

Committee: Resource & Rules  
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## An Act

### Legislative Act 41-05

#### ACT RELATING TO THE REGULATION OF HAZARDOUS WASTE AND UNDERGROUND INJECTION CONTROL

BE IT ENACTED BY THE CHEROKEE NATION:

#### Section (code section) 1. Title and Codification

This act shall be known as the Cherokee Nation Hazardous Waste Code, codified as 63 CNCA Section 1301 et seq., and the Cherokee Nation Underground Injection Control Code, codified as 63 CNCA Section 1401 et seq., of the Cherokee Nation Code Annotated.

#### Section (code section) 2. Purpose

#### Section (code section) 3. Legislative History

None

#### Section (code section) 4. Definitions

N/A

#### Section (code section) 5. (Insert Substantive Provisions of Law in this and following paragraphs)

Title 63. Cherokee Nation Environmental Quality Code

Article 13. Hazardous Waste Code

#### 1301. Title of Act

This Act shall be called the "Cherokee Nation Hazardous Waste Code". Any reference herein to the "code" shall refer to the Cherokee Nation Hazardous Waste Code unless the context clearly indicates otherwise.

#### 1302. Purpose and General Provisions

The purpose of this code is to:

- A. Establish the authority of the Cherokee Nation to enforce, as minimum requirements in Indian Country and on lands or waters of the Nation, all applicable requirements of federal law and regulations. For that purpose, until such time as the Nation may develop additional or more stringent requirements, the requirements of federal law and regulations applicable to hazardous waste, hazardous materials and hazardous substances are hereby adopted by reference;
- B. Provide authority to appropriate entities within the Nation to take all actions necessary to develop, implement and enforce a comprehensive regulatory program for hazardous wastes and materials;
- C. Provide authority to appropriate entities within the Nation to develop, implement and enforce requirements that are more stringent than or in addition to federal requirements, to the full extent not prohibited by law.

#### 1303. Definitions.

A. Unless otherwise defined in this code, rules promulgated hereunder, or otherwise applicable provisions of the Cherokee Nation Environmental Code, definitions contained in applicable federal laws and regulations shall apply.

B. The following definitions shall be used:

##### 1. "Affiliated person" means:

- a. any officer, Administrator or partner of the applicant,
- b. any person employed by the applicant as a general or key manager who directs the operations

- c. of the site or facility which is the subject of the application, and any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

2. "Cherokee community" means a group of persons which is predominantly composed of members of the Cherokee Nation and who reside in the same geographic area and meet or work together on common goals, regardless of whether or not such community is shown on maps published outside the Cherokee Nation, listed as a town or city or otherwise recognized by persons outside Cherokee Nation;
3. "Commission" means the Cherokee Nation Environmental Protection Commission;
4. "Council" means the Cherokee Nation Tribal Council;
5. "Demonstrated pattern of prohibited conduct" means a series of conduct of the same or like character in violation of Cherokee Nation or federal environmental laws which, as a result of the applicant's or affiliated person's reckless disregard thereof, actually endangers, or reasonably has the potential to endanger, human health or the environment;
6. "Disclosure statement" means a written statement by the applicant which contains:
  - a. the full name, business address, and social security number of the applicant, and all affiliated persons,
  - b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the Cherokee Nation,
  - c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation,
  - d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of "hazardous waste" as defined by the Cherokee Nation Hazardous Waste Code or by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a Cherokee Nation regulatory authority or the United States Environmental Protection Agency, and
  - e. a listing of any federal environmental agency and any Cherokee Nation environmental agency outside this Cherokee Nation that has or has had regulatory responsibility over the applicant;
7. "Disposal" means the final disposition of hazardous waste;
8. "Disposal site" means the location where any final disposition of hazardous waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;
9. "Guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Cherokee Nation Hazardous Waste Code;
10. "Hazardous waste" means waste materials and byproducts, either solid or liquid or containerized gases, which are:
  - a. to be discarded by the generator or recycled,
  - b. toxic to human, animal, aquatic or plant life, and
  - c. generated in such quantity that they cannot be safely disposed of in properly operated, Cherokee Nation-approved solid waste landfills or waste, sewage or wastewater treatment facilities.

