

An Act

Legislative Act 31-04

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 Amendments Act of 2004".

Section 2. Purpose

The purpose of this Act is to make technical amendments and updates and to clarify the authority of the Environmental Protection Commission. Articles 1, 2, 3 and 4 of the existing Environmental Quality Act are hereby amended to make technical revisions and updates; a new Article 12 is added, entitled "General Provisions", which establishes additional authorities and delegations to the Environmental Protection Commission; makes pollution unlawful; authorizes administrative proceedings for environmental matters; establishes violations and penalties; and establishes an "Environmental Quality Revolving Fund". The Act also renames the entire Chapter 3 as the "Environmental Quality Code".

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:

**CHAPTER 3
CHEROKEE NATION ENVIRONMENTAL ACT QUALITY CODE**

ARTICLE 1. CODIFICATION

§ 50. Codification

This ~~Act~~ Chapter shall be codified as the Cherokee Nation Environmental ~~Act~~ Quality Code and supersedes and supplements all conflicting provisions or laws of the Cherokee Nation.

**ARTICLE 2. DELEGATION OF AUTHORITY
AND GENERAL PROVISIONS**

§ 101. Establishment of the Cherokee Nation Environmental Protection Commission

A. Establishment

The Cherokee Nation hereby creates the Cherokee Nation Environmental Protection Commission (CN EPC).

B. Governing body: Appointment; Terms; Vacancies

The CN EPC shall be governed by a Board of Commissioners (Board), which shall be composed of three (3) Commissioners (except in a meeting called to overrule a veto by the Principal Chief under subsection H of 63 CNCA § 606B, in which case all commissioners must be present for a quorum) all of whom shall be citizens of the Cherokee Nation. The Commissioners shall be appointed by the Principal Chief of the Cherokee Nation with the advice and consent of the Council of the Cherokee Nation. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the term of office, one of the original Commissioners shall be appointed for a term of two (2) years, one for a term of three (3) years, and one for a term of four (4) years. Any vacancy on the Board, howsoever caused, will be filled by appointment by the Principal Chief of the Cherokee Nation with the consent of the Council of the Cherokee Nation, provided that the replacement serves only the amount of time remaining in the term of the original appointee.

C. Chairperson; Quorum; Meetings

The Commissioners shall elect a Chairperson from among themselves. The business of the Board will be conducted at meetings of the Board duly called and noticed and at which a quorum is present. A quorum shall consist of two (2) Commissioners. Any substantive action of the CN EPC must be approved by the affirmative votes of at least two Commissioners and must be recorded in writing ~~and signed~~.

D. Authority of the Cherokee Nation Environmental Protection Commission

The Commission is hereby authorized to:

1. review and propose changes in this chapter to the Council of the Cherokee Nation including maintaining the law of Cherokee Nation to meet or exceed federal regulations;
2. negotiate cooperative agreements with federal, state, local and tribal authorities on matters dealing with environmental management and with the approval of the Principal Chief and/or Council of the Cherokee Nation;
3. consult with representatives of science, industry, agriculture, labor environmental protection and consumer organizations, and other groups, as CN EPC deems advisable;
4. utilize the information, facilities, personnel, and other resources of federal, state and local agencies including, but not limited to, the Department of Interior, the Environmental Protection Agency, the Department of Human Services, state or county emergency response departments and CN departments as long as it is not in conflict with funding authorization;
5. develop enforcement authority within the Cherokee Nation and/or enter cooperative agreements for enforcement of this chapter with federal or state authorities with approval of the Principal Chief and Council of the Cherokee Nation;
6. pursue ~~through the lead Department~~ loans and grants from the federal government and from other sources as may be available to the Cherokee Nation for the planning, construction, and operation of ~~solid~~ waste disposal and recycling facilities, environmental education, emergency response, environmental resource management and environmental protection activities;
7. direct the examination and approval of plans and specifications for ~~solid~~ wastes disposal facilities and to inspect construction, remediation, operation, and closing of ~~solid~~

waste disposal sites, facilities, and other environmentally sensitive sites operations, or designate a qualified agent to do so;

