

An Act

Legislative Act 35-04

A LEGISLATIVE ACT AMENDING TITLE 63 OF THE CHEROKEE NATION CODE ANNOTATED, THE ENVIRONMENTAL QUALITY ACT; ADDING NEW ITEMS; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title

This act shall be known as the "Cherokee Nation Environmental Quality Code Water Quality Amendment Act of 2004".

Section 2. Purpose

The purpose of this Act is to enact the Cherokee Nation Water Quality Code by revoking and replacing Article 9 of the existing Environmental Quality Act. This act:

- Specifies policy and the authorities of the Environmental Protection Commission; adds and amends definitions; establishes powers and duties of the Commission; makes certain acts such as land application of sludge unlawful if done without first obtaining a permit from the Commission;
- Establishes the "Discharge Elimination System Act"; describes the Commission's duty to promulgate rules and set requirements for discharges to waters of the Nation; describes authority to specify conditions in permits; describes how permits may be modified; provides authority for inspection of discharge facilities; makes point source discharges without a permit unlawful;
- Enacts the "Water Supply System Act"; giving Commission authority for wellhead protection program and public water supply supervision; providing authority for Commission to promulgate rules for water supply, treatment and distribution systems; requiring plans for waterworks be filed; granting authority to investigate sanitary quality of water supplied to public; granting authority for issuing compliance orders, emergency orders and orders requiring public notice to consumers; stating policy for groundwater supplies; granting authority to develop rules for preventing pollution of water supplies; providing for a water supply protection education program;
- Creates the "Waste Storage, Treatment, Transportation and Disposal Act"; requires a permit before constructing or operating a wastewater treatment system or works; providing for exemptions from permit requirements; requiring compliance with Commission rules and inspection, and submission of plans, for public sewage systems; specifying federal requirements for sewage sludge apply

until Commission promulgates rules; setting requirements for land application of sludge or other wastes; specifying activities requiring a permit; describing Commission authority to promulgate rules for control of pollution and sanitation in watersheds; requiring permit for underground injection wells;

- Creates the "Scenic Rivers Act"; designating same areas as state to be Cherokee Nation scenic rivers; specifying intent to preserve condition of scenic rivers; granting authority to cross-deputized law enforcement to file complaints on litter or pollution; specifying penalties for illegally disposing of garbage in scenic area; requiring notice and hearing for new scenic river areas; requiring Commission to establish rules and standards not less stringent than those of other federal, state or local agency with jurisdiction.

Section 3. Legislative History

The Environmental Quality Act, Title 63 CNCA §§ et seq., was first enacted in 1993. LA 1-93, eff. June 14, 1993.

Section 4. Definitions

Not applicable.

Section 5. Amendments

CNCA Title 63 Chapter 3 is hereby revised as follows: the existing Article 9 is revoked and replaced with the following:

**TITLE 63
PUBLIC HEALTH AND SAFETY**

**CHAPTER 3
CHEROKEE NATION ENVIRONMENTAL CODE**

Article 9. WATER QUALITY

900. Title of Article.

The provisions of this article shall be known as the Cherokee Nation Water Quality Code.

901. Declaration of Policy and Authority.

This Article recognizes the authority of the Cherokee Nation Environmental Protection Commission to take all actions necessary to implement the goals and policies of the Nation to:

- A. Restore, maintain and improve the chemical, physical and biological integrity of waters of the Cherokee Nation.
- B. Utilize area-wide planning and management to control sewage and other discharges.
- C. Assert and defend the Nation's legal rights and claims to waters and related natural resources.
- D. Monitor and ensure that the United States and surrounding states and nations take meaningful action to protect water quality and comply with applicable laws for the protection of resources, whenever their actions or inaction may harm the Nation's waters or resources.
- E. Hold anyone who has, without authorization, used or damaged the Nation's waters or related natural resources accountable for restoring the same to their original condition and/or compensating the Nation for such damage or unauthorized use.
- F. Identify and protect waters and resources of the Nation with special cultural or historical significance, and develop and enforce such standards and antidegradation provisions as may be appropriate for such purposes.
- G. Engage in planning and participate in decision-making to assure that the Nation's waters and related natural resources are developed in a manner consistent with the goal of long-term, sustainable use and protection for future generations.
- H. Prohibit the discharge of toxic pollutants in toxic amounts and, to the extent practicable eliminate, or effectively control, the discharge of pollutants from any source.
- I. Require environmental review of proposed activities which may cause individual or cumulative adverse impacts to water quality, natural resources,

