

LINCOLN COUNTY, WV ORDINANCE NO. 2017- _____

AN ORDINANCE DECLARING, PROHIBITING, AND ESTABLISHING PROCEDURES FOR INVESTIGATING AND ABATING ANY PUBLIC NUISANCE WITHIN OR ADVERSELY AFFECTING LINCOLN COUNTY, WEST VIRGINIA; PROHIBITING AS A PUBLIC NUISANCE THE DISPOSAL OF DESIGNATED HAZARDOUS WASTES AND HAZARDOUS SUBSTANCES AT ANY PLACE WITHIN LINCOLN COUNTY, DECLARING THE EXISTENCE OF ANY PERMANENT LAND DISPOSAL OF ANY SUCH HAZARDOUS WASTES OR PROHIBITED HAZARDOUS SUBSTANCES AT ANY PLACE WITHIN LINCOLN COUNTY TO BE A PUBLIC NUISANCE; PROVIDING DEFINITIONS; DECLARING INTENT; PROVIDING FOR EXEMPTIONS; PROVIDING FOR METHODS OF INVESTIGATION, ENFORCEMENT, AND ABATEMENT OF PUBLIC NUISANCES AND ANY IMMINENT AND SUBSTANTIAL ENDANGERMENTS TO THE PUBLIC HEALTH, SAFETY, WELFARE OR THE ENVIRONMENT WITHIN LINCOLN COUNTY; PROVIDING PROCEDURES FOR RECOVERY OF PUBLIC NUISANCE ABATEMENT ACTION COSTS INCURRED OR TO BE INCURRED BY LINCOLN COUNTY FROM PERSONS LIABLE FOR THE PUBLIC NUISANCE CONDITION; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lincoln County Commission is authorized and empowered by West Virginia Code Section 7-1-3kk to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety, and to abate or cause to be abated anything which the County Commission determines to be a public nuisance; and

WHEREAS, the Lincoln County Commission is also authorized and empowered by West Virginia Code Section 7-1-3-ff to enact ordinances regulating the removal and clean up of any accumulation of refuse or debris, or toxic spillage or toxic seepage located on private lands which is determined by the County Commission to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect; and

WHEREAS, in order to assure adequate protection of public health, safety, welfare and the environment within Lincoln County, the permanent land disposal of any Prohibited Hazardous Substances at any disposal site or facility within Lincoln County other than at a facility with either: (1) a valid federal Hazardous Waste treatment or disposal permit properly issued pursuant to the provisions of Subtitle C of the federal Solid Waste Management Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended, 42 U.S.C. §§ 69016992k, or (2) a duly issued and valid West Virginia Hazardous Waste treatment, or disposal permit issued pursuant to the WV Hazardous Waste Management Act, Article 22-18 of the West Virginia Code, which permanent land disposal has already been banned by Congress

for any such Hazardous Substances that result in whole or in part from the remediation of remote sites performed pursuant to the national Hazardous Substance release investigation and clean-up program embodied in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “federal Superfund Act”), 42 U.S.C. §§ 9601-9675; and

WHEREAS, the Lincoln County Commission has determined that the storage or land disposal of Prohibited Hazardous Substance as defined in this Ordinance within Lincoln County, regardless of by whom such storage or disposal has been or is being conducted, other than in complete compliance with the terms of this Ordinance, poses an unwarranted and unacceptable endangerment to public health, safety, welfare, and the environment within Lincoln County, and should be, and by this Ordinance is, declared to be a Public Nuisance; and

WHEREAS, the County Commission has determined that permanent disposal of Hazardous Waste as defined in this Ordinance within Lincoln County, other than in complete compliance with the terms of this Ordinance, poses an unwarranted and unacceptable endangerment to the public health, safety, welfare and the environment within Lincoln County, and should be, and by this Ordinance is, declared to be a Public Nuisance; and

WHEREAS, the necessity, in the public interest, for the provisions and prohibitions hereinafter contained and enacted in this Ordinance is declared, as a matter of legislative determination and public policy, to be necessary and appropriate to the provision of adequate protection of the public health, safety, welfare, and the environment within Lincoln County; and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of, and for the purpose of securing for the benefit of present and future generations of the Public within Lincoln County, adequate protection of the public health, safety, welfare, and of the environment within Lincoln County;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF LINCOLN COUNTY, WEST VIRGINIA THAT THE FOLLOWING IS INTENDED TO BE, AND IS HEREBY ORDAINED, ORDERED AND DECLARED TO BE, A LAWFUL ORDINANCE OF LINCOLN COUNTY, WEST VIRGINIA:

Section 1 - Title:

This Ordinance shall be known, and may be cited, as the "Lincoln County Comprehensive Public Nuisance Investigation and Abatement Ordinance."

Section 2 - Applicability :

This Ordinance shall apply within and throughout Lincoln County, West Virginia.

Section 3 - Definitions :

The following definitions shall apply for purposes of, and shall govern, the interpretation and enforcement of this Ordinance, and shall be understood and construed, together with the context in which these defined terms are used in this Ordinance, to set forth the legislative intent of this Ordinance. When not inconsistent with the context, words used in the present tense include the future; words used in the singular include the plural, and the plural the singular. The word "shall" or "must" is always mandatory and not merely directory. The word "may" is permissible and not mandatory. The masculine gender shall include the feminine or neutral gender.

- (a) The term "**Abatement Action**" means any activities that are or may be necessary to respond to an existing or imminently threatened Public Nuisance, specifically including, but not limited to, all the following activities:
- (1) The investigation, study, analysis, or assessment of the nature and extent of any known or suspected nuisance, including, but not limited to, any known or potential endangerments to the public health, safety, welfare, or to the **Environment** resulting from, contributed to by, or that may be presented by such nuisance within or affecting Lincoln County;
 - (2) The analysis, selection and implementation of suitable methodology and technology for the conduct of a comprehensive remedial investigation in compliance with the requirements of this Ordinance, the assessment of the qualifications of, and retention of, appropriate scientific, legal, and technical personnel determined by the Enforcement Agency to be necessary or appropriate to the effective conduct of a remedial investigation by the County, or to the effective oversight and monitoring of a remedial investigation being performed by or on behalf of any **Person(s)** liable for the Public Nuisance, and the creation, finalization, and implementation of the comprehensive work plan for the appropriate remedial investigation approved by the Enforcement Agency;
 - (3) The analysis and selection of suitable methodology and technology for the conduct of a comprehensive feasibility study (including any appropriate endangerment analysis or treatability studies) in compliance with the requirements of this Ordinance; the assessment of the qualifications of, and retention of, the scientific, legal, and technical personnel necessary or appropriate to the conduct of a feasibility study (including any necessary or appropriate endangerment analysis or treatability studies) by the County, or to the effective oversight and monitoring of a feasibility study being performed by or on behalf of any **Person(s)** liable for the Public Nuisance, and the creation, development through the review and comment process determined appropriate by the County, finalization, and implementation of the comprehensive work plan for the appropriate feasibility study approved by the Enforcement Agency;
 - (4) The development and implementation of a Public Nuisance/Public Health Endangerment Abatement Action Plan that adequately protects, or restores to the maximum extent practicable, the public health, safety, welfare, and the **Environment**, natural resources, and current and potential beneficial uses of environmental media owned or held in trust for the benefit of present and future generations of the public within the Lincoln County environment;

- (5) Such actions as are necessary and proper for the Enforcement Agency to implement, and to evaluate the effectiveness of, any of the activities listed in subparagraphs (1) through (4) of this Section 3(a), whether those activities were implemented in whole or in part by the Enforcement Agency, or by any other **Person**;
 - (6) Such actions as are necessary and proper for the Enforcement Agency to provide comprehensive and effective oversight and monitoring of the performance of any **Abatement Action(s)** being undertaken by a liable **Person** that has been approved by the Enforcement Agency, the County Commission, or a Hearing Officer appointed by the County Commission as capable of implementing an approved **Removal Action** or **Remedial Action**, or that has been ordered by a court to perform an **Abatement Action**, or both such actions, with respect to any Public Nuisance within or affecting Lincoln County;
 - (7) Such actions as are necessary and proper for the Enforcement Agency, the Lincoln County Prosecuting Attorney, and the Lincoln County Commission effectively to coordinate and cooperate with the lawful actions of appropriate agencies of federal, state or other county government in responding to any Public Nuisance;
 - (8) All enforcement activities determined by the Enforcement Agency or the Lincoln County Prosecuting Attorney to be necessary and proper to effectuate the public purposes of the Ordinance, or to secure the effective or enforceable performance of any action(s) specified in Sections 3(a)(1) through (8) of this Ordinance.
- (b) The term "**Abatement Action Costs**" means any fees and costs incurred and to be incurred by Lincoln County that in the judgment of the Enforcement Agency, the Lincoln County Commission or the Lincoln County Prosecuting Attorney are determined to be necessary or proper in performing or preparing to perform an **Abatement Action**, and shall include, but shall not be limited to, the following costs incurred or to be incurred by the County:
- (1) for expert assistance in health, law, engineering and environmental science, expert witness services and legal fees (including, but not limited to, costs of the County Prosecuting Attorney and the legal fees and cost of any retained legal counsel deemed necessary and proper at the sole discretion of the County Commission, the Enforcement Agency, or the Lincoln County Prosecuting Attorney, with the advice and consent of the Lincoln County Commission) to study, investigate, abate, remove, remediate or respond to an actual or threatened Public Nuisance or any endangerment to the public health, welfare or the **Environment** that may be presented by an actual or threatened Public Nuisance;
 - (2) to investigate or respond to the existence, or threat of a Public Nuisance or Endangerment to the Public Health;
 - (3) to monitor, assess or evaluate a Public Nuisance or any endangerment to the public health, safety, welfare, or to the **Environment** that may be presented by an actual or threatened Public Nuisance;
 - (4) to prevent, minimize, or mitigate a Public Nuisance or any endangerment to the public health, safety, welfare or to the **Environment** that may be presented by an actual or threatened Public Nuisance; or

- (5) to oversee and monitor the performance by any responsible party of any investigation or Abatement Action in response to a condition which is or may be a Public Nuisance;
 - (6) interest on such costs, which interest shall accrue from the later of: (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of such costs recoverable under this Ordinance shall be the same rate as is specified for prejudgment interest determined in accordance with the provisions of West Virginia Code § 56-631.
- (c) The term “**Action Level or Advisory Level**” (“**AL**”) means the maximum level established by valid legal authority of the United States or of the State of West Virginia at which a hazardous constituent may lawfully be present in a drinking water supply and also remain protective of both human health and the environment.
 - (d) The term “**CERCLA**” shall mean the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (also sometimes known as the “federal Superfund Act”), 42 U.S.C. §§ 9601-9675.
 - (e) The term “**Confidential Information**” shall mean:
 - (1) records, reports, information or data, or a particular portion thereof, that reveal a **Trade Secret**, contain protected information relating to homeland security, or are subject to another exemption provided by the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1, *et seq.*; and
 - (2) records, reports or information, or a particular portion thereof, that if made public would:
 - (1) Divulge production or sales figures or methods, processes, or production unique to the submitting **Person**;
 - (2) Otherwise tend to adversely affect the competitive position of a **Person** by revealing trade secrets, including intellectual property rights; or
 - (3) Present a credible threat to the safety and security of any water supply, including information concerning water supply vulnerability assessments.
 - (f) The term “**Dilution and Attenuation Factor**” (“**DAF**”) shall mean a factor that is used to estimate the dilution and attenuation for toxic constituents contained in a **Waste** as they travel from the point of leachate generation in a landfill through the subsurface to the point of human or environmental exposure, such as, a drinking water well, discharge into a publicly owned treatment works (“**POTW**”), or an aerated leachate collection pond. [Note: The U.S. EPA uses chemical specific DAFs to determine if toxic contaminants listed in the National Drinking Water Standards are present in Waste to identify the waste stream as a “Hazardous Waste listed or identified by the Administrator” of U.S. EPA pursuant to Subtitle C of **RCRA** using the U.S. EPA Toxicity Characteristic Leachate Procedure (“**TCLP**”). An identical process is followed by the Secretary of the West Virginia Department of Environmental Protection (“**WV DEP**”) in determining if toxic contaminants listed in the National Drinking Water Standards are present in Waste to identify the waste stream as a regulated Hazardous Waste under the WV Hazardous Waste Management Act, Article 22-18 of the West

Virginia Code. [The U.S. EPA uses a maximum **DAF** of 100 unless other information exists to use a different DAF.]

- (g) The term “**Disposal**” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any **Waste** into or on any land or water so that such **Waste** or any constituent thereof may enter the **Environment** or be emitted into the air or discharged into any waters, including ground waters.
- (h) The term "**Effective Settlement**" means a good faith settlement of all or any part of any joint and several liability or obligation imposed pursuant to this Ordinance that has been resolved: (i) in any matter not pending before any court, between the Enforcement Agency, with the advice and written consent of the Lincoln County Prosecuting Attorney, and any responsible or potentially responsible party, or (ii) in any matter arising under this Ordinance pending before any court of competent jurisdiction, by agreement between the Lincoln County Prosecuting Attorney and any responsible or potentially responsible party, which, considering all appropriate factors and circumstances, effectuates the purposes and goals of this Ordinance, and which settlement has been either reduced to, and is wholly contained in, a writing, or all the material terms of which have been recited and agreed to on the record before the County Commission or before a court of record of competent jurisdiction, after providing appropriate public notice of the settlement and its upcoming consideration by the court or by the County Commission, and after providing an prior period of no less than ten (10) days for submission of public comments. Any settlement agreed to by the settling parties and approved by the Lincoln County Prosecuting Attorney in writing or by agreement recited on the record before the County Commission or a court of competent jurisdiction shall be valid and binding unless and until such settlement is rejected after the close of the public comment period by the County Commission at its next meeting at which the settlement may be properly considered and acted upon, or by a court of competent jurisdiction.
- (i) The term "**Environment**" means any surface water, groundwater, soil water, drinking water supply, soil, land surface, subsurface strata, or ambient air within Lincoln County.
- (j) The term "**Facility**" means:
 - (1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft; or
 - (2) Any site or area where **Hazardous Waste** or a **Prohibited Hazardous Substance** has been deposited, stored, disposed of, or placed, or otherwise has come to be located, but does not include any consumer product in consumer use.
- (k) The term “**Governmental entity**” means any officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board, instrumentality, and commission of the United States or any State; and any other body, including any municipality, which is created by state or local governmental authority or which is primarily funded by or pursuant to state or local governmental authority.