The term "hazardous waste" may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste. The term "hazardous waste" shall not include domestic sewage;
11. "Hazardous waste facility" means and includes treatment, storage, recycling and disposal facilities;
12. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;
13. "Multi-user on-site treatment facility" means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by the Cherokee Nation Hazardous Waste Code;
14. "Off-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility;
15. "On-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a

hazardous waste facility of hazardous waste generated by the owner of the facility;

16. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, Cherokee Nation or local governmental instrumentality, agency or body or any other legal entity however organized;
17. "Recycling" means the reuse, processing, treating, neutralizing or re-refining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;
18. "Regeneration" or "regenerated" means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith;
19. "Site" or "proposed site" means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility;
20. "Storage facility" means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;
21. "TSRD" means treatment, storage, recycling or disposal;
22. "Treatment" means the detoxification, neutralization, incineration or biodegradation of hazardous waste in order to remove or reduce its harmful properties or characteristics; and
23. "Treatment facility" means any location where treating or recycling of hazardous waste occurs.

1304. Powers and duties

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

1. Issue permits, promulgate rules and issue orders relating to the construction, operation, closure, post-closure, maintenance and monitoring of hazardous waste facilities;
2. Initiate and take appropriate enforcement actions;
3. Make final decisions on permit applications;
4. Make final decisions in all administrative appeals under this code;
5. Approve or disapprove methods of treatment, storage, transportation or disposal of hazardous waste and other wastes that are not specifically addressed by other parts of the Cherokee Nation Environmental Code;
6. Require terms and conditions in permits, including terms limiting the duration of any permit;
7. Restrict or prohibit certain disposal practices including, but not limited to, any type of land disposal of any form of hazardous waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;
8. Promulgate such rules as they deem necessary or appropriate to implement this code;
9. Establish a comprehensive regulatory program for hazardous waste and any other wastes not specifically regulated by other parts of the Cherokee Nation Environmental Code;
10. Require monitoring, audits, reports, remediation, environmental assessments and other actions they may deem appropriate to ensure the protection of public health, safety and welfare and the protection of the environment; and
11. Determine and enforce penalties for violations of the Cherokee Nation Hazardous Waste Code, permits, orders and rules promulgated thereunder.
12. Evaluate the benefit and establish innovative rules or requirements for pollution prevention, waste reduction, recycling and labeling for any containers used for the disposal, storage, treatment, transportation of or disposal of hazardous waste.
13. Until such time as the Commission may promulgate rules, issue orders or otherwise establish requirements that are more stringent, the Commission and their duly authorized representatives shall have the authority to enforce as minimum requirements those contained in any applicable federal laws or regulations.

B. The Administrator or their designee shall have the authority to:

1. Provide the owner or operator of a hazardous waste facility a list of all materials which are acceptable for treatment, recycling, storage, transportation or disposal at a facility or in any part of Indian Country;

2. Conduct compliance inspections of hazardous waste facilities and recycling, transporting, and generating facilities;
3. Require submittal of information, including manifests or other forms, by persons proposing to own or operate a hazardous waste facility or who generate, store, treat, transport, recycle or dispose of hazardous waste within the Cherokee Nation;
4. Develop, maintain, and monitor public records of the source and amount of hazardous waste generated in Cherokee Nation and the methods used to dispose of, recycle, or treat said waste or material;
5. Require and approve or disapprove disposal plans from all persons generating hazardous waste or shipping hazardous waste within, from, or into the Cherokee Nation indicating the amount of hazardous waste generated, the handling, storage, treatment, and disposal methods, and the hazardous waste facilities used. The disposal plans shall be kept current by the persons generating or shipping hazardous waste and the Commission shall be advised within five (5) working days of any changes in the disposal plans;
6. Require reports from all persons generating hazardous waste, indicating the amount generated the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;
7. Require periodic reports or manifest certifications regarding programs and efforts to reduce the volume or quantity and toxicity of such hazardous waste;
8. Require reports from all operators of hazardous waste facilities who receive hazardous waste for treatment or storage or disposal, listing the amount, transporter, and generator of all hazardous waste received. Such reports are to be made on at least a monthly or quarterly basis, as designated by the Commission;
9. Inform persons generating hazardous waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;
10. Coordinate program activities with the U.S. Environmental Protection Agency;
11. Require the preparation and implementation of an emergency response plan for spills of hazardous waste, spills of hazardous materials or other spills of waste; and
12. Make information obtained by the Nation regarding hazardous waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the hazardous waste program in Cherokee Nation were being carried out by the U.S. Environmental Protection Agency;