- public health, lands, recreation, cultural or historical values, air, quality of life, or other aspects of the Nation's environment;
- J. Require projects to be modified to avoid adverse impacts if possible, to minimize unavoidable impacts, and provide full mitigation for unavoidable impacts.
 - K. Prohibit or restrict activities which may cause or contribute substantially to a violation of water quality standards or a violation of federal law.

902. Definitions.

For purposes of this article:

"Administrator" means the person designated as administrator of the CN EPC.

"Affected Party" means any person or entity applying for or holding a permit under this chapter, and any citizen of the Cherokee Nation, but only if such person, entity, or citizen is directly and substantially impacted by an action or decision of the CN EPC. The CN EPC, in the regulations adopted pursuant to 63 CNCA § 102, may include other classes of persons within the meaning of "Affected Party". The Nation and any department thereof may be an affected party.

"CN APA" means Cherokee Nation Administrative Procedures Act.

"CN EPC" means the, Environmental Protection Commission of the Cherokee Nation.

"Cherokee Nation District Court" means the trial court of the Cherokee Nation.

"Citizen of the Cherokee Nation" means a member of the Cherokee Nation as defined by law.

"Commission" means the Environmental Protection Commission of the Cherokee Nation.

"Council of the Cherokee Nation" means the legislative body of the Cherokee Nation.

"Discharge" includes but is not limited to any addition of any pollutant to waters of the Nation from any point source and includes any discharge of a pollutant or pollutants from any source.

"Disposal system" means pipelines or conduits, pumping stations and force mains and all other devices, construction, appurtenances and facilities used for collecting, conducting or disposing of wastewater, including treatment systems.

"Drainage basin" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Commission to be necessary to protect adequately the waters of the reservoir. The area may extend upstream on any watercourse to any point within six hundred (600) feet of the highest water line of the reservoir.

"Effluent limitation" means any established restriction on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the nation, including schedules of compliance.

"Environment" includes but is not limited to the air, land, wildlife, cultural and archaeological resources, and waters of the Nation.

"Environmental Code" means the Cherokee Nation Environmental Code and

shall refer to Title 63 CNCA Section 50 et seq.

"Indirect discharge" means the introduction of pollutants to a treatment works from a nondomestic source.

"Indian" means a person who is a citizen or is eligible for citizenship in a federally recognized Indian tribe or nation.

"Indian Country" means as defined by federal statutory and case law.

"Indian tribe or nation" means a federally recognized Indian tribe or nation.

"Judicial Appeals Tribunal" means the appellate court of the Cherokee Nation.

"Jurisdiction" means jurisdiction of the Cherokee Nation over the territory legally described in the treaties of 1828, 1835 and 1838 and the Cherokee Nation patent issued in 1846, and other such lands acquired by the Cherokee Nation since 1838.

"Lands of the Cherokee Nation" means tribal lands and those lands under the

jurisdiction of the Cherokee Nation.

“Nation” means the Cherokee Nation.

“Nonpoint source” means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined.

“Person” means any individual, trust, joint stock company, corporation (including a government corporation), partnership, association, government or any other legal entity or an agent, employee, representative, assignee or successor thereof.

“Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants or wastes are or may be discharged. The term "point source" does not include stormwater discharges and return flows from normal agricultural practices, but may include those associated with agri-industry practices such as concentrated animal feeding operations.

“Pollutant” includes but is not limited to dredged spoil, medical waste, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste.

“Pollution” means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.

“Pretreatment” means reduction of the amount of pollutants, or alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or introducing into a treatment works.

“Public water supply” means water supplied to the public for domestic or drinking purposes.

“Restricted lands” means lands held which are restricted against alienation as provided by the federal law.

“Sludge” means nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works, or water by a water supply system, or manure, or such residue, treated or untreated, which results from industrial, nonindustrial, commercial, or agribusiness activities or processes.