8. direct investigations and inspections which the CN EPC deems necessary to ensure compliance with this chapter;

9. direct inspections of closed or abandoned ~~solid~~ waste disposal sites, and other regulated sites to determine compliance rules and regulations for proper protective measures;

10. contract for inspection and planning services with private firms, Cherokee Nation or federal agencies in accordance with Cherokee Nation law and approval;

11. seek an injunction against any person in violation of this chapter in the Courts of the Cherokee Nation, or state or federal court under cooperative agreements;

12. create environmental advisory committees;

13. enforce the laws of the Cherokee Nation regarding the environment, including but not limited to the issuance, modification or revocation of permits, establish enforcement procedures and hold hearings, issue appropriate orders or directives, and promulgate rules applicable to activities and persons subject the jurisdiction of the Cherokee Nation as they may deem appropriate to protect environmental resources and public health and welfare;

14. promulgate rules, and issue appropriate orders and directives ~~regulations~~ implementing the provisions of this Act which shall be followed by the Departments of the Cherokee Nation.

E. Revision of chapter

This chapter will be reviewed and where necessary revised, ~~not less frequently than every three years~~ as deemed necessary by the CN EPC and/or the Principal Chief.

F. Complaint reception

The CN EPC shall establish and publicize the manner in which individuals or groups may submit complaints, grievances, and requests for information as long as in compliance with Cherokee Nation Administrative Procedure Act.

G. Annual report

The CN EPC may transmit to the Principal Chief and the Council of the Cherokee Nation, ~~not later than 90 days~~ after the end of each fiscal year, a comprehensive ~~and detailed~~ report on all activities of the commission during the preceding fiscal year.

Each report shall include:

1. a statement of specific and detailed objectives for the activities authorized by this section;
2. statements of the CN EPCs conclusions as to the effectiveness of such activities and programs in meeting the stated objectives of such activities and the purposes of this Act measured through the end of such fiscal year;
3. a summary of outstanding environmental problems and opportunities before the Cherokee Nation, ~~in order of priority;~~
4. a plan for the ~~following current~~ fiscal year.

§ 102. Regulations

A. Adoption of rules and regulations

The CN EPC is hereby authorized and directed to promulgate and publish any and all rules and regulations which it deems necessary to carry out, implement and enforce the goals, purposes and provisions of this chapter. Said rules and regulations may include, without limitation, standards, tests, methods and procedures to be followed in permitting, permit renewal, inspection, permit revocation or suspension proceedings, and other enforcement actions pursuant to this chapter, the establishment of fines and/or penalties which may be imposed by the CN EPC for violations of this chapter, including the revocation and/or suspension of any permit issued here under the regulations authorized by this section, orders of the CN EPC, and/or the conditions of any permit issued hereunder; and the rules and procedures to be followed in any hearings conducted before the CN EPC. The rules and regulations adopted pursuant to this section may be amended, modified or replaced from time to time in the discretion of the CN EPC, subject to the provisions of subsection B of this section.

B. Consistency with chapter; Approval by Principal Chief

The rules and regulations, and any amendments, modifications or replacements thereof, shall be consistent with the goals, purposes and provisions of this chapter and the Constitution of the Cherokee Nation. Provided, however, that prior to becoming effective, such rules and regulations, and any amendments, modifications or replacements thereof, shall be first submitted to and approved in writing by the Principal Chief of the Cherokee Nation.

§ 103. Personal jurisdiction

For purposes of enforcing the provisions of the Cherokee Nation Environmental Act the Cherokee Nation shall have jurisdiction over all persons who by their actions violate the provisions of the Cherokee Nation Environmental Act.

§ 104. Territorial jurisdiction

For purpose of enforcing the provisions of the Cherokee Nation Environmental Act, the Cherokee Nation shall have jurisdiction ~~over all Indians~~ in the territorial boundaries of the Cherokee Nation as defined in the patent of 1838, and other places determined to be Indian Country within the Cherokee Nation jurisdiction.

