amount of parking can be provided if the use or tenancy changes.

e. Compliance with Other Zoning Ordinance Standards. In addition to the requirements set forth herein, an applicant for conditional use approval for a Radioactive Materials Facility shall demonstrate compliance with the provisions of Article 5 hereof as well as all other relevant provisions of this Zoning Ordinance. In the event any other provision of this Zoning Ordinance

conflicts with any provision hereof, that provision containing the strictest regulation shall apply.

f. Annual Zoning Permit. To assure that the operator of a Radioactive Materials Facility continues to comply with the provisions hereof and the conditions of conditional use approval, the operator of such a facility shall obtain a zoning permit on an annual basis with application made by January 15 of each year. The permit shall be issued only after inspection by the code enforcement officer or such other person, as is designated by the Township, to determine that the use continues to meet all the provisions hereof and the conditions of any conditional use approval. The Code Enforcement Officer shall require certifications from third parties as to the adequacy of and proper operation of the radiation monitoring and security systems required hereby and that the requirements concerning personnel and training herein have been met.

g. Conditional Use Approval. An applicant for conditional use approval to establish a Radioactive Materials Facility shall demonstrate compliance with the following:

1. Compliance With Other Regulations. In addition to the regulations hereof, the applicant, prior to conditional use approval, shall demonstrate that permits have been obtained from the Nuclear Regulatory Commission (“NRC”) and/or Pennsylvania Department of Environmental Protection (“DEP”) to the extent permits are required by either of such agencies. The applicant shall provide Township with notice that it is applying for such a permit and afford the Township an opportunity to participate in the permit application process. The notice shall include a copy of the permit application and all supporting materials. In the event of a conflict between the regulations of the Nuclear Regulatory Commission and/or Pennsylvania Department of Environmental Protection, the strictest regulations shall apply except to the extent any specific regulation hereof is pre-empted by such other regulatory agencies.

2. Security of Facility. Applicant shall submit Plans and materials to demonstrate that the facility shall be secure from unauthorized access, which plans shall include fencing, an adequate alarm system, security guards and/or such other provisions to protect the radioactive materials from access by unauthorized persons.

3. Financial Security. An applicant shall post adequate financial security in the form of cash or an Irrevocable Letter of Credit. Any other form of financial security shall be subject to approval by the Township. The financial security posted shall be adequate to assure that the facility will be properly remediated in the event of a release of radioactive materials and will be properly closed when out of service in accordance with the provisions hereof. Additionally, the applicant shall maintain liability insurance in an amount reasonably required by the Township to assure that persons or property damaged as the result of a release of radioactive materials are adequately compensated.

4. **Containment Standards.** Applicant shall demonstrate that Radioactive Materials Facilities are adequately designed and will be constructed such as to contain the radioactive materials within the area where they are proposed to be stored, processed or used (the “containment area”). The applicant shall submit appropriate plans and other information demonstrating that the design and construction of the facility will be adequate to contain the materials safely within the containment area without release. The plans as well as the installation, construction, repair or modification, closure and removal of such containment facilities shall be subject to approval by the Township.

a. The containment area shall be constructed of materials sufficient thickness, density and composition so as not to leak or be structurally weakened as the result of contact with the radioactive material or vessels and equipment used in any process involving the radioactive material. The containment area shall be sufficient to contain radioactive releases for a period of time equal to or longer than the maximum anticipated time sufficient to prevent a release of radiation outside the building in which the containment area is located, but in no case less than 72 hours.

5. **Drainage System.** Drainage systems shall be in accordance with the Township Plumbing Code as amended and the following:

a. The shape of floors in indoor locations or similar areas in outdoor locations shall be not less than 1 percent.

b. Drains from indoor storage areas shall be sized to carry the volume of the fire protection water as determined by the design density discharged from the automatic fire extinguishing system over the minimum required system design area or area of the room or area in which the storage is located, whichever is smaller.

c. Drains shall terminate in an approved location away from buildings, valves, means of egress, fire access roadways, adjoining property and storm drains. Drains for water which may come into contact with radioactive materials shall be contained within the building.

d. Drains shall be constructed in such a way that there is no possibility that radioactive material can be discharged into the drainage system.