“Schedule of compliance” means a schedule of remedial measures including but not limited to an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

“Storm water” means rain water runoff, snow melt runoff, and surface runoff and drainage

“Treatment works” means any facility used for the purpose of treating or stabilizing wastes or wastewater.

“Tribal lands” means lands held by the Cherokee Nation regardless of whether those lands are held in fee simple, restricted or trust status.

“Trust lands” means lands held in trust by the United States of America for the benefit of the Cherokee Nation or Indians living within the territorial jurisdiction of

the Cherokee Nation.

“Waste” means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the Nation.

“Water supply system” means a water treatment plant, water wells, and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public and, as such, shall be synonymous with waterworks.

“Waters of the Nation” means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial,

public or private, navigable or non-navigable, which are contained within, flow through, or border upon the Cherokee Nation or any portion thereof.

903. Powers and duties of Commission.

A. The Commission shall have the power and duty to:

1. Develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this Nation;
2. Require the submission of plans, specifications and other data in connection with the issuance of permits required pursuant to this article;
3. Require monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by certified laboratories or operators;
4. Issue swimming and fishing advisories related to human and animal health hazards;
5. Adopt standards of quality of the waters of the Nation and classifications of such waters, and promulgate other rules to protect, maintain and improve the best uses of waters in this Nation and establish such best management practices and conditions as may be necessary or appropriate for the prevention, control and abatement of pollution;
6. Issue, continue in effect, revoke, amend, modify, condition, deny, renew, or refuse to renew permits, licenses, water quality certifications and other authorizations;
7. Establish a schedule of fees for permits, studies, laboratory services or technical assistance and for recovering copy and other costs in response to open records requests
8. Establish, implement, amend and enforce a Water Quality Management Plan and total maximum daily loads;
9. Issue, modify, or revoke orders requiring the construction of new disposal or treatment systems or the modification or extension of existing systems, or the adoption of other remedial measures to prevent, control or abate pollution, and
10. Issue, modify, or revoke orders requiring other actions such as the Commission may deem necessary to enforce the provisions of this article and rules promulgated thereunder.

B. The Commission may, pursuant to resolution or writing approved in a regular or special meeting of the Commission, delegate any authority to the Administrator except for final rulemaking decisions.

C. Except as specifically provided herein, duties and requirements pursuant to this Article shall apply to all lands of the Cherokee Nation, all waters of the Cherokee Nation and all persons and activities subject to the authority and jurisdiction of the Cherokee Nation.

904. Unlawful acts.

A. The following shall be unlawful and subject to enforcement provision of this Chapter, unless the proper entity has first obtained a permit or written authorization from the Commission:

1. Point source discharges of pollutants to any waters of the Nation or placement of any wastes in a location where waters of the Nation may be polluted.
2. Dredge and fill activities in or adjacent to waters of the Nation.
3. Construction or operation of sewage or industrial treatment plants or lagoons.
4. Land application or disposal of any waste, wastewater or sludge.

B. The Commission may establish specific exemptions to the requirements of this section by rule.

905. Short title.

This part shall be known and may be cited as the "Discharge Elimination and Control Act".

906. Duty of Commission to promulgate rules and set requirements for discharges

The Commission shall promulgate rules implementing or effectuating the Discharge Elimination and Control Act. Such rules may incorporate by reference any applicable rules, regulations and policies of the U. S. Environmental Protection Agency, U.S. Corps of Engineers, or any other appropriate entity, including but not limited to rules which:

1. Allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in discharge permits;
2. Establish, implement and enforce effluent limitations, prohibitions, pretreatment standards, standards for the removal of toxic materials and pollutants, national standards of performance or more stringent standards, in the control of discharges, through permit terms and conditions or otherwise;
3. Prohibit or control the discharge of pollutants into wells within the jurisdiction of the Nation;
4. Ensure that the public and any other nation or state, the waters of which may be affected, receive notice of each application for a discharge permit and have the opportunity to submit written recommendations or comments;
5. Establish management standards for sludge which are no less stringent than applicable federal regulations;
6. Establish requirements for dredge and fill activities, mining and physical alterations of streams and lakes of the Nation; and
7. Establish any requirements needed to obtain treatment as state or delegation of federal programs or requirements otherwise deemed necessary for comprehensive environmental programs; provided, that approval to effectuate treatment as a state is granted by the Principal Chief and the Council.