The CN EPC shall have jurisdiction to regulate and enforce the provisions of this Chapter with respect to any activity conducted on trust land or in Indian Country within the Cherokee Nation to the fullest extent allowed by law.

~~§ 105. Interface with the Bureau of Indian Affairs~~

~~Bureau of Indian Affairs approval shall be necessary for any lease or contract requiring use of lands held in trust only as required by appropriate federal law.~~

~~§ 106. Designation of Lead Department; EPA authorization~~

~~A. Lead Department~~

~~—The rules and regulations to be adopted pursuant to 63 CNCA §102 shall designate a Lead Department with primary responsibility over processing permit applications, permit renewals or revocations, and enforcement actions pursuant to this chapter. The Lead Department may seek grant funds with approval of the Principal Chief from the federal agencies and other sources as may be available to the Cherokee Nation for the planning, construction, research, and operation of environmental protection activities. The Lead Department may be an existing department of the Cherokee Nation or a newly created department, as determined by the Principal Chief in his or her sole discretion.~~

~~—B. Cherokee Nation authorization by EPA~~

The CN EPC with the approval of the Principal Chief shall establish Tribal Implementation Programs (Tribal Authorization) ~~in compliance with to the extent allowed by federal law and may, where appropriate, establish programs for which there is no corresponding federal law or program.~~

§ 107. Severability

The provisions of this chapter are severable, and if any part or provision hereof shall be held void, the decision of any court so holding shall not affect or impair any of the remaining parts or provisions of this chapter.

§ 108. Applicability

This chapter shall apply to all causes within the jurisdiction of the Cherokee Nation.

§ 109. Review of Commission actions

Any affected party may seek review in the District Court of the Cherokee Nation of any final order or decision of the CN EPC. The CN EPC may establish procedures and requirements for filing motions to reconsider, administrative appeals and other administrative remedies, and may designate some procedures as prerequisites to filing an appeal in District Court.

~~A. Appeals~~

An affected party may file a written appeal from any final order or decision of the CN EPC in the District Court of the Cherokee Nation within 15 days after the date of notice of such order or decision. The notice shall inform the affected party that he or she has the right:

- (1) to inspect the documents relative to the order and
- (2) to appeal the order or decision pursuant to this section.

~~B. Veto by the Chief~~

~~The Principal Chief may veto any decision or order of the CN EPC approving an application for a permit hereunder within 15 days of the CN EPC's notice of same. A veto by the Chief may not be appealed.~~

§ 110. Removal of Commissioners

Commissioners shall only be removed for cause, and shall be entitled to after a hearing by the judicial Appeals Tribunal under such rules and procedures as prescribed by the Council. A petition for removal for cause may be brought by a vote of the majority of Tribal Council Members, or the Principal Chief.

ARTICLE 3. GENERAL DEFINITIONS

Section 201. Definitions. (revoke existing Section 201 and re-enact)

For purposes of this Title:

“Administrator means the person designated as administrator of the CN EPC”

“Affected Party” means the Cherokee Nation or any department thereof. It shall also include any person or entity applying for or holding a permit or subject to regulation under this chapter and any citizen of the Cherokee Nation, if such person, entity or citizen is directly and substantially impacted by an action or decision of the CN EPC and can demonstrate standing. The CN EPC may adopt rules which include other classes of persons or entities within the meaning of “affected party”.

“CN EPC”, “Commission” and “EPC” means the Environmental Protection Commission of the Cherokee Nation.

“Environmental Code” means the Cherokee Nation Environmental Code and shall refer to Title 63 CNCA Section 50 et seq.

"Environment" includes the air, land, wildlife, cultural and archaeological resources, and waters of the Nation.

"Jurisdiction" means jurisdiction of the Cherokee Nation over lands of the Cherokee Nation and over such other lands, air and water as may be allowed by law.