- (l) The term “**Hazardous Substance**” shall have the same meaning as is provided in **CERCLA** section 104(14), 42 U.S.C. § 9601(14), as that term has been construed and interpreted by the decisions of the Courts of the United States having jurisdiction to interpret and apply the provisions of **CERCLA**.
- (m) The term "**Hazardous Waste**" shall mean a **Waste** or combination of **Wastes**, which because of its quantity, concentration or physical, chemical, or infectious characteristics: may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the **Environment** when improperly treated, stored, transported, disposed of or otherwise managed; **and** the term shall non-exclusively include any **Waste** or **Wastes** meeting either of the following criteria:
- (1) it is a **Waste** or **Wastes** the lawful management or **Disposal** of which requires a federal hazardous waste treatment, storage or disposal permit issued pursuant to Subtitle C of RCRA, or a West Virginia hazardous waste treatment, storage or disposal permit duly issued pursuant to the West Virginia Hazardous Waste Management Act (hereinafter: “WV HWMA”), Article 22-18 of the West Virginia Code; or
 - (2) it is a **Waste** producing a **TCLP Liquid Extraction** containing any chemical constituent which has or has had an “**AL**” that has not been invalidated by any lawful administrative or judicial order, and a concentration greater than the product of the **DAF** and the highest reported concentration in the waste stream; or
 - (3) it is a **Waste** producing a **TCLP Liquid Extraction** containing any chemical constituent which has a concentration greater than the product of the **DAF** and three times the **Odor Detection Threshold** determined for the chemical constituent.
- (n) The term “**Indemnitor or Insurer**” means any **Person** who provides by contract or otherwise any indemnification of any liable party or potentially liable party, specifically including any duty to defend or provide partial or full indemnification to a potentially liable party, that does or may provide coverage for any claims of Lincoln County pursuant to this Ordinance or applicable law against any liable **Person** or potentially liable **Person** as a result of such **Person’s** act, omission or occurrences that gives rise to the liability or potential liability of such **Person** under this Ordinance or under applicable law for any **Abatement Action, Removal Action, Remedial Action**, recovery of **Abatement Action Costs**, litigation costs, attorneys’ fees and costs, or any Penalties or Damages of any kind recoverable by Lincoln County with respect to any Public Nuisance or any Endangerment to the public health, safety, welfare or the **Environment** within Lincoln County.
- (o) The term "**Knowingly**" imports only a knowledge that the facts exist which brings the act or omission within the any applicable provision of this Ordinance. It does not require any knowledge of the unlawfulness of such act or omission, nor does it require any knowledge of any requirement in law that a **Person** affirmatively conduct any inquiry or assessment; however, for purposes of this Ordinance, a **Person** acts knowingly if he proceeds without knowledge of any fact which the law, including this Ordinance, imposes an affirmative obligation to know or ascertain.

- (p) The term “**Land Disposal**” means disposal in or on the land, including placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.
- (q) The term "**National Contingency Plan**" or "**NCP**" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by the U.S. Environmental Protection Agency and codified at 40 C.F.R., Part 300, in accordance with Section 105 of CERCLA, 42 U.S.C. § 9605, as the same may be amended or repromulgated from time to time, which plan, as referenced in and for purposes of interpreting this Ordinance, shall be interpreted, read and understood, unless the context unambiguously requires otherwise, as the Lincoln County Enforcement Agency being and acting in every regard as the "Lead Agency.”
- (r) The term “**Odor Detection Threshold**” shall mean the lowest concentration of a given odor compound that is perceivable by the human sense of smell. [Note: The National Secondary Drinking Water Standards recommend that drinking water should not contain chemical constituents that exceed three times the “Odor Detection Threshold.”]
- (s) The term "**Person**" means an individual, a deceased individual (or the Estate of a decedent) to the extent of his available insurance assets and undistributed non-insurance assets, trust, firm, joint stock company, corporation, including a governmental corporation, a dissolved or bankrupt corporation to the extent of its available insurance assets and undistributed non-insurance assets, bankruptcy trustee, debtor in possession under the federal bankruptcy laws, partnership, association, consortium, joint venture, limited liability company, limited liability partnership, or commercial entity. The term also includes any municipality, county, commission, district, any state, any department, or agency thereof or any political subdivision thereof, any interstate body, or the United States, and any of its agencies or instrumentalities to the extent authorized by law, as well as the estate of a deceased individual to the extent of its available insurance assets.
- (t) The term "**Proceeding**" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court of competent jurisdiction, the Lincoln County Commission, the Enforcement Agency, or any other **Person** authorized by law) in which, pursuant to law, specifically including this Ordinance, testimony can be compelled to be given or documents of any kind can be compelled to be produced.
- (u) The term “**Prohibited Hazardous Substance**” shall mean a **Hazardous Substance** that resulted or is resulting, in whole or in part, from a Removal Action or Remedial Action undertaken at any site wherever located from which such **Hazardous Substance** has been or is being transferred from such site for **Disposal** at any location within Lincoln County, and such term shall include any environmental media or other material contaminated in whole or in any part with such **Hazardous Substance**.
- (v) The term “**Public Nuisance**” shall mean any of the conditions, acts, events and activities defined and declared to be a Public Nuisance in Section 5 of this Ordinance, as the same may be amended from time to time.

- (w) The term “**RCRA**” shall mean the federal Solid Waste Management Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended (also known as the “federal Hazardous Waste Management Act”), 42 U.S.C. §§ 6901-6992k.
- (x) The term ”**Release**” shall mean means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the **Environment** (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any **Hazardous Substance**), but excludes (1) any release which results in exposure to **Persons** solely within a workplace, with respect to a claim which such **Persons** may assert against the employer of such **Persons**, (2) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel, (3) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 USCS § 2210]; and (4) the normal application of fertilizer.
- (y) The term “**Remedial Action**” shall have the same meaning set forth in **CERCLA** Section 104(24), 42 U.S.C. Section 9601(24), as that term has been construed and interpreted by the decisions of the Courts of the United States having jurisdiction to interpret the provisions of **CERCLA**.
- (z) The term “**Removal Action**” shall have the same meaning as is provided in **CERCLA** section 104(23), 42 U.S.C. Section 9601(23), as that term has been interpreted and construed by the decisions of the courts of the United States having jurisdiction to interpret the provisions of **CERCLA**.
- (aa) The term “**Storage**,” when used in connection with **Waste**, means the containment of **Waste**, either on a temporary basis or for a period of years, in such a manner as not to constitute **Disposal** of such **Waste**.
- (bb) The term “**TCLP Liquid Extraction**” means the liquid phase of a **Waste** that is obtained using the U.S. EPA Method 1311.
- (cc) The term “**Toxicity Characteristic Leaching Procedure**” (“**TCLP**”) shall mean the EPA Method 1311, Toxicity Characteristic Leaching Procedure designed to determine the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes.
- (dd) The term “**Trade Secrets**” shall mean, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, that:
 - (1) is not patented; and
 - (2) which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value; and gives its users an opportunity to obtain business advantage over competitors.
- (ee) The term “**Waste**” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded

material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended.

Section 4 – Public Nuisances prohibited within Lincoln County:

No **Person** shall cause, contribute to, harbor, commit, or maintain, or suffer to be caused, contributed to, harbored, committed or maintained, or imminently threaten to cause, contribute to, harbor, commit or maintain any Public Nuisance as defined by this Ordinance or applicable law at any place within Lincoln County.

Section 5 – Public Nuisances declared and enumerated:

- (a) Each of the following are hereby defined and declared to be a Public Nuisance:
- (1) An act done, committed, aided, or assisted to be done or committed, or a condition created, contributed to, or maintained by any **Person**, which presents or may present an imminent and substantial endangerment to the public health, safety, welfare, the **Environment**, or detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public;
 - (2) Conduct of any business, trade or activity within Lincoln County whereby noisome stenches and odors or noxious gasses arise or are generated;
 - (3) the **Storage, Disposal or Land Disposal** of any **Hazardous Waste** as defined in Section 3(m)(1) through (3), inclusive, of this Ordinance at any place in Lincoln County;
 - (4) the **Land Disposal**, or the **Storage** by conditions constituting **Land Disposal**, of any **Prohibited Hazardous Substance** at any place in Lincoln County;
 - (5) the **Disposal** in Lincoln County of any **Prohibited Hazardous Substance** at any site, location or facility other than one which is duly licensed pursuant to either:
 - (A) **RCRA** sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, (or, where applicable, in compliance with the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), or
 - (B) the provisions of West Virginia law that, pursuant to **RCRA** § 3006, 42 U.S.C. § 6906, operate within the State of West Virginia “in lieu of” RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, and which is operating in compliance with the terms and conditions of such permit, and other applicable Federal laws, and all applicable State laws and regulations;
 - (6) the **Release** into, or the delivery to any **Person(s)** within Lincoln County through, any conveyance of a public water supply within Lincoln County of any water containing any **Hazardous Waste** or **Hazardous Substance**;

- (7) the **Release** into the **Environment** within Lincoln County of any **Hazardous Substance**, which presents, or which may present, an imminent and substantial endangerment to the public health, safety, welfare, or the **Environment**, or which is detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public.
- (8) the **Disposal** of any **Waste** or **Hazardous Waste**, which presents, or which may present, an imminent and substantial endangerment to the public health, safety, welfare, or the **Environment** within Lincoln County or detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public.

Section 6 - Persons liable for appropriate abatement of Public Nuisance and for reimbursement to the County of all Abatement Action Costs incurred and to be incurred with respect to such Public Nuisance; scope of liability; settlement of liability:

(a) Civil Liability for Abatement of a Public Nuisance; recovery of Abatement Action

Costs: Notwithstanding any other provision of county or municipal law within Lincoln County, and subject only to the affirmative defenses set forth in subsection (b) of this section 6, the following **Persons** are liable for timely and effective performance of all **Abatement Actions, Removal Actions** or **Remedial Actions** required by this Ordinance appropriately to address or respond to the Public Nuisance within Lincoln County that is, or may be, presented by their acts or omission, for timely reimbursement to Lincoln County of all **Abatement Action Costs** incurred or to be incurred by the County with respect to such Public Nuisance, for such civil penalties as may be imposed pursuant to Section 23 of this Ordinance, and for such damages to which the County may be entitled by law with respect to such Public Nuisance:

- (1) Any **Person** who creates, has caused or created, or imminently threatens to cause or create a Public Nuisance within Lincoln County;
- (2) Any **Person** who has contributed to, is contributing to, or imminently threatens to contribute to a Public Nuisance within Lincoln County;
- (3) Any **Person** who **Knowingly** maintains, has maintained or imminently threatens to maintain a Public Nuisance within Lincoln County; or
- (4) Any **Person** who, at any time during the creation or existence of a Public Nuisance, owned or had control over any real or personal property, site, or **Facility** at, on, in, from or with which a Public Nuisance has been, is being, or imminently threatens to be created, contributed to, or maintained within Lincoln County, and, who, regardless of actual knowledge of the existence or nature of the nuisance condition, failed to abate the Public Nuisance;
- (5) Any **Person**, including the United States and any other **Governmental entity**, to the extent permitted by the eleventh amendment to the United States Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a **Waste** or **Hazardous**

Waste treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any **Waste** or **Hazardous Waste** which may present an imminent and substantial endangerment to public health, safety, welfare or the **Environment**, or which is detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public.

(6) Any **Person** who by contract, agreement, or otherwise arranged for **Disposal** in Lincoln County, or arranged with a transporter for transport for **Disposal** in Lincoln County, of a **Hazardous Waste** or **Hazardous Substances** owned or possessed by such **Person**, by any other party or entity, at any facility owned or operated in Lincoln County by another party or entity and containing such **Hazardous Waste** or **Hazardous Substances**; and

(7) Any **Person** who through any act or omission causes Lincoln County to incur necessary and appropriate **Abatement Action Costs** in order to respond to any condition or activity that presents or may present a **Public Nuisance** or which is detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public.

(8) Any **Person** (including any past or present generator or past or present transporter) who has contributed to or is contributing to the past or present **Disposal** in Lincoln County of any **Waste, Hazardous Waste** or **Hazardous Substance** which presents, or which may present, a Public Nuisance within Lincoln County.

(b) **Affirmative defenses to liability:** There shall be no liability, civil or criminal, under this Ordinance for any **Person** otherwise liable who can establish by clear and convincing evidence any of the following affirmative defenses applicable to the Public Nuisance giving rise to the liability involved:

(1) with respect to any **Public Nuisance**, all of the acts or omissions of the potentially liable party(ies) with regard to the **Public Nuisance** which cause that **Person** to fall within any of the categories of liable **Persons** set forth in subsections (1) through (7) of Section 6(a) were caused solely by:

(A) An act of God;

(B) An act of war;

(C) An act or omission of a third party other than an employee or agent of the liable party or potentially liable party, or other than by one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the liable party or potentially liable party if the liable party or potentially liable party establishes by clear and convincing evidence that:

(i) it exercised due care with respect to the acts, events or conditions giving rise to the **Public Nuisance**, taking into consideration the characteristics of such **Hazardous Substance** or **Waste**, in light of all relevant facts and circumstance, and

- (ii) it took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
 - (D) Any combination of the foregoing subparagraphs (A) through (C).
- (2) with respect only to the **Public Nuisance** declared and defined in Section 5(a), that the **Hazardous Waste** is being stored or disposed of at facility duly licensed pursuant to, and operating in compliance with its license issued pursuant to, RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, (or, where applicable, in compliance with the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), or in compliance with the provisions of West Virginia law that operate within West Virginia, pursuant to RCRA § 3006, 42 U.S.C. § 6906, “in lieu of” RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, (or, where applicable, in compliance with the federal Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*) or other applicable federal law, and all applicable State law requirements.
- (3) with respect only to the **Public Nuisance** declared and defined in section 5(b), either or both of the following:
 - (A) that prior to their disposal at any place in Lincoln County the **Prohibited Hazardous Substance(s)** were or will be subject to a **Remedial Action** in which treatment which permanently and significantly reduces the volume, toxicity, or mobility of the **Prohibited Hazardous Substance(s)** is a principal element; or (B) in the absence of the treatment described in subsection (3)(A) of this Section 6(b), that no other practicable treatment technologies are available for the **Prohibited Hazardous Substances**.
- (c) **Liability of subsequent owner or operator:** A subsequent owner of, or Person controlling, any real or personal property or **Facility** described in subsection (a)(4) of this Section 6 shall be liable to the same extent as the **Person** who owned or controlled such facility at the time when such Public Nuisance was created, contributed to, or maintained, so long as such Public Nuisance remains unabated.
- (d) **Standard of civil liability:** Unless otherwise expressly indicated, the standard of liability imposed by this Ordinance is strict liability, without regard to any element of *mens rea*, fault, negligence, knowledge, or other wrongdoing.
- (e) **Scope of civil liability:** When two or more **Persons** liable for a **Public Nuisance** pursuant to this Ordinance, any state law, or any other ordinance of Lincoln County, which Public Nuisance presents or imminently threatens to present a single, indivisible harm to the public health, safety, welfare, the **Environment**, or to any beneficial use within Lincoln County of any natural resource owned by State or held in trust for the benefit of present and future generations of the public for which there is no reasonable and reliable basis for apportioning among those liable or potentially liable **Persons** the harm presented or imminently threatened by the **Public Nuisance**, each such **Person** shall be jointly and severally liable for appropriate abatement of the **Public Nuisance**, reimbursement to the County of all **Abatement Action Cost** incurred and to be incurred by the County with respect to such **Public Nuisance**, and for all damages to which the County may be entitled

by law. Any potentially liable party seeking to apportion such harm must prove by a preponderance of the evidence that the component of the harm which is sought to be apportioned is scientifically and technologically susceptible to reasonable and reliable apportionment, that there is a reasonable and practicable basis for apportioning the harm, and that the separate abatement activity proposed for that harm or portion of the harm is as practicable, safe, efficient, reliable and cost-effective in providing the degree of protection of the public health, safety, welfare, and the **Environment** as the abatement activity or activities, if any, proposed by the County.