907. Issuance of discharge permits, conditions - Availability of records, reports or other information.

A. Pollutant discharge permits may include schedules of compliance and such conditions as the Commission may determine appropriate, including but not limited to terms and conditions which:

1. Prevent, control or abate pollution, including but not limited to such water-quality-related and technology-based effluent limitations as are necessary to protect water quality and existing and designated beneficial uses of the waters of the nation;
2. Set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;
3. Set terms and conditions for sludge, land application of wastewater and impoundments.

B. The Commission shall:

1. Have authority to issue individual permits and authorizations under general discharge permits for pollutants and stormwater and sludge, subject to Commission veto or approval;
2. Issue permits for fixed terms not to exceed five (5) years, but subject to modification prior to the expiration of term for purposes including but not limited to compliance with new standards or assuring protection of water quality;
3. Have the authority to require in permits issued to publicly or privately owned treatment works conditions requiring the permittee to give notice to the Commission of new introductions into such works, a substantial change in volume or character of pollutants, or other appropriate condition, and to require permits for any indirect discharges to such works;
4. Have the authority to ensure compliance all provisions of the Clean Water Act and with other applicable federal law;
5. Have the authority to terminate or modify permits for cause, including but not limited to:
 - a. violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry and inspections,
 - b. obtaining a permit by misrepresentation, or failure to disclose fully all

- relevant facts, or
 - c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
 - 6. Have all necessary authority to implement and enforce duly promulgated rules, authority to implement and enforce a Nationwide pretreatment program, and to implement and enforce requirements applicable to dischargers into municipal separate storm sewer systems; and
 - 7. Have all necessary or incidental authority to investigate and abate violations of permits, administrative orders, rules, and laws of the Nation, to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection and sampling.
- C. Authorized employees or representatives of the Commission shall, upon presentation of credentials, have:
- 1. A right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;
 - 2. Access to at any reasonable time for the purposes of reviewing and copying any records required to be maintained;
 - 3. Authority to inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and
 - 4. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the Nation or to treatment systems discharging into waters of the Nation or for inspection and sampling of any sludge source, storage, beneficial use, reuse or disposal site.
- D. Copies of records, plans, reports or other information required by the Commission shall be submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Commission upon showing of proper credentials. Any authorized representative of the Commission may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by statute, permit, order or duly promulgated rules of the Commission.

908. Discharge without permit unlawful.

- A. Except as otherwise provided in subsection B of this section, any point source discharge into waters of the Nation, or in a place likely to reach waters of the Nation, by or from any facility, activity, source or entity regulated by the Commission, shall be unlawful unless a permit has first been obtained from the Commission.
- B. The Commission may promulgate rules applicable to discharges composed entirely of stormwater or other discharges that are known not to contain significant quantities of pollutants, require permits on a case-by-case basis, establish general permit terms, exempt categories of discharges, or provide a schedule for obtaining a permit.
- C. Dilution shall not be considered a solution to pollution.

910. Water Supply Systems Act - Short title.

This part shall be known and may be cited as the "Water Supply Systems Act".

911. Cooperation with federal agencies.

The Commission shall have authority to administer a wellhead protection program and Public Water Supply Supervision program for the Nation pursuant to the federal Safe Drinking Water Act, in cooperation with such other departments of the Nation as the Principal Chief may deem appropriate.

912. Rules and standards.

A. The Commission may promulgate rules as necessary to implement the provisions of this part pertaining to water supply systems and the treatment and distribution of water to the public, including but not limited to rules for:

1. The construction and extension of such systems;
2. Specifications and directions as to the source, manner of storage, purification, treatment and distribution of water supplied to the public;
3. Requirements for control tests, laboratory checks, operating records and reports, including the submission of water samples for testing or sample analyses as prescribed by the federal Safe Drinking Water Act and this Code; and
4. Permitting requirements.

B. The Commission shall recommend standards to the public for individual water supplies.

C. Such rules may provide for the exemption and conditions therefore, of specified categories of water supply systems from any of the requirements thereof, except for wastewater discharges, if the public health will not thereby be endangered.