"Lands of the Cherokee Nation" means tribal lands and those lands under the jurisdiction of the Cherokee Nation, including but not limited to the territory legally described in the treaties of 1828, 1835 and 1838 and the Cherokee Nation patent issued in 1846, other such lands acquired by the Cherokee Nation since 1838. For purposes of this Chapter, the term "lands" shall include the earth, air and waters associated with such lands.

"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, government, partnership, association, organization, agency or any other legal entity, or an agent, employee, representative, assignee or successor thereof.

"Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, medical waste, 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;

"Waters of the Nation" means all streams, lakes, ponds, marshes, wetlands, 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, which are contained within, flow through, or border upon the Cherokee Nation or any portion thereof, and shall include under all circumstances waters which are contained within the boundaries of, flow through or border upon this Nation or any portion thereof.

"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.

ARTICLE 4. CHEROKEE NATION ENVIRONMENTAL POLICY

§ 302. Policies and goals

A. The Council of the Cherokee Nation, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, declares that it is the continuing policy of the Cherokee Nation, in cooperation with federal, state and local governments, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations.

B. In order to carry out the policy set forth in this chapter, it shall be the continuing responsibility of the Cherokee Nation to use all practicable means, consistent with other essential considerations of Cherokee law, policy, and customs, to improve and coordinate plans, functions, programs, and resources to the end that the Cherokee Nation may:

1. fulfill the responsibility of each generation of human beings as trustees of the environment for succeeding generations;
2. assure for all human beings safe, healthful, productive and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation of Cherokee Nation natural resources;
4. preserve important historic, cultural and natural aspects of Cherokee Nation heritage;
5. analyze potential environmental effects of proposed actions and their alternatives ~~of~~ and promote public understanding and scrutiny; and
6. enhance the quality of renewable resources and achieve their maximum value and yield through recycling and other methods of conservation;
7. provide civil and criminal remedies and sanctions in favor of Cherokee Nation against any persons who violates this chapter or any regulations adopted hereunder and, to maximum extent possible, enforce these remedies and sanctions against such persons;
8. prohibit the improper storage, transport, generation, burial or disposal of any solid, liquid or gaseous waste, or nuclear, hazardous or toxic refuse, by-product, waste or material, or any other chemical or polluting material or agent, within the jurisdiction of the Cherokee Nation, or that could affect lands, air, water, natural resources or people of the Cherokee Nation;
9. provide for regulation and taxation of interests, actions and omissions that adversely affect the environment of the Cherokee Nation;
10. utilize whenever possible, means of development, job creation, construction and resource use that are environmentally friendly and reflective of tribal culture and history.

§ 303. Implementing regulations

The CN EPC is authorized and directed to promulgate rules and regulations, which shall be adopted by the Principal Chief or otherwise promulgated in compliance with the CN Administrative Procedures Act, implementing the policies and goals of this chapter.

§ 304. Cooperation of Cherokee Nation departments

The Council of the Cherokee Nation authorizes and directs that, to the fullest extent possible:

- A. The policies, regulations and laws of the Cherokee Nation shall be interpreted and administered in accordance with the policies, procedures, and regulations adopted pursuant to 63 CNCA § 303; and
- B. all departments of the Cherokee Nation undertaking activities regulated by this chapter shall:
 1. utilize a systematic, interdisciplinary approach and ~~to~~ ensure the integrated use of natural and social sciences in planning and in decision making which may have an impact on the environment, natural resources and public health;
 2. identify and develop methods and procedures which will ensure that presently unquantified environmental and cultural amenities and values ~~may~~ will be given appropriate consideration in decision making along with economic and technical considerations consistent with the regulations adopted under this chapter, and

3. include in all recommendations, ~~and reports on~~ and proposals for the departmental legislative actions, projects and programs identified in the regulations adopted under this chapter or identified by resolution or order of the CN EPC, a statement by the responsible official on:

