Section 302. Exemptions/Modifications

A. Under no circumstance shall the Applicant be exempt from implementing such measures as necessary to:

1. Meet State Water Quality Standards and Requirements.
2. Protect health, safety, and property.
3. Meet special requirements for High Quality (HQ) and Exceptional Value (EV) watersheds.

B. The Applicant must demonstrate that the following BMPs are being utilized to the maximum extent practicable to receive consideration for the exemptions:

1. Design around and limit disturbance of Floodplains, Wetlands, Natural Slopes over 15%, existing native vegetation, and other sensitive and special value features.
2. Maintain riparian and forested buffers.
3. Limit grading and maintain non-erosive flow conditions in natural flow paths.
4. Maintain existing tree canopies near impervious areas.
5. Minimize soil disturbance and reclaim disturbed areas with topsoil and vegetation.
6. Direct runoff to pervious areas.

C. The Applicant must demonstrate that the proposed development/additional impervious area will not adversely impact the following:

1. Capacities of existing drainageways and storm sewer systems.
2. Velocities and erosion.
3. Quality of runoff if direct discharge is proposed.
4. Existing known problem areas.
5. Safe conveyance of the additional runoff.
6. Downstream property owners.

THE FOLLOWING ARE OPTIONS FOR EXEMPTION CRITERIA THE MUNICIPALITY MAY SELECT FROM. THE OPTIONS WILL GIVE MUNICIPALITIES FLEXIBILITY TO SELECT AN EXEMPTION APPROACH THAT BEST SUITS THE NEEDS OF THE MUNICIPALITY.

OPTION 1.

OPTION 1 IS THE CURRENT EXEMPTION CRITERIA. THIS OPTION ALLOWS THE MUNICIPALITY TO RETAIN THE EXEMPTION CRITERIA FOUND IN THE CURRENT ACT 167 COUNTY WIDE PLAN AND IMPLEMENTED IN EXISTING MUNICIPAL ORDIANCES IN THE VAST MAJORITY OF MUNICIPALITIES IN DAUPHIN COUNTY.

D. An Applicant proposing Regulated Activities, after demonstrating compliance with Sections 302.A, 302.B, and 302.C, may be exempted from various requirements of this Ordinance according to the following table:

New Impervious Area* [Since the Date of Adoption of this Ordinance] (square footage)	Applicant Must Submit to the Municipality
0 – 1,000	
1,000 – 5,000	Volume Controls and SWM Site Plan & Report
> 5,000	Rate Controls, Volume Controls, SWM Site Plan & Report and Record Drawings

*Gravel in the existing condition shall be considered pervious and proposed gravel shall be considered impervious.

OPTION 2.

OPTION 2 IS THE RECENTLY PROPOSED AMMENDMENT. IT IS INTENDED PRIMARILY TO PROVIDE RELIEF FROM THE REQUIREMENTS OF THE ORDINANCE IN SITUATIONS WHERE THERE IS SUFFICIENT PERVIOUS AREA SURROUNDING THE NEW IMPERVIOUS AREA TO SATISFACTORILY HANDLE THE RESULTING INCREASED VOLUME OF RUNOFF GENERATED FROM THE NEW IMPERVIOUS AREA. THIS OPTION MAY BE BEST SUITED TO MORE RURAL MUNICIPALITIES.

D. An Applicant proposing Regulated Activities, after demonstrating compliance with Sections 302.A and 302.B may be exempted from the requirements of this Ordinance according to Table 1 below and the following conditions. If the applicant requests an exemption and meets all of the conditions below, the requirements of 302.C are assumed to be met.

1. MINIMUM SEPARATION

a. New impervious cover must be separated from the features listed in 302.D.1.b below by the minimum separation distances listed in Table 1.

b. Minimum separation distance is the shortest distance from the edge of the proposed new impervious cover, or roof drain discharge point, in the flow direction of runoff, to any of the following:

i. Perennial or intermittent streams or watercourses
ii. Swales or ditches
iii. Wetlands
iv. Lakes, ponds and other surface water bodies
v. Storm sewer or combined sewer systems
vi. Public roads
vii. Property lines
viii. Cropland, pasture land, manure storage areas and other agricultural land unless the area meets the requirements of 3.02.D.4.b below.
ix. Other features deemed relevant by the municipal governing body

2. MULTIPLE IMPERVIOUS AREAS

a. If the proposed new impervious area receives runoff from an existing contiguous impervious area or contributes runoff to an existing contiguous impervious area, the total impervious area to be considered for this exemption shall be the new impervious area only.

b. If the existing and proposed new impervious are not contiguous, the total impervious area to be considered for this exemption shall be the new impervious area only. In this case, the total separation area may include the distance between the two impervious areas.

c. Separation from the features listed in 3.02.D.1.b shall be determined from the edge, or roof drain discharge, of either the existing or the proposed new impervious area, whichever is most downslope.

d. The municipality reserves the right to consider existing conditions and runoff issues in determining the needed separation area under this section.

