ORDINANCE NO. _____ (done by Makel)

AN ORDINANCE OF BENTLEYVILLE BOROUGH, WASHINGTON COUNTY, PENNSYLVANIA, PROVIDING FOR REGULATION AND ADMINISTRATION OF THE BOROUGH'S ACT 537 SEWAGE PLAN AND ORDINANCES, RULES AND REGULATION INCIDENT THERETO AS APPLIED TO "ALTERNATE ON-LOT SYSTEMS".

WHEREAS, the Bentleyville Borough Council desires to further provide for administration of the Borough's Act 537 sewage plan and Ordinances, rules and regulations incident thereto; and

WHEREAS, the Borough confirmed the joinder by the Borough with certain other Municipalities in a Cooperative Agreement known as "Local Cooperative Sanitation Council" now known as the "Washington County Sewage Council" delegating to said Council the powers to carry out the responsibilities and duties mandated by the Pennsylvania Sewage Facilities Act as amended; and

WHEREAS, the Borough's Act 537 Sewage Plan is required to address sewage management for on lot sewage systems which, at a minimum, address management and maintenance requirements for new alternate on lot sewage systems and the Borough desires to delegate the aforesaid to the Washington County Sewage Council; and

WHEREAS, the Bentleyville Borough Council believes it to be in the best interest of the health, safety and welfare of its citizens to enact this Ordinance.

NOW, THEREFORE, pursuant to the authority of the Borough Code, as amended, and other laws of the Commonwealth of Pennsylvania, it is hereby ENACTED and ORDAINED as follows:

Section 1: **Title.** This Ordinance shall be known as The Bentleyville Borough Alternate On-Lot Sewage System Ordinance.

Section 2: **Purpose**. The Borough reaffirms the delegation to the Washington County Sewage Counsel to administer the requirements of Act 537 and the Bentleyville Borough Ordinances governing all aspects of alternate on-lot sewage collection, treatment and discharge.

Section 3: **Definitions**.

Act 537: The Act of January 24, 1966, P. L. 1535 as amended, 53 P.S. §750.1, et seq. known as the Pennsylvania Sewage Facilities Act.

Alternate On-Lot Sewage Systems: Any on-lot sewage system so designated as an alternate type by the Department of Environmental Protection.

Authorized Agent: A Certified Sewage Enforcement Officer, Code Enforcement Officer, Professional Engineer, Plumbing Inspector, Bentleyville Borough Secretary or any other qualified or licensed person who is delegated by Bentleyville Borough to function within the specified limits as the agent of Bentleyville Borough to carry out the provisions of this Ordinance.

Board: The Borough Council, Bentleyville Borough, Washington County, Pennsylvania.

Code Enforcement Officer (CEO): An individual employed by Bentleyville Borough to administer and enforce other Ordinances in Bentleyville Borough.

Community Sewage System: Any system, whether publicly or privately owned, for collection of sewage from two or more lots, and the treatment and/or disposal of the sewage on one or more lots or at any other site.

Washington County Sewage Council (WCSC): The Washington County Sewage Council, an intergovernmental cooperative organization which provides certain services to member Municipalities.

Department: The Department of Environmental Protection of the Commonwealth of Pennsylvania.

Individual Sewage System: A system of piping, tanks or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into any waters of the Commonwealth.

Malfunction: The condition which occurs when an on-lot sewage disposal system discharges sewage onto the surface of the ground, into ground waters of the Commonwealth, backs up into the building connected to the system or otherwise causes a nuisance hazard to the public health or pollution of ground or surface water or contamination of public or private drinking water wells. Systems shall be considered to be malfunctioning if any of the conditions noted above occur for any length of time during any period of the year.

Marginal Soils: Soils determined to be unsatisfactory or of limited utility as drainage for clarified sewage as determined by application of any or a combination of the following:

• Not suitable for installation of standard leach field or sand mound systems due to the slope of the terrain, proximity to water, etc., as listed in Department criteria.

* Tested and classified as unsuitable through standard soil testing/classification procedures approved by the Department

• Demonstrating unsatisfactory or limited utility through percolation testing by methods approved by the Department.

The decision on classification of soils is made by the Washington County Sewage Council in consideration of the above and any engineering data provided by the property owner.

Municipality: Bentleyville Borough, Washington County, Pennsylvania.

Official Sewage Facilities Plan: A comprehensive plan for the provision of adequate sewage disposal systems adopted by the Municipality and approved by the Department of Environment Resources as described in and required by the Pennsylvania Sewage Facilities Act.