- a. environmental impacts of the proposed action and reasonable alternatives,
- b. any adverse ~~environmental~~ effects on lands, resources, culture, water, air or other aspects of the environment of the Cherokee Nation which cannot be avoided should the proposal be implemented,
- c. alternatives to the proposed action, and a comparison of the impacts and benefits of the proposal in comparison to the alternatives,
- d. the relationship between local short-term use of the environment and the maintenance and enhancement of long-term productivity, sustainable communities and a cohesive, distinct tribal culture, and
- e. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

~~Prior to preparing the foregoing statement, the~~ The responsible department shall submit pertinent information to the CN environmental offices and contract with those offices for preparation of such statement, or obtain authorization of the CN EPC or Principal Chief to prepare the statement themselves or utilize outside consulting services. Prior to finalizing any statement, the preparer should ~~may~~ consult with and obtain the comments of any Cherokee Nation, federal, or state or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views from appropriate Indian tribes or nations, and federal, state, and/or local agencies, which are authorized to develop and enforce environmental standards or may be directly impacted by the proposed action, shall be made available to the CN EPC.

4. study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
5. make available to other Indian tribes and nations, states, and federal agencies and offices advice and information useful in restoring, maintaining, and enhancing the quality of their environment;
6. initiate and utilize ecological and cultural information in the planning and development of ~~natural resource oriented~~ projects affecting tribal resources or the environment.

ARTICLE 12. GENERAL PROVISIONS (new)

Section 1001. Rules and adoption by reference.

A. The Commission shall have the authority to promulgate rules, adopt requirements by reference, establish implementation programs, require permits or licenses, and take appropriate enforcement actions as necessary to prevent pollution and ensure that the following minimum requirements are met in Indian Country:

1. Federal standards and requirements under Section 112 of the Federal Clean Air Act for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under Section 112(r) of the Federal Clean Air Act;
2. Federally approved water quality standards of adjacent states and Nations;
3. Drinking water standards established by federal law;

4. Requirements under the Resource Conservation and Recovery Act, Toxic Substances Control Act, federal Clean Water Act, Endangered Species Act, National Environmental Policy Act and other federal environmental laws.

B. The Commission may promulgate rules that incorporate by reference and/or modify appropriate environmental requirements established by the federal government or neighboring states or nations. The Commission may adopt requirements in addition to, or more stringent than, those under federal law or laws of adjoining states.

C. Requirements adopted by the Commission shall be enforceable through licenses, permit conditions, administrative proceedings or Court actions without a showing of actual harm or intent.

Section 1002. Authorities.

The Commission may establish, implement and enforce programs and requirements that cover any potential or actual source of pollution and any activity, including but not limited to:

1. Point source discharges, land application of wastes or chemicals, surface impoundments and other facilities for treatment, storage or disposal of wastewater, animal wastes or sludge;
2. Groundwater, wells, underground injection control, underground and aboveground storage tanks and pipelines;
3. Drinking water, water use, dams and hydrologic modifications;
4. Stormwater, nonpoint source pollution and best management practices;
5. Water quality, water quality standards and certifications, wetlands, protection of instream flow and water planning;
6. Air quality, source controls and emission standards, and noxious odors or gases;
7. Storage, facility siting, treatment, disposal and transportation of hazardous waste, solid waste, pesticides, toxic substances and other pollutants;
8. Dredge and fill, mining, oil and gas extraction and forestry practices;
9. Environmental assessments, reviews and impact statements;
10. Inspections, sampling, compliance, enforcement and administrative hearings;
11. Indoor air quality, asbestos, lead-based paint, radon and required disclosures and remediation of habitable structures contaminated or rendered dangerous by manufacturing of illegal drugs, other chemicals or harmful materials;
12. Protection of or regulation of fish and wildlife; and
13. Any program or activity conducted in cooperation with or funded by federal, state, local or tribal governments.