6. **Facility Closure.**

a. **Temporarily out-of-service facilities.** Facilities which are temporarily out of service shall continue to maintain a permit and be monitored and inspected.

b. **Permanently out-of-service facilities.** Facilities for which a permit is not kept current or is not monitored and inspected on a regular

basis shall be deemed to be permanently out of service and shall be closed in accordance with the provisions hereof.

c. **Plan.** The permit holder or applicant shall submit a plan to the Township to terminate storage, dispensing, handling or use of radioactive materials at least 30 days prior to facility closure. The plan shall demonstrate that radioactive materials which were stored, dispensed, handled or used in the facility have been transported, disposed of or reused in a manner that eliminates the need for further maintenance and any threat to public health, safety and welfare. In addition, closure shall be in accordance with any other State or Federal requirements concerning radioactive materials.

d. All radiation detectors shall be designed to automatically read radiation levels at the times specified in the conditional use approval and to automatically record the readings, the record of which shall be maintained by the permittee or applicant in accordance with the provisions of subparagraph g13 and 14 hereof

7. **Monitoring.** The applicant shall provide a monitoring plan and construct a monitoring system meeting the following conditions:

a. **Monitoring Methods.** Monitoring methods shall include the following:

i. Where water is utilized to shield the area surrounding the radiation source, radiation detectors shall measure any increase in the ambient radiation level of the water above the design levels approved in the conditional use application. Where other containment methods are used, radiation detectors shall be installed outside the shield and shall measure any increase in the amount of radiation beyond the level approved as part of the conditional use application.

ii. Where water is utilized to shield the area surrounding the radiation source, radiation detectors shall be installed above the water and shall measure any increase in the amount of radiation above the design levels approved as part of the conditional use.

iii. Radiation detectors shall also be mounted at an approved location on the building adjacent to the containment area which shall measure any increase in the amount of radiation above the design level approved as part of the conditional use.

iv. Radiation detectors shall be designed such that they provide automatic readings at the times specified in the conditional use approval and automatically record such readings. A record of the recorded readings shall be maintained in accordance with the provisions of subsection 13 hereof.

b. Radiation Monitoring Devices. The radiation detectors shall be designed and constructed in such a way as to be readable outside the containment area and shall also provide automatic notification to a central monitoring service when the level measured by any radiation detection device exceeds the ambient standards approved in the conditional use hearing. When the monitoring service receives notification of such a reading, persons identified on a list as part of the conditional use approval shall be immediately notified including the following persons:

- i. 911
- ii. Persons designated by the permittee
- iii. Township Code Official or Manager
- iv. Designated emergency management personnel
- v. Such other persons as the Township may direct in the conditional use approval

Monitoring devices shall also be connected to attention getting visual and audible alarms within the building housing the radioactive materials.

c. Monitoring, Testing and Inspection. The applicant shall demonstrate annually that the monitoring, testing and inspections are in compliance with the radioactive materials business plan required herein and shall maintain records adequate to demonstrate compliance therewith. The applicant or permittee shall provide certifications from third parties as to the proper operation of the monitoring devices and the central monitoring service as to the performance of the monitoring system during the previous 12 months and any recommended maintenance or upgrade of the monitoring system. If the monitoring system failed to function according to its design during the previous 12 month period, a report shall be provided stating the nature of the failure and the steps taken to prevent such an occurrence in the future.

8. Maintenance, Repair or Replacement.

a. It shall be a condition of conditional use approval that the operator of a Radioactive Materials Facility shall carry out maintenance, ordinary upkeep and minor repairs in a careful and safe manner as approved by the NRC.

b. Any substantial modification or repair of a radioactive materials storage facility other than minor repairs or emergency repairs shall be in accordance with plans submitted to the Township and approved by the NRC.

c. Permittee may make emergency repairs to a radioactive materials storage facility in advance of seeking an additional permit approval whenever an immediate repair is required to prevent or contain an

unauthorized release or to protect the integrity of the containment. However, within five (5) working days after such emergency repairs have been started, permittee shall seek approval by submitting drawings or other information adequate to describe the repairs to the Township and the NRC.

d. Replacement of any radioactive materials storage components must be in accordance with the provisions hereof and any State or Federal requirements concerning same.

9. Handling Radioactive Materials. An applicant for conditional use approval shall demonstrate that the handling of radioactive materials shall not be done in such a manner as to substantially increase the risk of release. When radioactive materials are moved into or out of a facility they shall remain in the travel path only for time reasonably necessary to transport the radioactive material and such movement shall be in a manner which will not result in an unauthorized release.

