

## **TITLE 27**

### **ENVIRONMENTAL QUALITY**

#### **Oklahoma Statutes**

Environment and natural resources, see 27A O.S. § 1–1–101 et seq.

#### **United States Code**

Indian dams safety, see 25 U.S.C. § 3801 et seq.

Indian lands open dump cleanup, see 25 U.S.C. § 3901 et seq.

## **CHAPTER 1**

### **ENVIRONMENTAL PROTECTION COMMISSION**

#### **§ 100. Short title**

This Title shall be known and may be cited as the Cherokee Nation Environmental Quality Code and supersedes and supplements all conflicting provisions or laws of Cherokee Nation.

#### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 50.

**Amended.** LA 31–04, eff. July 16, 2004.

#### **Library References**

Environmental Law <KEY>13.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 101, 106, 130 to 132, 173.

#### **§ 101. Establishment of the Cherokee Nation Environmental Protection Commission**

A. Establishment. 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 five (5) Commissioners (except in a meeting called to overrule a veto by the Principal Chief under 27 CNCA § 606B(H), in which case all Commissioners must be present for a quorum) all of whom shall be citizens of Cherokee Nation. The Commissioners shall be appointed by the Principal Chief of Cherokee Nation with the advice and consent of the Council of Cherokee Nation. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the term of office, one (1) of the original Commissioners shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. Any vacancy on the Board, howsoever caused, will be filled by appointment by the Principal Chief of Cherokee Nation with the consent of the Council of 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 a majority of those Commissioners duly appointed and confirmed. Any substantive action of the CN EPC must be approved by the affirmative votes of a majority of the duly appointed and confirmed Commissioners and must be recorded in writing.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 101.

**Amended.** LA 31–04, eff. July 16, 2004.

**Amended.** LA 06–08, eff. April 17, 2008.

**Amended.** LA 04–10, eff. January 15, 2010.

**Amended.** LA 25–10, eff. September 17, 2010.

### **Cross References**

Challenges, see 26 CNCA § 37.

Requirements of the state, see 29 CNCA § 105.

### **Library References**

Environmental Law <KEY>15.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 105, 109, 130 to 132, 135, 173.

## **§ 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 Title. 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 Title, the establishment of fines and/or penalties which may be imposed by the CN EPC for violations of this Title, including the revocation and/or suspension of any permit issued 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 Title and the Constitution of 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 Cherokee Nation.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 102.

**Amended.** LA 31–04, eff. July 16, 2004.

### **Cross References**

Challenges, see 26 CNCA § 37.

Water Quality Code, definitions, see 27 CNCA § 902.

### **Library References**

Indians <KEY>412.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 103. Personal jurisdiction**

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

#### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 103.

**Amended.** LA 31–04, eff. July 16, 2004.

#### **Cross References**

Challenges, see 26 CNCA § 37.

#### **Library References**

Indians <KEY>413.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 104. Territorial jurisdiction**

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

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

#### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 104.

**Amended.** LA 31–04, eff. July 16, 2004.

#### **Library References**

Indians <KEY>413.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

**§ 105. Repealed by LA 31–04, eff. July 16, 2004**

**History**

The repealed section, derived from LA 1–93 and renumbered from 63 CNCA § 105, related to an interface with the Bureau of Indian Affairs.

**§ 106. EPA authorization**

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

**History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 106.

**Amended.** LA 31–04, eff. July 16, 2004.

**Library References**

Indians <KEY>413.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

**§ 107. Severability**

The provisions of this title 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 title.

**History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 107.

**Amended.** LA 31–04, eff. July 16, 2004.

### **Library References**

Statutes <KEY>1535(21).

Westlaw Topic No. 361.

### **§ 108. Applicability**

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

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 108.

**Amended.** LA 31–04, eff. July 16, 2004.

### **§ 109. Review of Commission actions**

Any affected party may seek review in the District Court of 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.

An affected party may file a written appeal from any final order or decision of the CN EPC in the District Court of Cherokee Nation within fifteen (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.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 109.

**Amended.** LA 31–04, eff. July 16, 2004.

## Library References

Indians <KEY>433, 434, 436.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### § 110. Removal of Commissioners

Commissioners shall only be removed for cause, and shall be entitled to a hearing by the Supreme Court 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.

## History

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 110.

**Amended.** LA 31–04, eff. July 16, 2004.

## Library References

Indians <KEY>218.

Westlaw Topic No. 209.

## CHAPTER 2

### DEFINITIONS AND GENERAL PROVISIONS

#### § 201. Definitions

For purposes of this title:

1. "**Administrator**" means the person designated as administrator of the CN EPC.
2. "**Affected party**" means 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 title and any citizen of 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".
3. "**CN EPC**", "**Commission**" and "**EPC**" means the Environmental Protection Commission of Cherokee Nation.

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

5. **"Environmental Code"** means the Cherokee Nation Environmental Code and shall refer to Title 27 CNCA § 100 et seq.

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

7. **"Lands of Cherokee Nation"** means tribal lands and those lands under the jurisdiction of 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 Cherokee Nation since 1838. For purposes of this title, the term "lands" shall include the earth, air and waters associated with such lands.

8. **"Nation"** means Cherokee Nation.

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

10. **"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.

11. **"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.

12. **"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;

13. **"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.

14. **"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 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.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 201.

**Amended.** LA 31–04, eff. July 16, 2004.

### **Cross References**

Releases from storage tank systems, reporting, see 27 CNCA § 670.

### **United States Code**

Congressional declaration of purpose, see 42 U.S.C. § 4321 et seq.

Congressional findings and declaration of purposes and policy, see 16 U.S.C. § 1531 et seq.

Findings, policy, and intent, see 15 U.S.C. § 2601 et seq.

Hazardous air pollutants, see 42 U.S.C. § 7412.

Identification and listing of hazardous waste, see 42 U.S.C. § 6921 et seq.

Public information and education on recycling and reuse of wastewater, use of land treatment, and reduction of wastewater volume, see 33 U.S.C. § 1294 et seq.

### **§ 202. Supplemental definitions**

The CN EPC is authorized to supplement these definitions and all other definitions of this Cherokee Nation Environmental Act with Commission definitions established by regulations and adopted by the Principal Chief. Within these definitions there will be one (1) particular department designated as the Lead Department for purposes of permitting and enforcement within any section of the act.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 202.

### **§ 203. 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, 42 U.S.C. § 7412, for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under 42 U.S.C. § 7412(r);

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, 42 U.S.C. § 6921 et seq., Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., Clean Water Act, 33 U.S.C. § 1294 et seq., Endangered Species Act, 16 U.S.C. § 1531 et seq., National Environmental Policy Act, 42 U.S.C. § 4321 et seq. 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.

### **History**

**Source.** LA 31–04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1001.

### **Library References**

Indians <KEY>413.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 204. 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 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.

### **History**

**Source.** LA 31–04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1002.

### **Library References**

Indians <KEY>413, 443.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **§ 205. 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 title, pollution complaint, 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.

### **History**

**Source.** LA 31–04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1003.

## **§ 206. 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 title.

### **History**

**Source.** LA 31–04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1004.

### **Library References**

Environmental Law <KEY>13, 19.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 101, 106, 130 to 132, 134, 150, 156, 173.

### **§ 207. 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 title 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.

The proposed compliance order may, pursuant to subsection (K) of this section:

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

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 title 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 judicial review thereof.

J. 1. Unless specified otherwise in this title, 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 factors such 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 chapter to the Administrator.

### **History**

**Source.** LA 31-04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1005.

### **Library References**

Indians <KEY>411, 416, 422, 443.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 208. 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 (1) 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 compliance with, any of the provisions of this title or any rule promulgated thereunder or order, license or permit issued pursuant to this title.

B. Nothing in this chapter 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 title.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorney 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 title, 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 title, 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 title, and for recovery of natural resource damages, costs of mitigation and corrective action.

2. The District 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 this title 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 this title shall be paid into the Environmental Quality Revolving Fund established in this chapter. 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 title, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

### **History**

**Source.** LA 31-04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1006.

### **Library References**

Environmental Law <KEY>738, 762.

Indians <KEY>423, 433.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment §§ 160, 162.

C.J.S. Indians §§ 151 to 179.

### **§ 209. 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 Title. 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 Title.

### **History**

**Source.** LA 31–04, eff. July 16, 2004.

**Renumbered** from 63 CNCA § 1007.

### **Cross References**

Operation without permit prohibited—Application form—Denial, refusal to issue, suspension or revocation—Financial responsibility coverage, see 27 CNCA § 668.

### **Library References**

Indians <KEY>210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## **CHAPTER 3**

### **CHEROKEE NATION ENVIRONMENTAL POLICY**

#### **§ 301. Purpose**

The purposes of this chapter are to establish and implement a Cherokee Nation policy which will encourage productive and enjoyable harmony between human beings and their environment; to promote efforts which will prevent or eliminate damage to natural resources and the environment and to enrich the understanding of the ecological systems and natural resources important to Cherokee Nation.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 301.

### **Library References**

Environmental Law <KEY>5, 13.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 101 to 102, 106 to 107, 130 to 132, 173.

### **§ 302. Policies and goals**

A. The Council of 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 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 title, it shall be the continuing responsibility of 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 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 and promote public understanding and scrutiny;
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 violate this chapter or any regulations adopted hereunder and, to the 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 Cherokee Nation, or that could affect lands, air, water, natural resources or people of Cherokee Nation;
9. provide for regulation and taxation of interests, actions and omissions that adversely affect the environment of 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.

## **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 302.

**Amended.** LA 31–04, eff. July 16, 2004.

## **Library References**

Environmental Law <KEY>13.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 101, 106, 130 to 132, 173.

### **§ 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 Administrative Procedure Act, 1 CNCA § 101 et seq., implementing the policies and goals of this Title.

## **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 303.

**Amended.** LA 31–04, eff. July 16, 2004.

## **Library References**

Indians <KEY>412.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 304. Cooperation of Cherokee Nation Departments**

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

1. the policies, regulations and laws of Cherokee Nation shall be interpreted and administered in accordance with the policies, procedures, and regulations adopted pursuant to 27 CNCA § 303; and

2. all Departments of Cherokee Nation undertaking activities regulated by this Title shall:

a. 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;

b. identify and develop methods and procedures which will ensure that presently unquantified environmental and cultural amenities and values will be given appropriate consideration in decision-making along with economic and technical considerations consistent with the regulations adopted under this title; and

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

i. environmental impacts of the proposed action and reasonable alternatives;

ii. any adverse effects on lands, resources, culture, water, air or other aspects of the environment of Cherokee Nation which cannot be avoided should the proposal be implemented;

iii. alternatives to the proposed action, and a comparison of the impacts and benefits of the proposal in comparison to the alternatives;

iv. 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

v. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

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 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 projects affecting tribal resources or the environment.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 304.

**Amended.** LA 31–04, eff. July 16, 2004.

### **§ 305. Conformity of administrative procedures**

All Departments of Cherokee Nation shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance herein, and report findings to the CN EPC, and take all measures as may be necessary to bring their authority and policies into conformity with the intent, purpose and procedures set forth in this chapter.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 305.

### **§ 306. Statutory obligations**

Nothing in 27 CNCA § 303 or 27 CNCA § 304 shall in any way affect the specific statutory obligations of any Department:

1. to comply with criteria or standards of environmental quality;
2. to coordinate or consult with any other department or intergovernmental agency; or
3. to act, or refrain from acting contingent upon the recommendations or certification of any other Department.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 306.

### **§ 307. Policy supplementary**

The policies and goals set forth in this chapter are supplementary to those set forth in existing or

future authorizations of Departments of Cherokee Nation.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 307.

## **CHAPTER 4**

### **AIR QUALITY**

#### **§ 401. Short title**

This chapter shall be known and may be cited as the Cherokee Nation Clean Air Act.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–101.

### **Library References**

Environmental Law <KEY>244.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

#### **§ 402. Purpose**

It is the purpose of the Cherokee Nation Clean Air Act to provide the means to achieve and maintain atmospheric purity necessary for the protection and enjoyment of human, plant or animal life and property in this Nation.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–102.

### **Library References**

Environmental Law <KEY>245.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 403. Reserved**

### **§ 404. Definitions**

As used in the Cherokee Nation Clean Air Act:

1. **"Accidental release"** means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
2. **"Administrator"** means the Administrator of Environmental Quality Programs.
3. **"Air contaminants"** means the presence in the outdoor atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any combination thereof that creates a condition of air pollution.
4. **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as tend to be or may be injurious to human, plant or animal life or to property, or which interfere with the comfortable enjoyment of life and property, excluding, however, all conditions pertaining to employer-employee relations.
5. **"Ambient air"** means the surrounding outdoor air.
6. **"Commission"** means the Cherokee Nation Environmental Protection Commission.
7. **"Emission"** means the release or discharge of any air contaminant or potential air contaminant into the ambient air.
8. **"Federal Clean Air Act"** means the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, including the federal Clean Air Act Amendments of 1990.
9. **"Hazardous air pollutant"** means any air pollutant listed and regulated pursuant to 42 U.S.C. § 7412(b).
10. **"Hearing officer"** means a person appointed to preside at public hearings held pursuant to this chapter.
11. **"Person"** means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, tribe, state, trust, estate, municipality or any other legal entity, or their representative, agent or assign.
12. **"Regulated substance"** means any substance, including extremely hazardous substances, listed and regulated pursuant to 42 U.S.C. § 7412(r)(3).



13. **"Small business stationary source"** means a stationary source as defined in 42 U.S.C. § 7661f(c).

14. **"Toxic air contaminant"** means any substance determined to be highly toxic, moderately toxic, or of low toxicity pursuant to criteria set forth by rule. The term shall not be construed to include pollutants for which a primary and secondary ambient air quality standard has been promulgated under the federal Clean Air Act to the extent of the criteria for which they are listed.

15. **"Trade secret"** means information, including but not limited to a formula, pattern, compilation, program, device, method, technique or process, that:

a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term **"trade secret"** shall not be construed to include data concerning the amount, emission rate or identification of any air contaminant emitted by any source, nor shall it include the contents of any proposed or final permit.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–104.

### **United States Code**

Congressional findings and declaration of purpose, see 42 U.S.C. § 7401 et seq.

Hazardous air pollutants, see 42 U.S.C. § 7412(b); 42 U.S.C. § 7412(r).

Small business stationary source technical and environmental compliance assistance program, see 42 U.S.C. § 7661f.