1305. The Commission shall develop rules and the Administrator shall have the authority to implement measures and requirements that:

1. Establish requirements for any existing surface impoundment, landfill or other site where hazardous waste has been generated, stored, treated, transferred or disposed of, where there exists a risk that hazardous waste may migrate into waters of the Nation or otherwise cause adverse impacts on public health, safety or the environment. Such rules or requirements may require closure, cleanup, restoration, or such protective actions as double liners and leachate detection and collection systems, or any other measures as the Commission may deem necessary to protect public health, safety and the environment;
2. Prohibit or restrict the use of any specific disposal methods or practices for specific hazardous waste material, substances or classes, as may be necessary to protect human health and the environment;
3. Identify areas within the Cherokee Nation which are unsuitable for specific hazardous waste disposal methods, and deny permits for such disposal methods in such areas;
4. Require groundwater or surface water monitoring or other appropriate studies for any landfill, surface impoundment, land treatment site, pile or any site where hazardous waste or other wastes are generated, stored, treated, transferred, transported, recycled or disposed;
5. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;
6. Require oil or any other recycling facilities using hazardous waste to have a hazardous waste facility permit;
7. Require and issue permits for any activity associated with generating, storing, treating, transferring, transporting or disposing of hazardous waste, including such conditions as may be necessary to protect public health, safety and the environment; and
8. Require and issue permits for the storage of hazardous waste in aboveground or underground tanks or any other containment system;

1306. Adoption of federal requirements by reference

A. Except as may be specified otherwise in this Code or Commission rules, orders or permits issued under the authority of the Cherokee Nation Environmental Code or Hazardous Waste Code, the following are adopted by reference as minimum requirements that shall be applicable in Indian Country and enforceable by the Commission and Administrator:

1. The Resource Conservation and Recovery Act (RCRA); 42 U.S.C. §321 et seq. (1976);
2. The Toxic Substances Control Act (TSCA); 15 U.S.C. §2601 et seq. (1976); and
3. The following provisions of 40 C.F.R.:
  - a. Part 260 - Hazardous waste management system: general
  - b. Part 261 - Identification and listing of hazardous waste
  - c. Part 262 - Standards applicable to generators of hazardous waste
  - d. Part 263 - Standards applicable to transporters of hazardous waste
  - e. Part 264 - Standards for owners and operators of hazardous waste treatment, storage, and disposal facilities
  - f. Part 265 - Interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities
  - g. Part 266 - Standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities
  - h. Part 268 - Land disposal restrictions
  - i. Part 270 - EPA administered permit programs: the hazardous waste permit program
  - j. Part 273 - Standards for universal waste management
  - k. Part 279 - Standards for the management of used oil

B. Nothing contained here shall be construed as allowing the Commission to establish standards or requirements that are less stringent than federal requirements.

1307. Rules.

A. In addition to other powers and duties specified by law, the Commission shall have the authority to promulgate rules which:

1. Prohibit the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required or which is operating under interim status;
2. Prohibit or restrict the storage of hazardous waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal;
3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules of the Commission as a hazardous waste except a waste identified solely on the basis of ignitability;
4. Require such monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;
5. Regulate the production, burning, distribution, and marketing of fuel containing hazardous waste, and the commercial collection, storage, transportation, marketing, management, burning and disposal of used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;
6. Control the listed or identified hazardous wastes which discharge through a sewer system to a publicly owned treatment works for the protection of human health and the environment;
7. Provide in accordance with Sections 3005(c) and 3005(e) of the federal Resource Conservation and Recovery Act for the automatic termination of interim status for hazardous waste units failing to comply with applicable requirements for the submission of part B permit applications and certification of groundwater monitoring and financial responsibility compliance;
8. Require from applicants for permits and from owners and operators of hazardous waste facilities evidence of financial responsibility for corrective action as may be required or ordered under the authority of the Cherokee Nation Hazardous Waste Code;
9. Require that generators of hazardous waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent technologically feasible; and
10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

B. The hazardous waste component of mixed waste and radioactive waste shall be regulated as hazardous waste. The radioactive waste component shall be regulated as radioactive waste. Both the hazardous waste

requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished. If a conflict exists between the two requirements, the requirement most protective of human health and the environment shall take precedence.