Section 1003. Inspections and records

A. Any duly authorized representative of the Commission shall have the power to enter at reasonable times upon any private or public property for the purpose of sampling, inspecting and investigating conditions relating to pollution, damage to natural resources, compliance with rules, orders and laws of the Nation, or the possible pollution of any air, land, resources or waters of the Nation or the environment or relating to any other environmental or permitting responsibility authorized by law.

B. The Commission may require the establishment and maintenance of records and production of reports relating to any regulated activity. Copies of such records shall be submitted to the Commission upon request. Any authorized representative of the Commission shall be allowed access at reasonable times to examine such reports or records.

C. The Commission may apply to and obtain from the district court, an order authorizing an administrative warrant to enforce access to premises for sampling, investigation, inquiry and inspection related to requirements of this Code, pollution complaints, Commission-issued orders or permits, and any rules promulgated by the Commission. Failure to obey an administrative warrant of the district court may be punished by the district court as a contempt of court.

Section 1004 . Pollution unlawful.

A. It shall be unlawful for any person to cause pollution of any air, water, land or resources of the Nation, or to place or cause to be placed any wastes or pollutants in a location where they are likely to cause pollution of any air, water, land or resources of the Nation. Any such action is hereby declared to be a public nuisance.

B. If the Commission finds that any of the air, land, resources or waters of the Nation have been, or are being, polluted, they may issue an order requiring such pollution to cease within a reasonable time, and/or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in their judgment be necessary to prevent further pollution.

C. It shall be the duty of the person to whom such order is directed to fully comply with such order. Said order may be issued ex-parte in an emergency, or otherwise in compliance with administrative procedures set forth in this Code.

Section 1005 . Administrative proceedings.

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that any person is in violation of this Code or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Commission may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Commission may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

1. The proposed compliance order may, pursuant to subsection K of this section:

- a. assess an administrative penalty for past violations of this Code, rules promulgated thereunder, or the terms and conditions of permits or licenses issued pursuant thereto, and
- b. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

2. Such proposed order may specify compliance requirements and schedules, mandate corrective action, assess damages for injuries to natural resources of the Nation and/or require mitigation of damage that has occurred.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no later than seven (7) days after its service, any respondent named therein requests an administrative enforcement hearing.

D. Notwithstanding the provisions of subsection A and B of this section, the Commission, after notice and opportunity for an administrative hearing, may revoke, modify or suspend the holder's permit or license in part or in whole for cause, including but not limited to the holder's:

1. Flagrant or consistent violations of this Code and/or rules promulgated thereunder, or of final orders, permits or licenses issued pursuant thereto;
2. Reckless disregard for the protection of the public and the environment as demonstrated by noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or
3. Actions causing, continuing, or contributing to the release or threatened release of pollutants or contaminants to the environment.

E. Whenever the Commission finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment, the Commission or their designee may without notice or hearing issue an order, effective upon issuance, requiring that such action be taken as deemed necessary to meet the emergency. Any person to

whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is

served. A hearing shall be held as promptly as possible after receipt of a request. A hearing may be held at any time the Commission, in their discretion, may deem appropriate. On the basis of the hearing record, the Commission may sustain, modify or rescind such order.

F. Except as otherwise expressly provided by law, any notice of violation, order, or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return-receipt requested directed to such person at his last-known post office address as shown by the files or records of the Nation. Proof of service shall be made as in the case of service of a summons or by publication in a civil action.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. Any order issued by the Commission shall become final upon service.

I. Any party aggrieved by a final order may petition the Commission for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order may petition for a judicial review thereof.

J. 1. Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs shall constitute a separate violation.

K. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

L. The Commission may delegate the authority to issue orders or take other appropriate actions under this Article to the Administrator.