### **§ 405. Powers and duties**

The Environmental Protection Commission is hereby designated the administrative agency for the Cherokee Nation Clean Air Act. The Commission is empowered to:

1. establish programs necessary to implement the Cherokee Nation Clean Air Act and protect the Nation's air, resources and people;

2. establish a permitting program that will contain the flexible source operation provisions required

by 42 U.S.C. § 7661a(b)(10);

3. prepare and develop a general plan for proper air quality management in the Nation;
4. enforce the laws, rules and orders of the Commission and Nation;
5. advise, consult and cooperate with other agencies, communities, cities, counties, industries, tribes, states, the federal government, citizens and affected groups, in the prevention and control of new and existing air contamination sources within the Nation;
6. encourage and conduct studies, seminars, workshops, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement;
7. collect and disseminate information relating to air pollution, its prevention and control;
8. encourage voluntary cooperation by persons, communities, cities, counties, industries, states, tribes or other affected groups in restoring and protecting air quality within the Nation;
9. represent the Nation in any and all matters pertaining to plans and procedures in relation to the control of air pollution;
10. provide technical, scientific or such other services as may be appropriate and feasible, for the purpose of carrying out the provisions of the Cherokee Nation Clean Air Act;
11. identify, propose and implement grants or such other funds or gifts provided by or with the with consent of the Commission and Principal Chief, for the purpose of carrying out the functions of the Cherokee Nation Clean Air Act;
12. bring appropriate court action to enforce the Cherokee Nation Clean Air Act and other provisions of Cherokee Nation laws, rules and final orders of the Commission, and to obtain injunctive or other relief as may be determined appropriate;
- 13, 14. Reserved.
15. take such action as may be necessary to abate alleged pollution upon receipt of evidence that a source of pollution or a combination of sources of pollution is presenting an immediate, imminent and substantial endangerment to the health of persons. The Commission may issue emergency orders, subpoena witnesses and documents, require submission of information or take other action in an administrative proceeding, or may proceed directly to Court to obtain relief;
16. periodically enter and inspect at reasonable times, any source, facility or premises permitted or regulated by the Commission, for the purpose of obtaining samples or determining compliance with the Cherokee Nation Clean Air Act, any rule promulgated thereunder or permit condition, or to examine any records kept or required to be kept pursuant to the Cherokee Nation Clean Air Act or other applicable law. Such inspections shall be conducted with reasonable promptness and shall be confined to those areas, sources, facilities or premises reasonably expected to emit, control, or

contribute to the emission of any air contaminant or other source of pollution;

17. require the submission or the production and examination, within a reasonable amount of time, of any information, record, document, test or monitoring results or emission data, including trade secrets necessary to determine compliance with the Cherokee Nation Clean Air Act, rules promulgated thereunder, any permit condition, or any order of the Commission. The Commission shall hold and keep as confidential any information declared by the provider to be a trade secret and may only release such information upon authorization by the person providing such information, or as directed by court order. Any documents submitted pursuant to the Cherokee Nation Clean Air Act and declared to be trade secrets, to be so considered, must be plainly labeled by the provider, and be in a form whereby the confidential information may be easily removed intact without disturbing the continuity of any remaining documents. The remaining document, or documents, as submitted, shall contain a notation indicating, at the place where the particular information was originally located, that confidential information has been removed. Nothing in this section shall preclude an in-camera examination of confidential information by an Administrative Law Judge during the course of a contested hearing;

18. maintain and update an inventory of air emissions from stationary sources; and

19. carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Cherokee Nation Clean Air Act and the federal Clean Air Act, 42 U.S.C. § 7401 et seq.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–105.

### **United States Code**

Congressional findings and declaration of purpose, see 42 U.S.C. § 7401 et seq.

Permit programs, see 42 U.S.C. § 7661a.

### **Library References**

Environmental Law <KEY>242.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 406. Controlled open burning**

A. For purposes of this section, "**open burning**" means the burning of non-hazardous combustible

materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

B. Persons who wish to conduct open burning on tribal lands shall provide notification of the planned open burn to the Environmental Programs Group at least ten (10) days prior to the burning. The notification shall be on a form developed by the Commission.

C. The Commission shall have the authority to promulgate rules regarding open burning as necessary.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–106.

### **Library References**

Environmental Law <KEY>272.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 407. Rules and regulations**

A. The Commission is hereby authorized, after public rulemaking hearing and approval, to:

1. Promulgate, amend or repeal rules for the prevention, control and abatement of air pollution and for establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere; and

2. Promulgate such additional rules including but not limited to permit fees, as it deems necessary to protect the health, safety and welfare of the public and fulfill the intent and purpose of these provisions.

B. The Commission may prescribe additional requirements to protect health, environment, communities, wildlife, welfare and property through rulemaking, through conditions in any permit or authorization or compliance schedule, or through any order.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–107.

## Library References

Environmental Law <KEY>242.

Indians <KEY>412.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment §§ 163 to 164.

C.J.S. Indians §§ 151 to 179.

### **§ 408. Delegation of authority**

The Commission may delegate such authority as it deems appropriate to the EPC Administrator or other appropriate Cherokee Nation staff.

## History

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–108.

### **§ 409. Variances**

A. Any person seeking a variance from any provision of the Cherokee Nation Clean Air Act, or from any applicable air quality rule, shall do so by filing a petition for variance with the Commission. The Commission may deny, grant or conditionally approve any request.

B. The Commission may, in its discretion, determine whether or not an administrative hearing is necessary in granting a variance. The Commission shall notify the petitioner of the time and place of any administrative hearing. The burden of proof shall be on the petitioner.

C. The Commission may, but is not required to, grant individual variances beyond the limitations prescribed in the Cherokee Nation Clean Air Act or Commission rules, whenever it is found, upon presentation of adequate proof, that compliance with any provision of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people, the environment or to public health. The Commission may also propose rules applicable to such variances.

D. In determining under what conditions and to what extent a variance from the Cherokee Nation Clean Air Act or any rule promulgated thereunder may be granted, the Commission may give due recognition to the progress which the person requesting such variance shall have made in eliminating or preventing air pollution. In such a case, the Commission shall consider the reasonableness of granting a variance conditioned upon such person effecting a partial abatement

of the particular air pollution over a period of time which it shall consider reasonable under the circumstances.

E. If the Commission deems proper, such an incremental compliance schedule may be imposed and shall contain a date or dates certain by which compliance with otherwise applicable rules or provisions of the Cherokee Nation Clean Air Act shall be achieved. The Commission may also include provisions whereby a penalty of up to Five Thousand Dollars (\$5,000.00) per day, or the maximum amount otherwise allowed by law, may be assessed for failure to achieve compliance by the date(s) specified in the compliance schedule or other violations.

F. The Commission may prescribe requirements to protect health, environment, communities, wildlife, welfare and property, as conditions of granting any variance. The person who receives such variance shall comply with such conditions or the variance shall become null and void, unless and until otherwise ordered by the Commission.

G. Any variance granted pursuant to the provisions of this section shall constitute a final order, shall be in writing, and shall be granted for a period of time not to exceed three (3) years. Periodic reports that specify the progress which such person shall have made toward compliance shall be submitted to the Commission. A variance may, for good cause shown, be extended on a year-to-year basis by affirmative action of the Commission.

H. Nothing in this section shall be construed to preclude the informal disposition of any matter by stipulation, agreed settlement, consent order or default.

### **History**

**Source.** LA 42-04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2-5-109.

### **Library References**

Environmental Law <KEY>274.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 410. Violations**

A. In addition to any other remedy provided for by law, the Commission may issue a written order to any person whom the Commission has reason to believe has violated, or is presently in violation of, the Cherokee Nation Clean Air Act or any rule promulgated by the Commission, any order of the Commission, or any condition of any permit issued by the Commission pursuant to the Cherokee Nation Clean Air Act, and to whom the Commission has served, no less than fifteen (15) days previously, a written notice of violation. The Commission shall provide the person a

reasonable opportunity to eliminate such violations, but may, however, reduce the fifteen- (15) day notice period as in the opinion of the Commission may be necessary to render the order reasonably effectual.

B. The Commission shall use reasonable efforts to provide any person alleged to be in violation with advance notice of intent to issue an order and of the opportunity to request an evidentiary hearing or to informally appear before the Commission. An order may require compliance immediately or within a specified time period or both. The order, notwithstanding any restriction contained in subsection (A) of this section, may also assess an administrative penalty for past violations occurring no more than five (5) years prior to the date the order is issued by the Commission, and for each day or part of a day that such person fails to comply with the order.

C. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations, and may impose such requirements, procedures or conditions as may be necessary to correct the violations. The Commission may order any environmental contamination or threat to public health or welfare, when caused by the violations, to be corrected by the person or persons responsible. The Commission or the Nation may also take reasonable actions to correct violations and contamination or to eliminate any threat, and may seek reimbursement by the responsible parties through administrative or court proceedings.

D. Any penalty assessed in the order shall not exceed Five Thousand Dollars (\$5,000.00) per day for each violation or the maximum established in the Environmental Quality Code. In assessing such penalties, the Commission shall consider the seriousness of the violation or violations, any good faith efforts to comply, and other factors determined by rule to be relevant.

E. An order issued after hearing or waiver of hearing shall become a final order upon issuance or on a date specified by the Commission. An order issued without a prior hearing shall become final unless no later than fifteen (15) days after the order is served the person or persons named therein request in writing an enforcement hearing.

F. In the case of an emergency where public health or the environment is in imminent danger, the order may be effective immediately but reasonable efforts to give notice to the person(s) subject to the order must be documented prior to issuance.

G. Upon request for a hearing, the Commission shall promptly schedule the enforcement hearing before an authorized representative for the Commission or the full Commission, and notify the respondent.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–110.

### **Library References**

Indians <KEY>419, 422, 443.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

#### **§ 411. Reserved**

#### **§ 412. Comprehensive permitting program—Issuance, denial or renewal**

A. Upon the effective date of permitting rules promulgated pursuant to the Cherokee Nation Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Commission, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Commission shall have the authority and the responsibility to implement a comprehensive permitting program for the Nation consistent with the requirements of the Cherokee Nation Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Commission may revoke, suspend, deny, and refuse to issue or to reissue a permit:

- a. upon a determination that any permittee or applicant is or would be in violation of any substantive provisions of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, or any permit issued pursuant thereto, or any local, regional or national air quality plan, or

- b. when the Commission determines that the emissions or activity will pose an unreasonable threat to health, safety property or the environment;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

- a. emission limitations for regulated air contaminants,

- b. operating procedures when related to emissions,

- c. performance standards,



d. provisions relating to entry and inspections, and

e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

a. installation and utilization of continuous monitoring devices,

b. sampling, testing and monitoring of emissions as needed to determine compliance,

c. submission of reports and test results, and

d. ambient air modeling and monitoring;

6. Issue:

a. general permits covering similar sources, and

b. permits to sources in violation, when compliance plans, which shall be enforceable by the Commission, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Commission;

9. Issue permits to sources requiring permits under Title V of the federal Clean Air Act for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Commission must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Commission may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Commission and shall be subject to any applicable rules or general permit requirements.

D. The Commission shall notify, or require that any applicant notify, all nations or states whose air

quality may be affected and that are contiguous to Cherokee Nation, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the federal Clean Air Act, and shall provide an opportunity for such nations or states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

E. No person, including but not limited to the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues have been raised and documented before the close of the public comment period on the draft permit, unless the Commission or Court finds good cause exists to allow the same.

F. A change in ownership of any facility or source subject to permitting requirements under this section may require such action, including but not limited to permit modification or a new permit, as the Commission in its discretion shall determine appropriate. If transferred, any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Commission in writing within ten (10) days of the change in ownership.

G. Operating permits for new sources. Operating permits may be issued to new sources without public review upon a proper determination by the Commission that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and
2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

### **History**

**Source.** LA 42-04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2-5-112.

### **Library References**

Environmental Law <KEY>265.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 163 to 164.

### **§ 413. Permit fees—Environmental Programs Revolving Fund**

A. Upon the effective date of the Cherokee Nation Clean Air Act a schedule of permit fees may be adopted requiring the owner or operator of any source required to have a permit to pay to the Commission:

1. A fee sufficient to cover the reasonable cost of reviewing and acting upon any application for a construction or operating permit for any new source or for the modification of any existing source;

2. An annual operating permit fee sufficient to cover the reasonable costs, both direct and indirect, of implementing and enforcing the permit program authorized by the Cherokee Nation Clean Air Act and/or the federal Clean Air Act, including, but not to be limited to:

- a. the costs of reviewing and acting upon any permit renewal,
- b. emissions and ambient monitoring, for those costs incurred under the permitting program,
- c. preparing generally applicable rules or guidance,
- d. modeling, monitoring, analyses and demonstrations,
- e. preparing inventories and tracking emissions, and
- f. inspections and enforcement.

B. The fees authorized in this section shall be set forth by rule.

C. Any fee not received by the Commission within the prescribed time period allotted for payment, unless a lesser amount shall be provided for by rule, shall be subject to a one and one-half percent (1 1/2%) per month penalty.

D. There is hereby created the Environmental Programs Revolving Fund, a subaccount which shall consist of all fees collected by the Commission as authorized by the Cherokee Nation Clean Air Act.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–113.

### **Library References**

Environmental Law <KEY>265.

Indians <KEY>210.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment §§ 131, 163 to 164.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 414. Implementation and enforcement of federal emission standards—Oil and gas well and equipment emissions**

A. The Commission shall have the authority to establish a program for the implementation and enforcement of the federal emission standards and other requirements under 42 U.S.C. § 7412 for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under 42 U.S.C. § 7412(r). The Commission may promulgate rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination that more stringent standards are necessary to protect the public health or the environment.

B. The Commission shall have the authority to establish programs for control of the emission of toxic air contaminants not otherwise regulated by a final emission standard under 42 U.S.C. § 7412(d), and/or for the control of any other air contaminants, emissions or pollution.

C. Emissions from any oil or gas exploration or production well with its associated equipment, and emissions from any pipeline compressor or pump station may be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

D. The Commission may list oil and gas production wells with their associated equipment as an area source category or may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of one million (1,000,000) if the Commission determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

E. Nothing in this section shall be construed to limit authority established elsewhere in the Cherokee Nation Clean Air Act or other provisions of the Cherokee Nation Code.

**History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–114.

**United States Code**

Hazardous air pollutants, see 42 U.S.C. § 7412(d); 42 U.S.C. § 7412(r).

### **Library References**

Environmental Law <KEY>254, 257, 271.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164, 171.

### **§ 415. Reserved**

### **§ 416. Violations—Penalties**

Any person who knowingly and willfully:

1. Violates any applicable provision of the Cherokee Nation Clean Air Act or federal Clean Air Act or any rule or standard or order promulgated thereunder;
2. Violates any order issued or permit condition prescribed pursuant to the Cherokee Nation Clean Air Act or federal Clean Air Act;
3. Violates any emission limitation or any substantive provision or condition of any permit;
4. Makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan or other document except for monitoring data, required pursuant to the Cherokee Nation Clean Air Act to be either filed or maintained;
5. Fails to notify or report as required by the Cherokee Nation Clean Air Act rules promulgated thereunder or orders or permits issued pursuant thereto;
6. Fails to install any monitoring device or method required to be maintained or followed pursuant to the Cherokee Nation Clean Air Act; or any rule, order or permit issued thereunder,
7. Tampers with or renders inaccurate any monitoring device; or
8. Falsifies any monitoring information required to be maintained or submitted to the Commission pursuant to the Cherokee Nation Clean Air Act;

shall be subject to the administrative, civil and criminal penalty provisions of the Environmental Quality Code.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–116.

### **Library References**

Indians <KEY>423, 535.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 417. Civil actions**

A. The Commission shall have the authority to commence a civil action for a permanent or temporary injunction or other appropriate relief, or to require abatement of any emission or correction of any contamination, or to seek and recover a civil penalty in any of the following instances:

1. Whenever any person has violated or is in violation of any applicable provision of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder;
2. Whenever any person has commenced construction, modification or operation of any source, or operates any source in violation of the requirement to have a permit, or violates or is in violation of any substantive provision or condition of any permit issued pursuant to the Cherokee Nation Clean Air Act; or
3. Whenever any person has violated any order of the Commission or any requirement to pay any fee, fine or penalty owed to the Nation pursuant to the Cherokee Nation Clean Air Act.

B. In any court proceeding, the Commission shall be entitled to recover reasonable attorney fees, expenses, penalties, fines costs of collection and an appropriate fee of up to fifty percent (50%) for collecting delinquent fees, penalties or fines. Any funds resulting from such actions shall be utilized by the Commission for environmental programs related to air quality, planning, assistance to communities, research related to health effects and environmental education.