- C. Rules pertaining to standards for the transportation of hazardous waste and recyclable materials promulgated by the U.S. Department of Transportation shall be the minimum standards and requirements unless the Nation adopts more stringent standards and requirements to the extent allowed by federal law.

1308. Prohibition of new disposal sites; permits required

- A. Any hazardous waste disposal site within Cherokee Nation that exists as of January 1, 2006, shall file an application for permit with the Administrator no later than March 1, 2006. The Commission may, in their sole discretion, deny an application for permit for such an existing disposal site. After January 1, 2006, no permits shall be issued for new hazardous waste disposal sites in Cherokee Nation.
- B. The construction or operation of a hazardous waste disposal site, receipt of hazardous wastes at a disposal site in Cherokee Nation or incineration of hazardous waste in Cherokee Nation after January 1, 2006, is hereby prohibited. Violation of the requirements in this section are subject to the general enforcement provisions of Article 12 of the Cherokee Nation Environmental Code and, in addition, the Commission or any Court with jurisdiction shall have the authority to order the closure of any unpermitted hazardous waste disposal site and require that all hazardous waste be removed.
- C. Except as otherwise provided by subsection D of this section or any rules of the Environmental Protection Commission, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, unless they first obtain and maintain a valid and appropriate hazardous waste facility permit. The provisions of this subsection shall not include remediation activities under an order of the Commission which would not require a federal hazardous waste permit from the Environmental Protection Agency if conducted pursuant to a federal order.
- D.
  - 1. The Commission may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Cherokee Nation Hazardous Waste Code.
  - 2. The provisions for the allowance of continued operation on an interim basis shall not apply in the case of a facility for which a permit, under the Cherokee Nation Hazardous Waste Code, has been previously denied or for which authority to operate has been terminated.
- E. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of the Cherokee Nation Hazardous Waste Code shall operate in an environmentally acceptable manner and in accordance with the rules regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

1309. Permits - Limitation on persons eligible - Disclosure of information.

- A. The Commission shall not issue, renew, or transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:
  - 1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by Cherokee Nation, any state or any federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;
  - 2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or
  - 3. Has as an affiliated person any person who is described by paragraph 1 or 2 of this subsection.
- B.
  - 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, renewal or transfer of any hazardous waste permit, license, certification or operational authority issued by the Commission shall file a disclosure statement with their applications.
  - 2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, the applicant shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other relevant information as the Commission may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.
- C. The Commission is authorized to revoke, or to refuse to issue, to renew, or to transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal:

1. To any person who:
  - a. Is not, due to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court relating to the environment;
  - b. Is not, due to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record relating to the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;
  - c. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with Cherokee Nation or federal environmental laws, including without limitation the rules of the Commission or the United States Environmental Protection Agency regarding the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Cherokee Nation Hazardous Waste Code, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act; or
  - d. Has as an affiliated person any person who is described by paragraphs 1, 2 or 3 of this subsection.
2. in any circumstances in which the Commission believes it prudent or necessary in order to ensure the protection of public health or safety, the Nation's wildlife and other natural resources, or any component of the environment

- D. 1. An application for a permit for a TSRD facility or for renewal of a permit shall be signed under oath by the applicant.
2. The Commission may refuse to renew, or may suspend or revoke, a permit issued for a hazardous waste facility for treatment, storage, recycling or disposal to any person who has failed to disclose or state falsely any information required pursuant to the provisions of this section.

1310. Special Restrictions Applicable in Indian Country

- A. No permit shall be issued for new TSRD which is proposed to be located:
  1. Within eight (8) miles of the corporate limits of an incorporated city or town or of any Cherokee community;
  2. Within a one-hundred year floodplain;
  3. Within one-mile of any stream or lake;
  4. Within one mile of a public or private water supply;
  5. On any land held in trust or otherwise owned by the Nation unless such land is specifically designated for such purposes in the Cherokee Nation strategic land plan or amendments to such plan;
  6. Within five miles of the Cherokee Nation tribal complex, tribal courts or cultural grounds;
  7. Within three miles of a school, church, campground, cultural or recreational area, or other public gathering place;
  8. Within one mile of any inhabited residence unless the residence is owned by the facility owner;
  9. Over any area of karst geology; or
  10. In such location or circumstances that, in the judgment of the Commission, the proposed facilities, activities or wastes pose an unacceptable risk to public health, safety, wildlife or any aspect of the environment.