- (f) **Civil liability for, and recovery of, future Abatement Action Costs:** In any action by the County to recover **Abatement Action Costs** from a liable party in which the County has prevailed or substantially prevailed, the court shall enter a declaratory judgment on liability for future **Abatement Action Costs** to be incurred by the County with respect to the **Public Nuisance(s)** at issue that will be binding on any subsequent action or actions to recover further response costs or damages, unless all **Abatement Actions** with respect to the Public Nuisance(s) at issue have been completed and all related **Abatement Actions Costs** have been presented to the Court or their recovery expressly waived by the County. Any subsequent action for recovery of further **Abatement Action Costs** with respect to the **Public Nuisance(s)** may be maintained at any time during the **Abatement Action**, but must be commenced no later than 3 years after the date of completion of all **Abatement Actions** with respect to the Public Nuisance.
- (g) **Direct action against Indemnitor or Insurer allowed in certain cases:** In any case where any liable **Person** or potentially liable **Person** is: (i) in bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code; (ii) is a dissolved or defunct business organization of any kind; (iii) is a deceased individual or the estate of a decedent; or (iv) where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over such liable **Person** or potentially liable **Person** likely to be solvent at the time of judgment:
- (1) any claim arising from any act, omission, or occurrence that gives rise to liability or potential liability under this Ordinance or applicable law with respect to any Public Nuisance or any endangerment of the public health, safety, welfare, or the **Environment** within Lincoln County for which such liable **Person** or potentially liable **Person** is or may be covered by indemnification, whether equitable or contractual, or insurance may be asserted directly against the **Indemnitor or Insurer** that does or may provide such indemnification or defense coverage. In the case of any action pursuant to this subsection, such **Indemnitor or Insurer** is entitled to invoke all rights and defenses which would have been available to such liable **Person** or potentially liable **Person** if any such action had been brought against the liable **Person** or potentially liable **Person** by Lincoln County and which would have been available to the **Indemnitor or Insurer** if an action had been brought against the **Indemnitor or Insurer** by such liable **Person** or potentially liable **Person** as a putative indemnitee or insured; and.
- (2) the total liability of any **Indemnitor or Insurer** of any liable or potentially liable party under this Ordinance is limited to the aggregate amount provided to the

indemnitee or insured pursuant to the indemnification contract(s) or decree(s), or the insurance contract(s) or policy(ies), specifically including any amount of coverage for any Remedial Investigation/Feasibility study obligation that does or may be provided pursuant to the Duty to Defend afforded to the insured by any such policy of insurance. Nothing in this subsection limits any other state or federal statutory contractual or common law liability of a guarantor or insurer to its guarantee or insured, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim;

- (3) a judgment in the favor of Lincoln County in any action brought by Lincoln County directly against the **Indemnitor or Insurer** of any deceased individual or the estate of any decedent pursuant to this subsection 6(g) is enforceable only from the indemnification proceeds or insurance coverage, and not against property in the estate;
- (4) any claim brought by Lincoln County directly against the **Indemnitor or Insurer** of any deceased individual or the estate of any decedent pursuant to this subsection 6(g) may be joined with a claim against the estate of the decedent or the personal representative of a decedent under applicable state law seeking recovery of any undistributed assets, other than insurance assets or third-party indemnification proceeds, of the estate of the decedent; and
- (3) nothing in this Subsection 6(g) diminishes the liability of any **Person** under other applicable law.

(h) **Settlement of joint and several civil liability and its effect:**

- (1) *Contribution Protection:* A **Person** who is alleged by the County to be, or has been found to be, jointly and several liable pursuant to this Ordinance, and who has resolved its liability to the County in an **Effective Settlement** shall not be liable for claims for contribution or comparative equitable indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable **Person(s)** unless its terms so provide, but it reduces the potential liability of the other jointly and severally liable **Person(s)** by the amount of the settlement.
- (2) *Rights of Settling Party:* A **Person** who has resolved its liability to the County for some or all of an **Abatement Action**, or for recovery of some or all of the **Abatement Action Costs** with respect to a **Public Nuisance** in an **Effective Settlement** may seek contribution from any jointly and severally liable **Person** who is not party to an **Effective Settlement**.
- (3) *Rights of Settling Party(ies) Subordinate to County's Rights:* In any action seeking contribution with respect to any liability imposed pursuant to this section 6, the rights of any **Person** who has resolved its liability to the County shall be subordinate to the rights of the County.

Section 7 – Enforcement, inspections, investigations and public complaints:

- (a) **Enforcement Agency**: Solely for the purposes of enforcing this Ordinance, there is hereby created within the County Government a Public Nuisance Enforcement Agency (hereinafter: “Enforcement Agency”). This Enforcement Agency shall be composed of the following County Officers: the County Administrator, the County Engineer (or other technically qualified county employee or consulting engineer designated by the County Engineer or by the County Commission), the County Health Officer or his or her designee, a fire chief from a county fire company, the county litter control officer, the Director of the County Solid Waste Authority, any special environmental or public health protection investigator appointed by the County Commission, and two (2) at large member appointed by the County Commission for two (2) year terms. The County Administrator shall serve as Chairperson of the Enforcement Agency.
- (b) **County Sheriff charged with enforcing orders of County Commission issued pursuant to this Ordinance**: The Lincoln County Sheriff shall serve as an *ex officio* member of the Enforcement Agency and shall be the county officer charged with enforcing, with the advice and consent of the Lincoln County Prosecuting Attorney, the orders of the County Commission under this Ordinance.
- (c) **Investigations when directed by the County Commission**: When so directed by the County Commission, any member of the Enforcement Agency shall make inspections and investigations, or cause inspections and investigations to be made, under their direction and control, of such places, conditions, locations, structures, objects or activities from time to time at any place in Lincoln County as the County Commission may designate to determine whether any condition exists or activity is being engaged in which constitutes a Public Nuisance as defined and declared in Section 5 of this Ordinance or as the same may be defined under state law or other county ordinance.
- (d) **Duty of County Officers acting on their authority under this Ordinance**: Any member of the Enforcement Agency from time to time may make inspections and investigations, or cause inspections and investigations to be made, under their direction and control, of such places, conditions, locations, structures, objects or activities at any place in Lincoln County; and any such officer shall make or cause to be made an inquiry sufficient to determine whether any condition exists or activity is being engaged in constitutes a Public Nuisance as defined and declared in Section 5 of this Ordinance.
- (e) **Duty of County Officers acting on responsible complaint**: The County Administrator, or such other member of the Enforcement Agency as may be designated by the County Commission or the County Administrator for such purpose, upon receipt of report in writing made by any responsible **Person** who believes that there exists at any place in Lincoln County a Public Nuisance as defined by this Ordinance, or by state law or other county ordinance, or who believe that any **Person** may be in imminent danger of physical harm by reason of a known or suspected Public Nuisance; provided, that such report is signed by the **Person** requesting the inspection and alleges in sufficient detail: (1) facts believed to constitute a Public Nuisance as defined and declared in this Ordinance or by state law;
- (2) the place or places where the Public Nuisance condition exists or the Public Nuisance activity is being engaged in; and

- (3) if known, the names of the **Persons** maintaining, committing, or contributing to the Public Nuisance as defined and declared in this Ordinance, and the name of the owner(s) of the property upon which the Public Nuisance condition exists or Public Nuisance activity is being engaged in shall make inspections and investigations, or cause inspections and investigations to be made under their direction and control of such places, conditions, locations, or activities at any place in Lincoln County that are the subject of the complaint to determine whether any condition(s) exists or activity(ies) is being engaged in which constitutes a Public Nuisance as defined and declared in Section 5 of this Ordinance or under state law or other county ordinance.

Section 8 - Authority to conduct investigations and to inspect real property and premises pertaining to a known or suspected Public Nuisance:

- (a) **Inspection of real property and premises:** In order to assure adequate protection of the public health, safety, welfare and of the **Environment** from activities or conditions constituting a Public Nuisance as defined and declared by this Ordinance, state law or county law, and in order competently to carry out the purposes of this Section 8, the County Sheriff or any Member or authorized agent of the Enforcement Agency, upon presenting appropriate credentials to the person(s) present at or in charge of the premises where a suspected Public Nuisance condition exists or a suspected Public Nuisance activity is being conducted, or where information relevant to the proper abatement of a Public Nuisance or to the parties liable for that Public Nuisance may be obtained, is authorized:
 - (1) with the consent of the owner or any **Person** in charge of such premises or **Facility**, to enter without advance notice, at reasonable times, and in the manner least disruptive and least inconvenient to the occupants of the premises that is consistent with the faithful, competent and complete conduct of the investigation required; and
 - (2) to inspect and investigate, during regular working hours and at other reasonable times, given the nature and timing, if any of the nuisance condition or event, and within reasonable limits and in a reasonable manner, at any place in Lincoln County where a Public Nuisance is known or suspected to exist, and there inspect all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein, take samples of any relevant material (allowing, where feasible, splits of any such sample to be taken by the **Person** in charge of the location or premises at their sole cost) which pertain to the suspected nuisance condition or event, and to question privately any **Person(s)** who may have knowledge relevant to the Public Nuisance or its appropriate abatement; and
 - (3) If any **Person** refuses to consent to, attempts to limit, interfere with, or prevent the County Sheriff, any Deputy Sheriff, or any Member or authorized agent of the Enforcement Agency from conducting an investigation and inspection of any location within the county where there is reasonable grounds to suspect a Public Nuisance may exist or where information relevant to the nature or proper abatement of a Public Nuisance or to the parties liable for that Public Nuisance may be obtained, the Lincoln County Commission or the Lincoln County Administrator may direct the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting

Attorney to apply for, or with the consent of the Lincoln County Prosecuting Attorney, the County Sheriff or any member of the Enforcement Agency may apply for, an Inspection Warrant from the Magistrate Court or Lincoln County Circuit Court, or, at the option of the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney, from any other court of competent jurisdiction.

(b) Requirement to appear and give testimony: If any Member or authorized agent of the Enforcement Agency, determines that it is necessary and proper to the complete investigation of any known or suspected Public Nuisance to require the appearance and testimony of witnesses, either with or without issuance of an Investigative Order pursuant to subsection (c) of this Section 8, the Enforcement Agency may request the County Administrator to issue, and the County Administrator upon such request, or, in the case of any investigation being conducted in whole or in part by the County Administrator, upon his own instance, shall have authority to issue an Investigative Order upon ten (10) days' advance notice or upon shorter notice as may be necessary or appropriate under the circumstances, which Investigative Order may require:

- (1) any Person** who has or may have information relevant to the nature of, existence of, cause of, maintenance of, abatement of, or any **Person** who may be liable for the abatement of any actual or imminently threatened Public Nuisance within Lincoln County, or that is or may be adversely affecting the public health, safety, or the **Environment** within Lincoln County; or
- (2) any Person** who has or may have information relevant to the assets, ability, liability or responsibility of any guarantor, indemnitor, or insurer of (or that is providing any benefits to) any **Person** who is or may be liable for the abatement of a Public Nuisance within Lincoln County, which information may be relevant to the ability of the responsible party to perform, or pay for the performance of, any **Abatement Actions**, or to pay, indemnify, or reimburse for the costs of performance of an **Abatement Action** by any potentially responsible party(ies) or payment of **Abatement Action Costs** incurred or to be incurred by the Enforcement Agency or by Lincoln County

to appear before a Member or authorized agent of the Enforcement Agency and a certified court reporter designated by the Enforcement Agency and give non-privileged testimony under oath and on a record. At any such proceeding, the Enforcement Agency, and any of its Members or authorized agents shall be represented by, and the witness may be questioned by, the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney. In any such proceeding, witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this State. In case of contumacy or failure or refusal of any **Person** to obey such an Investigative Order to appear and give testimony, the Circuit Court, upon petition of the Enforcement Agency or its authorized agent, shall issue to such **Person** an order requiring the **Person** to appear, to produce evidence if asked, and, when so ordered, to give non-privileged testimony relating to the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as contempt thereof. Testimony may be compelled either before or after documents and information are produced as provided in this Section 8.

- (c) **Requirement to produce documents, records and things:** The Enforcement Agency, the Lincoln County Prosecuting Attorney, any Assistant Lincoln County Prosecuting Attorney, may require by Investigative Order, upon twenty (20) days notice or such shorter notice as may be necessary and appropriate under the circumstances, any **Person** who has, or may have, information relevant to any Public Nuisance within Lincoln County, specifically including information relevant to the assets, including insurance assets, of any **Person** who is or may be liable for the abatement of a Public Nuisance within Lincoln County, or that is or may be adversely affecting the public health, safety, welfare, or the **Environment** within Lincoln County, regardless of where such thing, information or document are or may be found, to produce to the Enforcement Agency or its designee on the date, time and place set forth in the Investigative Order:
- (1) truthful and complete, written responses to the Enforcement Agency's written demand for information contained in the Investigative Order submitted under oath and personally attested to before a Notary Public; and
 - (2) timely production as and when demanded of any thing, and production of copies of any demanded, non-privileged books, records and other documents that contain, relate to, or may reasonably lead to the discovery of, any of the following information:
 - (A) The nature, characteristics, origin or extent of any Public Nuisance, or of any **Waste, Hazardous Waste or Prohibited Hazardous Substance** that is or may be contributing to or comprising, in whole or in part, a Public Nuisance in Lincoln County;
 - (B) The nature, characteristics, origin or extent of any existing or threatened **Release** into the **Environment** within Lincoln County of any **Hazardous Waste or Prohibited Hazardous Substance or Waste**;
 - (C) The identification, source, nature or quantity of materials which may be or may have been related by source, composition, origin, destination or use to the actual or threatened Public Nuisance in Lincoln County, or to an existing or threatened **Release of Hazardous Waste, Prohibited Hazardous Substance, or Waste** in Lincoln County;
 - (D) The identification, location, or nature and extent of any assets (including any sums that are or may be available pursuant to any guarantee, indemnity or insurance agreements, contracts or policies of any kind), or information pertaining to the financial condition of any **Person** who is, may have been, or may be a **Person** liable for the abatement of a Public Nuisance as defined by this Ordinance or by state law;
 - (E) Information relating to the ability of any **Person** who is, may have been, or may be a responsible party to pay for or perform an **Abatement Action** or to reimburse the County for **Abatement Action Costs** it has incurred or may incur, including information regarding the assets, ability, liability and responsibility of any guarantor, indemnitor, or insurer of (or providing any benefits to) any **Person** who is or may be a liable party, to perform or pay for the performance of any **Abatement Action**, or to pay, indemnify, or reimburse for the costs of any potentially responsible party's performance of an **Abatement Action** or

payment of **Abatement Action Costs** incurred or to be incurred by Lincoln County.