### **History**

**Source.** LA 42–04, eff. November 23, 2004.

**Renumbered** from 63 CNCA § 2–5–117.

### **Library References**

Indians <KEY>433, 434.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **CHAPTER 5**

### **HISTORICAL AND CULTURAL PRESERVATION**

*Reserved for Future Use*

## **CHAPTER 6**

### **SOLID WASTE**

#### **GENERAL PROVISIONS**

##### **§ 601. Short title**

This chapter shall be known and may be cited as the Cherokee Nation Solid Waste Code.

##### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 601.

##### **Library References**

Environmental Law <KEY>344.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

##### **§ 602. Purpose**

It is the purpose of the Cherokee Nation Solid Waste Code to regulate the collection, transportation, processing and disposal of solid waste in a manner that will:

1. Protect the public health, safety and welfare;
2. Protect the environment of Cherokee Nation;
3. Conserve valuable land and other natural resources;
4. Enhance the beauty and quality of the environment; and

5. Encourage recycling of solid waste.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 602.

### **Library References**

Environmental Law <KEY>345.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 603. Definitions**

As used in the Cherokee Nation Solid Waste Code:

1. **"Affiliated person"** means:

- a. any officer, director, partner or sole shareholder of the applicant;
- b. any person employed by the applicant as a general or key manager or who directs operations of the site, transfer station, or facility addressed by the application; or
- c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity.

2. **"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 business 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 ongoing organizational relationships as they may impact operations;
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations;
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application. Such action shall include, without limitations, any permit denial or any sanction



imposed by a tribe, a state regulatory agency or the United States Environmental Protection Agency; and

e. a listing of any other tribe, federal and state environmental agency that has or has had regulatory responsibility over the applicant.

3. **"Disposal site"** means any place, including, but not limited to, landfills, transfer stations, surface disposal sites and burial areas, at which solid waste is dumped, abandoned, or accepted or disposed of by incineration, land filling, land application, composting, shredding, compaction, baling or any other method, or by processing by pyrolysis, resource recovery or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recovery or storage or reduced in volume.

4. **"Dwelling"** means a permanently-constructed, habitable structure designed and constructed for full-time occupancy in all weather conditions, which is not readily mobile. The term shall include, but is not limited to, traditional housing and manufactured homes.

5. **"Final closure"** means those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, monitoring and other closure actions required for the site by statute, rule, permit or order.

6. **"Hazardous waste"** means any solid waste, or a combination of solid wastes, which meets the criteria to be considered hazardous under 40 C.F.R. 261.3, or which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or

c. any substance listed by the United States government as hazardous.

7. **"History of noncompliance"** means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation, or a demonstrated pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact if a permit were issued.

8. **"Inert waste"** means any solid waste that is insoluble in water, chemically inactive, that will not leach contaminants, or is commonly found as a significant percentage of residential solid waste.

9. **"Integrated solid waste management plan"** means a plan that provides for the integrated management of all solid waste within the planning unit and embodies sound principles of solid waste management, natural resources conservation, energy production, and employment-creating

opportunities.

10. **"Lithified earth material"** means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term "lithified earth material" shall not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

11. **"Maximum horizontal acceleration in lithified earth material"** means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

12. **"Monofill"** means a landfill which is used to dispose of a single type of specified nonhazardous industrial solid waste, except for other nonhazardous industrial solid wastes which are not readily separable from the specified waste.

13. **"Nonhazardous industrial solid waste"** means any of the following wastes deemed by Administrator to require special handling:

- a. unusable industrial or chemical products;
- b. solid waste generated by the release of an industrial product to the environment; or
- c. solid waste generated by a manufacturing or industrial process.

The term **"nonhazardous industrial solid waste"** shall not include waste that is regulated as hazardous waste or is commonly found as a significant percentage of residential solid waste.

14. **"Person"** means any individual, corporation, company, firm, partnership, association, trust, state agency, tribe, government instrumentality or agency, institution, county, any incorporated city or town or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized.

15. **"Recycling"** means to reuse a material that would otherwise be disposed of as waste, with or without reprocessing.

16. **"Seismic impact zone"** means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years.

17. **"Solid waste"** means all putrescible and nonputrescible refuse in solid, semisolid, or liquid form, or contained gaseous material, including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial waste including explosives, biomedical wastes, chemical wastes, mining wastes, herbicide and pesticide wastes.

18. **"Solid waste landfill"** means, but is not limited to, municipal solid waste landfills as defined in federal regulations.

19. **"Solid waste management system"** means the system that may be developed for the purpose of collection and disposal of solid waste by any person engaging in such process as a business or by any municipality, authority, trust, county or by any combination thereof at one or more disposal sites.

20. **"Solid waste planning unit"** means any district, Indian community, county, incorporated city or town, municipal authority or trust in which any governmental entity is a beneficiary, or other legal entity however organized, which the Administrator determines to be capable of planning and implementing an integrated solid waste management program.

21. **"Transfer station"** means any disposal site, processing facility or other place where solid waste is transferred from a vehicle or container to another vehicle or container for transportation, including but not limited to a barge or railroad unloading facility. It does not include:

a. a facility such as an apartment complex or a manufacturing plant, where solid waste that is transferred has been generated by the occupants, residents, or facility functions;

b. a citizens' collection station; or

c. a solid waste collection system which leaves waste in enclosed containers along the collection route for later transport.

22. **"Waste reduction"** means to reduce the volume of waste being generated and/or requiring disposal.

## **History**

**Source.** LA 15-05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 603.

## **Code of Federal Regulations**

Definition of hazardous waste, see 40 C.F.R. § 261.3.

## **§ 604. Policy**

Cherokee Nation declares it to be the policy of the Nation that solid waste generated on lands under the Nation's jurisdiction or imported should be treated, stored and disposed of so as to minimize the present and future threat to human health and the environment, and that pollution prevention, waste reduction and recycling should be encouraged.

## **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 604.

## **Library References**

Environmental Law <KEY>353.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 605. Powers and duties**

A. The EPC is empowered to promulgate rules, require and issue permits, and issue orders:

1. applicable to the permitting, posting of security, construction, operation, closure, maintenance and remediation of solid waste disposal sites, borrow pits and dredge and fill areas;
2. establishing requirements for disposal, transfer, transport, treatment and storage of solid waste in ways that ensure public health and safety and protection of the environment to the greatest extent possible;
3. encouraging or requiring methods of pollution prevention, waste reduction, conservation, avoidance, minimization or mitigation of impacts, and recycling;
4. requiring sampling or the submission of laboratory reports or analyses performed by certified laboratories for the purposes of compliance monitoring and testing, and for other purposes required for the regulation of sludge;
5. requiring the submission by any applicant, owner or operator of a solid waste facility of detailed site plans, compliance audits, environmental assessments or other reports prepared by an engineer or qualified consulting firm approved by the EPC, as a condition of granting a permit or allowing continued operations, and as a requirement in any order or consent agreement;
6. requiring disclosure of information and filing of reports by any owner, operator or applicant, and requiring certifications or licenses for operators;
7. addressing the transportation of solid waste. Such rules shall not be less stringent than those of the United States Department of Transportation or the United States Interstate Commerce Commission;
8. regulating borrow and storage areas for soils, and storage of chemicals or other materials;

9. developing comprehensive solid waste management rules and best management practices;
10. overseeing development of a nationwide integrated solid waste management plan with input from the public, other tribes, states, municipal and county governments and regional solid waste planning and management entities;
11. establishing administrative permit and enforcement procedures;
12. establishing standards and requirements for the remediation of groundwater, surface waters, or contaminated soils resulting from releases, spills or any other activity;
13. implementing and enforcing provisions of the Solid Waste Code and applicable regulations pursuant to Chapter 12 of the Cherokee Nation Environmental Quality Code; and
14. enforcing the provisions of applicable federal laws and regulations including, but not limited to, those related to landfills in 40 C.F.R. Part 258.

B. The EPC may establish by rule a schedule of fees to be charged for copies, applications for permits, licenses and other authorizations, inspections and other environmental services involved in the regulation of solid waste. Fees charged pursuant to this section shall be paid into the Environmental Quality Revolving Fund. The EPC in setting fees shall consider appropriate factors such as facility size and capability, type of facility and type and amount of waste accepted, stored, treated, transferred or disposed.

C. The EPC may, but is not obligated to, authorize a variance from specific requirements if the applicant demonstrates that compliance will be met by substituted technology which equals or exceeds the protection otherwise accorded and the variance will not result in a hazard to the health, environment and safety of the people of this Nation or their property. Any variance shall be upon express condition that, in the event of the failure of the substituted technology to conform to requirements, the applicant shall be required to incorporate the technology, process or procedure established under the rules.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 605.

### **Library References**

Environmental Law <KEY>342.

Indians <KEY>412, 413.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 169.

C.J.S. Indians §§ 151 to 179.

#### **§ 606. Authority to administer and implement federal laws and programs**

The EPC and Administrator are hereby designated and authorized to take all actions necessary or appropriate to administer, implement and enforce the federal Solid Waste Disposal Act (Public Law 89–272), Clean Water Act Section 404 program, Resource Conservation and Recovery Act, Surface Mining Control and Reclamation Act and other mining laws, Comprehensive Environmental Response, Compensation and Liability Act, and Superfund Amendments and Reauthorization Act, as these laws exist or may be amended.

#### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 606.

#### **Cross References**

Establishment of the Cherokee Nation Environmental Protection Commission, see 27 CNCA § 101.

#### **Code of Federal Regulations**

Criteria for municipal solid waste landfills, see 40 C.F.R. Part 258.

#### **Library References**

Environmental Law <KEY>342.

Indians <KEY>413.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 169.

C.J.S. Indians §§ 151 to 179.

#### **§ 607. Cherokee Nation Recycling Initiative**

A. The Council recognizes and declares that it is necessary for the public interest, health and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and reuse of recoverable materials can substantially reduce production and disposal costs, save tribal lands, conserve natural resources and protect the environment.

B. The Legislature declares that the goal of the Cherokee Nation Recycling Initiative is that the Cherokee Nation government, Cherokee Nation-related entities and each Cherokee Nation community should develop and operate a recycling program. Due to the importance of the paper industry to Cherokee Nation's economy, each recycling and reuse program should at a minimum include the collection of waste paper.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 607.

### **Library References**

Environmental Law <KEY>372.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 608. Permit required—Exemptions**

A. Except as otherwise specified in this section:

1. No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid waste disposal has been issued by the EPC;
2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the EPC; and
3. No person shall knowingly transport solid waste to an unpermitted site or facility.

B. A person is not prohibited from disposing of solid waste from his or her household upon his or her property provided such disposal does not otherwise create a nuisance or a hazard to the public health or environment or does not violate any other applicable laws, rules, orders or ordinances. Provided, however, disposal areas for more than fifty (50) tires, junk cars or similar wastes shall be subject to the permit requirements of this chapter.

C. The EPC shall issue a permit to be effective for the life of a given site or operation, but may require periodic renewal or modify the permit as appropriate. Each person who operates a landfill disposal site shall submit information on an annual basis at such times and in such form as the EPC shall require, sufficient to allow the EPC to know the remaining landfill life and ensure compliance with financial assurance requirements are met.

D. Information and data submitted in support of a permit application or a permit modification application shall be prepared and sealed by a professional engineer licensed to practice in Oklahoma or Arkansas unless a waiver of this requirement is obtained.

E. The EPC shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate boundaries of any city or town or within one (1) mile of a designated scenic river.

F. Disposal sites approved by the EPC to receive only solid waste shall not accept for disposal any biomedical waste or waste classified as hazardous waste.

G. No permit shall be required for a disposal site constructed pursuant to an order issued by the EPC in an effort to remediate an abandoned or inactive waste site. Such disposal site shall only receive waste from the remediation project, and shall be designed, constructed, and operated in accordance with the standards established in applicable rules, statutes, permits or orders. Such standards shall not be less stringent than those which would apply to a federally-funded remediation project pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

H. The EPC shall not issue any permit for the siting of a new solid waste disposal site in any location that is:

1. within a locally fractured or cavernous limestone or cherty limestone bedrock;
2. within five (5) miles of any water well owned by a rural water district that is used or has the potential to be used to provide water to customers of the district; or
3. within any area judged to present unacceptable risks to any water supply or any other beneficial use of surface water or groundwater, or
4. Within a one-hundred (100) year floodplain.

I. The EPC may reject a permit application for siting of a new solid waste disposal site where it determines that it create an unacceptable risk to public health, safety or welfare, natural resources or the environment. The applicant shall be entitled to a hearing and in any event shall have the burden of proof to show that such a risk would not exist.

J. The EPC may include conditions and terms in any permit to require restrictions on site location, types and amounts of wastes authorized, pretreatment and sorting, recycling, stormwater and discharge controls, retention times or other schedules, cover and revegetation, fencing, buffer zones, setbacks, fencing, reporting, recordkeeping, sampling, and any other condition or term deemed appropriate to avoid, minimize or mitigate environmental impacts or other unacceptable risks to public health, welfare and safety.

K. Where appropriate, the EPC may require both owner and operator to be listed as joint



permittees or may require separate permits for the owner(s) of the property, owner(s) of the business and/or the operator(s) of the business.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 608.

### **Library References**

Environmental Law <KEY>358.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 609. Disclosure statement upon application—Revocation, or refusal to issue, amend, modify, renew or transfer permit—Failure to disclose or stating false information—Penalty**

A. All applicants for the issuance or transfer of any solid waste permit, license, certification or operational authority shall file a disclosure statement with their applications, including if applicable the most recent annual and quarterly reports required by the Securities and Exchange Commission, information regarding legal proceedings in which the applicant has been involved, and such other information relating to the competency, reliability, or responsibility of the applicant and affiliated persons as the EPC may require.

B. The EPC is authorized to revoke or to refuse to issue, amend, modify, renew or transfer a permit for the disposal of solid waste from or to any person or an affiliated person who:

1. is not in substantial compliance with any final EPC order or final order or judgment of a court of record issued pursuant to the provisions of the Cherokee Nation Solid Waste Code or any other portion of the Cherokee Nation Environmental Code; or

2. is not in substantial compliance with any final EPC order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the storage, transfer, transportation, treatment or disposal of any solid waste; or

3. 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 state or federal environmental laws, including without limitation the rules of the EPC regarding the storage, transfer, transportation, treatment or disposal of any solid or hazardous waste.

C. The application shall be signed under oath by the applicant.

D. The EPC may suspend or revoke a permit issued pursuant to the Cherokee Nation Solid Waste

Code to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a misdemeanor and may be punished as set forth in Chapter 12 of the Cherokee Nation Environmental Code.

E. The EPC may suspend, revoke, refuse to issue, refuse to renew or refuse to transfer a solid waste or other permit for good cause at any time. Good cause shall include, but is not limited to, a determination that there is insufficient information upon which to base a decision that adequate protection will be provided for the environment or public health if a permit is issued, or available information indicates that the activity would pose an unacceptable risk of adverse impacts.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 609.

### **Library References**

Environmental Law <KEY>358.

Indians <KEY>417.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 169.

C.J.S. Indians §§ 151 to 179.

### **§ 610. Availability of administrative permit hearing**

Any interested person may request an administrative permit hearing on a proposed permit application for a new permit or for the major modification of an existing permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal including but not limited to incineration.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 610.

### **Library References**

Indians <KEY>419.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

### **§ 611. Appeal of issuance of permit—Stay of time restraints**

The filing of a proceeding appealing the issuance of a permit authorizing the construction and operation of a solid waste disposal facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.

#### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 611.

#### **Library References**

Environmental Law <KEY>358.

Indians <KEY>429, 431.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 169.

C.J.S. Indians §§ 151 to 179.

