

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK

Special Meeting on April 9, 2007

PRESENT:

Commissioners: Ed Fite

Mark Green (by teleconference)

Marty Matlock (by teleconference)

STAFF AND GUESTS:

Jeannine Hale, CNEP - Administrator

Doug Bane, CN Landfill - Manager

Seth Coleman, ICI

Jimmy D Smith, Sue's Recycling

David W. Thornton, Tribal Council Member, District #3

Bill John Baker, Tribal Council Member, District #1

S. Joe Crittenden, Tribal Council Member, District #2 (Adair County)

Jack Crittenden, Concerned Citizen of Adair County

Callie Catcher, CN Treasurer

Imre Szekelynidi, ICI

Robert Murray, ICI

Gary Pitchlynn, ICI

John Freise, CNEP

Shaun West, CNEP

Nathan Moton, J.C Gang, C.C. of AC

Becky Johnson, CN Office of Attorney General

Calvin Harris, AERT Recycling

Alford Drinkwater, AERT Recycling

Mike Miller, CN Communications

Dorothy Gilbert, CNEP

Ashley Wagnon, CNEP

1. Chairman Fite called the meeting to order at 11:00 am.
2. Chairman Fite acknowledged and placed into the record the Record of Public Notice and meeting agenda.
3. Landfill - Administrative Order

A. Request for Approval to allow landfill to correct elevations on Cell 2.

Jeannine Hale, CNEP summarized the request for approval to allow landfill to correct elevations on Cell 2 to redirect and control storm water. Ms. Hale explained that the landfill's existing interim permit states that the landfill can only use the specified surface impoundment for storm water control unless another impoundment is authorized by the commission. The administrative compliance order basically re-states the provisions of the notice of violation- the landfill must either 1) redirect the storm water and quit using the unlined, unauthorized area, or 2) install a temporary liner. In evaluating these two options, concerns were identified with the option involving the temporary liner – basically, this would interfere with the construction schedule that had been presented to the Commission by ICI's engineer, Bob Murray. The construction schedule includes building a new surface impoundment in the same location where the unlined basin is.

In order to pursue the option of redirecting storm water to the existing storm water pond, recontouring of Cell 2 and 3 would be needed. The landfill would also purchase a pump of appropriate size to put in

the unlined basin area and pump stormwater back over to the existing storm water pond. The Staff is recommending that the EPC approve this approach because the existing permit does not allow waste disposal on cell 2.

B. Discussion by Commission and opportunity for public comment.

Chairman Fite asked Mr. Murray if the proposal had been accurately described.

Mr. Murray confirmed the plan was to minimize run off to outfall #6 and instead contour it back to the other direction to outfall #1, and meanwhile pump other water that is collecting in that area back to outfall #1 as well.

Mr. Jack Crittenden presented the Commission with photos he had taken and expressed concern that one area was full of water and below that it is leaking out onto the ground. He also stated that last week the landfill put 3 foot of clay on top of that, yesterday it went down through there and now it's seeping up through that clay right to the surface.

CNEP staff were not familiar with the photos provided by Mr. Crittenden and Landfill Manager Doug Bane was asked if he could comment on them. Mr. Bane responded that the photos were from the area on the East side of cell 3 and stated that this had been discussed previously and was addressed by the construction schedule.

Chairman Fite inquired of CNEP's John Friese if Mr. Bane's statements appeared to be an accurate accounting of the situation shown in the photos. John Friese replied yes, that we have discussed this area of storm water buildup and that is where the landfill proposes to build the clay plug to stop the storm water going into the leachate pond. Chairman Fite asked CNEP staff to go out and validate the concerns that were raised by Mr. Crittenden at their earliest convenience and then report back to Jeannine and she will inform the Commissioners.

Councilman Bill John Baker voiced concern that the Commission earlier required a temporary liner but now that wasn't going to be done. Chairman Fite restated what was in the EPC's earlier Order:

1. There shall be a completed pollutant loading study provided no later than 4:30 p.m. on or before April 19, 2007. In the event that the respondents fail to comply with this requirement, the penalty of \$5,000 per day of non-compliance may be assessed.
2. There shall either be a constructed temporary liner or redirection of the storm water now going to the unlined unauthorized impoundment area to an approved storm water impoundment no later than 4:30 on the 19th of April.