1311. Disposal – restrictions applicable to impoundments and landfills

- A. The Commission shall not issue a permit for the treatment, disposal or temporary storage in a surface impoundment of any liquid hazardous waste which is not generated by the owners of the surface impoundment.
- B. Except as otherwise specifically provided by law, the disposal of any liquid hazardous waste in a landfill or in a surface impoundment is prohibited.
- C. The provisions of this section shall not prohibit:
  1. The construction and operation of surface impoundments solely for the collection of rainfall runoff; or

2. The construction of impoundments solely for bioremediation or for the emergency retention of spills of substances which are or may become hazardous waste; provided all liquids and associated solids are removed for proper treatment or disposal.

1312. Prohibited disposal - treatment, storage recycling, or disposal (TSRD) sites.

- A. Nothing in this section shall be deemed to authorize TSRD sites or activities that are otherwise prohibited under other provisions of the Cherokee Nation Hazardous Waste Code.
- B. The practice of plowing hazardous waste into the soil surface or otherwise land applying hazardous waste for the purpose of disposal is prohibited.
- C. A hazardous waste facility for on-site or off-site treatment, recycling or storage shall not be sited in or over a principal groundwater resource or recharge area.
- D. The Commission may grant a variance to a hazardous waste treatment, recycling or storage facility to allow the siting over a principal groundwater resource or recharge area only upon the following conditions:
  1. the request for variance, accompanied by plans certified by a professional engineer and a detailed rationale, shall be included in the permit application,
  2. the Commission shall receive and consider comments on the appropriateness of the proposed variance at any formal public meeting or administrative permit hearing conducted on the draft permit or proposed permit,
  3. the applicant shall bear the burden of establishing clearly and convincingly to the Commission that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to waters of the Nation is improbable and minimal, and
  4. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance in an amount sufficient to fully remediate and restore the environment and resources should contamination occur.

1313. Hazardous waste facility construction to be supervised.

The design, testing and construction of a hazardous waste facility shall be conducted under the supervision of a professional engineer, duly registered in Oklahoma, with training and experience in suitable disciplines.

1314. Issuance of permits - Suitability of facility - Administrative procedures.

- A. The Commission may issue a permit for a hazardous waste facility or activity requiring a permit upon proper application and determination by the Commission that the proposed site and facility are physically and technically suitable.
- B. Upon a finding that a proposed hazardous waste facility is not physically or technically suitable, or upon finding that the proposed facility or operation poses an unacceptable risk to the public health, safety or environment, the Commission shall deny the permit.
- C. An administrative permit hearing shall be available on an application for a new permit or for the modification of an existing permit involving a twenty-five percent (25%) or more increase in permitted capacity for storage, treatment or disposal.
- D. The Commission may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity to request a public meeting or the administrative permit hearing required by this section. Any person aggrieved by such permit may seek judicial review.

1315. New permits - Suitability of roads and bridges

- A. In connection with any permit application, the Commission shall consider the roads and bridges that are to be used to provide access to the proposed waste facility, the likely effect on property values, development and uses in the area, and road classification plans.

If any county commissioner or local government official asserts that substantial detriment to the roads and bridges would occur, the Commission shall work with them to determine any reasonable measures necessary to upgrade the roads and bridges or prevent such detriment. The Commission may require the applicant for a hazardous waste facility to upgrade or pay for the upgrading of such roads and bridges or other appropriate measures as a prerequisite to receiving a permit or as an essential condition in a permit.

1316. Permits - Application - Liability insurance - Bond - Financial responsibility - Operation of facility - Insolvency - Liability of guarantors.

- A. Except for emergency permits issued in accordance with this title, no permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and compliance with the requirements of the Cherokee Nation Environmental Quality Code



including, but not limited to, requirements of the Cherokee Nation Hazardous Waste Code.