### **§ 612. Nonhazardous industrial solid waste landfills—Permit—Restrictions**

A. The EPC may issue a permit for a landfill disposal site, which is not a hazardous waste facility, which accepts nonhazardous industrial solid waste, only under the following circumstances:

1. the landfill is located outside of areas of principal groundwater resource or recharge areas as determined and mapped by the Oklahoma Geological Survey or is on a proposed site on property owned or operated by a person who also owns or operates a hazardous waste facility or solid waste facility, on or contiguous to property on which a hazardous waste facility or solid waste facility is operating pursuant to a permit and the site is designed to meet the most environmentally protective solid waste rules promulgated by the EPC and includes a leachate collection system; or
2. the landfill complies with all siting and public participation requirements as though the solid waste landfill were a hazardous waste landfill; or
3. the site is proposed and designed as a nonhazardous industrial solid waste landfill which will be owned, operated, or owned and operated by an industry or manufacturer for its exclusive noncommercial use.

B. 1. New landfills which accept nonhazardous industrial solid waste shall not be constructed nor shall such existing landfills be expanded which are located within a seismic impact zone unless the applicant demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

2. No nonhazardous industrial solid waste landfill shall be located within five (5) miles of a known epicenter of an earthquake of more than 4.0 on the Richter Scale or a number V on the modified Mercalli Scale as recorded by the Cherokee Nation Geological Survey.

C. 1. Before sending waste identified as nonhazardous industrial solid waste for disposal in a solid waste landfill, a certification that the waste is not a hazardous waste shall be submitted to the holder of the landfill permit with a copy to the Administrator. Such certification shall be made by:

a. the original generator,

b. a person who identifies and is under contract with a generator and whose activities under the contract cause the waste to be generated,

c. a party to a remediation project under an order of the EPC, state or federal agency, or

d. a person responding to an environmental emergency.

2. The EPC may require the certifier to substantiate the certification by appropriate means, when it is reasonable to believe such waste may be hazardous. Such substantiation may include Material Safety Data Sheets, an explanation of specific technical process knowledge adequate to identify that the waste is not a hazardous waste, or laboratory analysis.

D. Any generator seeking to exclude a specific nonhazardous industrial solid waste, which is also an inert waste, from the provisions of this section may petition the EPC for a regulatory exclusion. The generator shall demonstrate to the satisfaction of the EPC that the waste is inert and that it may be properly disposed.

### **History**

**Source.** LA 15-05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 612.

### **Library References**

Environmental Law <KEY>358.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

**§ 613. Site closure plan—Financial security**

A. All disposal site owners shall provide a closure plan to the EPC for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure. A site may be closed in phases according to a closure plan approved by the EPC.

1. Owners of landfills that receive household solid waste, defined as Municipal Solid Waste Landfill Facilities in the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act, and owners of nonhazardous industrial waste landfills shall provide for the maintenance and monitoring of such works for thirty (30) years.

2. Generator-owned and -operated private industrial nonhazardous monofills and landfill disposal sites may apply to the EPC for a variance from the thirty (30) year postclosure monitoring or other closure requirements, provided that no variance may allow for requirements that are less stringent than those under applicable federal law.

3. Disposal sites other than land disposal sites shall have a closure plan which would accomplish the removal and proper disposal of any remaining waste and the elimination of potential environmental health hazards.

B. Financial assurance for costs of closure and any postclosure shall be provided in accordance with 40 C.F.R. Part 258 and any applicable EPC rules.

C. The Nation shall be the sole beneficiary of any such assurance and shall have a security interest therein.

D. When financial assurance is required, it shall remain in effect until closure and any postclosure is completed.

**History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 613.

**Code of Federal Regulations**

Criteria for municipal solid waste landfills, see 40 C.F.R. Part 258.

**Library References**

Environmental Law <KEY>363, 365.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

#### **§ 614. Vegetation plan**

The owner or operator of any solid waste landfill, over fifty feet (50') in height above natural surface contours that accepts more than two hundred (200) tons per day of solid waste, or any disposal site which disturbs more than one (1) acre of land, must submit a vegetation plan to the EPC for approval. The vegetation plan shall address establishment and maintenance of appropriate vegetative cover for the purposes of erosion and dust control and aesthetic enhancement. The vegetation plan shall be implemented in waste disposal areas that have been undisturbed for ninety (90) days. The EPC shall promulgate rules relative to the contents of the vegetation plan.

#### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 614.

#### **Library References**

Environmental Law <KEY>361.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

#### **§ 615. Scales—Fees, exemptions—Expenditure of funds—Recycling project contracts—Annual report**

A. 1. Owners or operators of solid waste disposal sites shall install and maintain scales or volumetric measuring equipment. Such scales or equipment shall be installed on or within five (5) miles of the landfill disposal site and shall be tested and certified.

2. The owner or operator shall upon receipt weigh or record the volume of all waste received and record the weight or volume in writing. These records shall be maintained at the site and must be provided to the EPC upon request.

3. The owner or operator of a solid waste disposal site shall collect any additional fees that may be established by the EPC pursuant to this Code as trustee for the Nation and shall prepare and file with the Administrator of the EPC quarterly returns indicating:

- a. the total tonnage of solid wastes received for disposal at the gate of the site, and
- b. the total amount of the fees collected.

4. Not later than thirty (30) days after the end of the quarter to which such a return applies, the owner or operator shall mail to the Administrator of the EPC the return for that quarter together with the fees collected during that quarter as indicated on the return.

5. If the owner or operator misrepresents, or fails to properly measure or record the amount of waste received or fails to remit fees within sixty (60) days after the last day of the quarter during which they were collected, the disposal site's permit shall be summarily suspended by order and the EPC shall initiate the process of revoking the permit and may require closure of the landfill.

C. 1. The Administrator of the EPC shall expend funds collected pursuant to the provisions of this section solely for the administration and enforcement of the provisions of the Cherokee Nation Environmental Code, the development of solid waste technical assistance programs, environmental education programs and educational curricula, development of a nation-wide solid waste plan, recycling and litter prevention programs, and other environmental improvements.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 615.

### **Library References**

Environmental Law <KEY>361.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 616. Development of plan**

To the extent feasible, the EPC and Environmental Programs should work with Cherokee Nation citizens and the Tribal Council to ensure that each district has a plan that will provide a solid waste management system to adequately handle solid wastes generated or existing within the boundaries of such district.

### **History**

**Source.** LA 15–05, eff. April 20, 2005.

**Renumbered** from 63 CNCA § 616.

### **Library References**

Environmental Law <KEY>355.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

## **STORAGE TANK ACCOUNTABILITY AND REGULATORY SYSTEM (STARS)**

### **§ 661. Short title**

Sections 661 through 675 of this Title shall be known and may be cited as the Storage Tank Accountability and Regulatory System or STARS.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 661.

### **Library References**

Environmental Law <KEY>416.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 662. Legislative intent—Public policy**

The Council finds that the release of hazardous substances and petroleum from storage tanks into the surface water, groundwater, air and subsurface soils of this Nation poses a potential threat to the natural resources, health, safety and welfare of the residents of this Nation and to the economy of this Nation.

Therefore the Council declares it is the public policy of this Nation to protect the public health, safety, welfare, the economy and the environment from the potential harmful effects of storage tanks used to store hazardous substances and petroleum. In order to implement this policy, it is the intent of the Council to establish a program for the regulation of storage tank systems.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 662.

### **Library References**



Environmental Law <KEY>416, 417.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 663. Definitions**

As used in STARS:

1. **"Abandoned system"** means a storage tank system which:
  - a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service,
  - b. has been out of service for one (1) year or more prior to April 21, 1989, or
  - c. has been rendered permanently unfit for use as determined by the Commission.
2. **"Administrator"** means the Administrator of the Cherokee Nation Environmental Protection Commission.
3. **"Commission"** means the Cherokee Nation Environmental Protection Commission.
4. **"Corrective action"** means action taken to monitor, maintain, minimize, eliminate or clean up a release from a storage tank system.
5. **"Corrective action plan"** means the plan submitted to the regulatory program of the Commission detailing the method and manner of corrective action to be taken for a release.
6. **"Council"** means the Cherokee Nation Tribal Council.
7. **"Environment"** means any chemical, physical or biological component of the earth, including but not limited to water, water vapor, air, land (surface or subsurface), fish, birds and other wildlife, vegetation, and all other natural resources.
8. **"Facility"** means any location or part thereof containing one (1) or more storage tanks or systems.
9. **"Hazardous substance"** shall include:
  - a. any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, but not including:
    - i. any substance regulated as a hazardous waste under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C. § 6903, or

ii. any substance regulated as a hazardous waste under the Cherokee Nation Environmental Code;

b. a mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimis quantity;

c. substances identified as such in 40 C.F.R. Parts 117 and 302; and

d. any other substances so designated by the Commission.

10. **"Operator"** means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release or a violation of the STARS or of a rule promulgated hereunder.

11. **"Owner"** means:

a. in the case of a storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, or

b. in the case of a storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

The term **"owner"** does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank system.

12. **"Permit"** means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system.

13. **"Person"** means any tribe, tribal entity, individual, trust, firm, joint stock company or limited liability company, federal agency, including a government partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government or any other legal entity.

14. **"Petroleum"** means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances; provided, the amount of the hazardous substances is of a de minimis quantity.

15. **"Pipeline facilities"** means new and existing pipe rights-of-way and any equipment, facilities

or buildings regulated under any applicable federal, tribal or state law, including but not limited to:

- a. the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.App. § 1671 et seq. (repealed; see 49 U.S.C. § 60101 et seq.),
- b. the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. § 2001 et seq. (repealed; see 49 U.S.C. § 60101 et seq.),
- c. Oklahoma Hazardous Liquid Transportation System Safety Act, 52 O.S. § 47.1 et seq.,
- d. Cherokee Nation Environmental Code, 27 CNCA § 100 et seq., or
- e. intrastate pipeline facilities.

16. **"Regulated substances"** means hazardous substances, petroleum and any substance otherwise designated by the Commission or this act;

17. **"Release"** means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from a storage tank system into the environment of the Nation. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner.

18. **"Storage tank system"** means any one or combination of tanks, including underground or aboveground piping and equipment connected thereto, that is used to contain an accumulation of regulated substances, and shall include such tanks regardless if located aboveground or underground.

19. **"Tank"** means a stationary vessel designed to contain an accumulation of regulated substances, which is constructed of primarily non-earthen materials that provide structural support.

20. **"Transporter"** means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 663.

### **Oklahoma Statutes**

Hazardous Liquid Transportation System Safety Act, see 52 O.S. § 47.1.

### **Code of Federal Regulations**

Designation, reportable quantities, and notification, see 40 C.F.R. Part 302.

Determination of reportable quantities for hazardous substances, see 40 C.F.R. Part 117.

### **United States Code**

Comprehensive environmental response, compensation and liability, definitions, see 42 U.S.C. § 9601.

Pipelines, definitions, see 49 U.S.C. § 60101.

Solid waste disposal, definitions, see 42 U.S.C. § 6903.

### **§ 664. Exemptions and case-by-case determinations**

A. The provisions of STARS do not apply to:

1. septic tank systems otherwise approved by the Commission or exempted under regulations promulgated by the Commission;
2. surface impoundments, pits and lagoons that are otherwise covered in a permit issued by the Commission and/or are subject to other provisions of the Cherokee Nation Environmental Code;
3. stormwater and wastewater collection systems;
4. row-through process tank systems;
5. liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
6. hydraulic lift tank systems;
7. storage tank systems with a capacity of less than one hundred ten (110) gallons;
8. storage tank systems with a de minimis concentration of regulated substances including but not limited to swimming pools and coffins;
9. storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use;
10. storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;
11. Storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; and

12. storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C. § 6921 et seq., or substances regulated as hazardous wastes under Cherokee Nation hazardous waste laws.

B. The Commission may require any facility, structure or activity to comply with STARS, rules promulgated hereunder, Commission guidelines, notification requirements, restrictions, appropriate Commission orders, and may require any facility, structure, activity or person to obtain a permit prior to constructing, installing or operating any facility, whenever it determines that it is necessary or appropriate to protect the environment or public health, safety or welfare.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 664.

### **United States Code**

Identification and listing of hazardous waste, see 42 U.S.C. § 6921 et seq.

### **Library References**

Environmental Law <KEY>416, 417.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 665. Environmental Programs designated to administer certain federal programs**

Cherokee Nation Environmental Programs and the Commission are hereby designated and empowered to administer subtitle I of Title VI of the Solid Waste Disposal Act and Section 205 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 6991 et seq. The Commission's jurisdiction shall include, but is not limited to:

1. underground and aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below;
2. point source and nonpoint source discharges of pollutants to waters of the Nation from storage tank facilities and related activities;
3. site remediation and the off-site disposal of contaminated soil, media, or debris; and

4. underground and aboveground storage tanks containing hazardous substances and other substances or facilities not otherwise listed.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 665.

### **Code of Federal Regulations**

Technical standards and corrective action requirements for owners and operators of underground storage tanks (UST), see 40 C.F.R. Part 280.

### **United States Code**

Solid waste disposal, definitions and exemptions, see 42 U.S.C. § 6991 et seq.

### **Library References**

Environmental Law <KEY>342, 402.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 169 to 170.

### **§ 666. Powers and duties**

A. In addition to other powers and duties prescribed by law, the Commission and its duly authorized representatives shall have the power and duty to:

1. issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems and related activities pursuant to the provisions of STARS and rules promulgated pursuant thereto;
2. promulgate and enforce rules to implement the provisions of STARS, including but not limited to rules setting permit fees;
3. establish minimum standards and schedules for storage tank systems;
4. by order, permit, rule or other lawful process require any owner or operator of a storage tank system within this Nation to:
  - a. submit such reports and information concerning the storage tank system as may be determined necessary by the Administrator pursuant to the provisions of STARS or rules promulgated thereto,

b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,

c. make timely reports to the Administrator of pollution or releases,

d. temporarily or permanently cease operation of a storage tank system, modify and immediately remove or control any regulated substance that is found to be causing pollution when such cessation, removal or control is determined to be necessary by the Commission,

e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such standard exists, such standard as the Department of Environmental Quality shall determine,

f. take full corrective action if such owner or operator is found to be responsible for the release, and

g. take appropriate action to temporarily relocate residents affected by the release;

5. establish and enforce administrative penalties for violations pursuant to the provisions of STARS and the Cherokee Nation Environmental Code, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment, a facility operating without a proper permit, or a facility with operating tanks for which permit fees have not been paid;

6. institute and maintain or intervene in any action or proceeding where deemed necessary by the Commission pursuant to the provisions of STARS to protect the health, safety and welfare of any resident of this Nation or the environment.

B. The Administrator and Environmental Programs shall have the following powers and authority:

1. register storage tank systems, establish a database, accept payment of fees and hire such personnel as are necessary for implementing this act to the extent funding shall allow;

2. enter at any reasonable time upon any public or private property for the purpose of inspecting and investigating a storage tank system and taking such samples as may be necessary to determine compliance with the provisions of STARS, and rules promulgated thereto;

3. issue informal letters requesting compliance, issue notices of violation, refer matters to the Commission when formal enforcement action may be appropriate;

4. exercise any authority of the Commission when such authority has been delegated to them by the Commission;

5. draft and propose rules, schedules, forms, permits and other documents for the Commission;

6. request issuance of an administrative warrant or search warrant as may be necessary from the District Court where such public or private property is located to allow entry, inspection, sampling, or copying;
7. have access to and copy any records required to be maintained pursuant to the provisions of STARS or rules promulgated thereunder,
8. inspect any equipment, practice or method, which is required by the provisions of STARS or rules promulgated thereto;
9. have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;
10. employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of STARS and rules promulgated thereto;
11. report to the Attorney General of Cherokee Nation, U.S. Department of Justice, or any other appropriate law enforcement entity with jurisdiction, any act committed by an owner, operator or employee of a facility which may constitute a violation of the provisions of STARS or rules promulgated thereto; and
12. operate the Storage Tank Program, in coordination with the Commission, in lieu of the federal government upon approval by the Environmental Protection Agency.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 666.