TABLE 1 – MINIMUM SEPARATION DISTANCES

New Impervious Area in Square Feet	**Minimum Separation Distance (in feet)**	
	NO ROOF DRAIN	ROOF DRAIN
0-250	25	40
251-500	50	75
501-1,000	75	110
1,001-1,500	100	150
1,501-2,000	125	190
2,001-2,500	150	225
2,501-3,000	175	260
3,001-4,000	200	300
4,001-5,000	225	340
5,001 to 10,000	350	525
Where the municipality believes that conditions present in the receiving area (slope, soil type, existing problems, etc.) warrant additional separation distance, the municipality may request additional separation distance or require Stormwater management controls.		

3. DISCHARGE

   a. With the exception of roof drains, runoff from the proposed new impervious cover may not be concentrated. Roof drains:

      i. Must discharge to a stabilized separation area meeting the criteria in Table 1 and section 3.02.D.4.

      ii. May not discharge to concentrated flow areas.

   b. Separation shall be determined from the roof drain discharge point, unless the discharge is to an impervious area. In this case the separation shall be determined from the edge of the pervious area.

4. SEPARATION AREA

   a. The area separating the proposed new impervious discharge from any features such as those listed in 302.D.1.b must at all times meet the following criteria:

      i. Be maintained in stable vegetative cover.

      ii. Eroded areas in the separation area must be immediately repaired.

      iii. No new impervious cover may be installed in the separation areas unless the requirements of this ordinance are met.

      iv. Runoff in the separation area must be maintained as unconcentrated flow.

   b. The separation area may contain cropland, pasture land, manure storage areas and other agricultural land provided the land is in compliance with Title 25 Chapter 102.4.a (relating to erosion and sediment pollution control on agricultural land) and Title 25 Chapter 91.36.a (relating to pollution control at agricultural operations) of The Pennsylvania Code.

5. REQUIREMENT FOR ADDITIONAL STORMWATER MANAGEMENT CONTROLS

   a. The municipal governing body reserves the right to require additional stormwater management controls if an exempted project is determined to be causing adverse impacts of any kind.

6. OBLIGATION TO MEET OTHER REQUIREMENTS

a. Nothing in this section shall relieve the applicant of any responsibility under other regulations such as, but not limited to, municipal ordinances or codes and state and federal regulations related to stormwater management , NPDES permitting requirements for erosion and sediment pollution control and Post Construction Stormwater Management, stream and wetland encroachment or floodplain management.

OPTION 3

OPTION 3 IS A HYBRID OF OPTIONS 1 AND 2. IT IS BASED PRIMARILY ON OPTION 2 BUT INCLUDES ELEMENTS OF OPTION 1 AS AN ADDITIONAL EXEMPTION OPTION WHERE THE REQUIREMENTS OF OPTION 2 CAN NOT BE MET.

D. An Applicant proposing Regulated Activities, after demonstrating compliance with Sections 302.A and 302.B may be exempted from the requirements of this Ordinance according to Table 1 below and the following conditions. If the applicant requests an exemption and meets all of the conditions below, the requirements of 302.C are assumed to be met.

1. MINIMUM SEPARATION

a. New impervious cover must be separated from the features listed in 302.D.1.b below by the minimum separation distances listed in Table 1.

b Minimum separation distance is the shortest distance from the edge of the proposed new impervious cover, or roof drain discharge point, in the flow direction of runoff, to any of the following:

i. Perennial or intermittent streams or watercourses
ii. Swales or ditches
iii. Wetlands
iv. Lakes, ponds and other surface water bodies
v. Storm sewer or combined sewer systems
vi. Public roads
vii. Property lines
viii. Cropland, pasture land, manure storage areas and other agricultural land unless the area meets the requirements of 3.02.D.4.b below.
ix. Other features deemed relevant by the municipal governing body

2. MULTIPLE IMPERVIOUS AREAS

a. If the proposed new impervious area receives runoff from an existing contiguous impervious area or contributes runoff to an existing contiguous impervious area, the total impervious area to be considered for this exemption shall be the new impervious area only.

b. If the existing and proposed new impervious are not contiguous, the total impervious area to be considered for this exemption shall be the new impervious area only. In this case, the total separation area may include the distance between the two impervious areas.

c. Separation from the features listed in 3.02.D.1.b shall be determined from the edge, or roof drain discharge, of either the existing or proposed new impervious area, whichever is most downslope.

d. The municipality reserves the right to consider existing conditions and runoff issues in determining the needed separation area under this section.

TABLE 1 – MINIMUM SEPARATION DISTANCES

New Impervious Area in Square Feet	**Minimum Separation Distance**	
	NO ROOF DRAIN	ROOF DRAIN
0-250	25	40
251-500	50	75
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2,001-2,500	150	225
2,501-3,000	175	260
3,001-4,000	200	300
4,001-5,000	225	340
5,001 to 10,000	350	525
Where the municipality believes that conditions present in the receiving area (slope, soil type, existing problems, etc)warrant additional separation distance, the municipality may request additional separation distance or require Stormwater management controls.		

3. DISCHARGE

a. With the exception of roof drains, runoff from the proposed new impervious cover may not be concentrated. Roof drains:

i. Must discharge to a stabilized separation area meeting the criteria in Table 1 and section 3.02.D.4.

ii. May not discharge to concentrated flow areas.

b. Separation shall be determined from the roof drain discharge point, unless the discharge is to an impervious area. In this case the separation shall be determined from the edge of the impervious area.