Commissioner Matlock wanted clarification of what oversight would be provided by CNEP personnel prior to voting on this agenda item. He wants, at minimum, sampling or observing during a run off event and frequent visits for at least the next couple of months, if not weekly site visits. He asked that CNEP staff understand the site as well as anyone in the room and be able to communicate that to the EPC, and that level of competency must be maintained as this site changes. Ms. Hale agreed to this request, but expressed concern that the budget may not be adequate to cover all this monitoring. Commissioner Matlock pointed out that CNEP cannot do the job without adequate resources.

Commissioner Green asked for clarification whether the staff was recommending the proposed action. Ms. Hale responded yes, we are recommending that the Commission approve this because it will allow the proposed construction schedule to go forward and that construction will result in major improvements in the control of storm water and leachate.

C. Vote by Commission to approve work on Cell 2 for limited purpose of correcting elevations to redirect and control stormwater subject to oversight and approval of CNEP

Commissioner Matlock made a Motion to Approve the Request and Commissioner Green seconded the motion.

Roll was called:

Commissioner Matlock – aye

Commissioner Green – aye

Chairman Fite- aye

The vote to approve the request was unanimous.

Chairman Fite continued to discuss and clarify what would happen next – that by the 19th the water will be temporarily moved by pump while they are redirecting or reconstructing the elevation so that it will drain to outfall #1, that recontouring will be completed in 2 or 3 months and someone will be monitoring the site. If we have a rain fall event we will have staff on site regardless. Commissioner Green asked that staff have cameras with them.

Ms. Hale noted that the proposed recontouring idea was run by Eric Adidas in the Solid Waste Division at EPA Region 6 and he didn't have any problem with it.

Ms. Johnson was asked if she had any legal concerns and she replied no.

4. Cherokee Nation Landfill Request for Minor Permit Modification to Change Duration of Interim Permit

A. Summary by Staff and Landfill Representatives.

CNEP Administrator Jeannine Hale summarized this agenda item as a revisit of a previous agenda item - a request to modify the existing Interim Permit to lift the 2 year term. Ms. Hale stated that most landfill permits don't have a limited term. To grant this request would allow further work on the existing footprint as defined by the Terracon engineering plans modified by A & M, but it would not allow the landfill to expand. This would allow the landfill to proceed according to the construction schedule outlined in the document entitled "Conceptual Work Program and Sequence". The construction plan was developed at a meeting CNEP staff, Mr. Murray and Aquaterra. It will allow new storm water controls to be implemented. The leachate pond, which now has inadequate capacity, would be addressed. Because of these improvements, the staff is recommending that the Commission lift the 2 year term so the construction schedule can be implemented.

B. Discussion by Commission and opportunity for comment.

Chairman Fite inquired whether anyone had comments.

Mr. Murray, ICI, stated that he believed that the summary was accurate and ICI is prepared to get with Jeannine/CNEP later today to work out just how to make this happen. He doesn't think there will be any problems. Mr. Bane agreed.

Commissioner Matlock stated that he wanted to make sure that the extenuation of this permit does not in anyway delay the completion of the appropriate application for a full permit for the operation of the landfill- something that seems to have been stalled somewhere along the way. He and Commissioner Green both would like to see a schedule for the master permit.

Ms. Hale stated that a meeting with ICI and Financial Resources would be held that afternoon to discuss this and other issues.

Chairman Fite asked Mr. Murray what the time span would be for that? Mr. Murray responded that the first priority is to address the construction in items #1-5 of the schedule to control storm water run off and maintain adequate landfill capacity, but he is prepared to come back here to meet as often as

needed. At these meetings, they can iron out all the items that will be needed for a major permit modification.

Chairman Fite asked: You have built and designed a number of landfills. How long did it take to design? Mr. Murray responded that the first thing they would need to do is take existing geo-tech information and see if we need to do any further geotechnical work to confirm that our subsurface conditions are continuous, or else in the absence of that we can go ahead and have them in some instances assume the same condition with the confirmation requirement as a part of the permit. In other words if you encounter any different subsurface conditions, stop. You're looking at a minimum of a 90 day process to put all of that documentation together. That is if you don't require any geo-tech.

There are issues about the various elements of work that need to be accomplished for a major modification. We need to come to an agreement with the EPC staff about that level of detail and then we can forecast based upon the weather circumstances that we have facing us. If we have some resolution on those items we could come up with a schedule but I think it is very reasonable to expect that to within 6 to 9 months we could commence work and have it ready and submitted.