### **Library References**

Environmental Law <KEY>416, 417.

Indians <KEY>423.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 667. Registration, fees and permit applications**

A. All persons who already own, operate or use aboveground or underground storage tanks on lands under the jurisdiction of Cherokee Nation on the effective date of this act shall register such



tanks with the Administrator no later than August 1, 2005. If registered before August 1, 2005, and otherwise in compliance with applicable requirements, such existing tanks are not required to have an individual permit issued under STARS until January 1, 2007 unless the Commission otherwise determines a permit is appropriate.

B. All persons wishing to install, construct, operate or use a storage tank after August 1, 2005, shall first submit a permit application and any required permit fees to the Administrator prior to any installation, construction, operation or use.

C. The Commission may establish a schedule of fees for issuance of any permit, registration or authorization required pursuant to the provisions of STARS or rules promulgated thereunder. The fees shall be in an amount to cover the costs of the Commission in administering STARS.

D. The Administrator will notify persons submitting permit applications in a timely manner whether additional information, fees, engineering plans, inspections, sampling and/or laboratory analyses will be required.

E. All permit fees, penalties and other monies collected under this Code shall be deposited into the Environmental Quality Revolving Fund established under 27 CNCA § 209 and may only be used for environmental programs and protection of natural resources.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 667.

### **Library References**

Environmental Law <KEY>416, 417.

Indians <KEY>423.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 668. Operation without permit prohibited—Application form—Denial, refusal to issue, suspension or revocation—Financial responsibility coverage**

A. Except as otherwise provided by STARS, no storage tank system or facility shall be installed, used or operated without first obtaining a permit from the Commission. All businesses or persons proposing to own, install, use, locate or operate a storage tank on lands owned by the Nation, held in trust by the United States for the Nation, or otherwise in Indian Country subject to the Nation's

jurisdiction, shall comply with the permit requirements and other requirements of STARS and the Cherokee Nation Environmental Code.

A storage tank system is not required to be permitted if the tank system:

1. does not contain or has not contained a regulated substance; or
2. has been permanently closed or has not been in operation since January 1, 1974.

B. No person shall deposit a regulated substance into a storage tank system unless the system is operating pursuant to a permit issued by the Commission.

C. Any person who sells a storage tank system shall notify the owner or operator, or both, of the tank of the permit requirements of STARS and the Cherokee Nation Environmental Code.

D. The application form for a permit shall be provided by and filed with the Administrator. In addition to other information requested by the Commission, the application shall include the type of financial responsibility coverage utilized to comply with the requirements of STARS and by rule of the Commission and the type of leak detection method employed.

E. 1. Permits shall be issued by the Commission for a period not to exceed three (3) years, but may be issued for a shorter duration.

2. A permit issued pursuant to the provisions of STARS may only be transferred with the prior approval of the Commission.

3. Any permittee or applicant for permit subject to the provisions of the STARS shall be deemed to have given consent to any duly authorized employee or agent of the Commission to access, enter, inspect or monitor the tank system or facility in accordance with the provisions of STARS. Refusal to allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the Commission or a duly authorized representative may make application for and obtain an administrative warrant or a search warrant from the District Court where the facility is located to allow such entry, inspection, sampling or copying.

4. The owner or operator of a storage tank system shall display the permit in a location or manner in which the permit can easily be visible to any person depositing a regulated substance into a storage tank even after normal business hours.

F. Any permit or other fees collected pursuant to STARS shall be deposited in the Cherokee Nation Environmental Quality Revolving Fund and may only be used for environmental programs and protection of natural resources.

G. The Commission may deny approval of a permit application, or refuse to reissue, suspend or revoke a permit issued pursuant to STARS if the Commission finds, after notice and a hearing, that the applicant or permittee has:

1. fraudulently or deceptively obtained or attempted to obtain a permit;
2. failed to comply with any provision or requirement of STARS, the Cherokee Nation Environmental Code and rules, or any order of the Commission;
3. not maintained in effect the financial responsibility requirements established by this section and by rules of the Commission; or
4. the Commission otherwise finds such action appropriate in fulfilling its duties to protect the public, natural resources and environment.

H. Any person owning or operating a storage tank system containing a regulated substance who is not otherwise exempted by law or rule of the Commission, shall obtain and have in effect financial responsibility coverage for taking corrective action and for compensating third parties for physical injury and property damage caused by releases arising from operating storage tank systems. Financial assurance shall be sufficient to restore property to its previous condition or comparable condition. Proof of financial assurance shall be a prerequisite to obtaining a permit.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 668.

### **Library References**

Environmental Law <KEY>416, 417.

Indians <KEY>417.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 669. Rules governing storage tank systems**

A. The Commission shall promulgate rules, guidelines and schedules of fees governing storage tank systems. Until such time as superceded, the following minimum requirements and provisions apply:

1. standards and requirements of 40 C.F.R. Part 280;
2. release detection methods or equipment adequate to identify releases from storage tank systems,

or both detection methods and equipment shall be installed and maintained;

3. written procedures to follow when release detection methods or equipment or both such methods and equipment records indicate any loss or gain which is not explainable by spillage, temperature variations or other known causes, shall be prepared and maintained;

4. in the event of any release, owners and operators of storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or another reasonable time period specified by the Cherokee Nation Environmental Protection Commission, as required by STARS or regulations promulgated thereunder;

5. records documenting actions taken in accordance with paragraphs 1 through 3 of this subsection shall be prepared and maintained;

6. notice shall be promptly given to landowners whose property has been or may be affected by a release, and such landowner shall be afforded a meaningful opportunity to have input into any activities impacting such landowners' property;

7. adjacent property owner(s) whose property has been contaminated by a release may remediate his or her own property under the same requirements as the tank owner or operator responsible for remediating the release, if the release is not otherwise promptly remediated, and the owner or operator shall reimburse such adjacent property owner(s) unless otherwise ordered by the Commission or a court with jurisdiction.

B. Minimum schedules and standards may be established and imposed by the Administrator and the Commission in the form of written guidelines for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment and closure of storage tank systems, as may be necessary to protect human health, safety and welfare and the environment. Said written schedules and standards shall be enforceable as rules until otherwise modified, superceded or revoked by the Commission or a court of competent jurisdiction. Copies of all written guidelines must be provided or made available to the public upon request.

C. In promulgating rules establishing schedules and standards pursuant to this section, the Commission may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the Commission may consider such factors as:

1. location of the tanks;

2. soil and climate conditions;

3. uses of the tanks;

4. history of maintenance;

5. age of the tanks;
6. national industry codes;
7. hydrogeology;
8. water table;
9. size of the tanks;
10. quantity of regulated substances periodically deposited in or dispensed from the tank;
11. the compatibility of the regulated substance and the materials of which the tank is fabricated;  
and
12. any other factors as deemed appropriate or necessary by the Commission.

D. The Commission may promulgate rules establishing different requirements for different areas or regions of the Nation if the Commission finds that more stringent rules are necessary:

1. to protect specific waters or other resources of the Nation including but not limited to those waters of the Nation designated for additional protection in Cherokee Nation's water quality standards; or
2. because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

E. In promulgating rules pursuant to the provisions of STARS, the Commission shall consider all relevant federal standards and regulations on storage tank systems and shall not promulgate any rule less stringent than federal requirements.

### **History**

**Source.** LA 19-05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 669.

### **Code of Federal Regulations**

Release investigation and confirmation steps, see 40 C.F.R. § 280.52.

### **Library References**

Environmental Law <KEY>416, 417.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 670. Releases from storage tank systems—Reporting**

A. Until the Environmental Protection Commission may adopt rules that differ, the following minimum requirements apply to releases from storage tank systems:

1. Owners and operators of underground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission. Underground storage systems must comply with substantive and procedural requirements of 40 C.F.R. Part 280 including, but not limited to, the procedures in 40 C.F.R. § 280.52;

2. Owners and operators of aboveground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission.

B. In the event of a discharge of a "pollutant" to "waters of the Nation" or in the event that "pollution" may occur, as those terms are defined in 27 CNCA § 201, a release must be immediately reported to the Administrator regardless of its source. The initial report may be by telephone or in person, but shall be followed with a written report within forty-eight (48) hours.

C Nothing in STARS shall be deemed to supercede reporting requirements elsewhere in the Cherokee Nation Environmental Code or rules promulgated thereunder.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 670.

### **Library References**

Environmental Law <KEY>416, 417, 439.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 671. Release from storage tank system—Corrective action**

A. No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from a storage tank system to occur or continue to occur without

reporting the release to the Administrator within twenty-four (24) hours upon discovering such a release.

B. The owner or operator of a storage tank system shall immediately take all corrective actions necessary to prevent or halt a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and Nation requirements. Any corrective action taken by a tank owner or operator or authorized by the Commission shall be in compliance with all applicable tribal, state and federal statutes and rules for the protection of air quality and water quality and for the transportation and disposal of any waste.

C. If there is a release from a storage tank system, the Commission may:

1. after notice and hearing, order the owner or operator to take reasonable and necessary corrective actions;

2. without notice and hearing, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the District Court.

D. 1. The Commission or the Nation may take corrective action if:

- a. an owner or operator of the storage tank system cannot be identified,

- b. an identified owner or operator cannot or will not comply with an order issued by the Commission,

- c. an administrative or judicial proceeding is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or

- d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take corrective action and notify the owners of real property as specified by 27 CNCA § 673.

2. The owner or operator is liable for the cost of corrective action taken by the Commission or Nation, including the cost of investigating the release and administrative and legal expenses, if:

- a. the owner or operator has failed to take a corrective action ordered by the Commission or

otherwise required, or

b. the Commission has taken corrective action in an emergency.

3. Reasonable and necessary expenses incurred by the Commission or Nation in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action. A certification of expenses by the Nation or Commission shall be prima facie evidence that the expenses are reasonable and necessary. The Commission or Nation shall be entitled to apply for and receive payment from the Indemnity Fund or any other program on behalf of an eligible person for an eligible release upon any site upon which the Commission or Nation has taken corrective action. Such payments shall be deemed to be reimbursement of the eligible person. Expenses that are recovered under this subsection shall be deposited in the Environmental Quality Revolving Fund.

E. In addition to corrective action, persons liable for the release shall be responsible for any damage caused to natural resources, costs associated with alternative drinking water supplies if needed, emergency response, and restoration of the area to its previous state to the extent possible.

F. Any order issued by the Commission pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement.

This subsection does not:

1. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;
2. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 671.

### **Library References**

Environmental Law <KEY>439, 445(1), 446.



Indians <KEY>416, 419.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 672. Emergency response plans, coordination and incidental powers**

The Commission, Administrator and their authorized representatives shall have the authority to:

1. require the preparation and submission of an emergency response plan to include but not be limited to spills or releases of regulated substances and any other waste or pollutant, require certain plans be implemented, and review/approve/disapprove emergency response plans;
2. create and implement an internal coordinated management system between all Cherokee Nation programs, corporations and business entities; and
3. exercise any and all incidental powers that may be necessary and proper to administer STARS and other programs necessary to protect the Nation's resources, public health and safety, and the environment.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 672.

### **Library References**

Environmental Law <KEY>416, 417.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 673. Inspections and investigations—Violations—Notice—Failure to take corrective action—Hearings—Orders—Access to real property**

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that a storage tank system is in violation of STARS or of any rule promulgated thereunder or of any order of the Commission, the Commission shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that corrective action be immediately initiated.

B. 1. If corrective action is not taken in response to the notice issued pursuant to subsection (A) of this section, the Commission shall initiate proceedings and hold a hearing to determine if:

- a. the alleged violator should be found in violation of Commission rules, permit conditions or orders, or any applicable laws or regulations,
- b. any permit issued to the alleged violator should be modified, suspended, revoked or not reissued,
- c. an application for a permit should be denied or subject to special conditions,
- d. what actions should be taken, who should take such actions, and a schedule for such actions, in order to avoid, alleviate or remedy any risk to public health, safety or welfare or any damage to the environment or the Nation's resources, or
- e. whether any other appropriate relief should be granted.

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the District Court within sixty (60) days.

C. The Commission shall provide notice and an opportunity for hearing to:

- 1. the surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the storage tank system; and
- 2. the owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.

The notice shall advise such real property owner or owners that the corrective action is to be taken and that the owner's cooperation will be required for that action to be taken. The Commission shall give the owner or owners of such real property, as the case might be, an opportunity for hearing and to present evidence on the matter.

D. The Commission is vested with the adjudicative authority to enter orders allowing a tank owner or operator or staff of Cherokee Nation access to property not owned by such tank owner or operator when necessary to investigate, remediate or perform corrective action as the result of a release. An order granting access to a third non-governmental party shall only be entered upon a determination that access cannot be obtained by any other means and that the tank owner or operator seeking access has made a good faith effort to obtain access. The Commission shall determine the reasonable compensation, if any, to be paid to the owner of the property which is to be accessed for the use of the property to investigate, remediate or perform corrective action as the result of a release. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the owners' use of the property and to protect the rights of the property owner.

## **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 673.

## **Library References**

Environmental Law <KEY>416, 417.

Indians <KEY>416, 419, 426.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

## **§ 674. Penalties**

A. Facilities, activities and persons alleged to be in violation of any provisions of STARS or any rule promulgated or order issued pursuant to the provisions of STARS shall be subject to the general enforcement provisions of the Cherokee Nation Environmental Code. Provided, however, nothing herein shall be construed as limiting administrative, civil or criminal remedies that may be sought by the Commission, the Nation, or any interested person against persons responsible for violations or damage to natural resources or property.

B. The Commission or any court of competent jurisdiction may order such equitable relief necessary or appropriate to redress or restrain a violation by any person of a provision of STARS or any rule promulgated or order issued pursuant thereto, including but not limited to:

1. enjoining further releases;
2. ordering facilities temporarily or permanently closed or activities halted;
3. ordering the design, construction, installation or operation of alternate facilities;
4. ordering the removal of facilities, contaminated soils and the restoration of the environment;
5. fixing and ordering compensation for any public or private property destroyed, damaged or injured;
6. except as otherwise provided by law, assessing and awarding damages in an amount necessary to restore any property or resources to its previous condition and punitive damages; and
7. ordering reimbursement to the Nation or any other governmental entity from any person whose

acts caused governmental expenditures if not already reimbursed.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 674.

### **Library References**

Environmental Law <KEY>416, 417.

Indians <KEY>423.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 675. Records, reports and information—Public inspection—Confidentiality—Disclosure to federal or tribal representatives**

A. Any records, reports or information obtained pursuant to STARS shall be available to the public except as provided in subsection (B) of this section.

B. Upon a showing satisfactory to the Commission by any person that records, reports or information, or a particular part thereof is made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Commission shall consider such record, report or information or particular portion thereof, confidential.

C. Nothing in this section shall be construed to prevent disclosures of such report, record or information to federal or tribal representatives as necessary for purposes of administration of any federal or tribal laws or when relevant to proceedings pursuant to STARS.

D. Information concerning groundwater quality and the presence or concentration of substances in soils or groundwater, or any other condition potentially posing a risk to public health or safety, shall not be considered confidential by the Commission.

### **History**

**Source.** LA 19–05, eff. May 19, 2005.

**Renumbered** from 63 CNCA § 675.

**CHAPTER 7**  
**TOXIC AND HAZARDOUS SUBSTANCE CONTROL**  
**GENERAL PROVISIONS**

**§ 701. Findings, policy and intent**

A. Findings. Cherokee Nation finds that:

1. Human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;
2. Among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution, use, or disposal may present an unreasonable risk of injury to health or the environment.