(3) Any **Person** required to produce information, or to produce and to permit the inspection and copying or photographing or sampling of any books, records, other non-privileged documents, or any thing pursuant to subsection (c) of this Section 8 shall, on or before the date and time set forth in the Investigative Order for production, deliver a written certification, signed under oath administered before a notary public or other official authorized by law to administer such an oath attesting to the following:

- (A) that the written information provided, if any, is truthful and complete;
- (B) that the books, records, other documents, or things produced, if any, together with those withheld from production as privileged or for any other reason and for which the information required by Section 8(d) of this Ordinance has been timely produced, if any, constitutes the truthful and complete results of a diligent search, conducted in good faith, for the information and thing(s) demanded; and
- (C) that all books, records, documents and things responsive to the Investigative Order to produce that are in the possession, care, custody, or control of that **Person**, its agents, representatives, employees, directors, partners, consultants, parent corporations or other entities, and subsidiaries, and to the extent they are available to that **Person**, all books, records, documents and things responsive to the Investigative Order to produce that are in the possession, care, custody, or control of that **Person's** predecessors or successors-in-interest, and any and all **Persons** acting on its behalf or in concert with it, have been produced as required by the Investigative Order.

(d) **Materials required to support assertions of privilege or other asserted legal basis for failure to produce:**

(1) *Privilege log information required:* In order to allow the Enforcement Agency and the Lincoln County Prosecuting Attorney adequately to assess the validity of any assertion of any privilege for the purposes of determining whether public resources should be expended to pursue production of any withheld document, any **Person** from whom documents or things are demanded pursuant to Section 8(c) who fails or refuses to produce any such document(s) or thing(s) based in whole or in part upon a claim of privilege, or for any other reason must file with the County Clerk and with the office of the Lincoln County Prosecuting Attorney on or before the date set forth in the Investigative Order for production a concise written statement setting forth all facts supporting the claim of privilege or other asserted basis for withholding the requested production of the document(s) or thing(s), and the asserted legal authority upon which the failure or refusal to produce is based. The concise written statement required by this Section 8(d) must, at a minimum, include the following as to each document or thing to be withheld:

- (A) the identity of the author thereof, any other **Person** who participated or assisted in its preparation;
- (B) the title or other identifying data;
- (C) the date of the creation of the document or, if no date appears thereon, the

approximate date;

- (D) A summary of the nature (e.g., letter) and content of the document sufficient to identify it;
 - (E) the name and location of each **Person** having or last having possession, care, custody or control of the original and of each copy thereof, and the names of all **Persons** to whom the document has been disclosed, sent, or otherwise shared;
 - (F) if such document or thing was, but is no longer, in the possession or control of the **Person** from whom the document or thing is requested, the disposition that was made of it, including but not limited to the name and address of the **Person** to whom the document or thing was transferred, or who disposed of the document or thing, as well as the date, time, place and mode or method of transfer or disposal; and
 - (G) the precise, current location of the document or thing and the complete name and address of its current custodian.
- (2) *Effects of failure timely to provide required privilege log information:* Any **Person** required by subsection (d)(1) of this Section 8 to provide the concise written statement described therein who failed or refused timely to file a complete, concise written statement that fully complies with the requirements of that subsection, thereafter, in any proceeding before the Lincoln County Commission, or any civil or criminal action in which the County or the Lincoln County Prosecuting Attorney acting on behalf of the County Commission, is seeking to enforce any provision of this Ordinance, to abate any Public Nuisance condition, or to recover any **Abatement Action Costs**, or other fees, costs or penalties pursuant to this Ordinance, shall be barred from asserting or relying upon any privilege for which a compliant statement of supporting factual basis and legal authority was not timely filed, and shall further be barred from withholding, based upon any assertion of any such privilege, any document or thing for which all of the details required by subsection (d)(1) of this Section 8 were not timely provided. The bar established by this subsection (d)(2) of this section 8 shall apply only to the assertion of any privilege or other asserted basis for withholding requested information, document(s) or thing(s) with respect to which claim of privilege this Ordinance required the filing of a concise written statement pursuant to Section 8(d)(1), but for which no compliant statement was timely filed. Such bar shall not apply to any failure or refusal to produce such documents based upon the claimed application of the privilege against self-incrimination.
- (e) **Investigations upon reasonable public report:** Upon receipt of a report from a member of the public complying with the requirements of Section 7(e), a copy of the notice shall be provided to the person in charge of the premises or location at which the Public Nuisance is alleged or suspected to exist or his agent no later than the time of the inspection; provided, however, that upon the request of the **Person** giving the notice, his name and the names of individual who may have provided him information shall not appear in the copy or on any record published, released or made available pursuant to the public, unless the release of such information is required by a valid court order. If, upon receipt of the notification, the County

Administrator, other Member(s) of the Enforcement Agency, authorized agent(s) of the Enforcement Agency, or other County Officer authorized to enforce this Ordinance determines there are reasonable grounds to believe that such public nuisance or such endangerment of the public health, safety, welfare, or the **Environment** within Lincoln County does or may exist, he shall make an inspection in accordance with the provisions of this section as soon as practicable to determine if the endangerment or Public Nuisance exists. The County Sheriff or any Member of the Enforcement Agency shall maintain records of the results of any such investigation, which shall, subject to the provisions of Section 10, be made available to the public upon request. The authority of any such County officer or officers to inspect any site or premises for purposes of investigating a report by a member of the public made pursuant to this subsection shall not be limited to the location of the alleged Public Nuisance, but shall extend to any other area of the **Facility**, site or premises in which the County Sheriff, the Enforcement Agency, or any Member of or any authorized agent of the Enforcement Agency has reason to believe that evidence relating to its nature, origin, or extent of any such known or suspected Public Nuisance or endangerment may be found, or where **Persons** or property that may be endangered by the Public Nuisance are or may be located.

Section 9 – Abatement Actions; remediation standards and requirements:

- (a) **Environmental and Public Health and Safety Protection Response Authorities:** Whenever the County Commission, the Enforcement Agency, or any court determines that there is an existing or imminently threatened Public Nuisance in Lincoln County, or that there may be an imminent and substantial endangerment to the public health, safety, welfare, the **Environment**, or to the beneficial use within Lincoln County of any natural resources held in trust for the public arising out of or resulting from, in whole or in part, an existing or threatened Public Nuisance, the County Commission, Enforcement Agency, or court shall require one or more of the liable parties to undertake in a timely manner, in full compliance with the requirements of this Ordinance and the **NCP**, an appropriate **Abatement Action** that is consistent with the **NCP** and appropriate to secure adequate abatement of the Public Nuisance, and adequate protection of the public health, safety, welfare, and the **Environment**, or adequate restoration of the beneficial use within Lincoln County of, and protection of, natural resources within Lincoln County held in trust for the public.
- (b) **Abatement Enforcement Procedures:** In addition to any other action taken by federal, state, or other local government, whenever the Enforcement Agency determines that there is an existing or threatened Public Nuisance in any place in Lincoln County, or that there may be an endangerment to the public health, safety, welfare, the **Environment**, or to the beneficial use within Lincoln County, or to the adequate protection of, natural resources held in trust for public arising out of, in whole or in part, an existing or threatened Public Nuisance, the Enforcement Agency may proceed in any of the following ways:

- (1) In accord with the provisions of Section 12 or 13 of this Ordinance, file with the County Commission and serve on such potentially responsible parties as the Enforcement Agency deems appropriate a complaint in the form of a Proposed Public Nuisance Abatement Order that would, if it became final and binding, require any responsible party(ies) to undertake partial or comprehensive **Abatement Actions** consistent with the **National Contingency Plan**, as modified, if at all, by the Enforcement Agency pursuant to subsections (c) or (d) of this Section 9, so as to provide adequate protection of public health, safety, welfare, the **Environment**, or adequate protection of and restoration to beneficial use within Lincoln County of any natural resources held in trust for the public; or
 - (2) Request that the Lincoln County Prosecuting Attorney, pursuant to the authority conveyed by Sections 20 or 22 of this Ordinance, promptly seek such relief with respect to the existing or threatened Public Nuisance as is authorized by this Ordinance and applicable federal and state law, as appropriate, from a court of competent jurisdiction; or
 - (3) At its discretion and with the advice and consent of the County Attorney, both file and serve a complaint/Proposed Public Nuisance Abatement Action Order pursuant to subsection (b)(1) of this Section 9, and request that the Lincoln County Prosecuting Attorney seek the judicial relief authorized by Section 22 of this Ordinance and applicable federal and state law, as appropriate.
- (c) **When Abatement Action requirements may be more stringent than NCP:** Notwithstanding subsection (a) of this Section 9, the Enforcement Agency may order additional or more stringent requirements for an **Abatement Action** than those that would or might apply under the **NCP** whenever the Enforcement Agency determines that there is or may be an endangerment to the public health, welfare, the **Environment**, or to the adequate protection of the beneficial use with Lincoln County of any natural resources held in trust for present and future generations of the Public arising out of or resulting from, in whole or in part, an existing or threatened Public Nuisance, and the Enforcement Agency determines that such additional or more stringent requirements are necessary or appropriate to secure adequate protection against, or appropriate abatement of, such Public Nuisance, or are necessary or appropriate to protect or restore approved land uses consistent with the applicable County plans.
- (d) **Waiver of strict NCP compliance:** The Enforcement Agency, on its own initiative or upon timely and appropriately supported application for waiver by a liable or potentially liable party, may order less stringent requirements for **Abatement Action** than those that would or might apply under the **National Contingency Plan**, whenever the Enforcement Agency determines that the requested waiver, if granted as requested or as modified by the Enforcement Agency, would result in an **Abatement Action** that will provide timely and adequate protection of the public health, safety, welfare, and the **Environment** and of natural resources, and their beneficial uses within Lincoln County, held in trust for the public, after considering the following factors:
- (1) Adequate protection of the public health, welfare, the **Environment** and all beneficial uses of natural resources in light of the existing or threatened

- endangerments presented and the public and private resources that are, or are likely to be, available to meaningfully and appropriately respond to such endangerments;
- (2) Restoration to the fullest extent practicable of the use and enjoyment of land within Lincoln County, consistent with its General Plan, including, but not limited to, commercial, industrial, recreational, and residential use and development;
 - (3) Safety of any public water supply;
 - (4) Provision of adequate protection of the future public health, safety and the **Environment** within Lincoln County, considering land use planning and development potential; and
 - (5) Preservation and restoration of the public health and safety and the **Environment** so as to preserve and expand, where and when appropriate, the aesthetic interests addressed by the General Plan and the appropriate development of social, recreational, residential and employment opportunities within the County.
- (e) **Right to appeal denial of waiver application:** Any liable or potentially liable party whose application for a waiver of strict **NCP** compliance pursuant to subsection (d) of this Section 9 has been denied in whole or in any significant part by the Enforcement Agency, may seek review by the County Commission of the decision of the Enforcement Agency by filing with the County Clerk a petition for review within ten (10) days of receipt of the decision of the Enforcement Agency for which review is sought. Any such petition must set forth in detail the grounds supporting the challenge of the decision of the Enforcement Agency, and must be served on the Enforcement Agency and the Lincoln County Prosecuting Attorney. Following its review of the filed petition for review of the decision of the Enforcement Agency, the County Commission or its appointed Hearing Officer will, by order, schedule such further briefings, hearings, or other proceedings, if any, with respect to the appeal as the Commission deems necessary and proper to the just resolution of the appeal. The County Commission will issue a final written decision, or the Hearing Officer appointed by the County Commission will issue a proposed written decision, on any petition for review filed pursuant to this subsection (e) of this Section 9.
- (f) **Exhaustion of County remedies required:** Any liable party or potentially liable party seeking a waiver of any of the requirements for an **Abatement Action** set forth in Section 9(a) of this Ordinance, or seeking to have any **Abatement Action** imposed or to be imposed pursuant to this Ordinance by the Enforcement Agency, the County Commission, or by any court, regardless of by whom the action before any court was commenced, incorporate any standard or requirement less stringent than, or not consistent with, the **NCP**, must first raise the request of such liable party or potentially liable party for such relief by filing with the Enforcement Agency a request for waiver pursuant to Section 9(d) of this Ordinance, and, thereafter, exhaust all of the remedies provided by Sections 9(e) and 17 of this Ordinance with respect to such a request for waiver. Failure of any liable party or potentially liable party under this Ordinance to exhaust the county remedies available to pursuant to Sections 9(d) and 17 of this Ordinance shall bar any request to any court or agency for imposition of any **Abatement Action** that does not at a minimum comply with the requirements of Section 9(a) of this Ordinance.