914. Waterworks - Filing of plans and surveys.

Every person supplying, authorized to supply, or proposing to supply water to the public shall file with the Commission a certified copy of the plans and surveys of the waterworks, with a description of the source from which the water supply is derived. No additional source of supply or well shall thereafter be used without written authorization from the Commission.

915. Investigations of sanitary quality of water.

A. The Commission may investigate the sanitary quality of water supplied to the public if the Commission has reason to believe that such water supply is prejudicial to the public health or environment.

B. During such investigation, the person in charge of the water supply shall furnish the Commission all information requested relative to the source or sources from which the supply of water is derived, and the manner of storage, distribution and purification or treatment necessary or desirable for the determination of its sanitary quality.

916. Orders.

A. The Commission may issue an order requiring compliance with this Code, rules of the Commission, and orders previously issued. Such orders may require a change in the source or sources of a public water supply, or in the manner of storage, distribution, purification or treatment of the supply before delivery to consumers, as may be necessary to safeguard the public health or environment.

B. The Commission or Administrator may issue an emergency orders as necessary to safeguard the health of the consumers or the environment.

C. Orders of the Commission or Administrator may require public water supply systems to

notify consumers of the problem with the supply and the action required by the order.

D. An order shall remain in full effect until it is rescinded by the Commission.

E. Orders and proceedings, unless otherwise specifically provided, shall be in compliance with general enforcement provisions of this Chapter and the Administrative Procedures Act.

917. Groundwater supplies.

A. The Council finds that a safe public groundwater supply is one of the most valuable natural resources in this Nation.

B. The Council recognizes and declares that the management, protection and conservation of groundwater supplies and the beneficial uses thereof are essential to the economic prosperity

and future well-being of the Nation. As such, the public interest demands procedures for the development and implementation of management practices to conserve and protect public groundwater supplies.

918. Wellhead and water supply protection program.

A. The Commission may develop rules and programs to prevent pollution of public water supply systems, including but not limited to a wellhead protection program to assist communities, states, municipalities, rural water districts, nonprofit water corporations and other public groundwater suppliers in the conservation and protection of their public groundwater supplies. Such a program should provide guidelines for:

1. specifying the duties of local communities and governments in developing and implementing a wellhead protection program;
2. determining all potential and actual pollution sources which may have an adverse effect on public health;
3. taking into consideration potential sources of pollution when siting new wells or intake structures for public water supplies; and
4. developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of pollution.

B. The Commission may assist communities with long-term planning for meeting water supply needs from groundwater, surface water or other sources.

919. Water supply protection education program.

A. The Commission should develop and implement an education program concerning protection of water supplies, including both groundwater and surface waters. In developing such program, the Commission shall consult with community leaders, public health agencies, water utilities, educational and research institutions, nonprofit organizations and any other person or agency the Commission deems necessary.

B. The program should provide public recognition of land uses and owners located within a public groundwater supply wellhead protection area, or within a watershed plan area, who demonstrate successful and committed efforts to protect drinking water supplies by implementing innovative approaches to pollution prevention and groundwater protection.

930. Waste storage, treatment, transportation and disposal act - Short title

This part shall be known and may be cited as the "Waste Storage, Treatment, Transportation and Disposal Act".

931. Wastewater treatment or sewer systems.

A. No person shall construct or let a contract for any construction work of any nature for a

municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Commission.

B. No permit shall be required for the construction or modification of a private individual sewage disposal system provided that such system is constructed or modified in accordance with other applicable requirements of the Nation.

C. An application for such permit shall include, but not be limited to, an engineering report, legal description of the site where the works or system is or is proposed to be located; and a legal description of the site where any discharge point is or is proposed to be located.

D. Upon approval of the engineering report, the applicant shall submit plans and specifications for the proposed system or the proposed extension or change of an existing

system for review. Such plans and specifications shall be prepared by a professional engineer licensed to practice in the state of Oklahoma.

931 . Construction, operation and extension of treatment systems.

A. The Commission may require permits and/or promulgate rules as necessary pertaining to the treatment, transportation, storage, use and disposal of wastewater, sewage sludge and other waste by wastewater treatment systems or treatment works.