B. Policy. It is the policy of Cherokee Nation that:

1. Data developed under federal programs with respect to the effect of chemical substances and mixtures on health and the environment should be used to protect human beings within Cherokee Nation;
2. Adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and
3. Authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this section to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment within Cherokee Nation.

C. Intent of Cherokee Nation. It is the intent of Cherokee Nation that the CN EPC shall carry out this chapter in a reasonable and prudent manner, and that the CN EPC shall consider the environmental, economic, and social impact on the Nation of any action the CN EPC takes or proposes to take under this chapter.

**History**

**Source.** LA 1-93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 701.

**Library References**

Environmental Law <KEY>413.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

## **§ 702. Definitions**

As used in this chapter:

1. **"Chemical substance"** means any organic or inorganic substance of a particular molecular identity, including:

a. any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature; and

b. any element or uncombined radical.

2. **"Commerce"** means trade, traffic, transportation, or other commerce:

a. between a place within the boundaries of the Cherokee Nation and any place outside of Cherokee Nation or

b. which affects trade, traffic; transportation, or commerce within the Cherokee Nation.

3. **"Distribute"** and **"distribution"** when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article.

4. **"Environment"** includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

5. **"Health and safety study"** means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.

6. **"Instrumentalities"** means any departments or organizations of the Cherokee Nation offering or providing services to citizens of the Cherokee Nation.

7. **"Manufacture"** means to import into the territory of Cherokee Nation, produce or manufacture.

8. **"Mixture"** means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical

reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

9. **"New chemical substance"** means any chemical substance which is not included in the chemical substance list compiled and published in federal guidelines and programs.

10. **"Process"** means the preparation of a chemical substance or mixture, after its manufacture, for distribution:

a. in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

b. as part of an article containing the chemical substance or mixture.

11. **"Processor"** means any person who processes a chemical substance or mixture.

12. **"Standards for the development of test data"** means those standards used for testing under federal EPA guidelines and programs.

### **History**

**Source.** LA 1-93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 702.

### **§ 703. Testing of chemical substances and mixtures**

Testing requirements. The CN EPC may utilize the lists and results of the tests required of the federal EPA under 15 U.S.C. § 2603 and 15 U.S.C. § 2604 for purposes of controlling toxic and hazardous substances within Cherokee Nation.

### **History**

**Source.** LA 1-93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 703.

### **United States Code**

Manufacturing and processing notices, see 15 U.S.C. § 2604.

Testing of chemical substances and mixtures, see 15 U.S.C. § 2603.

### **Library References**

Environmental Law <KEY>420.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

#### **§ 704. Regulation of hazardous chemical substances and mixtures**

A. Scope of regulation. If the CN EPC finds that there is a reasonable basis to conclude that the manufacture, processing, distribution, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the CN EPC shall by the rules and regulations adopted by 27 CNCA § 702 apply one (1) or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

1. A requirement:

a. prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or

b. limiting the amount of such substance or mixture which may be manufactured, processed, or distributed within the jurisdiction of Cherokee Nation;

2. A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture within the jurisdiction of Cherokee Nation;

3. A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of such substance or mixture within the jurisdiction of Cherokee Nation.

The CN EPC regulations promulgated under this section are to supplement federal law, and, as such, federal laws and regulations concerning toxic and hazardous substances will serve as a minimum standard for Cherokee Nation.

B. Promulgation of subsection (A) rules.

1. In promulgating any rule or regulations pursuant to 27 CNCA § 702 under subsection (A) of this section with respect to a chemical substance or mixture, the CN EPC shall consider and publish a statement with respect to:

a. the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture;

b. the effects of such substance or mixture on the environment and the magnitude of the exposure



of the environment to such substance or mixture;

c. the benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

2. When prescribing a rule under subsection (A) the CN EPC shall in compliance with the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.:

a. publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule;

b. allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available;

c. provide an opportunity for an informal hearing in accordance with paragraph 3 of this subsection;

d. promulgate, if appropriate, a final rule based on the matter in the rule-making record; and

e. make and publish with the rule the finding described in subsection (A) of this section.

3. Informal hearings required by subparagraph c of paragraph 2 may be conducted by the CN EPC in accordance with the following requirements:

a. Subject to subparagraph b of this paragraph, an interested person is entitled:

i. to present such person's position orally or by documentary submissions (or both), and

ii. if the CN EPC determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under clause ii of subparagraph b) such cross-examination of persons as the Administrator determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to such issues.

b. The CN EPC may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include:

i. the imposition of reasonable time limits on each interested person's oral presentations, and

ii. requirements that any cross-examination to which a person may be entitled under subparagraph a of this paragraph be conducted by the CN EPC on behalf of that person in such manner as the CN EPC determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to disputed issues of material fact.

c. A tape recording shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public upon payment of cost of such transcription cost.

C. Effective date.

1. The CN EPC shall specify in any rule under subsection (A) of this section the date on which it shall take effect, which date shall be as soon as feasible.

2. The CN EPC may declare a proposed rule under subsection (A) of this section to be effective upon its publication in the *Cherokee Phoenix* and until the effective date of final action taken, respecting such rule if the CN EPC determines that:

a. the manufacture, processing, distribution, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

b. making such proposed rule so effective is necessary to protect the public interest.

D. Polychlorinated biphenyls (PCB's). Disposal of PCB's within Cherokee Nation shall meet at a minimum the federal requirements in 15 U.S.C. § 2605(e) and such additional requirements as may be established by the CN EPC.

### **History**

**Source.** LA 1-93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 704.

### **United States Code**

Regulation of hazardous chemical substances and mixtures, see 15 U.S.C. § 2605.

### **Library References**

Environmental Law <KEY>413.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

**§ 705. Imminent hazards**

A. Actions authorized and required. The CN EPC may commence a civil action in Cherokee Nation District Court or the appropriate district court of the United States:

1. for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture;
2. for relief (as authorized by subsection (B) of this section) against any person who manufactures, processes, distributes, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture; or
3. for both such seizure and relief.

B. Relief authorized.

1. The Cherokee Nation District Court in which an action under subsection (A) of this section is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.
2. In the case of an action under subsection (A) of this section against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings for forfeiture of contraband as provided by the federal drug enforcement policies.

C. Venue and consolidation. An action under subsection (A) of this section may be brought in Cherokee Nation District Court or in any United States district court within the jurisdiction of which the substance, mixture, or article is found and federal law allows.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 705.

### **Library References**

Environmental Law <KEY>413.

Indians <KEY>501, 507, 533.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

## **§ 706. Inspections and subpoenas**

A. In general. For purposes of administering this chapter, the CN EPC, and any duly designated representative of the CN EPC, may inspect any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution and any conveyance being used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce within Cherokee Nation. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

### **B. Scope.**

1. Except as provided in paragraph 2, an inspection conducted under subsection (A) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances or mixtures within such premises or conveyance have been complied with.

2. No inspection under subsection (A) of this section shall extend to:

- a. financial data;
- b. sales data (other than shipment data);
- c. pricing data;
- d. personnel data; or
- e. research data (other than data required by this chapter or under a rule promulgated thereunder), unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (A) of this section for inspection.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 706.

### **Library References**

Environmental Law <KEY>413.

Indians <KEY>413.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 707. Prohibited acts**

It shall be unlawful for any person to:

1. fail or refuse to comply with any rule promulgated or order issued under this chapter;
2. use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in violation of Cherokee Nation or federal laws.
3. fail or refuse to:
  - a. establish or maintain records,
  - b. submit reports, notices, or other information, or
  - c. permit access to or copying of records, as required by this chapter or a rule thereunder; or
4. fail or refuse to permit entry or inspection as required by 27 CNCA § 706.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 707.

### **Library References**

Environmental Law <KEY>747.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 160.

### **§ 708. Penalties**

Civil.

1. Any person who violates any provision of 27 CNCA § 707 shall be liable to Cherokee Nation for a civil penalty in an amount not to exceed Five Thousand Dollars (\$5,000.00) for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of 27 CNCA § 707.

2. a. A civil penalty for a violation of 27 CNCA § 714 shall be assessed by the CN EPC by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with the Cherokee Administrative Procedure Act, 1 CNCA § 101 et seq. Before issuing such an order, the CN EPC shall give written notice to the person to be assessed a civil penalty under such order of the CN EPC proposal to issue such order and provide such person an opportunity to request, within fifteen (15) days of the date the notice is received by such person, such a hearing on the order.

b. In determining the amount of a civil penalty, the CN EPC shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

3. Any person who requested in accordance with subparagraph a of paragraph 2 a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the District Court of Cherokee Nation. Such a petition may only be filed within the thirty- (30) day period beginning on the date the order making such assessment was issued.

### **History**

**Source.** LA 1-93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 708.

### **Library References**

Environmental Law <KEY>747.

Indians <KEY>423.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 160.

C.J.S. Indians §§ 151 to 179.

### **§ 709. Specific enforcement and seizure**

A. Specific enforcement. The District Court of Cherokee Nation shall have jurisdiction over civil

actions to:

1. restrain any violation of 27 CNCA § 707;
2. restrain any person from taking any action prohibited by the toxic and hazardous waste sections of this chapter or rules and regulations set forth under this chapter;
3. compel the taking of any action required by or under this chapter:
  - a. to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture,
  - b. to give public notice of such risk of injury, and
  - c. to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.

B. Seizure. Any chemical substance or mixture which was manufactured, processed, or distributed in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be deemed contraband and shall be liable to be proceeded against, for the seizure and condemnation of such substance, mixture, or article, in the District Court of Cherokee Nation or in any district court of the United States within the jurisdiction of which such substance, mixture, or article is found. Such proceedings of the District Court of Cherokee Nation shall conform as nearly as possible to proceedings in forfeiture of controlled dangerous substances deemed contraband pursuant to 21 CNCA § 2101 et seq.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 709.

### **Library References**

Environmental Law <KEY>413.

Indians <KEY>501, 533.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 710. Judicial review**

The review process shall be through the courts of Cherokee Nation.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 710.

### **Library References**

Indians <KEY>430, 540.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **INDOOR RADON ABATEMENT**

### **§ 711A. National goal**

The long-term goal of Cherokee Nation with respect to radon levels in buildings is that the air within buildings in Cherokee Nation should be as free of radon as the ambient air outside of buildings.

A. Purpose. The purpose of 27 CNCA §§ 711A to 711C is:

1. to require instrumentalities and related departments of the Cherokee Nation including but not limited to citizens such as the Cherokee Nation Housing Authority, Historical Society, Indian Health Services, Headstart, other tribal facilities and Cherokee Nation departments to develop an effective departmental policy for dealing with radon contamination that utilizes any CN EPC guidelines and standards to ensure that occupants of housing covered by 27 CNCA §§ 711A to 711C are not exposed to hazardous levels of radon; and
2. to require Cherokee Nation and its departments to assist the CN EPC in reducing radon contamination.

B. Standards. In developing the policy, Cherokee Nation, its instrumentalities, and its departments may utilize any guidelines, information, or standards established by the US EPA for:

1. testing residential and nonresidential structures for radon;
2. identifying elevated radon levels;
3. identifying when remedial actions should be taken; and



4. identifying geographical areas that are likely to have elevated levels of radon.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 711A.

### **Library References**

Environmental Law <KEY>285.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 711B. Model construction standards and techniques**

The CN EPC may promulgate regulations to incorporate the model construction standards and techniques developed by the federal EPA into all Cherokee Nation Housing Authority projects and Cherokee Nation projects by October 1, 1994.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 711B.

### **Library References**

Environmental Law <KEY>285.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **§ 711C. Education**

The CN EPC may, using the available information and resources established in 15 U.S.C. § 2661 et seq., develop an educational program concerning the dangers and solutions of radon which might affect all human beings living within the borders of Cherokee Nation.

### **History**

**Source.** LA 1–93, eff. June 14, 1993.

**Renumbered** from 63 CNCA § 711C.

#### **United States Code**

National goal, see 15 U.S.C. § 2661 et seq.

#### **Library References**

Environmental Law <KEY>285.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 163 to 164.

### **CHAPTER 8**

#### **PESTICIDE APPLICATION NOTIFICATION SYSTEM**

##### **§ 801. Short title**

This act shall be known and may be cited as the Pesticide Application Notification System Act.

##### **History**

**Source.** LA 15–11, eff. August 11, 2011.

#### **Library References**

Environmental Law <KEY>421.

Westlaw Topic No. 149E.

C.J.S. Agriculture §§ 115 to 124, 126.

C.J.S. Health and Environment § 170.

##### **§ 802. Purpose**

The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest The Rules of pesticide application notification and recordkeeping are stated in this rule for the purpose of protecting the immediate and future health and welfare of the Cherokee Nation citizens.

##### **History**

**Source.** LA 15–11, eff. August 11, 2011.

### **Library References**

Environmental Law <KEY>421.

Westlaw Topic No. 149E.

C.J.S. Agriculture §§ 115 to 124, 126.

C.J.S. Health and Environment § 170.

### **§ 803. Definitions**

For purposes of this chapter:

1. **"Applicator"** means any person engaging in the application of pesticides or employment of devices.
2. **"Cherokee Nation"** means the Cherokee Nation government and all of its entities, including businesses wholly-owned by Cherokee Nation.
3. **"Device"** means any instrument subject to the United States Environmental Protection Agency regulation intended for trapping, destroying, repelling, or mitigating insects or rodents, or mitigation of fungi, bacteria, or weeds, or other pests designated by the board, but not including equipment used for the application of pesticides when sold separately.
4. **"Pest"** means any organism harmful to man including, but not limited to insects, mites, nematodes, weeds and pathogenic organisms. Pathogenic organisms include viruses, mycoplasma bacteria, rickettsia, and fungi.
5. **"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. A pesticide may be a chemical substance, biological agent (such as a virus or bacterium), antimicrobial, disinfectant or device used against any pest.
6. **"Pesticide application"** means the way in which pesticides are delivered to their target pests.
7. **"Use"** means transportation, storage, mixing, application, safe handling, waste and container disposal, and other specific instructions contained on the label and labeling.

### **History**

**Source.** LA 15–11, eff. August 11, 2011.

### **§ 804. Establishment of policies**

By July 1, 2011 policies will be developed and implemented requiring the following:

1. Notice of pesticide application.

a. General notification of pesticide use will be provided to the Cherokee Nation Environmental Programs department no less than forty-eight (48) hours prior to application on any Cherokee Nation-owned or -operated facility. The written notification must be provided to Cherokee Nation Environmental Programs with the following information:

i. name and address of facility to be treated;

ii. location of the application;

iii. date of the application;

iv. name, address and phone number of applicator company;

b. After completion of a pesticide application, the following information is to be provided to the appropriate facility personnel:

i. address of the facility being treated, specific area(s) treated by the product and for whom the pesticide was applied;

ii. name, address and telephone number of company making application (if applicable);

iii. name and license number of person making the application;

iv. complete brand name and EPA registration number of pesticide product used;

v. year, month, day, and time of application;

vi. target pest(s);

vii. quantity of pesticide used;

viii. method of application;

ix. MSDS sheet for pesticide applied.

2. Exemptions from 48-hour notification.

a. emergency pesticide applications required by the public health officials;

b. disinfectants, sanitizers, deodorizers, or microbial agents used for general cleaning purposes;

c. the use of baits and traps used for pest control.