Section 10 – Trade secrets; claims of confidentiality:

- (a) **Claim of Confidentiality; time limits for asserting claim:** Any **Person** required by this Ordinance to submit information that such **Person** believes in good faith to constitute confidential information may assert a confidentiality claim in accordance with this Section 10. Such claim must be made as soon as practicable, but in no event later than ten (10) days from the date the information was submitted. If a claim of confidentiality is not made within ten (10) days of submission, the Enforcement Agency may make the information available to the public without further notice.
- (b) **Submission of information claimed to be confidential:**
- (1) *Confidential Information –Hardcopy Submissions:* All information that is claimed to be confidential and which is submitted to the Enforcement Agency pursuant to the requirements of this Ordinance in hardcopy form must be submitted on colored paper in order to readily identify such information. The claimant must mark each page containing Confidential Information “CONFIDENTIAL COPY.” The claimant must clearly underscore or highlight by shading the text of all information in the confidential copy that the claimant asserts to be confidential in a manner that will be clearly visible on photocopies of the confidential copy.
 - (2) *Redacted submission of information claimed to be confidential for public disclosure:* For each hardcopy submission of information, any portion of which is claimed to be confidential, a complete set of the information must be submitted simultaneously on uncolored paper with the information claimed to be confidential redacted, and with the words “REDACTED COPY” marked clearly on each page, so that a set of information is suitable for public disclosure and provides notice to the public that a claim of confidentiality has been made.
 - (3) *Confidential information – electronics submissions:* For electronic submissions containing information claimed to be confidential, the claimant must submit a cover document and the written justification as required under Section 10(c), regardless of whether that document is submitted in electronic or hardcopy form. Upon the request of the Enforcement Agency, the claimant must submit a redacted form of the information.
 - (4) The claimant may assert that multiple pieces of data which do not individually qualify as Confidential Information could be pieced together to form Confidential Information if made publicly available. The Enforcement Agency shall assess such “mosaic effect” claims on a case-by-case basis, and take such action, if any, as is appropriate to affect the protections intended by this Section 10.
- (c) **Cover document:**
- (2) *Designee:* Each submission of information to the Enforcement Agency, any portion of which is claimed to be confidential, must be supported by a cover document that identifies the name and address of the claimant and designates a person as the proper addressee of communications from the Enforcement Agency or the County Commission regarding information gathering under the Act, the name, address, and

telephone number of the designated person; and a request that all County inquiries and communications regarding information claimed as confidential (oral and written) be directed to the designee. The cover document must be submitted within the time frame specified under Section 10(a) when a claim of confidentiality is made.

(3) *Justification for claimed confidentiality in cover document:* In addition to the information required under subdivision (1) of this Section 10(c), the cover document must, at a minimum, include the following:

(A) a statement that the information is being submitted pursuant to the “Lincoln County Comprehensive Public Nuisance Investigation and Abatement Ordinance;”

(B) identification of each segment of information within each page that is submitted as confidential; and the period of time for which the confidential treatment is desired by the claimant (*e.g.*, until a certain date, until the occurrence of a specified event, or permanently); and

(C) a detailed justification for each segment of information that is claimed confidential. The justification must address the criteria set forth in subsection (e)(1) of this Section 10 and must include the following information:

(i) if the reason for the claim of confidentiality is that the information would reveal a Trade Secret, a description of the substantial harmful effects which disclosure of the Confidential Information would have upon the claimant’s competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

(ii) if the Confidential Information consists of information other than Trade Secrets, the claimant must provide a description of the information and an explanation as to how it meets the definition of Confidential Information set forth in Section 3(e) of this Ordinance; and

(iii) any other substantiation that is relevant in establishing that the asserted Confidential Information is confidential.

(4) *Redacted Version:* If the cover document contains Confidential Information, the claimant must provide a redacted version, which will be available for public disclosure.

(5) *Cover Document as Basis for Review:* The cover document justifying the claim of confidentiality will form the basis for the Enforcement Agency’s review of the confidentiality claim. If the claimant submits additional information to support the confidentiality claim pursuant to subsection (f)(3) of this Section 10, the additional submission will also be considered.

(d) **Formal Submission to Enforcement Agency:**

(1) *Confidential Copy:* The claimant must seal the confidential copy in an envelope displaying the word “CONFIDENTIAL” in bold type or stamp on both sides. This envelope must be enclosed in another envelope for transmittal to the Enforcement Agency. The outer envelope must bear no markings indicating the confidential nature of the contents.

- (2) *Method of Delivery*: The claimant must send the package containing all required information to the Enforcement Agency by certified mail, return receipt requested, or by other means providing a reliable and verifiable receipt for delivery.
- (e) **Determination of Confidentiality**: In the course of making a determination of confidentiality, the Enforcement Agency shall consider the following criteria in addition to the required justification under subsection 10(c)(2) of this Ordinance:
- (1) the claim of confidentiality has not expired by its terms, nor been waived or withdrawn;
 - (2) the claimant has satisfactorily shown that it has taken reasonable measures, and intends to continue taking such measures, to prevent disclosure of the information to others;
 - (3) the information claimed to be confidential is not, and has not been, reasonably obtainable without the claimant's consent by other **Persons** (other than by lawful means available to governmental bodies) by use of legitimate means; for example, the information is not contained in materials which are routinely available to the general public, including without limitation material in administrative or judicial proceedings/decisions, press releases, copies of speeches, pamphlets and educational materials;
 - (4) the extent to which the information has been disclosed to others, and whether it was disclosed to other **Persons** either by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to such other **Persons**, as long as the information has not become available to **Persons** not involved in the proceeding), and the precautions taken to prevent further disclosure;
 - (5) if the United States Environmental Protection Agency, any department, agency or instrumentality of the State of West Virginia or of any other state, or any other department, agency or instrumentality of the United States has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations; and
 - (6) no law, regulation or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not Confidential Information.
- (f) **Notice of Determination by the Enforcement Agency**:
- (1) If, after review of all the information submitted, the Enforcement Agency determines that the information is not confidential, the Enforcement Agency will notify the claimant by certified mail, return receipt requested. The notice will state the basis for the determination and that it constitutes the final decision of the Enforcement Agency concerning the confidentiality claim.
 - (2) If, after review of all the information submitted, the Enforcement Agency determines that the information is confidential, Lincoln County will treat such information as confidential in accordance with the provisions set out in section

6. The Enforcement Agency will send written notice of the determination to the claimant. This notice will state the basis for the determination and that it constitutes the final decision of the Enforcement Agency. The Enforcement Agency shall send the notice of its decision to the claimant by certified mail, return receipt requested.
- (3) If a determination has not been made prior to the time that a request for information is received from the public, the Enforcement Agency will, after allowing the claimant up to ten (10) days to claim the information as confidential in accordance with this Section 10, proceed expeditiously to make a final determination in accordance with this Section 10. Before making such determination, the Enforcement Agency will provide notice to the claimant that a request for the Confidential Information has been received and provide the claimant a period of five (5) days to submit a written response to the Enforcement Agency.
- (4) All requests to inspect or copy documents submitted under the Ordinance must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within ten (10) business days of the receipt of a request, the Enforcement Agency will:
- (A) Advise the **Person** making the request in writing of the time and place where the **Person** may inspect and copy the documents which, if the request addresses information claimed as confidential, may not be sooner than twenty (20) days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the claimant; or
- (B) Deny the request, stating in writing the reasons for denial.
- (5) If the request addresses information claimed as confidential, the Enforcement Agency will provide notice of the action taken pursuant to this Section 10(f) to the claimant by certified mail, return receipt requested.
- (6) *Treatment of information pending confidentiality determination:* The Enforcement Agency will treat asserted Confidential Information as confidential in accordance with the provisions of Section 10(h) of this Ordinance until the Enforcement Agency has made its final determination that the asserted information is not confidential.
- (g) **Appeal of confidentiality determination:** Any **Person** adversely affected by a determination regarding Confidential Information under this Ordinance may appeal the determination of the Enforcement Agency to the County Commission. An appeal to the County Commission of the final determination of the Enforcement Agency must be filed with County Clerk within fifteen (15) days after the date upon which the aggrieved Person received notice of the final decision of the Enforcement Agency. The filing of a timely notice of appeal will stay any determination to disclose Confidential Information pending a final decision on the County Commission on appeal. Upon the timely filing of a notice of appeal the Enforcement Agency shall compile a record of all documents and other information which it considered and all documents and other information submitted to it by the claimant with respect the decision that is the subject of the appeal. The Enforcement Agency

shall forthwith transmit the compiled record to the County Commission. The scope of review on appeal to the County Commission is limited to the question of whether the portion of the records, reports, data or other information sought to be deemed confidential, inspected or copied is entitled to be treated as confidential under this Ordinance. The Enforcement Agency and the County Commission will take all measures to afford evidentiary protection in appeals as necessary to protect the confidentiality of the information at issue, including the use of *in camera* proceedings before the County Commission and the sealing of records when appropriate.

(h) **Treatment of confidential and asserted Confidential Information:**

- (1) *Handling of Confidential Information by authorized personnel:* Only those County Employees and Attorneys under the supervision and control of Members of the Enforcement Agency, or of the Office of the County Clerk whose activities necessitate access to information for which a confidentiality claim has been made may open and handle any envelope or file which is marked “CONFIDENTIAL.”
- (2) *Storage of records:* The County Administrator shall assure that his office or the Office of the County Clerk stores any records containing confidential or asserted Confidential Information only in secure, access-controlled rooms, provided that if such records are in a form which is not amenable to such storage, the County Administrator shall assure that such records are stored in a manner which similarly restricts access by **Persons** to whom disclosure of the Confidential Information in question is restricted. With regard to confidential electronic data, the County Administrator will take every reasonable precaution to safeguard the integrity of the data.
- (3) *Confidential Information clearly identified:* Any records made, possessed, or controlled by the Enforcement Agency or County Commission and containing confidential or asserted Confidential Information, will contain indicators clearly identifying the confidential or asserted Confidential Information.
- (4) *Record of Persons accessing Confidential Information:* The County Administrator shall assure that the Enforcement Agency and Office of the County Clerk maintain a record of all **Persons** obtaining access to confidential or asserted Confidential Information, including the date and time of, and the reasons for, the access.
- (5) *Unauthorized Use or Disclosure Prohibited:* No **Person** shall access, use or disclose all or any part of Confidential Information other than authorized by this Ordinance.

(i) **Release of Confidential Information to other Governmental Entities:**

Information designated as confidential may be released to **Governmental Entities**, their authorized employees and agents as may be necessary to discharge their responsibilities under any legislation that expressly authorizes access to or review of Confidential Information. Any **Governmental entity** or **Person** requesting information designated as confidential must, prior to receiving such information, complete the “Description of Intent” form attached as Appendix A to this Ordinance and agree to be bound by the terms of the “NonDisclosure Agreement” attached as Appendix B to this Ordinance. Any **Governmental entity** or **Person** receiving

information designated confidential shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

- (j) **Use of Confidential Material by the Enforcement Agency:** A claim of confidentiality will in no way limit the Enforcement Agency in the exercise of its powers or duties under this Ordinance or any Order of the County Commission promulgated pursuant to this Ordinance.

Section 11 - Actions and reports by County Officers:

- (a) **Admonition in the absence of an imminent hazard:** If at any time any County Officer or the County Sheriff or any Deputy Sheriff of the County finds a condition to exist or an activity being engaged in which constitutes or may constitute a Public Nuisance, but that does not present an immediate hazard to the public health, safety, welfare or the **Environment**, he shall warn any **Person** who is or may be responsible liable therefor and who is present or readily on call that the Public Nuisance must be abated without delay, and that failure to do so may result in appropriate legal action against him, and that if it becomes necessary or appropriate for the County to abate the Public Nuisance, he will be liable to the County for abatement of the Public Nuisance and reimbursement of all expenses incurred by the County, as well as for possible criminal penalties.
- (b) **Conditions or activities that may present an imminent and substantial endangerment to public health, safety, welfare, or the Environment:** If it appears to such officer that the any discovered condition may present a Public Nuisance that constitutes an imminent and substantial endangerment to the public health, safety or to the **Environment**, or presents an imminent fire hazard, such officer shall forthwith take such lawful action within his capabilities as may be necessary to negate or ameliorate the hazard, and to clear the endangered area of persons, and he shall notify the County Manager promptly by the most expeditious means of communication.
- (c) **Reporting:** All members of the Enforcement Agency, the County Sheriff and any deputy sheriffs shall report to the County Manager the facts as to any known or suspected Public Nuisance found by them upon investigation, and the action, if any, taken by them pursuant to subsections (a) or (b) of this section, together with recommendations as to the manner of abatement, the time limit for abatement and such other professional recommendations and comment as they may deem pertinent.

Section 12 – Commencement of Enforcement Action before County Commission:

- (a) **Commencement of Action before County Commission for Public Nuisance Abatement Action Order:** After conducting such investigation as is necessary and proper to conclude that there are reasonable grounds to believe:
- (1) that a Public Nuisance exists or is imminently threatened to be created at any place in Lincoln County, and the Public Nuisance should be properly abated; or
 - (2) an appropriate civil penalty pursuant Section 23 of this Ordinance should be imposed upon one or more of the parties alleged to be liable for the Public Nuisance, or

(3) that the provisions of subsections (1) and (2) of this Section 12(a) are applicable, the Enforcing Agency may file a complaint against one or more of the parties liable or potentially liable pursuant to the provisions of this Ordinance before the County Commission in the form of a complaint/Proposed Public Nuisance Abatement Action Order, or a complaint/Proposed Order Imposing Civil Penalties, or both.

(b) **Required contents of complaint before County Commission:** The complaint filed by the Enforcement Agency before the County Commission shall be written, shall include, as appropriate, the proposed Abatement Action Order to be issued, the proposed civil penalty to be assessed, or both, and shall be directed against one or more **Persons** alleged to be liable for abatement of the Public Nuisance, or for civil penalties, or both, as the Enforcement Agency may deem appropriate. Any such complaint filed and served by the Enforcement Agency pursuant to this section shall include a statement of the factual and legal grounds upon which the Enforcement Agency contends support the issuance of the Proposed Order, and shall set forth the proposed findings of fact and conclusions of law that the Enforcement Agency asserts support the appropriateness of the Abatement Actions, or civil penalties, or both, sought and may include a schedule for completion of specific actions. A complaint filed with the County Commission pursuant to subsection (a) of this Section 12 shall on its first page in prominent text contained in a highlighted text box specifically advise the **Person(s)** to whom it is issued of the right to contest the allegations of the complaint and the **Abatement Action**, civil penalties, or both, sought in the complaint, and request a hearing as provided for in Section 14(e) of this Ordinance.

Within that same highlighted text box such Proposed Order shall also conspicuously advise the **Person** to whom it is directed that failure to file and serve an Answer to the Enforcement Agency's complaint in compliance with the requirements of Section 14 of this Ordinance within ten (10) days of the date they were served with the Enforcement Agency's complaint will result in the complete and final termination of their legal right to contest: (1) the provisions or issuance of the Proposed Order; and, (2) subject only to discretion of the County Commission acting *sua sponte*, the adoption and issuance by the County Commission of the Proposed Order as a binding Final Order of the County Commission.

(c) **Service of Complaint:** Service of the Enforcement Agency's complaint shall be accomplished in the manner provided in Rule Four of the West Virginia Rules of Civil Procedure. If the owners of all sites or premises upon which such alleged Public Nuisance activity has taken, or is taking place, or upon which such alleged Public Nuisance condition exists, or that will be directly affected by the proposed Abatement Action, if any, are not named in the Enforcement Agency's complaint as respondent liable parties for some or all of the relief requested, the Enforcement Agency shall serve an informational copy of the Enforcement Agency's complaint upon all such **Persons**.