B. The Commission may allow the exemption, and set conditions therefore, for specified categories of wastewater treatment systems or treatment works for small public sewage facilities if public health and the environment will not thereby be endangered. Provided, no exemption shall be allowed which is inconsistent with applicable minimum federal requirements for discharges or use, transportation or disposal of sludge.

932. Requirements for public sewage disposal systems - Planning residential development

A. No public sewage system shall be constructed or operated unless such system, when constructed, complies with requirements prescribed by the Commission and has been inspected by an authorized person.

B. Any person, corporation or other legal entity which creates or intends to create an industrial or residential development outside the corporate limits of a city or town and within areas subject to the Nation's jurisdiction shall first file and obtain the Commission's approval of a plat and plans describing the methods of sewage disposal, water supply and stormwater management for such development. Approval shall be obtained prior to recording a plat, offering a lot or lots for sale or beginning construction within such development.

933. Sludge.

A. Rules of the Commission applicable to sewage sludge shall be at least as stringent as applicable federal regulations. Prior to promulgation of such rules, federal requirements shall apply, in addition to requirements established pursuant to this Code.

B. Sludge or other wastes shall only be land applied pursuant to a permit or plan approved by the Commission and in a manner consistent with Commission rules, including appropriate limitations on the location, amount, frequency, content, manipulation, setbacks and prohibitions as the Commission may deem appropriate. When allowed, the following minimum requirements apply:

1. Annual land application of sludge or other waste shall only occur during the growing season at a rate not to exceed the target crop's ability to uptake nutrients and shall be consistent with results of recent soil tests;
2. Land application of sludge or waste that contains concentrations of heavy metals, pathogens or pollutants which may pose an environmental or public health risk is prohibited.
3. Sludge or waste applied to land shall be incorporated into the soil before the end of each working day;
4. Sludge or waste shall not be applied within four (4) feet of the highest seasonal water table nor applied to the land within five hundred (500) feet of a stream or body of water;
5. Sludge shall not be applied within the watershed of a designated outstanding resource water or scenic river, or within one mile of a surface public water supply or any waterbody that is already impaired by pollutants normally found in such sludge. For purposes of this section, until such time as the Commission may promulgate superceding rules, the term designated "outstanding resource water" or ORW shall include those streams and their tributaries that are currently designated ORW under state law;

6. Sludge or waste shall not be applied within five hundred (500) feet of any other public or private water supply; and
 7. Sludge or waste shall not be land applied in areas of karst topography.
- C. Any use, storage or final disposition of sludge or wastes other than land application or disposal at a permitted facility shall require the approval of the Commission

934. Activities requiring permit – construction of impoundments, land application, new outfalls or major changes

- A. It shall be unlawful for any person to carry on any of the following activities with regard to wastewater or sludge without first securing a permit from the Commission:
1. The construction, installation, operation and closure of any industrial surface impoundment, industrial septic tank or treatment system, or the use of any existing unpermitted surface impoundment, septic tank or treatment system that is within the jurisdiction of the Nation and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;
 2. The construction, installation or operation of any industrial or commercial facility, the operation of which would cause an increase in the discharge of waste into the waters of the Nation or would otherwise alter the physical, chemical or biological properties of any waters of the Nation in any manner not already lawfully authorized;
 3. The construction or use of any new outfall for the discharge of any waste or pollutants into the waters of the Nation; or
 4. The land application of any nonindustrial or industrial wastewater and the land application of sludge or waste of any type.
- B. Any major addition, extension, operational change or other change proposed for a facility permitted pursuant to subsection A of this section shall require the approval of the Commission and modification of the facility's permit prior to construction or implementation of such addition, extension or change.
- C. The discharge of domestic sewage except to an authorized public or private disposal system or the surfacing of effluent from any domestic septic system shall be deemed pollution.

935. Rules - Application

The Commission shall have authority to make rules for the control of pollution and sanitation on all property located within any watershed, reservoir or drainage basin subject to the Nation's jurisdiction, including but not limited to rules:

1. Relating to the collection and disposal of domestic and industrial wastes within any reservoir or drainage basin;
2. Prohibiting the dumping of garbage, trash or other wastes or contaminated material within any reservoir or drainage basin; and
3. Providing that all wastes originating within any watershed, reservoir or drainage basin shall be disposed of in a manner approved by the Commission, and that the plans and specifications for any disposal system shall be approved

by the Commission prior to the construction of any such system.

