

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK
September 4, 2007

PRESENT:

Commissioners: Mark Green and Marty Matlock

STAFF AND GUESTS:

Pat Gwin, CN Natural Resources Department
Angela Drewes, CN Natural Resources Department
Keith Osterhout
Jodie Fishinghawk, Tribal Council Member District #2
Harold Langdon, CNE
Roger Fields, CNE
Doug Bane, CN Landfill
Callie Catcher, CN Finance
Janelle Fullbright, Tribal Council Member, District #3
S. Joe Crittenden, Tribal Council Member, District #2
Michael Lynn, CN Roads Department
Todd Enlow, CN Management Resources
Nathan Moton, Concerned Citizen of Adair County
Larry Perkins, Concerned Citizen of Adair County
Jack Crittenden, Concerned Citizen of Adair County
JoKay Dowell, Cherokee Phoenix
Debra Wilson, CN Gaming Commission
Bill John Baker, Tribal Council Member, District #1
Todd Hembree, CNTC Attorney
Randy Gibson, CN Communications
Becky M. Johnson, EPC Attorney
Jeannine Hale, CN Environmental Programs
Nancy John, CN Environmental Programs
Shaun West, CN Environmental Programs
John Freise, CN Environmental Programs
Wayne Isaacs, CN Environmental Programs
Mark Dunham, CN Environmental Programs
Amber Armstrong, CN Environmental Programs

1. Commissioner Green called the meeting to order at 9:40 a.m.
2. Commissioner Green acknowledged and placed into the record the Record of Public Notice and meeting agenda.
3. Commissioner Matlock made a motion to approve the minutes from the August 14, 2007 meeting. Commissioner Green seconded the motion. Roll was called, and the vote was:
Mark Green: aye
Marty Matlock: aye

The vote to approve the minutes was unanimous.

4. Reports

- A. Summary of CN Environmental Code 63 CNCA §304 (LA 31-04) – Jeannine Hale reported this statute gives the EPC authority to oversee projects that are being constructed even if it is not a NEPA requirement.
- B. Natural Resources Department – Pat Gwin reported 19 NEPA projects currently ongoing and that the vast majority of those are lease renewals of existing housing, hunting or agricultural leases. We had one project involving new construction with a single family dwelling. I have a correction to make on the second page of my report and that is the swarm of bees that was in the Pow Wow grounds concession stands. The hive had to be destroyed because of disease and it would not have survived the winter. Pat also spent a week in Red Lake, Minnesota on the reservation and they have a native plants for native people project. Pat was able to meet with the Eastern Cherokees and folks are planning a summit between the East and West Bands and possibly starting a seed bank
- C. Environmental Programs – Nancy John reported that CNEP has a new staff member, Mr. Larry Scrapper, who will be working in the Air Program. Randall Gee's last day was Friday. He will be Associate Director for the Tribal Affairs Program in Region 6 EPA.
- D. Cherokee Nation Enterprises – Roger Fields reported on the Roland, Catoosa, and West Siloam Springs excavation and expansion. He reported on an oil leak in a pole barn from storage drums containing oil at Will Rogers Downs. Soil samples were done and they are working to clean the spill area. Outpost #1 was reported to have had one environmental incident in August. A fuel spill was reported. Clean up was done and was reported as having no soil impact. Outpost #2 is working on replacing an older tank.
- E. NEPA projects for Realty, IHS, NAHASDA, Roads – Wayne Issacs reported we have done 848 reviews for Housing, approximately 145 reviews for Water and Sanitation. Some of the larger scale projects that NEPA reviews are underway on, include a 30 acre, 30 homes project just north of Locust Grove for the Jay office of the Housing Authority. For IHS we're finishing up the Oaks waste water treatment facility plant upgrade. There is a 9.7 mile water line extension in Northeastern Rogers County. For Roads, reviews are being done for a Chewy Road Widening Project, the Tenkiller Road Project, Smith Hollow Road Project, Dahlonageh Road Project, and the Robert Road Project. Realty reviews include the Ramona Casino Project on Hwy. 75.
- F. Roads projects (EAs not prepared by CNEP) – Michael Lynn reported that roads has three construction projects going on now: the Red Barn Project in Cherokee County and two in Delaware County-Fairview Phase II and the Daytown Dry Creek Project.
- G. Tribally funded construction projects – Todd Enlow reported working with CNEP on the Saline Courthouse, working with Fritz Bailey Architects to do the reconstruction of the Spring House. There are also seven new buildings proposed for the CN capital improvement plan. The architect will be James Childers and work will begin on site selection and complete designs. The areas for office and building construction will be around the main complex area between the Marshals Service and Sequoyah High School as well as the Birchet property which is adjacent to Hastings Hospital. The Pow Wow grounds sewer design will include a minor expansion to the existing bathrooms going out another 10 ft. There will also be rehab work and landscaping for the court house downtown.

5. Cherokee Nation Landfill

A. Report by Landfill Management - Doug Bane had nothing to add to the report he submitted but was willing to take questions. Commissioner Matlock asked about tonnage now as compared to last year. Doug responded the landfill continues to average 12 to 13 hundred tons a day now, and was 900 to a thousand last year.