Councilman Bill John Baker pointed out that having these minor modifications and lifting the 2 year limit is keeping the tribe from getting their 2.3 million dollar payment that is hinged on the master plan and it doesn't appear that we have made any progress in 2 years toward a master plan. My preference would be to do the master plan and have them comply with it. Or, to have ICI go ahead and agree to make a payment to the tribe and instead of paying a dollar a ton pay 2 dollars a ton like the contract reads. If we are going to give in good faith then they should also, and they should make the payment to the tribe.

Councilman David Thornton agreed, and stated that you need to look at the old agreement to make sure there hasn't been a breach of that contract.

Chairman Fite replied that the contract itself goes beyond the scope of the EPC's responsibility. The EPC has statutory authority for enforcement of environmental requirements for the Cherokee Nation. The Commissioners are holding the Cherokee Nation and ICI responsible for this landfill and we are going to be doing everything we can over the course of the next several months to see that we remove any obstacles to the staff, ICI, and Cherokee Nation working out a permit that makes that landfill environmentally sound.

Councilman David Thornton asked whether the Chairman was saying that the EPC couldn't extend the contract? Chairman Fite responded that all the EPC could deal with was the EPC permit, not the contract.

Councilman Crittenden stated that we have all expressed our concerns with the non-compliance issue, that we have had a period of 2 years for things to develop and quite honestly it has been a pretty pathetic performance.

Callie Catcher stated that this permit is for the Nation as the owner and ICI as the contract operator. There is no reason to continue only with a 2 year extension of the permit. EPC staff are doing a good job on oversight. When we entered into this contract with an outside operator, I thought it was a good thing because we could have oversight by an independent Commission. I think we are in a much better place than we were 2 years ago. If we continue to issue limited permits it makes it difficult from a financial side to plan because when you operate a landfill you are looking at a 20 year to 30 year plan not 1 or 2 years at a time.

Councilman Crittenden asked whose rules were being followed. Ms. Hale responded that the Cherokee Nation has a Solid Waste Management Act which is part of the Environmental Quality Code, but there are no CN solid waste rules yet. However, we enforce federal regulations (mainly in 40 CFR Part 258).

Mr. Crittenden expressed concern that nothing had been accomplished under the NOV. He asked whether the commission reported to anybody outside.

Chairman Fite responded that the Landfill is owned by the Cherokee Nation and it is a Cherokee Nation issue. The EPC signed an order recently that identified two issues – one that must be addressed by the 19th of this month and one by the 30th or there is going to be a fine assessed. We are going to pursue noncompliance through the Department of Justice if they haven't done what they are suppose to do.

Councilman Crittenden stated that, as a representative of the community, I think we should be considering a stop work order instead of an extension. Chairman Fite responded that date unfortunately came and went when we had the chance to close the landfill before subtitle D went into effect. Mr. Crittenden stated that a stop work order would be until they can get in compliance and make it run right.

Chairman Fite inquired what staff thought. Ms. Hale responded that the landfill is a complex situation with a lot of technical and legal issues, and concerns of the community. In her opinion the best thing to do is to lift the 2 year term on the permit to allow the problems with storm water and leachate to be corrected. Otherwise, there are financial assurance and funding issues that will come into play. The Commission can keep the permit issue separate from the compliance issues. If the landfill continues to be in non-compliance, penalties can be assessed through the process that is in the statutes with the assistance of the Attorney General. You could modify or even terminate the permit later as an enforcement action.

Commissioner Matlock stated that was what he wanted to make certain that the permit could be modified later for cause. Ms. Johnson responded that enforcement authority may be used later to revoke the permit or make more orders. Removal of the time limitation on the permit does not mean that all other conditions, rules and orders go away.

Chairman Fite wanted to know what would be involved in the revocation of the permit. Ms. Johnson responded there would have to be a notice sent to the permit holders that we are considering revoking your permit, there would probably be a hearing on it, and they may be able to appeal the decision to Court.

Mr. Crittenden stated that he wants to go on record as saying, "That as representative of that community, we are against any extensions of this permit until all of the environmental conditions are taken care of."

C. Vote by Commission to approve of Minor Modification of Landfill permit, specify related conditions, set Compliance/Construction schedules and/or take other appropriate action.

Commissioner Green made a motion to approve the Request to lift the 2 year term in the permit. Commissioner Matlock seconded the motion.

Roll was called:

Commissioner Matlock – aye

Commissioner Green – aye

Chairman Fite - aye

The Motion was approved unanimously:

5. Chairman Fite accepted a Motion to adjourn. The vote to adjourn was unanimous.