936. Underground injection of hazardous and nonhazardous liquids

A permit must be obtained from the Commission prior to construction or use of any underground injection wells within the Nation's jurisdiction.

1100. Short title.

This shall be known and may be cited as the "Scenic Rivers Act".

1101. Designation of scenic river areas.

A. The Council finds that some of the free-flowing streams and rivers of the Nation possess such unique natural scenic beauty, cultural or historical significance, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the Nation that it is the policy of the Council to preserve these areas.

For this purpose there are hereby designated certain "scenic river areas" to be preserved as a part of the Nation's diminishing resource of free-flowing, high quality, rivers and streams.

B. The areas of the Nation designated as "scenic river areas" shall include:

1. Those portions of the following rivers designated as scenic rivers or outstanding resource waters in the 2003 Oklahoma Water Quality Standards, including Flint Creek, Illinois River, Barren Fork Creek, Lee Creek, and Little Lee's Creek

2. Such portions of other rivers as may be designated by the Council or by standards promulgated by the Commission and approved by the Principal Chief.

C. The term "scenic river area" as used in the Scenic Rivers Act is defined as the stream or river and the public use and access areas located within the area designated.

1102. Legislative intent.

A. Once an area is designated as a "scenic river area", it is the intent of the Council that:

1. The stream or river be preserved in its free-flowing condition;

2. The stream or river shall not be impounded by any large dam or structure;

3. The stream or river and its tributaries shall be provided the highest level of water quality protection.

B. No agency or official of any government shall authorize or concur in plans of local, state, nation or federal agencies for the construction, operation, or maintenance of any dam or related project in any "scenic river area, except with the Council's consent and for documented needs of communities in the immediate vicinity of the "scenic river area" for their own domestic water supply.

C. No structures or alterations are allowed which may significantly interfere with the aesthetics and preservation of a designated stream as a scenic free-flowing stream.

1103. Cooperation and support of people and agencies - Purpose of act

A. It is recognized by the Council that an effective program for preserving the scenic beauty of the free-flowing streams and rivers designated as "scenic river areas" necessarily involves the cooperation and support of the people in the areas of designated "scenic river areas", as well as the people using the "scenic river areas", and the agencies and governments administering these areas.

B. The primary purpose of the Scenic Rivers Act is to encourage the preservation of the areas designated as "scenic river areas" in their natural scenic state.

1104. Littering and TMDLs

A. It is recognized by the Council that littering by people using the "scenic river areas" is one of the most immediate threats to the scenic beauty of our free-flowing streams and surrounding areas.

B. Any cross-deputized law enforcement officer, marshal, ranger, staff or members of the Oklahoma Scenic Rivers Commission, police or peace officer, game wardens, landowner in the area, or any other interested party may file a complaint to enforce the provisions of the Scenic Rivers Act or to enforce other applicable requirements to prevent and clean up pollution.

C. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on or near a scenic river area shall be subject to monetary penalties and enforcement provisions of the CN Environmental Code for illegal pollution or discharges and any other applicable law.

D. For those impaired scenic river watersheds where a total maximum daily load (TMDL) for phosphorus or other pollutants is necessary, the Commission shall work with affected states, if possible, to allocate and enforce loadings for discharges of all types.

1105. Notice and hearing as to designation of additional scenic areas.

Before any plans for additional proposed "scenic river areas" are brought to the Council for consideration, the Commission shall give reasonable notice in newspapers of general circulation in every district in which land and streams that would be affected by the proposed "scenic river area" are situated. The notice shall include a map or drawing of the proposed area and shall give the time and place of a meeting, at which time and place the Commission shall present their plans for the proposed area.

1106. Scenic rivers.

A. The Council finds that the protection and development of the Nation's scenic river areas and adjacent and contiguous lands and quality of outstanding resource waters included within the Nation and subject to its jurisdiction should be provided for by properly planned and executed rules promulgated by the Commission respecting public services, land use, occupancy, structures, management practices in riparian areas, and other activities as required for the proper protection of the cultural, aesthetic, scenic, historic, archeological and scientific features of the said affected areas, or deemed necessary for the protection of the ecosystem and the environment from pollution, despoliation and destruction or waste of natural resources and all other factors adversely affecting the Nation's heritage or public health, safety and the general welfare.