### 3. Pesticide contractors.

a. It shall be unlawful for any person to act, operate, or do business or advertise as a commercial, noncommercial, certified applicator, temporary certified applicator, service technician, or private applicator unless the person has obtained a valid applicator's license issued by the Oklahoma State Board of Agriculture, or similar license issued under the authority of a different state, for the category of pesticide application in which the person is engaged.

b. When Cherokee Nation uses contractors to apply pesticides on its behalf, all contractors will ensure full compliance with the notification requirements of this Plan. Where a contractor is to apply pesticides on behalf of Cherokee Nation, the contractor must complete a notification in accordance with this plan a minimum of forty-eight (48) hours prior to the proposed date for application. It is the responsibility of the contractor to complete the notification in accordance with this plan.

### 4. Penalties.

a. Failure to notify the Cherokee Nation's Environmental Programs staff as required by law shall result in the following actions:

i. First offense—a written warning from the Environmental Programs staff designed to educate the applicator;

ii. Second offense—a written warning from the Environmental Programs Department and a fine of Fifty Dollars (\$50.00);

iii. All subsequent infractions shall result in a fine of Five Hundred Dollars (\$500.00) per violation.

b. Any violations may be reported to the applicator's state licensing authority for investigation.

## History

**Source.** LA 15–11, eff. August 11, 2011.

## Library References

Environmental Law <KEY>421.

Westlaw Topic No. 149E.

C.J.S. Agriculture §§ 115 to 124, 126.

C.J.S. Health and Environment § 170.

## CHAPTER 9

## **WATER QUALITY CODE**

### **GENERAL PROVISIONS**

#### **§ 900. Short title**

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

#### **§ 901. Declaration of policy and authority**

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

1. restore, maintain and improve the chemical, physical and biological integrity of waters of Cherokee Nation;
2. utilize area-wide planning and management to control sewage and other discharges;
3. assert and defend the Nation's legal rights and claims to waters and related natural resources;
4. monitor and ensure that the United States and surrounding states and nations take meaningful action to protect water quality and comply with applicable laws for the protection of resources, whenever their actions or inaction may harm the Nation's waters or resources;
5. hold anyone who has, without authorization, used or damaged the Nation's waters or related natural resources accountable for restoring the same to their original condition and/or compensating the Nation for such damage or unauthorized use;
6. identify and protect waters and resources of the Nation with special cultural or historical significance, and develop and enforce such standards and antidegradation provisions as may be appropriate for such purposes;
7. engage in planning and participate in decision-making to assure that the Nation's waters and related natural resources are developed in a manner consistent with the goal of long-term, sustainable use and protection for future generations;
8. prohibit the discharge of toxic pollutants in toxic amounts and, to the extent practicable eliminate, or effectively control, the discharge of pollutants from any source;
9. require environmental review of proposed activities which may cause individual or cumulative

adverse impacts to water quality, natural resources, public health, lands, recreation, cultural or historical values, air, quality of life, or other aspects of the Nation's environment;

10. require projects to be modified to avoid adverse impacts if possible, to minimize unavoidable impacts, and provide full mitigation for unavoidable impacts;

11. prohibit or restrict activities which may cause or contribute substantially to a violation of water quality standards or a violation of federal law.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>162, 174, 196.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 902. Definitions**

For purposes of this chapter:

1. "**Administrator**" means the person designated as Administrator of the CN EPC.
2. "**Affected party**" means any person or entity applying for or holding a permit under this chapter, and any citizen of Cherokee Nation, but only if such person, entity, or citizen is directly and substantially impacted by an action or decision of the CN EPC. The CN EPC, in the regulations adopted pursuant to 27 CNCA § 102, may include other classes of persons within the meaning of "**Affected party**". The Nation and any department thereof may be an affected party.
3. "**CN APA**" means the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.
4. "**CN EPC**" means the Environmental Protection Commission of the Cherokee Nation.
5. "**Cherokee Nation District Court**" means the trial court of Cherokee Nation.
6. "**Citizen of Cherokee Nation**" means a citizen of Cherokee Nation as defined by law.
7. "**Commission**" means the Environmental Protection Commission of Cherokee Nation.
8. "**Council of Cherokee Nation**" means the legislative body of Cherokee Nation.
9. "**Discharge**" includes but is not limited to any addition of any pollutant to waters of the Nation

from any point source and includes any discharge of a pollutant or pollutants from any source.

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

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

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

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

14. **"Environmental Code"** means the Cherokee Nation Environmental Quality Code and shall refer to 27 CNCA § 100 et seq.

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

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

17. **"Indian country"** means as defined by federal statutory and case law.

18. **"Indian tribe or nation"** means a federally-recognized Indian tribe or nation.

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

20. **"Lands of Cherokee Nation"** means tribal lands and those lands under the jurisdiction of Cherokee Nation.

21. **"Nation"** means Cherokee Nation.

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

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



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

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

26. **"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.

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

28. **"Public water supply"** means water supplied to the public for domestic or drinking purposes.

29. **"Restricted lands"** means lands held which are restricted against alienation as provided by the federal law.

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

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

32. **"Storm water"** means rain water runoff, snow melt runoff, and surface runoff and drainage.

33. **"Supreme Court"** means the appellate court of Cherokee Nation.

34. **"Treatment works"** means any facility used for the purpose of treating or stabilizing wastes or wastewater.

35. **"Tribal lands"** means lands held by Cherokee Nation regardless of whether those lands are held in fee simple, restricted or trust status.

36. **"Trust lands"** means lands held in trust by the United States of America for the benefit of Cherokee Nation or Indians living within the territorial jurisdiction of Cherokee Nation.

37. **"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.

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

39. **"Waters of the Nation"** means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, navigable or non-navigable, which are contained within, flow through, or border upon Cherokee Nation or any portion thereof.

## **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **§ 903. Powers and duties of Commission**

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

1. develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this Nation;
2. require the submission of plans, specifications and other data in connection with the issuance of permits required pursuant to this chapter;
3. require monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by certified laboratories or operators;
4. issue swimming and fishing advisories related to human and animal health hazards;
5. adopt standards of quality of the waters of the Nation and classifications of such waters, and promulgate other rules to protect, maintain and improve the best uses of waters in this Nation and establish such best management practices and conditions as may be necessary or appropriate for the prevention, control and abatement of pollution;
6. issue, continue in effect, revoke, amend, modify, condition, deny, renew, or refuse to renew permits, licenses, water quality certifications and other authorizations;

7. establish a schedule of fees for permits, studies, laboratory services or technical assistance and for recovering copy and other costs in response to open records requests;

8. establish, implement, amend and enforce a Water Quality Management Plan and total maximum daily loads;

9. issue, modify, or revoke orders requiring the construction of new disposal or treatment systems or the modification or extension of existing systems, or the adoption of other remedial measures to prevent, control or abate pollution; and

10. issue, modify, or revoke orders requiring other actions such as the Commission may deem necessary to enforce the provisions of this chapter and rules promulgated thereunder.

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>162, 179, 187, 194, 207.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 904. Unlawful acts**

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

1. point source discharges of pollutants to any waters of the Nation or placement of any wastes in a location where waters of the Nation may be polluted;

2. dredge and fill activities in or adjacent to waters of the Nation;

3. construction or operation of sewage or industrial treatment plants or lagoons;

4. land application or disposal of any waste, wastewater or sludge.

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>136, 173, 196.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172 to 173.

## **DISCHARGE ELIMINATION AND CONTROL**

### **§ 905. Short title**

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>196.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

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

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

1. allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in discharge permits;
2. establish, implement and enforce effluent limitations, prohibitions, pretreatment standards, standards for the removal of toxic materials and pollutants, national standards of performance or

more stringent standards, in the control of discharges, through permit terms and conditions or otherwise;

3. prohibit or control the discharge of pollutants into wells within the jurisdiction of the Nation;
4. ensure that the public and any other nation or state, the waters of which may be affected, receive notice of each application for a discharge permit and have the opportunity to submit written recommendations or comments;
5. establish management standards for sludge which are no less stringent than applicable federal regulations;
6. establish requirements for dredge and fill activities, mining and physical alterations of streams and lakes of the Nation; and
7. establish any requirements needed to obtain treatment as state or delegation of federal programs or requirements otherwise deemed necessary for comprehensive environmental programs; provided, that approval to effectuate treatment as a state is granted by the Principal Chief and the Council.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>136, 196.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172 to 173.

### **§ 907. Issuance of discharge permits—Availability of records, reports or other information**

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

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

B. The Commission shall:

1. have authority to issue individual permits and authorizations under general discharge permits for pollutants and stormwater and sludge, subject to Commission veto or approval;
2. issue permits for fixed terms not to exceed five (5) years, but subject to modification prior to the expiration of term for purposes including but not limited to compliance with new standards or assuring protection of water quality;
3. have the authority to require in permits issued to publicly or privately owned treatment works conditions requiring the permittee to give notice to the Commission of new introductions into such works, a substantial change in volume or character of pollutants, or other appropriate condition, and to require permits for any indirect discharges to such works;
4. have the authority to ensure compliance with all provisions of the Clean Water Act and with other applicable federal law;
5. have the authority to terminate or modify permits for cause, including but not limited to:
  - a. violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry and inspections,
  - b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or
  - c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
6. have all necessary authority to implement and enforce duly promulgated rules, authority to implement and enforce a Nationwide pretreatment program, and to implement and enforce requirements applicable to dischargers into municipal separate storm sewer systems; and
7. have all necessary or incidental authority to investigate and abate violations of permits, administrative orders, rules, and laws of the Nation, to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection and sampling.

C. Authorized employees or representatives of the Commission shall, upon presentation of credentials, have:

1. a right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;
2. access to at any reasonable time for the purposes of reviewing and copying any records required to be maintained;

3. authority to inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and

4. access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the Nation or to treatment systems discharging into waters of the Nation or for inspection and sampling of any sludge source, storage, beneficial use, reuse or disposal site.

D. Copies of records, plans, reports or other information required by the Commission shall be submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Commission upon showing of proper credentials. Any authorized representative of the Commission may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by statute, permit, order or duly promulgated rules of the Commission.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>196, 198, 206.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 908. Discharge without permit unlawful**

A. Except as otherwise provided in subsection (B) of this section, any point source discharge into waters of the Nation, or in a place likely to reach waters of the Nation, by or from any facility, activity, source or entity regulated by the Commission, shall be unlawful unless a permit has first been obtained from the Commission.

B. The Commission may promulgate rules applicable to discharges composed entirely of stormwater or other discharges that are known not to contain significant quantities of pollutants, require permits on a case-by-case basis, establish general permit terms, exempt categories of discharges, or provide a schedule for obtaining a permit.

C. Dilution shall not be considered a solution to pollution.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>196, 743.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 160, 172.

**§ 909. Reserved**

**WATER SUPPLY SYSTEMS**

**§ 910. Short title**

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

**History**

**Source.** LA 35–04, eff. August 16, 2004.

**Library References**

Water Law <KEY>1860.

Westlaw Topic No. 405.

C.J.S. Waters §§ 531 to 532.

**§ 911. Cooperation with federal agendas**

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

**History**

**Source.** LA 35–04, eff. August 16, 2004.

**Library References**

Indians <KEY>413.

Water Law <KEY>1974.

Westlaw Topic Nos. 209, 405.



C.J.S. Indians §§ 151 to 179.

## **§ 912. Rules and standards**

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

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

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

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

## **History**

**Source.** LA 35–04, eff. August 16, 2004.

## **Library References**

Water Law <KEY>1910, 1974.

Westlaw Topic No. 405.

C.J.S. Waters §§ 531, 636 to 640.

## **§ 913. Reserved**

## **§ 914. Waterworks—Filing of plans and surveys**

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

## **History**

**Source.** LA 35–04, eff. August 16, 2004.

## **Library References**

Water Law <KEY>1910, 1914.

Westlaw Topic No. 405.

C.J.S. Waters §§ 531, 636 to 640, 644 to 654, 665 to 668.

### **§ 915. Investigations of sanitary quality of water**

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

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

## **History**

**Source.** LA 35–04, eff. August 16, 2004.

## **Library References**

Water Law <KEY>1974.

Westlaw Topic No. 405.

### **§ 916. Orders**

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

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

C. Orders of the Commission or Administrator may require public water supply systems to notify consumers of the problem with the supply and the action required by the order.

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

E. Orders and proceedings, unless otherwise specifically provided, shall be in compliance with general enforcement provisions of this chapter and the Administrative Procedure Act, 1 CNCA § 101 et seq.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **§ 917. Groundwater supplies**

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

B. The Council recognizes and declares that the management, protection and conservation of groundwater supplies and the beneficial uses thereof are essential to the economic prosperity and future well-being of the Nation. As such, the public interest demands procedures for the development and implementation of management practices to conserve and protect public groundwater supplies.

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Water Law <KEY>1974.

Westlaw Topic No. 405.

### **§ 918. Wellhead and water supply protection program**

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

1. specifying the duties of local communities and governments in developing and implementing a wellhead protection program;
2. determining all potential and actual pollution sources which may have an adverse effect on public health;

3. taking into consideration potential sources of pollution when siting new wells or intake structures for public water supplies; and

4. developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of pollution.

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Water Law <KEY>1974.

Westlaw Topic No. 405.

### **§ 919. Water supply protection education program**

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Water Law <KEY>1974.

Westlaw Topic No. 405.

### **§§ 920 to 929. Reserved**

## **WASTE STORAGE, TREATMENT, TRANSPORTATION AND DISPOSAL**

### **§ 930. Short title**

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

#### **Library References**

Environmental Law <KEY>176, 179, 195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 931. Wastewater treatment or sewer systems**

A. No person shall construct or let a contract for any construction work of any nature for a municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Commission.

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

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

D. Upon approval of the engineering report, the applicant shall submit plans and specifications for the proposed system or the proposed extension or change of an existing system for review. Such plans and specifications shall be prepared by a professional engineer licensed to practice in the state of Oklahoma.

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

#### **Library References**

Environmental Law <KEY>176, 195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 932. Construction, operation and extension of treatment systems**

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

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

#### **Library References**

Environmental Law <KEY>176, 195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

### **§ 933. Requirements for public sewage disposal systems—Planning residential development**

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

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

#### **Library References**

Environmental Law <KEY>176, 179.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 172.

#### § 934. Sludge

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

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

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

C. Any use, storage or final disposition of sludge or wastes other than land application or disposal at a permitted facility shall require the approval of the Commission.

## History

**Source.** LA 35–04, eff. August 16, 2004.

## Library References

Environmental Law <KEY>176.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 172.

### **§ 935. Activities requiring permit—Construction of impoundments, land application, new outfalls or major changes**

A. It shall be unlawful for any person to carry on any of the following activities with regard to wastewater or sludge without first securing a permit from the Commission:

1. The construction, installation, operation and closure of any industrial surface impoundment, industrial septic tank or treatment system, or the use of any existing unpermitted surface impoundment, septic tank or treatment system that is within the jurisdiction of the Nation and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;
2. The construction, installation or operation of any industrial or commercial facility, the operation of which would cause an increase in the discharge of waste into the waters of the Nation or would otherwise alter the physical, chemical or biological properties of any waters of the Nation in any manner not already lawfully authorized;
3. The construction or use of any new outfall for the discharge of any waste or pollutants into the waters of the Nation; or
4. The land application of any nonindustrial or industrial wastewater and the land application of sludge or waste of any type.

B. Any major addition, extension, operational change or other change proposed for a facility permitted pursuant to subsection (A) of this section shall require the approval of the Commission and modification of the facility's permit prior to construction or implementation of such addition, extension or change.

C. The discharge of domestic sewage except to an authorized public or private disposal system or the surfacing of effluent from any domestic septic system shall be deemed pollution.