10. Emergency Planning. The applicant shall submit a written Emergency Management Plan. The applicant shall demonstrate that emergency equipment shall be provided which is reasonable and appropriate for potential emergencies presented by the Radioactive Materials Facility. Such equipment shall be regularly tested and adequately maintained. Simplified emergency procedures shall be posted conspicuously in locations where radioactive materials are kept.

11. Radioactive Materials Business Plan. An applicant for conditional use approval for a Radioactive Materials Facility shall submit a Radioactive Materials Business Plan ("RMBP") addressing the following:

a. Each applicant shall file a written plan with the Township, to be known as the RMBP which shall demonstrate the safe use, storage and handling of the radioactive materials. The RMBP may be amended from time to time with the approval of the Township. The RMBP shall be a public record except as otherwise specified. Approval of the RMBP shall mean that the RMBP has provided adequate information for purposes of evaluating the permit approval. Such approval shall not be understood to mean that the Township has made an independent determination of the adequacy of that which is described in the RMBP.

b. Standards for RMBP. The applicant shall submit the RMBP with the application for conditional use approval. The RMPB shall contain the following:

i. General Requirements. The RMPB shall contain the name and address of the facility and the business phone number of the applicant, the names and titles and emergency phone numbers of the primary and secondary emergency coordinators who will be present on site. The RMPB shall contain a map drawn at a legible scale and a format and detailed determined by the Township. It shall show the location of all buildings and structures,

radioactive materials loading area, parking lots, internal roads, storm and sewer drainage, and shall specify the uses of adjacent properties. Information shall also be provided as to location of wells, flood plains, earthquake faults, surface water bodies and/or general land uses including the location of schools, hospitals, institutions and residential areas within 1 mile of the facility boundaries.

ii. All radioactive materials stored at the facility shall be listed on a radioactive materials inventory sheet.

iii. A site plan and storage map must be included with the RMPB. The drawings are intended for use in emergency response situations. Due to the threat to the safety of the facility posed by the disclosure of the information on the facility storage map, the Township shall take reasonable steps not to disclose this information to the public without the consent of the operator unless ordered to do so by a court of competent jurisdiction. The permittee or permit applicant shall be deemed a real party in interest in any such action. Prompt notice of a lawsuit to compel disclosure shall be given by the Township to the permittee or applicant. However, the Township shall not be required to take reasonable steps to prevent disclosure where there has been any unauthorized release of radioactive materials stored in the Radioactive Materials Facility or where such disclosure arises out of any official emergency response related to the radioactive storage facility. The radioactive facility storage map shall be updated whenever there is any change proposed for the location of radioactive materials.

iv. Emergency Response/Contingency Plans. The RMPB shall include an emergency response/contingency plan which shall be subject to approval by the Township.

12. Employee Training and Background Checks. A background check, including prior employment history, a criminal record check and the checking of references shall be utilized to assure no employee at a Radioactive Materials Facility has committed a crime or is affiliated with any terrorist organization. The permittee shall provide certification to the Township that no employee with a criminal record or affiliated with a terrorist organization is in its employ. This certification shall be made when the annual zoning permit is issued as well. The employee shall have training appropriate to his or her involvement with radioactive materials.

13. Maintenance of Records. The following records shall be maintained at the facility:

a. Current employee records including the background check and training records;

b. Former employees training records (to be retained at least three years after termination of employment); and

c. Training program.

In addition, the applicant shall maintain a current work copy of the emergency response/contingency plan, a record of recordable/radioactive releases, a record of all inspections and monitoring performed at the facility and a description and documentation of facility emergency response drills. Applicant or permittee shall also maintain a record of all recordings of radiation levels required by this ordinance and any conditional use approval. All records required by the provisions hereof shall be maintained by the permittee, owner, operator or other person who obtains approval for the operation of a Radioactive Materials Facility for a period of not less than three years. Said records shall be made available to the Township at all reasonable hours and upon reasonable notice.

14. **Reports to Township.** Reports shall be submitted to the Township of any unauthorized release as soon as any person in charge of the Radioactive Materials Facility or person responsible for emergency response for such a facility has knowledge of any confirmed or unconfirmed release of radiation. Such person shall take all necessary steps to ensure the discovery and containment and clean up of such release and shall notify the Township of the occurrence within one hour of same occurring.