- B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules of the Commission. Additional insurance shall be required as deemed necessary by the Commission to protect the Nation, Cherokee communities, property rights including but not limited to rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances, natural resources and public health, safety and welfare. Adequate insurance shall be maintained for the period of operation of the facility through closure and postclosure, and at a minimum shall provide coverage for damages resulting from operation of the facility during operation and after closing, remediation and full restoration of damaged properties and resources. In lieu of liability insurance required by this or any other section of Cherokee Nation statutes or rules, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Commission, may be substituted; provided, that such deposit shall be maintained for a minimum period of five (5) years after the date of last operation of the facility.
  - C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of closure and post-closure maintenance and monitoring functions. The applicant shall supplement the bond or financial assurance when requested by the Commission.
  - D. The Commission shall require additional insurance and security upon an application for expansion of the facility. The increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.
  - E. Prior to the issuance of any permit and at any time upon request of the Commission, the applicant shall produce evidence of the applicant's financial status or other qualifications indicating that the applicant is financially able and qualified to operate and maintain a hazardous waste facility in compliance with all applicable requirements.
  - F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Commission appropriate to the type of facility.
  - G. The Commission is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Commission to ensure the suitable operation of the facility.
  - H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or if jurisdiction in any Cherokee Nation court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required pursuant to this Code may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.
  - 2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility for the owner or operator pursuant to this Code. Nothing in this subsection shall be construed to limit any other Cherokee Nation or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.
1317. Facilities that recycle hazardous waste - Permit requirements, exemption - Prohibition of burning certain hazardous waste as fuel.

- A. Facilities that recycle hazardous waste may be granted an exemption from specific requirements by the Commission with regard to those units exclusively used in the recycling process. Off-site hazardous waste recycling facilities are subject to the requirements specified by the Cherokee Nation Hazardous Waste Code and rules promulgated thereunder, for a permit, and shall also meet required design standards.
- B. No hazardous waste having a heating value less than five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this Cherokee Nation permitted as a hazardous waste recycling unit.
- C. No owner or operator of any unit in this Cherokee Nation permitted as a hazardous waste recycling unit shall burn as fuel in such unit any substance which the owner or operator knows, or should know, contains hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound which has been blended with other materials or wastes and produces a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound.

1318. Fees.

- A. The Commission shall establish a schedule of fees to be charged for applications for permits required under this Code. Such fees shall be deposited in the Environmental Quality Revolving Fund.

B. Any person disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of not less than one cent per gallon for such disposal, provided that the total fee shall be not less than Ten Thousand Dollars (\$10,000.00) per year. Said fee shall be paid to the Administrator on a quarterly basis within one (1) month following the close of each quarter for the waste disposed in that preceding quarter. Said fees shall be deposited into the Environmental Quality Revolving Fund.

C. The Commission may direct a facility to waive the fees for hazardous waste received from certain sites undergoing response actions under the authority of the federal Comprehensive Environmental Response, Compensation and Liability Act. A fee waiver may only be granted for response actions financed through the Superfund Trust Fund that are conducted by the Commission or the federal Environmental Protection Agency, when the amount of fee waiver will qualify towards the contributions required of the Cherokee Nation for such actions.

D. The Commission may order a facility to waive fees for hazardous waste received from certain sites in Cherokee Nation undergoing remedial actions that are being conducted as a result of:

1. A consent order approved by the Commission;
2. Fulfilling the requirements of a compliance schedule issued by the Commission as a result of a permit; or
3. A Brownfields action that has been approved by the Commission.

Such fee waivers may be granted for remedial actions only when the amount of the fee waiver will qualify toward the contributions required of the Cherokee Nation in response actions financed through the Superfund Trust Fund. The Commission shall void all waivers for fees should the requirements of any Consent Order, Compliance Schedule, or Brownfields action not be fulfilled as stipulated.

E. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Cherokee Nation Hazardous Waste Code shall pay to the Administrator an annual fee on the amount of hazardous waste managed by such facility. The Commission shall establish a schedule of fees.

1. Until such a schedule is developed, the minimum fees shall be:

- a. Nine Dollars (\$9.00) per ton for on-site or off-site storage, treatment or land disposal,
- b. Four Dollars (\$4.00) per ton for off-site recycling, including regeneration, or
- c. ten Dollars (\$10.00) per gallon for on-site or off-site underground injection.