Section 13 - Procedure on application by Enforcement Agency for either a temporary or preliminary Public Nuisance Abatement Action Order:

- (a) **Temporary or preliminary Public Nuisance Abatement Action Order:** Upon filing with the County Commission a verified complaint that complies with the requirements of Section 10 of this Ordinance and that alleges the existence at any place in Lincoln County of a Public Nuisance which may present an imminent and substantial endangerment to public health, safety, welfare, or the **Environment**, or presents an imminent hazard to the health or safety of any person within or near the premises upon which such Public Nuisance exists or where the Public Nuisance activity is occurring, the Enforcement Agency may apply to the County Commission for issuance in full compliance with the requirements of this Section 13 of either or both a Temporary Public Nuisance Abatement Action Order or a Preliminary Public Nuisance Abatement Action Order.
- (b) **Required Showing for Temporary or Preliminary Public Nuisance Abatement Action Order:** No Temporary or Preliminary Public Nuisance Abatement Action Order shall issue unless the Enforcement Agency establishes on the record before the County Commission or before a Hearing Officer appointed by the County Commission by preponderance of the evidence, and to the satisfaction of the County Commission or Hearing Officer each of the following elements:
- (1) that the conditions constituting, arising out of, or emanating from the alleged Public Nuisance may present an imminent and substantial endangerment to public health, safety, welfare, or t the **Environment**, or presents an imminent hazard to the health or safety of any person or persons within or near the premises upon which such Public Nuisance exists or where the Public Nuisance activity is occurring;
 - (2) unless consolidation as authorized in Subsection (c)(2) of this Section 13 has been granted, that the Abatement Action requested in the Enforcement Agency’s application is no more extensive than necessary to provide adequate protection of the public health, safety, welfare, or the **Environment** or of the **Person** or **Persons** within or near the premises involved until the County Commission or a Hearing Officer appointed by the County Commission can hear the merits of the Enforcement Agency complaint pursuant to this Ordinance;
 - (3) that there is a likelihood that the Enforcement Agency will prevail on the merits of the following required elements of its complaint:
 - (A) a **Public Nuisance** exists or is imminently threatened to be created in Lincoln County;
 - (B) that one or more of the named respondents are a liable **Person** as defined by Section 6 this Ordinance, with respect to the Public Nuisance(s) at issue;
 - (C) the Abatement Action(s) requested by the Enforcement Agency complies with the requirements of Section 9 of this Ordinance;
 - (D) the Abatement Action requested by the Enforcement Agency is reasonably cost-effective in meeting the requirements of Section 9 of this Ordinance.
- (c) **Temporary Public Nuisance Abatement Action Order; notice; hearing; duration:** A final and binding Temporary Public Nuisance Abatement Action Order may be granted by the County Commission, or proposed Temporary Public Nuisance Abatement Order may be issued by a Hearing Officer appointed by the County

Commission, without written or oral notice to the alleged liable party(ies) or that party's attorney only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a condition of Public Nuisance that may present an imminent and substantial endangerment to public health, safety, welfare, or the **Environment**, or that presents an imminent hazard to the health or safety of any **Person** or **Persons** within or near the premises upon which such Public Nuisance exists or where the Public Nuisance activity is occurring and immediate and irreparable injury, loss, or damage may result to the public health, safety, welfare, or the **Environment** before the alleged liable party(ies) or that party's attorney can be heard in opposition; and
- (2) the Lincoln County Prosecuting Attorney or an Assistant Lincoln County Prosecuting Attorney certifies to the County Commission or to the Hearing Officer appointed by the County Commission in writing the efforts, if any, which have been made to give the notice of the application for a Temporary Abatement Action Order to the potentially responsible party(ies), or their legal counsel, if known to the Lincoln County Prosecuting Attorney, or the compelling reasons supporting the claim of the Enforcement Agency or the Lincoln County Prosecuting Attorney that notice should not be required.

Every final and binding or proposed Temporary Public Nuisance Abatement Action Order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the County Clerk's office and entered of record; shall define the injury and state why it may present an imminent and substantial endangerment to public health, safety, welfare, or to the **Environment**, or presents an imminent hazard to the health or safety of any **Person** or **Persons** within or near the premises upon which such Public Nuisance exists or where the Public Nuisance activity is occurring, and why the Order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 20 days, as the County Commission or the Hearing Officer appointed by the County Commission fixes, unless within the time so fixed the Order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a final and binding or proposed Temporary Public Nuisance Abatement Action Order is granted without notice, the Enforcement Agency's motion for a Preliminary Public Nuisance Abatement Action Order shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the Enforcement Agency shall proceed with the application for a Preliminary Public Nuisance Abatement Action Order and, if the Enforcement Agency does not do so, the County Commission or its appointed Hearing Officer shall dissolve the Temporary Public Nuisance Abatement Action Order. On 2 days' notice to the party(ies) alleged to be liable, to the Enforcement Agency, and to the Lincoln County Prosecuting Attorney or on such shorter notice as the County Commission or its appointed Hearing Officer may prescribe, the party(ies) alleged to be liable may appear and move for the dissolution or modification of the Temporary Public Nuisance Abatement Action Order, and in that event the County Commission or its appointed Hearing Officer shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(d) **Preliminary Public Nuisance Abatement Action Order:**

- (1) *Notice.* No final and binding or proposed Preliminary Public Nuisance Abatement Action Order shall be issued without notice to the alleged liable party(ies).
- (2) *Consolidation of hearing with trial on merits.* Before or after the commencement of the hearing of the Enforcement Agency's application for a Preliminary Public Nuisance Abatement Action Order, the County Commission or its appointed Hearing Officer may order the trial of the action on the merits of the Enforcement Agency's complaint to be advanced and consolidated with the hearing of the application for a Preliminary Public Nuisance Abatement Action Order. Even when this consolidation is not ordered, any evidence received upon an application for a Preliminary Public Nuisance Abatement Action Order which would be admissible upon the trial on the merits of the Enforcement Agency's complaint becomes part of the record on the trial and need not be repeated upon the trial.

Section 14 - Procedures before County Commission or Its Appointed Hearing Officer upon filing of Enforcement Agency complaint; actions by County Commission upon timely request for hearing:

- (a) **Required Answer to Complaint of Enforcement Agency:** Any **Person** who has been named as a respondent in a complaint filed and served by the Enforcement Agency pursuant to this Ordinance that contests all or any part of the liability asserted in the complaint, or seeks to challenge any findings of fact or conclusions of law, civil penalty, **Abatement Action**, or recovery of **Abatement Action Costs** sought in the complaint must file a timely Answer to the complaint as set forth in this Section 14. An Answer must be in writing and filed with the County Clerk and served on the Enforcement Agency and the Office of the Lincoln County Prosecuting Attorney on or before the end of regular business hours on the fourteenth (14th) day following service of the Enforcement Agency's complaint/Proposed Order.
- (b) **Required contents of Answer:** The Answer required by Section 14(a) shall set forth in short and plain terms the respondent's defenses to each claim asserted in the complaint of the Enforcement Agency, and shall admit or deny the averments upon which the Enforcement Agency relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder. Unless the respondent intends in good faith to controvert all the averments of the Enforcement Agency's complaint/Proposed Order, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the respondent expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the provisions of Section 14(d) of this Ordinance.

- (c) **Time requirement for Answer deemed jurisdictional:** The time requirement for filing the Answer required by this Section 12 shall be deemed jurisdictional and may not be waived. Upon timely receipt of an Answer which complies with the requirements of this section, the County Clerk shall refer the matter to the County Commission for further proceedings as set forth in this Ordinance.
- (d) **Affirmative matters required in Answer of respondent:** The Answer of each respondent required by Section 14(a) must set forth in writing with reasonable particularity all of the following, where applicable:
- (1) if the respondent intends to contest liability, all facts upon which the respondent will rely at the public hearing to contest liability;
 - (2) if the complaint of the Enforcement Agency seeks to impose joint and several liability upon the respondent, and the respondent intends to assert at the public hearing that the imposition of joint and several liability is inappropriate because the harm(s) presented by the Public Nuisance is properly divisible pursuant to the provisions of Section 6(d) of this Ordinance, all facts upon which the respondent intends to rely to establish that the harm is divisible; and
 - (3) if the respondent intends to assert at the public hearing that an alternative **Abatement Action, Removal Action or Remedial Action** is more appropriate than the Abatement Action sought in the Enforcement Agency's complaint/Proposed Order, all facts supporting the adequacy, appropriateness, and costs of any alternative remedial action(s) the respondent intends to be present at the public hearing.
- (e) **Hearing before County Commission upon timely request:** Any respondent named in an Enforcement Agency's complaint that has timely filed an Answer complying with the requirements of this Section 14 may on or before the required filing date for an Answer pursuant to Section 12(d) request a hearing before the County Commission. Upon timely receipt of a request for hearing filed in compliance with the requirement of this Section 14, the County Commission shall issue an order either setting the matter down for hearing within thirty (30) days before the Lincoln County Commission, or referring the matter for hearing before a Hearing Officer appointed by the Lincoln County Commission. Hearings shall be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.
- (f) **Effect of failure to timely and properly file an Answer and request a public hearing:** If a respondent properly served with a complaint/Proposed Nuisance Abatement Action Order by the Enforcement Agency fails to timely file a request for a hearing that complies with the requirements of Section 14 of this Ordinance, such Proposed Nuisance Abatement Action Order will immediately be and become a final, binding and enforceable Order, subject only to such modification or revocation, if any, that the County Commission *sua sponte* may order pursuant to Subsection(g) of this Section 14, if and only if the respondent is eligible for the discretionary relief authorized by Subsection(g) of this Section 14 of this Ordinance.
- (g) **Effect of untimely request for hearing on Proposed Nuisance Abatement Action Order; County Commission options:** If any request for a public hearing on a proposed

Nuisance Abatement Action Order is received from a **Person** authorized to request a public hearing under subsection (a) of this Section 14 later than fourteen (14) business days after service of the complaint/Proposed Nuisance Abatement Action Order upon the requesting party, and provided also that party has not failed to file a timely and compliant Answer, and further provided that request set forth all facts upon which the applicant relies to support the contention that County Commission should excuse the delayed filing of the request, the Lincoln County Commission, in its sole discretion, may take any of the following actions:

- (1) summarily deny the request as untimely;
- (2) for good cause shown, grant the request, with or without a Stay of all or any portion of the provisions of the Proposed Nuisance Abatement Action Order pending the decision of the County Commission or its appointed Hearing Officer at or following the public hearing on the Proposed Nuisance Abatement Action Order; or
- (3) for good cause shown, grant the request in part, with or without a Stay of all or any portion of the provisions of the Proposed Nuisance Abatement Action Order, pending the decision of the County Commission or its appointed Hearing Officer following the public hearing, limiting the scope of the public hearing to specific issues identified by County Commission.

(h) Signing of pleadings, motions and other papers; representations to County

Commission or its appointed Hearing Officer; sanctions: *Signing of pleadings and other papers.* Every pleading, motion and other paper submitted to the County Commission or to its appointed Hearing Officer in the course of a proceeding conducted pursuant to this Ordinance shall be signed by at least one attorney of record for each party in the attorney's individual name, or if the respondent or other party is not represented by an attorney shall be signed by that respondent or other party. Each paper shall state the signer's address and phone number, and the West Virginia State Bar identification number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(1) *Representations to or before the County Commission or its appointed Hearing Officer.* By presenting to the County Commission or its appointed Hearing Officer (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

- (A)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (B)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (C)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

- (D) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
- (2) *Sanctions*: If, after notice and a reasonable opportunity to respond, the Lincoln County Commission or its appointed Hearing Officer determines that subparagraph (2) of this Section 14(f) has been violated, the County Commission or its Hearing Officer, subject to the conditions stated below, and in addition to or in lieu of the contempt fine it is empowered to impose pursuant to West Virginia Code § 7-1-6, may impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subparagraph (2) of this Section 14(f) or are responsible for the violation.
- (A) *Initiated by motion*: A motion by any party to any proceeding under this Ordinance before the County Commission or its appointed Hearing Officer for imposition of sanctions pursuant to this Section 14(f) shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subparagraph (2) of this Section 14(f). Such motion shall be filed with the County Clerk and shall be served on the Lincoln County Prosecuting Attorney and all parties to the proceeding or their Attorney, but shall not be presented to the County Commission or its appointed Hearing Officer unless, within ten (10) days after service of the motion (or such other period as the County Commission or its appointed Hearing Officer may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the County Commission or its appointed Hearing Officer may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
- (B) *Initiated on instance of the County Commission or its appointed Hearing Officer*: On its own initiative, the County Commission or its appointed Hearing Officer may enter an order describing the specific conduct that appears to violate subparagraph (2) of this Section 14(f) and directing an attorney, law firm, or party to show cause why it has not violated Subparagraph (2) of this Section 14(f) with respect thereto.
- (4) *Nature of sanction; limitations*: A sanction imposed for violation of subparagraph (2) of this Section 14(f) shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, and an order to pay a penalty into the appropriate County Fund as directed by the County Commission or its appointed Hearing Officer, or, if imposed on motion of a party and warranted for effective deterrence, and order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.
- (5) *No Sanction against represented party*. Monetary sanctions may not be awarded against a represented party for a violation of subparagraph (2) of this Section 14(f).

- (6) *Order to Show Cause to precede dismissal or settlement.* Monetary sanction may not be awarded on the initiative of the County Commission or its appointed Hearing Officer unless the County Commission or its appointed Hearing Officer issues an order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.
- (7) *Required content of Order imposing sanction:* When imposing sanction pursuant to this subparagraph (2) of this Section 14(f), the County Commission or its appointed Hearing Officer shall describe the conduct determined to constitute a violation of this subparagraph (2) of this Section 14(f) and explain the basis for the sanction imposed.
- (i) **Burdens of Proof and Persuasion:** At any public hearing held before the County Commission or its appointed Hearing Officer upon a complaint by the Enforcement Agency pursuant to this Ordinance, the Enforcement Agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.
- (j) **Conduct of hearing:** At any public hearing held before the County Commission or its appointed Hearing Officer upon a complaint by the Enforcement Agency pursuant to this Ordinance, any party to the action may appear in person or by attorney, either or both, and he may have compulsory process for the attendance of witnesses and the production of pertinent books and papers, if there are any; and other parties in interest may also appear and be heard under oath
- (k) **Findings of facts, determinations, and conclusions of law:** At the conclusion of the hearing the County Commission or its appointed Hearing Officer shall make findings of fact, determinations and conclusions of law as to whether:
 - (1) a Public Nuisance as defined and declared in this Ordinance exists in Lincoln County;
 - (2) whether each respondent is a liable party, as defined and described in Section 6 of this Ordinance with respect to a Public Nuisance within Lincoln County; and
 - (3) whether any **Abatement Action** is necessary and proper to provide adequate protection of public health, safety, welfare, and the **Environment**, and, if so, the appropriate **Abatement Actions** compliant with the requirements of Section 9 of this Ordinance to be required, and, if applicable, the amount of Abatement Action Costs that Lincoln County is entitled to recover pursuant to this Ordinance..