Section 1006 . Violations and penalties

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Cherokee Nation Environmental Quality Code or who violates any order, permit or license, or rule promulgated by the Commission pursuant to the Cherokee Nation Code:

1. Shall be guilty of a crime and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Five Thousand Dollars (\$5,000.00) for each violation or by imprisonment for not more than one year, or by both such fine and imprisonment. Each day a violation continues may be considered a separate crime;

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each violation, and for each day that the violation continues;

3. May be assessed an administrative penalty not to exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance; and

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

B. Nothing in this part shall preclude the Commission from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Code.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Commission may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Code, any rule promulgated thereunder, or any order, license or permit issued pursuant thereto. No bond shall be required of the Commission for such suits.

F. 1. The Commission may bring an action in a court of competent jurisdiction for injunctive relief to redress or restrain a violation by any person of this Code, any rule promulgated thereunder, or any order, license, or permit issued pursuant thereto, for recovery of any administrative or civil penalty assessed pursuant to this Code, and for recovery of natural resource damages, costs of mitigation and corrective action.

2. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, punitive damages, assessment of natural resource damages, costs of corrective action and mitigation, and costs of any measures necessary to protect public health, safety and welfare or the environment.

3. In any judicial action in which the Commission seeks injunctive relief and alleges by verified petition that:

- a. the defendant's actions or omissions constitute a violation of the Code or a rule, order, license or permit, and
- b. the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action,

the Commission shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted and a preliminary injunction should issue.

G. Except as otherwise provided by law, administrative and civil penalties, costs and natural resource damages recovered pursuant to the Environmental Code shall be paid into the Environmental Quality Revolving Fund established by this Code. Allowable expenditures from the fund shall include operational and program costs of the Commission and Environmental Programs, reimbursement of costs and fees related to the enforcement action, emergency response and projects that enhance the environment or benefit the Nation's natural resources.

H. In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Commission, the Commission may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Code, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

Section 1007. Environmental Quality Revolving Fund.

There is hereby created a revolving fund to be designated the "Environmental Quality Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year

limitations, and shall consist of all monies received by the Commission or Environmental Programs from appropriations, administrative penalties, fees, charges, gifts and monies from any other source that are not designated for deposit to any other fund authorized by this Code. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the sole purpose of implementing and enforcing this Code.

Section 6. Provisions as cumulative

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

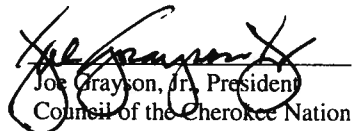
Section 7. Severability

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.

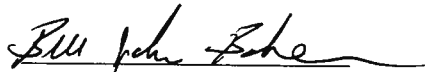
Section 8. Emergency declared

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 12th day of July, 2004.


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


ATTEST:


Bill John Baker, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 16th day of JULY, 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>ABSENT</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

Cherokee Nation Environmental Code - (Codification, Delegation of Authority, General Definitions, Environmental Policy and General Provisions)

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 renames Title 63 Chapter 3 the "Cherokee Nation Environmental Quality Code". The Act amends existing Articles 1, 2, 3 and 4 and adds a new Article 11. The Act updates existing definitions and authorities of the Environmental Protection Commission. The new Article 11 adds authorities for rules, permitting, inspections and enforcement. Existing state and federal environmental laws were used as models in developing these amendments..

This Act is necessary for the Nation to have adequate authority to protect the health of Cherokee citizens, protect the Nation's natural resources and environment, and obtain authorization to operate federal environmental programs.

ADMINISTRATIVE CLEARANCE

Program/Project Manager:

Signature/Initial Date

Department Director:

J. Hale 6-03-04

Signature/Initial Date

Executive Director: 6-4-4

Melanie Knight

Signature/Initial Date

Controller: (if needed)

Signature/Initial Date

Government Resources:

Vickie Sankey for Melanie Knight

Signature/Initial Date

Administration Approval:

Vickie Sankey for Melanie Knight

Signature/Initial Date

LEGISLATIVE CLEARANCE:

Legislative Aide:

AS 6-4-04

Signature/Initial Date

Standing Committee & Date:

Resourcer 6-17-04

Chairperson:

Martin

Signature/Initial Date

Returned to Presenter:

Date

06-04-04A11-45 R.C.V.D.