B. The Commission shall be invested with the power to prepare and establish minimum standards for planning and other ordinances and rules for the implementation of the Scenic Rivers Act, and promulgate such rules and issue such orders as necessary to protect the public interest and to achieve the purposes of the Scenic Rivers Act.

C. The standards shall be developed and executed in such manner as to protect and enhance the values which caused the area to be named a scenic river area without, insofar as is consistent with said protection and enhancement, limiting other uses that do not substantially interfere with the protection, public use, and enjoyment of these values.

D. Primary emphasis in the standards shall be given to protecting the cultural, aesthetic, scenic, historic, archeological, and scientific features of the scenic river area with due consideration being given to the sustainable and orderly development of the lands adjacent and contiguous to the scenic river area.

E. Standards set pursuant to the provisions of the Scenic Rivers Act shall not be less rigid or exacting than those established by any other federal, state or local agency having jurisdiction in respect to the subject covered by the particular standard.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

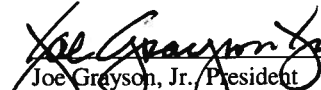
The provisions of this act are severable and if any part of provision hereof shall be held void

the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.


Section 8. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.


Enacted by the Council of the Cherokee Nation on the 16th day of August, 2004.


Joe Grayson, Jr., President
Cherokee Nation Council

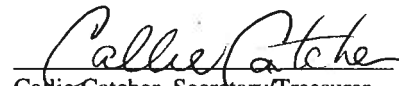
ATTEST:


Bill John Baker, Secretary
Cherokee Nation Council

Approved and signed by the Principal Chief this 20th day of AUGUST, 2004.


Chad Smith, Principal Chief
Cherokee Nation

ATTEST:


Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

| | | | |
|------------------------|------------|------------------------|------------|
| Audra Smoke-Conner | <u>Yea</u> | Melvina Shotpouch | <u>Yea</u> |
| Bill John Baker | <u>Yea</u> | Meredith A. Frailey | <u>Yea</u> |
| Joe Crittenden | <u>Yea</u> | John F. Keener | <u>Yea</u> |
| Jackie Bob Martin | <u>Yea</u> | Cara Cowan | <u>Yea</u> |
| Phyllis Yargee | <u>Yea</u> | Buel Anglen | <u>Yea</u> |
| David W. Thornton, Sr. | <u>Yea</u> | William G. Johnson | <u>Yea</u> |
| Don Garvin | <u>Yea</u> | Charles "Chuck" Hoskin | <u>Yea</u> |
| Linda Hughes-O'Leary | <u>Yea</u> | | |

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

| | |
|--|------|
| <u>ADMINISTRATIVE CLEARANCE</u> | |
| Program/Project Manager: | |
| Signature/Initial | Date |
| Department Director: | |
| Signature/Initial | Date |
| Executive Director: | |
| Signature/Initial | Date |
| Controller: (if needed) | |
| Signature/Initial | Date |
| Government Resources: | |
| Signature/Initial | Date |
| Administration Approval: | |
| Signature/Initial | Date |

TITLE: Public Health and Safety – Cherokee Nation Environmental Act

DEPARTMENT CONTACT: Jeannine Hale, Acting Administrator, Environmental Programs

RESOLUTION PRESENTER: Jeannine Hale

SPONSOR: _____

NARRATIVE: (See Attached Outline for Information If Outline is Required)

This Act updates the existing Cherokee Nation Environmental Act by revoking and re-enacting water quality provisions. These amendments ensure that the Nation has adequate authority in place to fully exercise sovereignty, protect the health of Cherokee citizens, protect the Nation's natural resources and environment, and obtain authorization to operate federal environmental programs

| | |
|---------------------------------------|------|
| <u>LEGISLATIVE CLEARANCE:</u> | |
| Legislative Aide: | |
| Signature/Initial | Date |
| Standing Committee & Date: | |
| <u>Rules</u> | |
| Chairperson: | |
| Signature/Initial | Date |
| Returned to Presenter: | |
| Signature/Initial | Date |

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