On-Lot Disposal System: Any system for disposal of sewage involving pretreatment and subsequent disposal of the clarified sewage into the soil for final treatment and disposal; including both individual sewage systems and community sewage systems including, but not limited to, drip irrigation systems, AB out systems, small stream discharge systems, community on-lot systems and any other currently DEP approved and sewage disposal systems which may be approved by the DEP in the future as an alternate On-Lot disposal system.

Person: Any individual, association, public or private corporation for profit or not for profit, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, the term shall include the members of an association, partnership or firm, and the officers of any local agency or municipal, public or private corporation for profit or not for profit.

Rehabilitation: Work done to modify, alter, repair, enlarge or replace an existing on-lot sewage disposal system.

Replacement Area: A portion of a lot or a developed property, sized to allow installation of a subsurface sewage disposal area which is reserved to allow that

installation in the event of the malfunction of the originally installed alternate on-lot disposal system.

Sewage: Any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings, and any noxious or deleterious substances being harmful or toxic to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under the Act of June 22, 1937 (P.L. 1987, No. 394), known as "The Clean Stream Law", as amended.

Sewage Enforcement Officer (SEO): The designated official of Bentleyville Borough who issues and reviews permit applications and conducts such investigations and inspections as are necessary to implement Act 537 and the rules and regulations promulgated thereunder is the WCSA/Council.

Sewage Management District: Any area or areas of a Municipality for which a sewage management program is recommended by the Municipality's adopted Act 537 Official Sewage Facilities Plan. A sewage management district may or may not encompass the entire Municipality.

Sewage Management Program: A comprehensive set of legal and administrative requirements encompassing the requirements of this Ordinance and other administrative requirements adopted by Bentleyville Borough to effectively enforce and administer the Ordinance.

Section 4 Applicability.

A. From the effective date of this Ordinance, its provisions shall apply in any portion of the Municipality identified in the Municipality's Act 537 Official Sewage Facilities Plan as a sewage management district. Within such an area or areas, the provisions of this Ordinance shall apply to all persons owning any property serviced by a new alternate on-lot sewage disposal system and to all persons installing or rehabilitating or repairing on-lot sewage disposal systems with a new alternate type systems. If necessary, the entire Municipality may be identified as a sewage management district.

B. The provisions of this Ordinance are not applicable to conventional leach field and sand mound sewage systems.

C. The provisions of this Ordinance are applicable to all new alternate systems currently listed in the DEP Alternate Systems Guidance Manual as well as other alternate on-lot sewage systems subsequently approved by the Pennsylvania Department of Environmental Protection (DEP).

D. The provisions of this Ordinance are applicable to alternate on-lot disposal systems located in subdivisions with marginal condition for long term use on alternate on-lot sewage disposal.

E. Bentleyville Borough specifically delegates to WCSC the management of the provisions of this Ordinance, any other Borough and DEP requirements, rules, regulators and provisions regarding Municipal governance and enforcement of Alternate On-Lot sewage systems except as to malfunction of any such systems which shall be addressed by the Borough and/or its agent.

F. The Borough and the WCSC shall jointly prepare and approve by Resolution, rules, regulations and requirements for on-lot septic systems applicable to this Ordinance including permitting approval and maintenance of said systems.

G. In order to have a permit issued for a new alternate on-lot sewage disposal system covered by this Ordinance, the property owner must post a bond and/or security when required as acceptable by Bentleyville Borough and in the amount set by Bentleyville Borough at the time the permit is to be issued.

Section 5. **Replacement Areas**.

A. Any supplements or revisions to the Borough's Official Sewage Facilities Plan which are prepared pursuant to the applicable regulations of the Pennsylvania Department of Environmental Protection for subdivision or development of land within an identified sewage management district shall provide for the testing, identification and reservation of an area of each lot or developed property suitable for the installation of a replacement alternate on-lot sewage disposal system. This requirement is in addition to the testing, identification and reservation of an area for the primary alternate sewage disposal system.

B. No permit shall be issued for any proposed alternate on-lot sewage disposal system on any newly created or subdivided property in any sewage management district that has any lots designated as marginal soils unless and until a replacement area is approved, identified and reserved for the lots with the marginal soils designation. The replacement area must be identified on the land survey at the time of subdivision approval.

Section 6. Inspections - This Section 6 is applicable only when the Borough revises its Official Sewage Facilities Plan and is only applicable to the area or areas affected by such revision.

A. Any alternate on-lot sewage system may be inspected by the Borough's authorized agent at any reasonable time as of the effective date of this Ordinance. The property owner shall have the authority (right) to be present during any/all inspections, but may not use this authority as a de-facto prohibition or long-term (30 day) delay of inspection.