Section 15 – Representation of respondent at public hearing:

At any public hearing held pursuant to Section 14 of this Ordinance, the respondent(s) may appear in person or by attorney, either or both, and may have compulsory process for the attendance of witnesses and the production of pertinent books and papers, if there are any; and other parties in interest may also appear and be heard under oath.

Section 16 – Final action by County Commission on Enforcement Agency complaint; Issuance of final Public Nuisance Abatement Action Order:

- (a) **Issuance of Public Nuisance Abatement Action Order:** If, after hearing all relevant and material facts and arguments from all parties on a case commenced before the County Commission or before a Hearing Officer appointed by the County Commission by a complaint filed by the Enforcement Agency, the County Commission or Hearing Officer determines that a Public Nuisance as defined and declared by this Ordinance exists at any place in Lincoln County, that one or more respondents are liable with respect to that Public Nuisance, and that an Abatement Action is appropriate to provide adequate protection of the public health, safety, welfare, and the **Environment** with respect to such Public Nuisance, the County Commission shall issue any or all of the following final and binding orders to the liable party(ies) as the County Commission deem appropriate and proper, or the Hearing Officer appointed by the County Commission shall issue any or all of the following proposed orders to the liable party(ies) as the Hearing Officer deem appropriate and proper:
- (1) order any **Person** or **Persons** liable for such Public Nuisance forthwith to cease and desist, as may be further delineated in the Order, any activity causing, creating, contributing to, or maintaining the Public Nuisance;
 - (2) order any **Person** or **Persons** liable for such Public Nuisance forthwith to proceed with all required speed to timely and properly implement **Abatement Action(s)** with respect to the Public Nuisance and any endangerments to public health, safety, welfare, or the **Environment** that it may present in full compliance with the provisions of the Public Nuisance Abatement Action Order, and within the time period stated in the Public Nuisance Abatement Action Order under the direction and supervision of a designated Member(s) or authorized agent(s) of the Enforcement Agency;
 - (3) enter against any **Person** or **Persons** liable for such Public Nuisance both such Public Nuisance Abatement Action Orders authorized in subsections (a) and (b) of this Section 16;
 - (4) in addition to or in lieu of any other relief authorized this Ordinance, order any **Person** or **Persons** liable for such Public Nuisance to undertake such further action as may be necessary and proper to remedy any adverse consequences to, or endangerments of, the public health, safety, welfare, or the **Environment** that may be presented as a result, in whole or in part, of the Public Nuisance; or
 - (5) require one or **Persons** liable for the Public Nuisance timely to reimburse the County for the **Abatement Action Costs** that is has incurred and that it will incur with respect to the Public Nuisance.
- (b) **Final action by County Commission:** County Commission action issuing or declining to issue a Public Nuisance Abatement Action Order, acting either on a matter before the Commission or on any request for review of proposed Order from any Hearing Officer appointed by the County Commission, with respect to any alleged Public Nuisance, dismissing a complaint filed by the Enforcement Agency, or issuing or declining to issue a Public Nuisance Abatement Action Order with respect to any alleged liable party(ies) is a Final Order of the County Commission.
- (c) **Continuing Jurisdiction of County Commission:** Notwithstanding the provisions of subsection (b) of this section, the County Commission shall have continuing jurisdiction

to enforce or modify any Public Nuisance Abatement Action Order and any other relief or recovery ordered by it pursuant to this Ordinance.

Section 17 – Appeals of Orders from County Commission:

All appeals from any final and binding decision of the County Commission or its appointed Hearing Officer on matters arising pursuant to this Ordinance, specifically including, but not limited to, any ruling on an appeal pursuant to Section 9(e) of this Ordinance, shall be to the circuit court in accordance with the provisions of Article three, Chapter fifty-eight of the West Virginia Code.

Section 18 - Duty to comply with Public Nuisance Abatement Action Order:

No **Person** who has been served as required by Section 12(c) of this Ordinance or who has otherwise been properly made a party respondent to any action before the County Commission or before a Hearing Officer appointed by the County Commission on or relating to a complaint of the Enforcement Agency pursuant to this Ordinance, including any application for a Temporary Public Nuisance Abatement Action Order or Preliminary Public Nuisance Abatement Action Order, and who is named as a liable party in any proposed Order by a Hearing Officer that has not been stayed, or in final and binding Temporary, Preliminary, or Final Public Nuisance Abatement Action Order shall disobey or fail timely to comply with the terms of such proposed or final and binding Temporary, Preliminary, or Final Public Nuisance Abatement Action Order.

Section 19 - County's remedies upon failure or refusal of respondent to comply with Public Nuisance Abatement Action Order; County's recourse; lien created:

- (a) **County's option to have required Abatement Actions performed:** If any **Person** liable for a nuisance who has been named in and properly served with a Public Nuisance Abatement Action Order fails or refuses to comply with the terms of such Nuisance Abatement Action Order, the County Commission or its appointed Hearing Officer, after giving reasonable notice to the liable **Person(s)** named in the Public Nuisance Action Abatement Order and to such owner, occupant or person in charge of the premises at the which the Public Nuisance exists or which will or may be affected the required Abatement Action, if such **Persons** are not named as liable **Person(s)** in the Public Nuisance Abatement Action Order, may abate the Public Nuisance, cause it to be abated, or advertise for and seek contractors to undertake the required Abatement Action and such other action(s) as may be required timely and completely to comply with the Public Nuisance Abatement Action Order.
- (b) **County's options to recover Abatement Action Costs:** Either separately or in connection with a complaint filed by the Enforcement Agency under Section 10(a) of this Ordinance, the Enforcement Agency or the Lincoln County Prosecuting Attorney may give notice of the County's intention to collect its **Abatement Action Costs** with respect to a Public Nuisance from the owner, occupant or person in charge, by distress or sale, in the same manner in which taxes levied upon real estate for the benefit of the

County are authorized to be collected, and the County's **Abatement Action Costs** with respect to the Public Nuisance shall remain a lien upon premises or part thereof, the same as taxes levied upon real estate; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced. In case of nonresident owners of real estate, such notice may be served upon any tenant, occupant, assignee or rental agent, or by publication thereof once a week for not less than two (2) consecutive weeks in two (2) newspapers of general circulation in the Lincoln County.

- (c) **Abatement by or payment to the County not a bar to County's other remedies:** Abatement by the County of any condition which constitutes a Public Nuisance, in whole or in part, or reimbursement to the County of **Abatement Action Costs** incurred thereby shall not bar prosecution for creation or maintenance of a Public Nuisance, or bar the County from pursuit of any of its civil or criminal remedies.

Section 20 – Judicial enforcement of Public Nuisance Abatement Action Order, recovery of county **Abatement Action Costs and county enforcement costs:**

- (a) **Judicial enforcement of Public Nuisance Abatement Action Order:** As an alternative to any other remedies available to the County, whenever any **Person** fails or refuses to comply with a Public Nuisance Abatement Action Order served upon such **Person** that is or has become a final and binding Order pursuant to the Ordinance, the County Commission may direct the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney to apply in the name of the County Commission to any court of competent jurisdiction, or to the judge thereof in vacation, for an injunction forthwith to enforce any final and binding Public Nuisance Abatement Action Order issued pursuant to this Ordinance, and upon proper proof to recover judgment for the **Abatement Action Costs** incurred by the County, and, where appropriate, to seek a declaratory judgment for **Abatement Action Costs** to be incurred by the County as authorized by Section 6(f) of this Ordinance. In any such action, upon presentation to the court of proof by a preponderance of the evidence on the required elements of its claim(s), the court shall award the Lincoln County Commission an injunction in the form of a judicial Public Nuisance Abatement Order, requiring the liable party(ies) timely and competently to abate the Public Nuisance consistent with the terms and conditions of the final and binding Abatement Action Order and applicable requirements of this Ordinance, at their sole cost, under the supervision and oversight of a designated Member(s) or authorized agent(s) of the Enforcement Agency.
- (b) **Judicial imposition and foreclosure of lien to accomplish completion of Abatement Action Order:** At any time after issuance of a final and binding Public Nuisance Abatement Action Order and the subsequent failure or refusal of a respondent to that Order to comply with any of its terms and conditions, the County Commission may direct the Lincoln County Prosecuting Attorney to commence, or the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney may *sua sponte* commence, a civil proceeding in any court of competent jurisdiction in the name

of the Lincoln County Commission against the owner or owners of the private land or other Liable Party(ies) that are respondents to a final and binding Public Nuisance Abatement Action Order to seek:

- (1) imposition of a lien for the amount of **Abatement Action Cost** incurred and to be incurred by the County in securing timely and complete compliance with the Public Nuisance Abatement Action Order;
 - (2) to order and decree the sale of the private land or property in question to satisfy the lien;
 - (3) to order and decree that any Member, authorized agent, or contractor of the Enforcement Agency may enter upon the private lands in question as necessary or proper to secure timely and complete compliance with the Public Nuisance Abatement Action Order;
 - (4) recovery of any **Abatement Action Costs** incurred by the County with respect to such Public Nuisance;
 - (5) a declaratory judgment on liability for all future **Abatement Action Costs** to be incurred by the County with respect to the Public Nuisance; and
 - (6) recovery of the County's enforcement costs pursuant to subsection (e) of this Section.
- (c) **Equitable criteria for injunctive relief authorized by this Section 20:** The Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney may commence a civil action in any court of competent jurisdiction in the name of the Lincoln County Commission to secure any of the relief authorized by this Section 20. In any such civil action in which a temporary restraining order, preliminary injunction, or partial or complete mandatory or prohibitory permanent injunction is sought, it shall not be necessary for the County Commission to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction (including any Public Nuisance Abatement Action Order) not be issued; or that any remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction (including any Public Nuisance Abatement Action Order) shall issue without such allegations and without such proof.
- (d) **Availability of remedies before the County Commission not a bar to judicial relief:** An application brought by the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney in the name of the Lincoln County Commission for injunctive relief pursuant to Sections 20 or 22 of this Ordinance, or for imposition and collection of a civil penalty pursuant to Section 23 of this Ordinance may be filed and relief requested therein granted notwithstanding the fact that all remedies that may be available from the County Commission pursuant to this Ordinance have not been exhausted or invoked against the **Person** or **Persons** against whom the relief is sought.
- (e) **Recovery of county enforcement costs:** In any proceedings under this section 20 in which the County is the prevailing party or substantially prevailing party, Lincoln County is entitled to recover, and the Court shall award to the County, its litigation costs and expenses, including attorneys' fees and expenses, expert witness fees and expenses, and the fees and expenses of no more than one (1) non-testifying technical or scientific

expert to assist the Lincoln County Prosecuting Attorney or Assistant Lincoln County Prosecuting Attorney in the preparation and prosecution of the action.

Section 21 - Arrest for committing, creating, or maintaining Public Nuisance not prohibited:

Nothing in this Article shall be construed to prohibit any peace officer from arresting any person for committing, creating, contributing to, or maintaining a Public Nuisance when such arrest is made pursuant to law.

Section 22 – Judicial abatement of Public Nuisance, recovery of Abatement Action Costs and damages, authority of the Lincoln County Prosecuting Attorney:

- (a) **Authority of Lincoln County Prosecuting Attorney:** In addition to or in lieu of any other remedy available to Lincoln County, the Lincoln County Prosecuting Attorney, or any Assistant Lincoln County Prosecuting Attorney designated by the Lincoln County Prosecuting Attorney or by the County Commission, may bring a civil action in the name of the Lincoln County Commission in any court of competent jurisdiction, and may seek in any such action any or all of the following forms of relief, and upon presentation to the court of proof to a preponderance of the evidence on the required elements of its claim(s) under this Ordinance with respect to an actual or imminently threatened Public Nuisance or with respect to any act or condition which is detrimental to any beneficial uses within Lincoln County of any natural resource owned by the State or held in trust for the benefit of present and future generations of the public, the court shall award the County:
- (1) an injunction in the form of a judicial Public Nuisance Abatement Order, requiring the liable party(ies) timely and competently to abate the Public Nuisance consistent with the applicable requirements of this Ordinance at their sole cost, under the supervision and oversight of the Enforcement Agency;
 - (2) recovery of all **Abatement Action Costs** incurred by the County with respect to such Public Nuisance;
 - (3) imposition of the appropriate civil penalty pursuant to Section 23 of this Ordinance;
 - (4) where appropriate, a declaratory judgment on liability for further **Abatement Action Costs** to be incurred by the County with respect to the Public Nuisance(s) in accord with Section 6(f) of this Ordinance; and
 - (5) recovery of such damages as may be available to the County by law with respect to such Public Nuisance;
- and the Lincoln County Prosecuting Attorney or Assistant Lincoln County Prosecuting Attorney shall bring such action whenever so directed by Lincoln County Commission.
- (b) **Equitable criteria for injunctive relief authorized by this Section 22:** In any civil action brought pursuant to this Section 22 by the Lincoln County Prosecuting Attorney or Assistant Lincoln County Prosecuting Attorney in the name of the Lincoln County Commission in which a temporary restraining order, preliminary injunction, or partial or

complete mandatory or prohibitory permanent injunction, or judicial Public Nuisance Abatement Action Order is sought, it shall not be necessary for the County Commission to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction (including any Public Nuisance Abatement Action Order) not be issued; or that any remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction (including any Public Nuisance Abatement Action Order) shall issue without such allegations and without such proof.

- (c) **Recovery of County litigation costs:** At every stage of any civil action brought pursuant to this Section 22 in which the Lincoln County Commission is a prevailing party or substantially prevailing party on any of its claims for interim or final relief, the County Commission shall be awarded its litigation costs, including attorneys' fees and expenses, expert witness fees and expenses, and the fees and expenses of no more than one (1) nontestifying technical or scientific expert to assist the Lincoln County Prosecuting Attorney in the preparation and prosecution of the action.