15. **Cleanup Responsibility.** Any person, firm, corporation or other entity responsible for the keeping, storage and use of radioactive materials at a Radioactive Materials Facility shall institute and complete all actions necessary to remedy the effects of any unauthorized release, whether sudden or gradual. The Township or Milford Township Fire Department, or emergency response agency, shall undertake to remedy the effects of such unauthorized release itself or themselves only if it is determined that it is reasonably necessary under the circumstances to do so. The responsible party shall be liable to the Township, Milford Township Fire Company or other emergency response agency for all costs incurred in remedying the effects of such unauthorized release including the cost of fighting fires, emergency response, traffic direction and the like. This responsibility is not conditioned upon evidence of willful conduct or negligence of the person who owns, leases, operates or is otherwise responsible for the Radiation Materials Facility in causing or allowing such release. Any responsible party who undertakes action to remedy the effects of unauthorized releases shall be entitled to recover appropriate costs and expenditures from the responsible parties.

16. **Indemnification.** The applicant, owner and operator of any Radioactive Materials Facility shall indemnify, hold harmless and defend the Township against any claim, cause of action, disability, loss, liability, damage, cost or expense howsoever arising which occurs by reason of an unauthorized release of radiation or radioactive materials in connection with the operation of a Radioactive Materials Facility.

17. **Inspections and Records.** Inspections by the Township. The Township may conduct inspections, at its direction, for the purpose of ascertaining compliance with the provisions hereof and causing to be corrected

any conditions which would constitute any violation of the provisions hereof or of any other law affecting the storage, handling and keeping of radioactive materials. Permittee shall not be required to disclose the identity of radioactive materials protected as trade secrets pursuant to Federal or State law to anyone other than the official designated by the Township to receive said information, except in the case of an emergency response or an unauthorized release related to the storage facility in which the trade secret material is contained. Therefore, permittee may put temporary coverings over the labels of trade secret materials during the course of the Township's inspections conducted by other than the Township official so designated. The designated Township official shall report his or her findings to the Board of Supervisors.

18. Right of Entry. Whenever necessary for the purpose of investigating and enforcing the provisions hereof or whenever any enforcement officer has reasonable cause to believe that there exists in any structure or upon any premises, any condition which constitutes the violation of the provisions hereof, said officers may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed upon any of said respective officers by law; provided that if such structure or premises be occupied, the officer shall first present proper credentials and request entry, and further provided, that if such structure or premises is unoccupied, the officer shall first make a reasonable attempt to contact a responsible person from such firm or corporation and request entry, except in emergency circumstances. If such entry is refused, the officer seeking entry shall have recourse to every remedy provided by law to secure entry.

19. Inspections by the Township – Discretionary. All inspections specified herein shall be at the discretion of the Township and nothing in the provisions herein shall be construed as requiring the Township to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in the provisions herein shall be construed to hold the Township or any officer, employee or representative of the Township responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or re-inspection.

20. Inspection by Permittee. The permittee shall conduct regular inspections of its own facilities to assure compliance with the provisions hereof and shall maintain logs or file reports in accordance with its RMBP. The inspector conducting such inspections shall be qualified to conduct such inspections.

SECTION 3. Section 650 amended.

Section 650.b of the Zoning Ordinance is amended to eliminate subsection 4 which includes wetlands within the riparian corridor inasmuch as wetland protection will be encompassed in the width determination provided at Section 650.c of the Zoning Ordinance.

SECTION 4. Miscellaneous Provisions.

a. **Inconsistent Ordinances Repealed.** To the extent any other Ordinance of Milford Township shall be inconsistent with or provide less strict regulations than the provisions hereof, then such inconsistent or less strict provision shall be deemed to have been repealed hereby; otherwise all other terms and provisions of Milford Township Ordinances shall continue and remain in full force and effect.

b. **Severability.** The provisions of this Ordinance are severable. If any provision of this Ordinance is held invalid such invalidity shall not effect other provisions of the Ordinance which can be given effect without the invalid provision.

c. **Effective Date.** This Ordinance shall be effective five (5) days from the date it is enacted.

ENACTED AND ORDAINED this 24th day of September, 2003.

**MILFORD TOWNSHIP
BOARD OF SUPERVISORS**

ATTEST:

**JEFFREY A. VEY,
TOWNSHIP MANAGER**

CHARLES STRUNK, CHAIRMAN

ROBERT B. MANSFIELD

THOMAS COURDUFF