B. The inspection may include a physical tour of the property, the taking of samples from surface water, wells, other ground water sources, the sampling of the contents of the sewage disposal system itself and/or the introduction of a traceable substance into the interior plumbing of the structure served to ascertain the path and ultimate destination of wastewater generated in the structure.

C. The Borough's authorized agent shall have the right to enter upon land for purposes of inspection described above, subject to 'A' above.

D. An initial inspection shall be conducted by the Borough's authorized agent within one (1) year of the effective date of this Ordinance for the purpose of determining the type and functional status of each Alternate On-Lot sewage disposal system in the sewage management district. A written report shall be furnished to the owner of each property inspected as evidence of said inspection and a copy of said report shall be maintained in the Municipal records.

E. A schedule of routine inspections may be established by the Borough, if necessary, to assure the proper function of the alternate on-lot sewage disposal systems in the sewage management district.

F. The Borough and its authorized agent shall inspect alternate systems suspected or alleged to be malfunctioning. Should said inspections reveal that the system is indeed malfunctioning, the Borough and its authorized agent shall take action to require the correction of the malfunction. If total correction is not technically or financially feasible in the opinion of the authorized agent and a representative of the Pennsylvania Department of Environmental Protection, then action by the property owner to mitigate the malfunction shall be required.

G. A non-inclusive list of criteria that may be considered to determine if said alternate on-lot system is suspected of malfunctioning is as follows:

1. Visible sewage discharge to ground surface at leach field.

2. Visible discharge pipe(s) to road, ditch, creek or ground surface.

3. Excessive surface-of-ground sewage odor.

4. Backup of sewage out of system vents or drains.

5. Any additional conditions indicating malfunction as defined earlier in this Ordinance.

H. In instances where the malfunction can be determined by the Borough Code Enforcement Officer and/or the Washington County Sewage Council Representative by observation from the public right-of-way or viewable from private property accessed with the permission of the property owner, costs of testing to confirm malfunction are borne by the owner of the system. In cases of "Complaint" where the preceding cannot be verified without entering the subject property, costs will be pre-paid by the party making the complaint.

I. When a Pennsylvania Department of Environmental Protection authorized Official Sewage Facilities Plan Revision has been undertaken by the Borough, mandatory repair or replacement of individual malfunctioning sewage disposal systems within the study area may be delayed, at the discretion of the Borough, pending the outcome of the plan revision process. However, the Borough may compel immediate corrective action whenever a malfunction, as determined by the Borough officials and the Pennsylvania Department of Environmental Protection, represents a serious public health or environmental threat.

Section 7. **Operation**.

A. Only normal domestic wastes shall be discharged into any alternate on-lot sewage disposal system. The following shall not be discharged into the system:

1. Industrial wastes;

2. Automobile oil and other domestic oil;

3. Toxic or hazardous substances or chemicals, including, but not limited to, pesticides, disinfectants, acids, paints, paint thinners, herbicides, gasoline and other solvents or;

4. Clean surface or ground water, including water from roof or cellar drains, springs, basement sump pumps and french drains.

SECTION 8. **Penalties**

A. Any person failing to comply with any provisions of this Ordinance shall be subject to a fine of not less that three hundred dollars ($300.00) and costs, and not more than five hundred dollars ($500.00) and costs, or in default thereof shall be confined in the county jail for a period of not more than thirty (30) days. Each day of noncompliance shall constitute a separate offense.

B. The penalty for actual malfunctions of any on-lot sewage septic system will come under the rules and regulations of the Pennsylvania Code, Title 73, Section 73.11(c) and the Pennsylvania Consolidated Statutes (Health & Safety) Title 35, Sec. 150.14, nuisance and Title 35, Sec. 750.13 Penalties.

SECTION 9 Separability. If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough of Bentleyville that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. Any Ordinance or parts hereof inconsistent herewith are hereby replaced.

SECTION 10. **Effective Date**. This Ordinance shall be effective upon passage or as otherwise provided by law.

DULY ENACTED AND ORDAINED on this _____ day of _____, 2009, by the Borough Council of Bentleyville Borough, Washington County, Pennsylvania, in lawful session duly meeting.

ATTEST: BENTLEYVILLE BOROUGH

_____ BY: _____
Sheryl M. Hreha/Secretary-Treasurer Lena Greenfield/PRESIDENT

BY: _____
Henry Wilson/VICE-PRESIDENT

EXAMINED AND APPROVED the day and year as set forth above.

BY: _____
Walter Wisniewski/MAYOR