Section 23 – Civil penalties:

- (a) **Imposition of Civil Penalties:** Any **Person** who violates (1) any requirement of this Ordinance; or (2) any requirement of a final and binding Temporary, Preliminary or Permanent Public Nuisance Abatement Action Order issued pursuant to this Ordinance, or a proposed Temporary, Preliminary or Permanent Public Nuisance Abatement Action Order issued pursuant to this Ordinance that was not stayed at the time of the alleged violation; or (3) who fails or refuses, without good and proper cause, to comply with an Information Demand issued pursuant to this Ordinance shall be liable to Lincoln County for the civil penalty determined in accord with the provisions of this Section 23 to be credited to and deposited in the proper County Fund as directed by the County Commission.
- (b) **Maximum Amount of Civil Penalty:** The maximum amount of the civil penalty that may be imposed pursuant to this Section 23 is:
- (1) For any matters not governed by the provisions of Subparagraph (2) of this Subsection 23(b), not more than five thousand dollars (\$5,000), but not less than five hundred dollars (\$500) per violation per each calendar day of violation;
 - (2) for any intentional, knowing or willful violation, not more than ten thousand dollars (\$10,000), but not less than one thousand dollars (\$1,000) per each calendar day of each such violation.
- (c) **Commencement of civil action or County Commission proceeding authorized with respect to Civil Penalties:** Liability for civil penalties under this Section 23 may be imposed in a civil action brought by the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney in the name of the County Commission before any court of competent jurisdiction, or liability for civil penalties pursuant to this Section 23 may be imposed by the County Commission in a proceeding before the County Commission or before a Hearing Officer appointed by the Lincoln County Commission commenced by complaint filed with the County Commission by the

Enforcement Agency and served as required by Section 10(c) of this Ordinance on the parties alleged to be liable for civil penalties pursuant to Section 23 of this Ordinance against whom the Enforcement Agency seeks to have civil penalties imposed pursuant to this Section 23 of this Ordinance. Any such civil action seeking imposition of civil penalties pursuant to this Section 23 may be brought by the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney upon request of the Enforcement Agency, and shall be brought by the Lincoln County Prosecuting Attorney or any Assistant Lincoln County Prosecuting Attorney when so directed by the Lincoln County Commission. A claim for imposition of a civil penalty pursuant to this Section 23 may be joined with an action for any other remedy available to the Lincoln County Commission pursuant to federal or state law, or pursuant to this or any other Lincoln County Ordinance.

- (d) **Determination of Amount of Civil Penalty**: In determining the amount of any civil penalty to be imposed under this Section 23, the court or County Commission shall, at a minimum, impose a penalty amount not to exceed the maximum penalty allowed by the limits set forth in Section 23(b), that will eliminate all economic benefit which has accrued to, and which is accruing, or will accrue to the liable party by reason of the Public Nuisance giving rise to his liability or other noncompliance and which fully reimburses the public for the harm and damage done to the public health, safety, welfare, or the **Environment**, if any, as a result of the liable party's past or present maintenance of the Public Nuisance or other noncompliance. Impossibility of substantial compliance, or the impossibility of quantifying the harm to the public health, safety or the **Environment**, does not bar the assessment of a civil penalty under this Section 23. In addition, in determining the proper civil penalty to be imposed, the court, County Commission, or the Hearing Officer appointed by the County Commission shall consider the liable party's degree of recalcitrance, the absence of good faith cooperation with the County or the Enforcement Agency, or any other governmental entities responding to the Public Nuisance, the liable party's defiance of, or indifference to, the requirements of the law, and any unusual or extraordinary burdens imposed on the public health or welfare or the public fisc as a result of the maintenance or required abatement of the Public Nuisance, or other noncompliance as factors requiring enhancement of the minimum penalty amount. The court, the County Commission, or the Hearing Officer appointed by the County Commission may mitigate the total amount of civil penalty calculated under the first sentence of this subsection (d) to reflect any part of the liable party's maintenance of the Public Nuisance or other noncompliance caused by the existence of extenuating circumstances that were wholly beyond the liable party's control, or to recognize bona fide efforts by the liable party timely to comply with the requirements of the law and to extend significant and meaningful cooperation to the Enforcement Agency, Lincoln County and to other governmental enforcing agencies with jurisdiction.

Section 24 – Criminal Penalties:

(a) **Imposition of Criminal Penalties:** Any **Person** committing any of the following specified offenses is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the following criminal sanctions:

- (1) for the defendant's first violation of Section 4 of this Ordinance with respect to a Public Nuisance which neither the County Commission, nor any Court of competent jurisdiction has found and determined in an enforceable order, or which a Hearing Officer appointed by the County Commission has not found in either a final and binding order or in a proposed order that was not stayed at the time of the violation, may present an imminent and substantial endangerment to public health, safety, welfare or to the Environment, defendant shall be fined not less than five hundred dollars (\$500.00) nor more than fifteen hundred dollars (\$1,000), or imprisoned for not more than sixty (60) days;
- (2) for the defendant's second or subsequent violation of Section 4 of this Ordinance with respect to a Public Nuisance which neither the County Commission, nor any Court of competent jurisdiction has found and determined in an enforceable order, or which a Hearing Officer appointed by the County Commission has not found in either a final and binding order or in a proposed order that was not stayed at the time of the violation, may present an imminent and substantial endangerment to public health, safety, welfare, or the **Environment**, defendant shall be fined not less than twentyfive hundred dollars (\$2,500) nor more than four thousand dollars (\$4,000), or imprisoned for not more than one hundred twenty (120) days, or both fined and imprisoned;
- (3) for the defendant's violation of Section 4 of this Ordinance with respect to a Public Nuisance which the County Commission or any Court of competent jurisdiction has found and determined in an enforceable order, or which a Hearing Officer appointed by the County Commission has found in either a final and binding order or in a proposed order that was not stayed at the time of the violation, may present an imminent and substantial endangerment to public health, safety, welfare or the **Environment**, defendant shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), or imprisoned for not more than six (6) months; or both fined and imprisoned;
- (4) for defendant's violation of Section 15 of this Ordinance with respect to any Public Nuisance Abatement Action Order which does not by its terms find that any Public Nuisance addressed in the Order, whether issued by the County Commission, Hearing Officer appointed by the County Commission, or by any court, may present an imminent and substantial endangerment to public health, safety, welfare, or the **Environment** shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars for the first offense, and for any second or subsequent offense, shall be fined not less than twenty-five hundred dollars (\$2,500) nor more than seven thousand five hundred dollars (\$7,500), or imprisoned in the county jail not more than six months, or both fined and imprisoned;
- (5) for defendant's violation of Section 15 of this Ordinance with respect to any Public Nuisance Abatement Action Order which by its terms finds that any Public Nuisance addressed in an Order, whether issued by the County Commission, by its appointed Hearing Officer, or by any court, may present an imminent and substantial

endangerment to public health, safety, welfare, or the **Environment** shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for the first offense, and for any second or subsequent offense, shall be fined not less than seventy-five hundred dollars (\$7,500) nor more than ten thousand dollars (\$10,000), or imprisoned in the county or regional jail not more than one (1) year, or both fined and imprisoned.

- (6) any **Person** who intentionally misrepresents any material fact in a submission to the Enforcement Agency or to the County Commission or a Hearing Officer appointed by the County Commission in any record, report, plan or other document filed or required to be maintained, produced or submitted under the provisions of this Ordinance or of any Order issued pursuant to it shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or imprisoned in a county or regional jail not more than six (6) months, or both fined and imprisoned.
 - (7) any **Person** required to make a report pursuant to Section 26(a) of this Ordinance who fails to make the required report or provide the required information as and when required shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or imprisoned in a county or regional jail not more than four (4) months, or both fined and imprisoned.
 - (8) any **Person** required to make a report and provide information pursuant to Section 26(b) of this Ordinance who willfully fails to make the required report or provide the required information as and when required shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisoned in a county or regional jail not more than three (3) months, or both fined and imprisoned.
- (b) **Complete defenses to criminal liability:** Any defendant who can prove to the satisfaction of the County Commission, a Hearing Officer appointed by the County Commission, or a Court that it is a **Person** holding a valid permit issued pursuant to Chapter 22 of the WV Code, and that it is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of that permit is not subject to criminal liability under this Ordinance arising out of the abatement of the pollution recognized and authorized by such permit.
- (c) **Courts of competent criminal jurisdiction:** Magistrate courts have concurrent jurisdiction with circuit courts to enforce the provisions of this Section 24.

Section 25 - Effect on municipal ordinances within Lincoln County:

- (a) **No General or Field Preemption Intended:** Subject only to the provisions of subsection (d) of this Section 25, this Ordinance is not intended to, and shall not be construed to, limit, restrict, or in any way preempt the lawful authority of any municipality within Lincoln County to define, declare, prohibit or abate any nuisance involving in whole or in part a **Hazardous Waste** or **Prohibited Hazardous Substance**; **provided however**, that such municipal ordinance is at least as comprehensive as this Ordinance in its definition of the terms “**Hazardous Waste**” and “**Prohibited Hazardous Substance**,” and **provided further**, that such municipal

ordinance is at least as stringent as this Ordinance with regard to requiring that Abatement Actions respecting **Hazardous Waste** and **Prohibited Hazardous Substances** be consistent with the **NCP** to the maximum extent appropriate to secure adequate protection of public health, safety, welfare, and the **Environment**.

- (b) **Consultation required on certain municipal determinations regarding consistency with the NCP:** Whenever in the course of undertaking or requiring any **Abatement Action** pursuant to any municipal law or ordinance within Lincoln County regarding a nuisance arising in whole or in part from a **Hazardous Waste** or a **Prohibited Hazardous Substance** a municipality within Lincoln County is considering either: (1) granting a request of one or more liable parties for a waiver from any component of the **Abatement Action** that would be necessary for consistency with the **NCP**; or (2) undertaking an **Abatement Action** that would not be consistent with the **NCP**, the municipality prior to authorizing or undertaking any such action must provide the Enforcement Agency all relevant information regarding the proposed **Abatement Actions** and all **NCP** consistency-related issues, and must thereafter meet and confer with the Enforcement Agency. If the Enforcement Agency determines that the proposed municipal action(s) warrants a waiver pursuant to Section 9(d) of this Ordinance of some or all the **NCP** requirements at issue, it shall approve an appropriate waiver under this Ordinance for the municipal **Abatement Action**.
- (c) **Right of municipality to request review by County Commission:** If the Enforcement Agency and the municipality cannot reach agreement on the **NCP** requirements at issue in matter arising under subsection (b) of this Section 25, the municipality may seek review by the County Commission of the Enforcement Agency's final determination by filing a request for hearing and review with the County Clerk within ten (10) days of receiving the final determination of the Enforcement Agency. Any decision rendered by the County Commission on a municipal request for hearing and review pursuant to this subsection may be appealed in accord with the provisions of Section 17 of this Ordinance.
- (d) **Municipal waiver of NCP consistency granted without compliance with the requirements of this Section are expressly preempted:** Unless the municipality has obtained the concurrence and approval of the Enforcement Agency or of the County Commission pursuant to subsections (b) or (c) of this Section 25, any provision of any municipal law or ordinance regarding a nuisance arising in whole or in part from a **Hazardous Waste** or **Prohibited Hazardous Substance**, and any approval of any **Abatement Action** undertaken or authorized pursuant to any such municipal law or ordinance, by any municipality in Lincoln County that does not require consistency with the **NCP** with respect to such **Abatement Action** is expressly preempted.

Section 26 - Reporting Obligations:

- (a) **Required reports by Owners and Operators of licensed Waste management facilities:** On and after the effective date of this Ordinance, any **Person** who owns or operates a site or **Facility**, including, but not limited to, a "Solid Waste Facility" as that term is defined in West Virginia Code § 22-15-2(34), in Lincoln County licensed by any

agency or instrumentality of the federal, state or local government to manage, including to treat, store, or dispose of, any **Waste**, including but not limited to a “Solid Waste,” as that term is defined in West Virginia Code § 22-15-2(31) or **Hazardous Waste**, shall make the following report(s) and provide the following information to the Enforcement Agency regarding the following **Waste** at least three (3) working days prior to managing within Lincoln County any of the **Waste** that gives rise to the reporting obligation under this subsection :

(1) *Wastes generated by a Removal Action or Remedial Action:* All available information about the source, quantity, physical, chemical or infectious characteristics of any **Waste** proposed for management or disposal in Lincoln County that was generated in whole or in part by a **Removal Action, Remedial Action, Abatement Action** or by an environmental clean-up at any site, regardless of by whom ordered or performed, and the results of any analysis of such **Waste**.

(2) *Wastes known or reasonably suspected to be Hazardous Wastes:* All available information about the source, quantity, physical, chemical or infectious characteristics of any **Waste** proposed for management or disposal in Lincoln County that any **Person** described in Section 26(a) knows or reasonably suspects to be a **Hazardous Waste** as that term is defined in West Virginia Code § 22-18-3(26);

(3) *Wastes requiring any license or permit Modification, special permission, waiver, or any Waste-specific action by any governmental authority prior to the management of that Waste in Lincoln County:* All available information about the source, quantity, physical, chemical or infectious characteristics of the **Waste** proposed for management or disposal in Lincoln County, which requires any new license or permit, the modification of any license or permit, the granting of any special permission or waiver, or any **Waste-specific** action by any governmental authority prior to the management or disposal of that **Waste** in Lincoln County, together with complete copies of any materials, including but not limited to application materials, and reports of any analysis of the **Waste** submitted to any governmental agency with respect to such **Waste**.

(b) **Required reports regarding location and Releases of Hazardous Waste or Prohibited Hazardous Substances within Lincoln County:** On and after the effective date of this Ordinance, any **Person**, other than **Person** subject to the provisions of subsection (a) of this Section 26, who owns, operates, or is in charge of any site or **Facility** in Lincoln County, as soon as he has knowledge of the presence at or on that site or **Facility** of any **Hazardous Waste** or **Prohibited Hazardous Substance**, or of the **Release** into the **Environment** within Lincoln County of any **Hazardous Waste** or **Prohibited Hazardous Substance** (other than a **Release** in compliance with a valid federal or state permit) at or from such site or **Facility** shall forthwith notify the Enforcement Agency or the Lincoln County Sheriff of the location or **Release** of such **Hazardous Waste** or **Prohibited Hazardous Substance**.

(c) Notification received pursuant to this Section 26 or information obtained by the exploitation of such notification shall not be used against the reporting **Person** in any criminal case, except a prosecution for perjury or for giving a false statement.

Section 27 - Provisions severable:

The several sections and subsections of this Ordinance are severable, and if any section or subsection hereof shall be held unconstitutional or otherwise invalid, all the remaining sections and subsections of the article shall nevertheless remain valid.

Section 28 - Effective Date:

This Ordinance of Lincoln County, West Virginia shall become effective on the day of _____, 2017

IT IS SO DONE, ORDAINED, ORDERED AND ADOPTED by the
Lincoln County Commission this _____ day of March, 2017.

COUNTY COMMISSION
LINCOLN COUNTY, WEST VIRGINIA

By _____
Hon. Charles N. Vance, III, D.O. Its
President

ATTEST:

Direl G. Baker
Lincoln County Clerk