## History

**Source.** LA 35–04, eff. August 16, 2004.



### **Library References**

Environmental Law <KEY>176, 195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

#### **§ 936. Rules—Application**

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>162, 176, 195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

#### **§ 937. Underground injection of hazardous and nonhazardous liquids**

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

### **Library References**

Environmental Law <KEY>195.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 131, 172.

## **CHAPTER 10**

### **SCENIC RIVERS**

#### **§ 1001. Short title**

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1100.

#### **Library References**

Environmental Law <KEY>126.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 173.

#### **§ 1002. Designation of scenic river areas**

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

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

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

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

2. such portions of other rivers as may be designated by the Council or by standards promulgated

by the Commission and approved by the Principal Chief.

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1101.

### **Library References**

Environmental Law <KEY>126.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 173.

### **§ 1003. Legislative intent**

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

1. The stream or river be preserved in its free-flowing condition;
2. The stream or river shall not be impounded by any large dam or structure;
3. The stream or river and its tributaries shall be provided the highest level of water quality protection.

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1102.

### **Library References**

Environmental Law <KEY>126, 133.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 173.

#### **§ 1004. Cooperation and support of people and agencies—Purpose of act**

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

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

#### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1103.

#### **Library References**

Environmental Law <KEY>115, 126, 133.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 173.

#### **§ 1005. Littering and TMDLs**

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

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

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1104.

### **Library References**

Environmental Law <KEY>133.

Indians <KEY>413, 423.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 173.

C.J.S. Indians §§ 151 to 179.

### **§ 1006. Notice and hearing as to designation of additional scenic areas**

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1105.

### **Library References**

Environmental Law <KEY>126.

Indians <KEY>416, 419.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 173.

C.J.S. Indians §§ 151 to 179.

### **§ 1007. Scenic rivers**

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

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

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

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

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

### **History**

**Source.** LA 35–04, eff. August 16, 2004.

**Renumbered** from 63 CNCA § 1106.

### **Library References**

Environmental Law <KEY>126, 133.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 173.

## **CHAPTER 11**

### **COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT [CN CERCLA]**

*Reserved for Future Use*

## **CHAPTER 12**

### **LEAD-BASED PAINT**

#### **§ 1201. Short title**

This act shall be known and may be cited as the Cherokee Nation Lead-Based Paint Act.

#### **History**

**Source.** LA 8–98, eff. June 14, 1998.

**Renumbered** from 63 CNCA § 1201.

#### **Library References**

Environmental Law <KEY>420.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

#### **§ 1202. Purpose**

The purpose of the Cherokee Nation Lead-Based Paint Act is to provide for the authorization and administration of a lead-based paint program in accordance with requirements set forth by the federal Environmental Protection Agency. This program is established for the health, safety and welfare of Cherokee citizens in recognition of the health risks associated with the presence of lead in paint products.

#### **History**

**Source.** LA 8–98, eff. June 14, 1998.

**Renumbered** from 63 CNCA § 1202.

#### **Library References**

Environmental Law <KEY>405, 420.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1203. Definitions**

As used in the Cherokee Nation Lead-Based Paint Act:

1. **"Lead-based paint"** means paint with a lead content of 0.5% or greater (5000 ppm). Coatings of residential paint are considered to be lead-based if the lead content exceeds 1 mg/cm<sup>2</sup> or 0.5% by weight.
2. **"Program"** means the Cherokee Nation Lead-Based Paint Program as defined in 27 CNCA § 1204.

### **History**

**Source.** LA 8–98, eff. June 14, 1998.

**Renumbered** from 63 CNCA § 1203.

### **§ 1204. Lead-Based Paint Program**

A. The Cherokee Nation Environmental Protection Program shall have the authority to act as the lead office in the development, implementation, and on-going facilitation of a Cherokee Nation Lead Based Paint program. The program shall be established in accordance with the Cherokee Nation Environmental Quality Code, and shall operate in accordance with criteria established by the federal Environmental Protection Agency for tribal nation lead-based paint programs.

B. The Lead Office shall have the authority to promulgate the necessary rules, regulations and operating procedure, in accordance with EPA criteria and Cherokee Nation law, to operate the program.

C. The Lead Office shall have the authority to pursue available sources of federal funding for the continued operation of the program.

### **History**

**Source.** LA 8–98, eff. June 14, 1998.

**Renumbered** from 63 CNCA § 1204.

### **Library References**



Environmental Law <KEY>420.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1205. Enforcement**

The Cherokee Nation Lead-Based Paint Program shall be enforced in accordance with the Cherokee Nation Environmental Quality Code; the Cherokee Nation Marshal Service, the Cherokee Nation Environmental Protection Commission and the Lead Office shall be designated as the enforcement authorities for the program.

### **History**

**Source.** LA 8–98, eff. June 14, 1998.

**Renumbered** from 63 CNCA § 1205.

### **Library References**

Environmental Law <KEY>420.

Indians <KEY>413.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

## **CHAPTER 13**

### **HAZARDOUS WASTE CODE**

### **§ 1301. Short title**

This act shall be known and may be cited as 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1301.

### **Library References**

Environmental Law <KEY>425.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1302. Purpose and general provisions**

The purpose of this code is to:

1. 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;
2. 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;
3. Provide authority to appropriate entities within the Nation to develop, implement and enforce requirements that are more stringent than or are in addition to federal requirements, to the full extent not prohibited by law.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1302.

### **Library References**

Environmental Law <KEY>425.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1303. Definitions**

A. Unless otherwise defined in this code, rules promulgated hereunder, or otherwise applicable

provisions of the Cherokee Nation Environmental Quality 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, the Administrator, or partner of the applicant;
- b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application; and
- c. 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 citizens of 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 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 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, or rerefining of hazardous waste into a product which is being 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.

23. **"Treatment facility"** means any location where treating or recycling of hazardous waste occurs.

## **History**

**Source.** LA 41-05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1303.

## **§ 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 Quality Code;
6. Require terms and conditions in permits, including terms limiting the duration of any permit;
7. Restrict or prohibit 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 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 Quality Code;
10. Require monitoring, 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 violation of the Cherokee Nation Hazardous Waste Code, permits, orders and rules promulgated thereunder;
12. Evaluate the benefit and establish 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 as 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 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 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.

## **History**

**Source.** LA 41-05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1304.

### **Library References**

Environmental Law <KEY>402, 425.

Indians <KEY>413.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 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 disposal 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 accessory to protect public health, safety and the environment; and



8. Require and issue permits for the storage of hazardous waste is aboveground or underground tanks or any other containment system.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1305.

### **Library References**

Environmental Law <KEY>430.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 Quality 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. § 3251 et seq. (repealed; see 42 U.S.C. § 6901 et seq.);

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 generation 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—Lead 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 requirement.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1306.

### **United States Code**

Findings, policy, and intent, see 15 U.S.C. § 2601 et seq.

### **Library References**

Environmental Law <KEY>425.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 accommodation 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 42 U.S.C. § 6925(c) and (e) 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 requirements 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1307.

## United States Code

Permits for treatment, storage, or disposal of hazardous waste, see 42 U.S.C. § 6925.

## Library References

Environmental Law <KEY>425.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 Chapter 2 of the Cherokee Nation Environmental Quality 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 wastes 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1308.

### **Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 disposed 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 states falsely any information required pursuant to the provisions of this section.

### **History**

**Source.** LA 41-05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1309.

### **Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1310. Special restrictions applicable in Indian Country**

A. No permit shall be issued for a 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- (100) year floodplain;
3. Within one (1) mile of any stream or lake;
4. Within one (1) 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 (5) miles of the Cherokee Nation tribal complex, tribal courts or cultural grounds;
7. Within three (3) miles of a school, church, campground, cultural or recreational area, or other public gathering place;
8. Within one (1) 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1310.

### **Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1311.

### **Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

### **History**

**Source.** LA 41-05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1312.

### **Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

## **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1313.

## **Library References**

Environmental Law <KEY>430.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

## **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1314.

## **Library References**

Environmental Law <KEY>430, 432.

Indians <KEY>417, 434.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

**§ 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.

B. 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.

**History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1315.

**Library References**

Environmental Law <KEY>430, 432.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

**§ 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 and to comply 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 defences 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1316.

### **Library References**

Environmental Law <KEY>430, 432.

Indians <KEY>417.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 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 Cherokee Nation permitted as a hazardous waste recycling unit.

C. No owner or operator of any unit in 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1317.

### **Library References**

Environmental Law <KEY>430, 433(1).

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 (\$.01) 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 proceeding 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 the waiver will qualify towards the contributions required of 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 action 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 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 Administrates 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1318.

### **Library References**

Environmental Law <KEY>430, 432, 434.

Indians <KEY>417.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

### **§ 1319. Permit issuance notice—Notice of remediation of 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 interfere 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1319.

### **Library References**

Environmental Law <KEY>430, 432, 439.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1320.

### **Library References**

Environmental Law <KEY>430.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 member 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 his 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1321.

### **§ 1322. Inspections—Administrative proceedings—Records—Violations—Penalties**

The provision of Chapter 2 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

**Renumbered** from 63 CNCA § 1322.

### **Library References**

Environmental Law <KEY>425.

Indians <KEY>411.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment § 170.

C.J.S. Indians §§ 151 to 179.

## **CHAPTER 14**

### **UNDERGROUND INJECTION CONTROL**

#### **§ 1401. Short title**

This chapter shall be known and may be cited as the Cherokee Nation Underground Injection Control Code or the UIC Code.

#### **History**

**Source.** LA 41–05, eff. December 15, 2005.

#### **Library References**

Environmental Law <KEY>430.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

#### **§ 1402. Purpose**

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

#### **History**

**Source.** LA 41–05, eff. December 15, 2005.

#### **Library References**

Environmental Law <KEY>430.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

#### **§ 1403. Definitions**

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

#### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Code of Federal Regulations**

Classification of wells, see 40 C.F.R. § 144.6.

#### **§ 1404. Prohibitions**

The following underground injection wells are prohibited within 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Library References**

Environmental Law <KEY>430, 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

#### **§ 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Library References**

Environmental Law <KEY>430, 432, 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 C.F.R. Part 144

2. 40 C.F.R. Part 146

3. 40 C.F.R. Part 148.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Code of Federal Regulations**

Hazardous waste injection restrictions, see 40 C.F.R. Part 148.

Underground injection control program: criteria and standards, see 40 C.F.R. Part 146.

Underground injection control program, see 40 C.F.R. Part 144.

### **Library References**

Environmental Law <KEY>430, 432, 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 1407. Power and duties**

The Commission shall have all necessary authority 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.

### **History**

**Source.** LA 41-05, eff. December 15, 2005.

### **Library References**

Environmental Law <KEY>430, 432, 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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 environments;
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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Library References**

Environmental Law <KEY>430, 432, 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 170.

### **§ 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.

### **History**

**Source.** LA 41–05, eff. December 15, 2005.

### **Library References**

Indians <KEY>422.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **CHAPTER 15**

### **REDUCE, REUSE AND RECYCLE**

### **§ 1501. Short title**

This act shall be known and may be cited as the Reduce, Reuse and Recycle Act of 2009.

### **History**

**Source.** LA 18–09, eff. August 16, 2009.

### **Library References**

Environmental Law <KEY>372.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 1502. Purpose**

Cherokee Nation, as a global partner in the recycling effort and to supplement other green initiatives will establish a "Reduce, Reuse and Recycling" program for all branches of Cherokee Nation Government. Such an effort will be the first step in formalizing overall conservation and energy efficiency policies for the Nation.

### **History**

**Source.** LA 18–09, eff. August 16, 2009.

### **Library References**

Environmental Law <KEY>372.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

### **§ 1503. Definitions**

For the purposes of this chapter, "**Cherokee Nation**" means Cherokee Nation Government and all of its entities, including businesses wholly-owned by Cherokee Nation.

### **History**

**Source.** LA 18–09, eff. August 16, 2009.

### **§ 1504. Policies and programs**

A. Establishment of policies. By January 1, 2010 policies will be developed and implemented requiring the following:

1. water conserving toilets and fixtures upon new construction or replacement;
2. cell phone reuse program;
3. eyeglass frame reuse program;
4. recycling of televisions, computers and other electronics as appropriate;



5. energy consumption reduction;
6. assessment of energy efficient options for new construction and remodeling.

B. Paper/cardboard recycling system.

1. Cherokee Nation shall establish and implement a paper/cardboard recycling system to recycle wastepaper/cardboard products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable wastepaper//cardboard products generated in the offices and other facilities of the Nation. Cherokee Nation may hire private contractors to establish or implement all or a portion of the recycling system under this chapter. The paper/cardboard recycling system established by the Nation shall provide for the recycling of wastepaper/cardboard in the offices and facilities that participate in that system, in accord with the following schedule:

- a. January 1, 2010 .... 40% or more.
- b. January 1, 2012 .... 50% or more.
- c. January 1, 2014 .... 60% or more.
- d. January 1, 2016 .... 85% or more.

2. The paper/cardboard recycling system established by Cherokee Nation shall provide for the expansion and improvement of any wastepaper/cardboard recycling system that exists on the effective date of this act:

- a. an aggressive program to locate and develop, if necessary, markets for recyclable wastepaper/cardboard products;
- b. an education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:
  - i. the importance of recycling paper/cardboard,
  - ii. the importance of reducing paper by use of electronics,
  - iii. the importance of double-sided printing to conserve the use of paper,
  - iv. the components of the paper/cardboard recycling system and how the system will impact each employee.
- c. the recovery of all wastepaper/cardboard for which a market is available and accessible;
- d. the separation of the recyclable wastepaper/cardboard by the generator in close proximity to the point at which the paper product enters the waste stream;

e. a central collection system within each building or office of facility that is participating in the recycling system;

f. the compiling of information and the preparation of an annual written report detailing the implementation and operation of the recycling system; the level of participation in the recycling system of offices, facilities, and agencies within each branch of government.

C. Aluminum, glass and plastic recycling system. Cherokee Nation shall establish and implement an aluminum, glass and plastic recycling system to recycle aluminum, glass and plastic products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable aluminum, glass and plastic products generated in the offices and other facilities of the Nation. Cherokee Nation may hire private contractors to establish or implement all or a portion of the recycling system under this chapter. The system shall be implemented by January 1, 2010.

The aluminum, glass and plastic recycling system established by the Cherokee Nation shall provide for the expansion and improvement of any aluminum, glass and plastic recycling system that exists on the effective date of this act:

1. an aggressive program to locate and develop, if necessary, markets for recyclable aluminum, glass and plastic products;

2. an education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:

a. the importance of recycling aluminum, glass and plastic

b. the components of the aluminum, glass and plastic recycling system and how the system will impact each employee.

3. the recovery of all aluminum, glass and plastic for which a market is available and accessible.

4. the separation of the recyclable aluminum, glass and plastic by the generator in close proximity to the point at which the aluminum, glass and plastic product enters the waste stream.

5. a central collection system within each building or office of facility that is participating in the recycling system.

6. the compiling of information and the preparation of an annual written report detailing the implementation and operation of the recycling system; the level of participation in the system of offices, facilities, and agencies within each branch of government

D. Cost effectiveness. Implementation of any provisions of this chapter is subject to a cost-benefit analysis. Such analysis will consider short- and long-term costs and benefits, including intangible costs and benefits of each mandate required herein. The fact that a mandate will result in net

financial cost to the Nation shall not preclude its implementation, however. Should the Nation find any mandate infeasible due to cost-benefit analysis, such determination and supporting information shall be publicized as soon as practicable thereafter via a public notice in the *Cherokee Phoenix* and reported to the appropriate committee of the Council of Cherokee Nation. Such public notice shall be published no later than the implementation deadlines set herein.

### **History**

**Source.** LA 18–09, eff. August 16, 2009.

### **Library References**

Environmental Law <KEY>372.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 169.