2. There shall be a minimum fee per facility as follows:

- a. except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each fiscal year,
- b. any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each fiscal year. The annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars (\$50,000.00),
- c. any person owning or operating an off-site facility for the storage or recycling of hazardous waste shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each fiscal year; provided, any such off-site recycling facility which consistently recycles fewer than ten (10) tons of hazardous waste per calendar month shall not be subject to this minimum annual fee. For the purpose of this subparagraph, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation, and
- d. any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars (\$10,000.00) each fiscal year.

3. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. For purposes of on-site facilities, receipt is deemed to have occurred when the waste is first managed in any unit or manner that requires a hazardous waste permit.

F. Payment of the fees required by this section shall be due and paid quarterly to the Administrator for all hazardous waste received by the facility during the prior calendar quarter. Quarterly payments shall be due on the first day of the month of the following quarter.

G. All fees and other monies received by the Administrator pursuant to the provisions of this Code shall be expended solely for purposes related to protection of the environment, implementing environmental programs and protection of Cherokee Nation natural resources.

1319. Permit issuance notice - Notice of remediation or related action taken - Interference with remediation.

- A. Upon issuance of any permit issued pursuant to the requirements of the Cherokee Nation Hazardous Waste Code, the Commission shall file a recordable notice of the permit in the Cherokee Nation Realty office . The notice shall contain the legal description of the site as well as the terms under which the permit was issued.
- B. The Commission shall file a recordable notice of remediation or related action taken pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act in the Cherokee Nation Realty office . The notice shall contain a legal description of the affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.
- C. When remediation of contaminated property is performed under an order of or a remediation plan approved by the Commission, the Commission shall file a recordable notice of remediation taken in the Cherokee Nation Realty office . The notice shall contain a legal description of the affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.
- D. The notices required in this section shall also contain a prohibition against engaging in any activities that could cause damage to the remediation or the engineering controls, or could cause contamination or recontamination of the soil or waters of the Nation. The notices shall also contain any appropriate restriction on land use or other activities that are incompatible with the cleanup level, including but not limited to, restriction against using water for drinking or irrigation purposes or redeveloping the land for residential use. Any person who damages or interferes with the remediation, the engineering controls or continuing operation, maintenance or monitoring of the site shall be liable to repair the damage or remedy the interference, or for costs incurred by the Nation in doing so. The Commission may take administrative or civil action to recover costs or to compel compliance with this subsection.

1320. Monitoring of closed facility.

After a hazardous waste facility has been closed, its owner or operator shall properly maintain and monitor the hazardous waste facility for the period of time required by the Code, rules promulgated hereunder, permit or order of the Commission and shall make such repairs or improvements as necessary to ensure that no migration of hazardous waste material will occur.

1321. Hazardous waste manifest

- A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Commission and shall indicate a disposal plan number assigned by the Commission which shows that the Commission has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in their possession while transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Commission.
- B. No off-site TSRD facility shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Commission has approved the plans of the person generating the hazardous waste.
- C. No person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.
- D. The Commission may recognize manifests that have been duly issued or authorized by a state or federal agency with jurisdiction.

1322. Inspections, Administrative Proceedings, Records, Violations and Penalties

The provisions of Article 12 of the Cherokee Nation Environmental Quality Code including, but not limited to, provisions relating to inspections, records, administrative proceedings, violations and penalties shall apply to persons, activities, waste and facilities regulated under the Cherokee Nation Hazardous Waste Code.

ARTICLE 14. UNDERGROUND INJECTION CONTROL

1401. Title

Sections 1401 -1410 of this Act shall be known as the "Cherokee Nation Underground Injection Control Code" or the "UIC Code".

1402. Purpose.

The purpose of the UIC Code is to protect Cherokee communities, underground waters and other resources of the Nation from pollution and to establish a comprehensive regulatory program for protecting the environment and human health.

1403. Definitions.

The types of underground injection wells defined in 40 CFR Part 144.6 are adopted by reference.

#### 1404. Prohibitions

The following underground injection wells are prohibited within the Cherokee Nation:

1. Class I wells for hazardous waste or radioactive waste.
2. Class III wells except those for mining of salts.
3. Class IV wells for hazardous waste or radioactive waste.
4. Wells prohibited by duly promulgated rules of the Commission.
5. Any well that the Commission finds:
  - a. will create an unreasonable risk of harm to wildlife, human health, natural resources, waters of the Nation and other parts of the environment, or
  - b. is not the most technologically advanced or environmentally sound means of waste disposal or mineral extraction.