4. SEPARATION AREA

a. The area separating the proposed new impervious discharge from any features such as those listed in 302.D.1.b must at all times meet the following criteria:

i. Be maintained in stable vegetative cover.

ii. Eroded areas in the separation area must be immediately repaired.

iii. No new impervious cover may be installed in the separation areas unless the requirements of this ordinance are met.

iv. Runoff in the separation area must be maintained as unconcentrated flow.

b. The separation area may contain cropland, pasture land, manure storage areas and other agricultural land provided the land is in compliance with Title 25 Chapter 102.4.a (relating to erosion and sediment pollution control on agricultural land) and Title 25 Chapter 91.36.a (relating to pollution control at agricultural operations) of The Pennsylvania Code.

5. An applicant for an exemption that cannot meet the criteria above may qualify for reduced requirements based on the following:

   a. The applicant must demonstrate compliance with 302.A, 302.B and 302.C above.

   b. Reduced requirements will be according to the following table 2:

TABLE 2 – REDUCED STORMWATER MANAGEMENT REQUIREMENTS

New Impervious Area*In Square Feet Since the Date of Adoption of this Ordinance	Applicant Must Submit to the Municipality
0 – 1,000	
1,000 – 5,000	Volume Controls and SWM Site Plan & Report
> 5,000	Rate Controls, Volume Controls, SWM Site Plan & Report and Record Drawings

*Gravel in the existing condition shall be considered pervious and proposed gravel shall be considered impervious.

6. REQUIREMENT FOR ADDITIONAL STORMWATER MANAGEMENT CONTROLS

   a. The municipal governing body reserves the right to require additional stormwater management controls if an exempted project is determined to be causing adverse impacts of any kind.

7. OBLIGATION TO MEET OTHER REQUIREMENTS

   a. Nothing in this section shall relieve the applicant of any responsibility under other regulations such as, but not limited to, municipal ordinances or codes and state and federal regulations related to stormwater management , NPDES permitting requirements for erosion and sediment pollution control and Post Construction Stormwater Management, stream and wetland encroachment or floodplain management.

The three options above are for consideration for exemption alternatives. Item J below is also proposed language. If a municipality desires to keep the existing ordinance (ie, use option 1) nothing need be done. If municipalities desire to use options 2 or 3, items E through I are included (these items are in the existing ordinance language) and item J is recommended. The intent of item J is to make explicitly clear that the governing body has the right to consider other factors in making a determination.

E. The purpose of this section is to ensure consistency of stormwater management planning between local ordinances and NPDES permitting (when required) and to ensure that the Applicant has a single and clear set of stormwater management standards to which the Applicant is subject. The Municipality may accept alternative stormwater management controls provided that:

   1. The Applicant, in consultation with the Municipality, PADEP and/or DCCD, states that meeting the requirements of the Volume Controls or Rate Controls of this Ordinance is not possible or creates an undue hardship.

   2. The alternative stormwater management controls, proposed by the Applicant, are documented to be acceptable to the Municipality, PADEP and/or DCCD for NPDES requirements pertaining to post construction stormwater management requirements.

   3. The alternative stormwater management controls are in compliance with all other sections of this Ordinance, including but not limited to sections 301.D, 302.A, 302.B and 302.C.

F. Forest management and timber operations are exempt from Rate and Volume Control requirements and SWM Site Plan preparation requirement of this Ordinance provided the activities are performed according to the requirements of 25 PA Code Chapter 102. It should be noted that temporary roadways are not exempt.

G. Agricultural activities are exempt from the requirements of this Ordinance provided the activities are performed according to the requirements of 25 PA Code Chapter 102.

H. Linear roadway improvement projects that create additional impervious area are not exempt from the requirements of this Ordinance. However, alternative stormwater management strategies may be applied at the joint approval of the Municipality and the Dauphin County Conservation District (if an NPDES permit is required) when site limitations (such as limited right-of-way) and constraints (as shown and provided by the Applicant), preclude the ability of the Applicant to meet the enforcement of the stormwater management standards in this Ordinance. All strategies must be consistent with PADEP's regulations, including NPDES requirements.

I. The municipality may, after an Applicant has demonstrated compliance with Sections 302.A, 302.B, and 302.C, grant a modification of the requirements of one or more provisions of this Ordinance if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the Ordinance is observed.

All requests for a modification shall be in writing and shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance involved, and the minimum modification necessary.

J. MUNICIPAL DECISION

All requests for exemptions or modifications shall be at the discretion of the municipal governing body. Demonstration that a proposed project meets exemption or modification requirements does not necessarily obligate the municipal governing body to grant the request for exemption or modification.

The municipal governing body may consider any and all relevant factors such as, but not limited to, runoff concentration, slope, soil characteristics, existing problems, adjacent properties, sensitive environmental features and recommendations from other municipal entities such as planning commissions, municipal engineers and solicitors in determining whether or not to grant any request for exemption or modification.