B. Enforcement items

1. Description of requirements and specific compliance issues – Jeannine Hale reviewed the NOV issued at the last meeting and presented a draft ACO on these issues. The draft ACO cites pertinent legal authorities and summarizes the possible fines and number of days in violation. The maximum penalties that might be assessed under the criteria in the draft ACO are:

Leachate pond \$30,000

Daily cover \$250,000

Industrial waste \$910,000

Methane gas \$1,585,000

Stormwater detention \$200,000

The Commission can establish proposed penalties after discussion of the facts and issues.

2. Opportunity for response and public comment on specific issues.

Commissioner Green went through each violation in the proposed ACO asking if there were comments, including

- unauthorized discharge of pollutants from the leachate storage pond on 7/1/07 and 7/2/07. (no comments)
- failure to maintain daily cover as required by 40 CFR 258.21 for some 50 days. (no comments)
- acceptance of industrial waste in violation of Permit No. MSW-01, Section VIII for 182 days from 2/13/07 to 8/14/07, from Insul-Bead Corp., Hendren Plastics, Cellofoam North American, Tyson Foods, Mrs. Smiths and others.
 - Mr. Bane stated that the landfill has been accepting these customers prior to the permit being issued and the intent of the permit was to maintain the status quo. The amount of waste they were bringing in remains about the same but additional research is needed to verify that.
 - Mr. Todd Hembree inquired about when ICI or the landfill knew that it was prohibited under the contract to accept the industrial waste and Ms. Hale responded that it was a violation of the EPC permit issue in July 2005, that Mr. Bane had worked with her in drafting the permit and listing the types of wastes., that now Mr. Bane alleges he forgot to list these customers/types of waste and had not provided evidence that the customers were existing prior to permit issuance.
- Since 8/2/06 methane levels at monitoring wells GP-4 through GP-6 have exceeded the LEL regulatory limit causing violation of 40 CFR 258.23. (no comments)
- Part VII page 2 of the permit MSW-01 authorizes 1 storm water pond, provides that no new impoundment shall be constructed without prior written approval, and that the landfill is using an unlined depression as an additional storm water impoundment. This violation was cited in NOV 0106 on 11/6/06.

3. Discussion by the Commission

Commissioner Matlock pointed out that the Commission supports the operation of a safe, effective, legal, responsible and respectable landfill by the Cherokee Nation. The main question is the amount of penalties. Ms. Hale clarified that the draft ACO is written so that if penalties were assessed, they would be assessed against the operator Indian Country Investments because all are operational failures.

The Commission went through each alleged violation, discussed potential penalties, identified factors that should be considered, and developed the following proposed penalty amounts:

- o leachate pond - maximum penalty of \$30,000.

Ms. Hale stated that of all of the violations, this is one that could have been prevented, that the Commission and staff both have been trying to get the landfill folks to pay attention to this for at least a year and probably since the permit was issued. There was one occasion when a discharge was narrowly avoided and this was a clear warning sign, yet nothing was done.

- o Inadequate daily cover for a period of 50 days in April, May, June and July 2007. - \$125,000

To arrive at this figure, the Commissioners discussed allowing some leeway for mitigating circumstances. The daily cover logs prepared by Mr. Bane or Teddy Ross were reviewed to determine the causes. It was decided that rain might constitute good cause but equipment failure was not, because the landfill should always have working equipment and backup. Shaun West examined the logs and stated that they indicate 27 days with inadequate cover due to rain. It was stated that weather was a mitigating factor but not an excuse for the violation.

- o industrial waste issue – action postponed pending report based on additional information.
- o methane gas – LEL violation for 5 days would be maximum penalty, and for failure to implement remediation plan the maximum penalty amount would be calculated based on the period of from March 29th (after notice of approval was clearly given) to August 28th (also discussed as end dates were 8/29 and 8/14), even though the Federal Regulation states there are 60 days from the date of the detection, to account for any ambiguity. It was also noted that ICI took no action to notify CNEP if they had any other considerations to address during that time.
- o Unauthorized storm water impoundment - maximum penalty for ten days. It was noted that this issue has not been successfully addressed despite prior debate, discussion and enforcement.

4. Vote to issue Administrative Compliance and Penalty Assessment Order, orders establishing deadlines and/or other appropriate action by the Commission

Commissioner Matlock made a motion to issue Administrative Compliance and Penalty Assessment Order consistent with discussion, and Commissioner Green seconded.

Roll was called and the vote was :

Commissioner Matlock – aye

Commissioner Green – aye

The vote to issue the Administrative Compliance and Penalty Assessment Order was approved unanimously.

The Commission next considered setting deadlines in a compliance schedule and asked for input from Mr. Bane on some of the timeframes in a proposed Compliance Schedule provided by Ms. Hale.

Commissioner Matlock made a motion to approve the proposed Compliance Schedule and Commissioner Green seconded. Roll was called and the vote was:

Commissioner Matlock – aye

Commissioner Green – aye

The vote to approve the proposed Compliance Schedule was approved unanimously.

The Commission next discussed when the penalties should become due and payable in the event there was no request for hearing within 15 days and the ACO and Penalty Assessment is final.

Commissioner Matlock moved that the penalties become due and payable 30 days from the date of the meeting (September 4, 2007) and Commissioner Green seconded. Roll was called and the vote was:

Commissioner Matlock – aye

Commissioner Green – aye

The vote to recommend that 30 days from today the order becomes final was approved unanimously.

6. New Business – There was no new business.
7. The next meeting will be held October 2nd at 9:30 a.m.
8. Commissioner Matlock moved to adjourn and Commissioner Green seconded. The meeting was adjourned at 11:15 a.m.