

Lehman Township, Luzerne County, Pa.

**ORDINANCE NUMBER 112299 of 1999**

WHEREAS, THE FEEDING OF MIGRATORY WATERFOWL OR CREATING ANY CONDITION CAUSING A CONGESTION OF SAID WATERFOWL WHICH RESULTS IN AN ACCUMULATION OF WATERFOWL DROPPINGS OR DAMAGE TO PLANTS OR PROPERTY OR WHICH RESULTS IN A THREAT OR NUISANCE TO PUBLIC HEALTH, SAFETY OR WELFARE, AND

WHEREAS, CIRCULATORS INSTALLED IN LAKE SILKWORTH ARE CAUSING EXTENSIVE UNDER ICE CURRENTS AND AREAS OF OPEN WATER, AND

WHEREAS, THIS ACTION RESULTS IN CREATING HAZARDOUS AND DANGEROUS LAKE ICE CONDITIONS AFFECTING THE SAFE PURSUIT OF WINTER RECREATION FOR MANY LAKE SILKWORTH RESIDENTS AND THEIR GUESTS, AND

WHEREAS, THE OPEN WATER CREATED BY THE CIRCULATORS IS ATTRACTING WATERFOWL OUT OF SEASON AND CREATING A HEALTH HAZARD, AND

WHEREAS, OPERATION OF CIRCULATORS CAUSES DAMAGE TO ADJACENT PROPERTIES, LIMITS RIGHTFUL ACCESS TO THE LAKE BY OTHER PROPERTY OWNERS, AND RESULTS IN AN EXTENSIVE FECAL RESIDUE ON WATERFRONT PROPERTIES FROM ATTRACTED WATERFOWL, AND

WHEREAS, THERE ARE OTHER LESS EXTENSIVE AND DISRUPTIVE MEANS TO PROTECT A WHARF, AND NOW THEREFORE IT IS HEREBY ORDAINED AND ENACTED BY THE LEHMAN TOWNSHIP BOARD OF



**SUPERVISORS THAT THE FOLLOWING ORDINANCE IS HEREBY ADOPTED:**

**An Ordinance Prohibiting the Feeding of Waterfowl or Creating any Condition Causing the the Congestion of Waterfowl, including, but not limited to, the Operation of Circulators or Similar Devices that Create Open Water When Normal Ice Conditions are Present on Lake Silkworth; establishing Periods of Time Prohibiting the Use of Circulators or Similar Devices; providing for Enforcement of the Ordinance; establishing Fines and Penalties; repealing Township Ordinance NO. 51898 and inconsistent ordinances.**

**ARTICLE 1      DEFINITIONS**

1.      Migratory waterfowl shall include but is not limited to geese, swans, brants, and ducks.
  
2.      'Circulators' or aerators shall include any mechanical or non-mechanical device, any warming or heating device, or any other device which would prohibit or restrict the water on Lake Silkworth from freezing or becoming thick enough to permit people to walk thereon.

**ARTICLE 2      FEEDING WATERFOWL**

1.      It shall be unlawful for any person to:
  - A.      Feed any migratory waterfowl.
  
  - B.      Create any condition, or allow any condition to exist, which results in a congregation or congestion of migratory water fowl which:
    - i.      Results in an accumulation of waterfowl feces or droppings, or
    - ii.      Results to damage to flora, fauna, or public or private property, or
    - iii.      Results in a threat to the health, safety or welfare of said migratory waterfowl, or
    - iv.      Results in a threat or nuisance to the public health, safety or welfare.



### **ARTICLE 3      PERIOD OF CIRCULATOR PROHIBITION**

1. From and after the effective date hereof, it shall be unlawful for any person, whether acting on his or her own behalf or as the agent, servant or employee of another person, to install, operate or permit the operation of a circulator on Lake Silkworth during the winter months from December 1st through March 31st.

### **ARTICLE 4      ENFORCEMENT**

1. In the event any person shall violate the terms and provisions of this Ordinance by keeping, maintaining, permitting or allowing a circulator to be used on Lake Silkworth during the months of December through March. Lehman Township, or its designated agent, shall serve or cause to be served upon such person owning or leasing said premises written notice of violation on a form to be approved by Lehman Township. In the event anyone served with notice as required herein does not remove or otherwise cease operation of the circulator which is in violation of this Ordinance within 48 hours of the date of said notice, the Township or its designated agent may take such action as deemed appropriate by Lehman Township or its designated agent to correct, remove or otherwise make inoperative the circulator and any expense in connection therewith shall be charged to and paid by the person(s) served with the aforesaid notice and charged with said violation.

### **ARTICLE 5      PRESUMPTION OF LIABILITY**

1. For purposes of enforcement of the terms and provisions of this Ordinance and for purposes of ascertaining joint and/or joint and several liability, as the case may be, it is hereby ordained that any person who as the record owner of any property in Lehman Township abutting the lake where a circulator is kept, maintained, permitted or allowed in violation of the terms and provisions of this Ordinance shall be deemed to be effectively in control of said circulator and is presumed to be liable under the terms and provisions of this Ordinance by permitting a circulator to be used on Lake Silkworth as prohibited herein.

### **ARTICLE 6      ENFORCEMENT AND PENALTIES**

1. Any person convicted of violating any section of this Ordinance shall for every such violation, be sentenced to pay a fine of not less than fifty (\$50.00) dollars but not more than one thousand (\$1000.00) dollars plus the costs of prosecution. Enforcement of this Ordinance shall be by the Lehman Township police who shall institute proceedings by an action brought before a justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.



2 The continuation of a violation under this Ordinance shall constitute a separate offense for each successive day of violation and the person or persons allowing or permitting the continued violation may be convicted and punished as provided herein for each day as constituting and being a separate offense under the terms and provisions of this Ordinance.

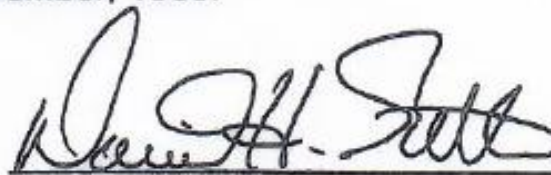
## ARTICLE 7 SEVERABILITY

1. If any section, provision or part of this Ordinance shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining sections, provisions or parts of this Ordinance. The Lehman Township hereby declares that it would have enacted and ordained the remaining sections, provision or parts of this Ordinance if it had known that such sections, provisions or parts thereof would be declared unconstitutional.

## ARTICLE 8 REPEALER

1. All ordinances or parts thereof which are inconsistent with this Ordinance are hereby repealed as is Township Ordinance NO. 51898.

PASSED at a special meeting for general purposes by the Board of Supervisors of Lehman Township this 22nd day of November, 1999.



DAVID SUTTON



RAYMOND IWANOWSKI



DOUGLAS IDE

Attest:



JON ROGERS