#### 1405. Permit required

A permit issued by the Commission is required for construction, operation and use of any UIC well that is not otherwise prohibited by law.

#### 1406. Minimum requirements

For UIC wells and related activities that are not otherwise prohibited under the UIC Code, the following regulations are adopted by reference as minimum requirements, provided, however, nothing herein shall prevent the Commission from promulgating rules that set forth additional or more stringent requirements:

1. 40 CFR Part 144
2. 40 CFR Part 146
3. 40 CFR Part 148

#### 1407. Powers and duties

The Commission shall have all necessary authorities and powers to:

1. implement the provisions of the Cherokee Nation UIC Code and applicable federal requirements within the Nation;
2. establish a comprehensive regulatory program;
3. approve or reject applications for permits;
4. issue, modify, renew or revoke permits;
5. promulgate rules and issue orders to implement the provisions of the UIC Code;
6. prosecute violations of the UIC Code, rules of the Commission or Commission orders and permits, using methods and penalties established under the provisions of the Environmental Quality Code.

#### 1408. Additional authorities

The Commission and Administrator shall have the authority to require:

1. maintenance of records by any permit holder;
2. sampling and monitoring of wastes and the environment;
3. reports;
4. provisions and conditions in permits as may be appropriate to prevent harm or risk of harm to the environment or public health;
5. appropriate studies and risk assessments; and
6. inspections at any reasonable time by the Administrator or other authorized representative of the Commission.

#### 1409. Violations and penalties

Any violation of an order, rule, statutory provision or permit under the UIC code shall be subject to the penalties provided in the Cherokee Nation Environmental Quality Code. The remedies provided herein shall be cumulative and shall not be construed to supercede any other remedy under federal statutes, tribal law, or other applicable law.

### **Section (code section) 6. Provisions as cumulative**

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

### **Section (code 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.

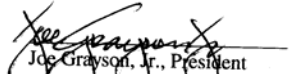
### **Section (code section) 8. Emergency declared**

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.

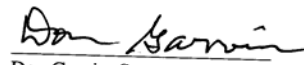
**Section (code section) 9. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.


Enacted by the Council of the Cherokee Nation on the 12<sup>th</sup> day of December, 2005.

  
Joe Grayson, Jr., President  
Council of the Cherokee Nation

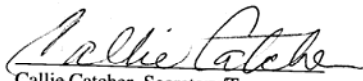
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 15<sup>th</sup> day of December, 2005.

  
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>		

**ADMINISTRATIVE CLEARANCE:**

Program/Project Manager:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Department Director:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Executive Director:

Jeannine Hale

Signature \_\_\_\_\_ Date \_\_\_\_\_

Controller (if needed):

Signature \_\_\_\_\_ Date \_\_\_\_\_

Government Resources Group:

*Vicki January* 11/3/05  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Administration Approval:

*Vicki January for* 11/3/05  
*Melanie Knight*  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**LEGISLATIVE CLEARANCE**

Legislative Aide:

*Ab* 11.3.05  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Standing Committee:

*Res/Rules*

11.15.05 / 11.17.05  
Next Meeting Date

Chairperson:

*Martin/Trailley*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Returned to Presenter: \_\_\_\_\_  
Date \_\_\_\_\_

**Cherokee Nation  
Act/Resolution Proposal Form**

Act       Resolution

**TITLE:** Cherokee Nation Hazardous Waste Code and  
Underground Injection Control Code

*dk  
adhr*

Department Contact: Jeannine Hale

Resolution Presenter: Jeannine Hale

Sponsor: Jackie Bob Martin

**NARRATIVE:**  
(See Attached Outline for Information Needed)

The purpose of is act is to create a new Hazardous Waste Code, create a new Underground Injection Control Code and establish general permitting authorities of the Commission.

These new codes and general provisions are needed to ensure that the Cherokee Nation Environmental Quality Code is comprehensive and will cover all types of wastes and waste disposal methods that new industries or activities may involve.

These new codes and provisions establish authorities, duties and requirements that are consistent with or similar to those established under federal law and laws of adjacent states.

These codes and provisions will allow the Cherokee Nation to apply for and assume authority for implementing federal programs in Indian Country, if the Nation so chooses.

**RECEIVED**  
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