

**FAYETTE COUNTY CODE ENFORCEMENT AGENCY  
FAYETTE COUNTY, WEST VIRGINIA**

**RESOLUTION NO. 2021-01**

**Creating within the Fayette County Code Enforcement Agency the “White Oak Creek-Dunloup Creek” Watershed Pollution Abatement Project and Site; Appointing a Project Manager for the Project; and Directing Preparations and Recommendations to this Agency for timely commencement and completion of a “Preliminary Site Assessment/Site Investigation” Plan.**



**WHEREAS**, on August 17, 2018, the Fayette County Commission adopted Fayette County Ordinance # 2018-001, entitled “The Fayette County Comprehensive Public Nuisance Abatement Ordinance” with an effective date of August 17, 2018; and

**WHEREAS**, as required by West Virginia § 7-1-3ff, the Fayette County Commission, by enactment of Section VII(a) of The Fayette County Comprehensive Public Nuisance Abatement Ordinance, created the Fayette County Code Enforcement Agency to have the expertise and jurisdiction to investigate and lawfully respond to known or suspected hazards to public health and the environment within Fayette County, and to address as promptly as possible the Environmental and Public Health Protection priorities and sites within Fayette County that present endangerments to the Public Health, Safety, Welfare or the Environment, or that impair or imminently threaten to impair any beneficial use of any Natural Resource within Fayette County that is held in trust for the use and benefit of present and future generations of the Public; and

**WHEREAS**, Section VII of **Fayette County Ordinance 2018-01** authorizes the Fayette County Code Enforcement Agency to undertake investigations of places, conditions, locations, structures, objects or activities within or affecting Fayette County where reasonable grounds exist for suspecting that any condition may exist or activity is being engaged in that constitutes or may constitute a **Public Nuisance** as defined and declared in Section V of **Fayette County Ordinance 2018-01**; and

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**RESOLUTION No. 2021-01 - “White Oak Creek-Dunloup Creek Watershed Pollution Abatement Project”**

**WHEREAS**, Dr. D. Scott Simonton, a sworn Special Agent and Authorized Investigator of this Agency, is a full Professor and Coordinator of the Graduate Environmental Sciences Program at Marshall University, Huntington and South Charleston, West Virginia. Dr. Simonton is also the founder and Principal Scientist and Environmental Engineer of Ashby-Tucker Environmental, LLC, a prominent West Virginia Environmental Engineering and Forensic Science Consulting and Project Management Company. Dr. Simonton is a Registered Professional Engineer in WV and MS, and formerly registered in TN and NM. For over 15 years until his resignation in 2017, Dr. Simonton served at the appointment of four (4) consecutive Governors of West Virginia as a **Member and Vice-Chairman of the West Environmental Quality Board**, the WV State Board responsible for hearing and resolving appeals from decisions of the West Virginia Department of Environmental Protection. Earlier in his professional career, Dr. Simonton also served as a Commissioned Officer in the United State Army Armored Cavalry and as a Non-commissioned Officer in the United States Marine Corp Infantry. Dr. Simonton brings regionally and nationally recognized Environmental forensic scientific and engineering expertise in the remedial investigation and design and implementation of appropriate Environmental and Public Health protection remedial actions at a wide range of contaminated properties, including multiple major mining, industrial, commercial, and residential sites. Dr. Simonton frequently serves before federal and state courts as Lead Expert Witness and Remedial Project Manager in governmental and private party legal actions to compel appropriate remedial investigation and abatement of sites that present or may present endangerments to the Public Health, Safety, Welfare or the Environment. Dr. Simonton has a broad range of expertise in the field of environmental engineering and geo-science, with particular focus in hydrogeology, fate and transport in the environment of released contaminants, and environmental issues associated with mining.

**WHEREAS**, good cause to suspect that within the White Oak Creek-Dunloup Creek watershed within Fayette County, West Virginia, which creeks are tributaries to the New River, there exists at least one large piles of coal mining wastes on the surface of the land within that watershed that has been discharging and that is continuing to discharge **Hazardous Substances and Pollutants and Contaminants**, as both of those terms are defined in Fayette County Ordinance 2018-01, into the Environment within that watershed injuriously impairing the beneficial uses of the Waters of the State within that watershed;

**NOW, THEREFORE, BE IT RESOLVED** by majority vote of those members of the Fayette County Code Enforcement Agency present and authorized to vote that there should be, and hereby is, created within the Fayette County Code Enforcement Agency the “White Oak Creek-Dunloup Creek Watershed Pollution Abatement Site,” which shall include all geographical areas, sites, facilities and locations, both above ground and underground, that are within the watershed of White Oak and Dunloup Creeks within Fayette County;

**BE IT FURTHER RESOLVED** by majority vote of those members of the Fayette County Code Enforcement Agency present and authorized to vote that **D. Scott Simonton, Ph.D., P.E., should be, and hereby is**, retained and appointed as a **Site Project Manager** of the “White Oak Creek-Dunloup Creek Pollution Abatement Site” for this Agency;

**BE IT FURTHER RESOLVED** by majority vote of those members of the Fayette County

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Code Enforcement Agency present and authorized to vote that Dr. Simonton and such staff and resources of the Fayette County Code Enforcement Agency as are or will become available to the “White Oak Creek-Dunloup Creek Watershed Pollution Abatement Site,” should coordinate all efforts of this Agency to secure timely and effective investigation and abatement of any conditions of Public Nuisance that do or may exist within the “White Oak Creek-Dunloup Creek Pollution Abatement Site,” with the efforts and abilities of: (i) the Environmental and Public Health Protection Unit (“EPHPU”) of the Office of the Fayette County Prosecuting Attorney; (ii) the Fayette County Board of Health; and (iii) the Fayette County Solid Waste Authority, so as timely to secure effective protection of the Public Health, Safety, Welfare and the Environment within “White Oak Creek-Dunloup Creek Pollution Abatement Site;”

**BE IT FURTHER RESOLVED** by majority vote of those members of the Fayette County Code Enforcement Agency present and authorized to vote that Dr. Simonton should be, and hereby is, directed as expeditiously as possible to recommend to the Fayette County Code Enforcement Agency appropriate methods, processes, procedures and protocols for this Agency to undertake and complete a “Preliminary Assessment/Site Investigation Plan” (“PA/SI Plan”) that would comply with the requirements of Section IX of Fayette County Ordinance 2018-001, the remedial investigation and response goals and standards established by Formal Order of the Fayette County Commission issued October 13, 2017; and, to the maximum extent possible, would comply with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R., Part 300, interpreted and applied with this Agency acting as “Lead Agency.”

**IT IS SO RESOLVED AND DONE** by the majority vote of the Members of the Fayette County Code Enforcement Agency present and entitled to vote, a quorum being present, at its duly-noticed Public Meeting on this 1<sup>st</sup> day of February 2021.

**FAYETTE COUNTY CODE  
ENFORCEMENT AGENCY  
FAYETTE COUNTY, WEST VIRGINIA**

By: \_\_\_\_\_  
Debbie Berry  
Fayette County Administrator  
Its Chairperson

**ATTEST:**

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Aletha L. Stolar  
Secretary and Member  
FAYETTE COUNTY CODE ENFORCEMENT AGENCY

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