

**CHEROKEE NATION
ENVIRONMENTAL PROTECTION COMMISSION**

MINUTES FOR MEETING OF JULY 3, 2003

Commissioners Present:

Ed Fite
Ed Henshaw
Stan Hummingbird

Staff and Guests Present:

Jeannine Hale, Asst General Counsel
Dwayne Beavers, OES
Wayne Isaacs, OEP
Del Roberts, OEP
Nancy John, OES
Doug Bane, NR
Pat Gwin, NR
Billy Hix , Env. Health
Shaun West, OEP

Agenda Item #:

1. Commissioner Fite called the meeting to order and welcomed guests.
2. Commissioner Fite noted in the record that the public notice of the meeting had been distributed per requirements of the Cherokee Nation Code.
3. A. Commissioner Henshaw made a motion to amend paragraph #13 of the minutes of the May, 2003, meeting of the EPC, to say that “Commissioner Henshaw and Commissioner Fite concurred with Ms. Hale and the Commissioners also requested to be informed about meetings, work and events related to environmental matters, such as the Tar Creek Natural Resource Council”, and asked that the minutes so amended be approved. Commissioner Hummingbird seconded the motion. The motion passed unanimously.
B. Commissioner Henshaw asked that the June minutes be amended to change his title from “Chairman” to “Commissioner” and made a motion that the minutes with that amendment be approved. Commissioner Hummingbird seconded. The motion passed unanimously.
4. Division Reports were provided as follows:
 - A. Environmental Protection : Wayne Isaacs stated that he was not aware of any significant developments since last meeting to report.
 - B. Office of Environmental Services: Dwayne Beavers provided a written and verbal status report for OES. He highlighted item 3 on the written report about EPA’s George Craft suggesting CN seek TAS status for purposes of Section 319 of the federal Clean Water Act (nonpoint source pollution grants). Mr. Beavers pointed out that CN’s program under Section 106 of the CWA did not meet resistance from the state and stated that, at the staff level, the state encourages us. He suggested that we set up meetings with the state to discuss cooperative efforts. Commissioner Henshaw agreed that is important for the Nation to meet with the state to explore opportunities to work together and suggested that by working cooperatively we

might avoid litigation. A discussion ensued about TECO and concern about remarks made by Earl Hatley at a recent meeting of the Oklahoma Water Quality Monitoring Council, wherein Mr. Hatley indicated that TECO member tribes voted not to enter into any MOAs with the state on water quality monitoring. Ms. Nancy John described how TECO was initially formed and reported that it was not formed for the purpose of being a collective voice to represent member tribes' positions. It was generally agreed that we need to make sure CN's interests are appropriately represented by authorized individuals.

- C. Natural Resources: Doug Bane provided a report with the assistance of Pat Gwin. All equipment is tied up at the landfill so there are not any other NR activities to report on. Regarding the landfill, Mr. Gwin reported that the CN is pursuing a voluntary compliance agreement with EPA to correct any deficiencies. Mr. Bane handed out an Interoffice Memorandum dated 7/02/03 re CNSL Photo-documentation report for the week of 06/30/03. Mr. Gwin went through some of the color photos and pointed out that major improvements have been accomplished at the landfill since Natural Resources has been working on it. A question was raised about the capacity of the leachate pond; Mr. Gwin indicated that the leachate pond is 4 to 4 1/2 acres with a 4 foot maximum depth. Commissioner Henshaw asked how much runoff the pond receives. Answer: the pond only receives direct rainfall, not runoff. Doug Bane and Pat Gwin of Natural Resources gave a brief history about how the Pat Gwin and Natural Resources department were asked by CN General Counsel, Julian Fite, and the CN Administration to step in and take care of problems that had been discovered at the landfill. An Executive Order to clean up the landfill was issued. Chairman Fite asked about institutional constraints in properly operating the landfill. Mr. Gwin pointed out budgetary constraints have existed in the past and that, in the past, operating the landfill may have been a lower priority. The landfill is a draw on resources: since taking it on, NR has had no major forestry projects, no equipment and no IRMP.

Chairman Fite commended Mr. Bane and Mr. Gwin for what they have been doing and asked if we are on the right track now. Mr. Gwin stated that there is much more to be done. A discussion ensued about how the landfill might be operated by a new environmental business corporation as opposed to how it was done before, which was a lease/contract. Commissioner Henshaw asked if staff had an opinion about the best method for handling it and they declined to offer an opinion at this time. Commissioner Henshaw pointed out that the EPC is statutorily responsible for the landfill and needs to be kept informed and involved in decisions that may affect whether it is properly operated. Mr. Bane stated that protecting against groundwater contamination must be a major concern when making long-term decisions and that, in his personal opinion, we must take care that environmental concerns take precedence over concerns related to financial profit. Commissioner Hummingbird expressed concerns about the effectiveness of the EPC if the EPC is not allowed input into important decisions about how the landfill will be operated.

Chairman Fite agreed with staff that much work remains to be done and reiterated that the EPC must be involved. He also pointed out the need to review the need for a permit for the landfill under 63 CNCA 606A. Commissioner Henshaw expressed concern about equipment needed for the landfill. Commissioner Henshaw and Chairman Fite agreed they would try to attend any Council meetings where this might be discussed.

5. Presentation regarding the Cherokee Nation Sanitary Landfill (CNSL): Mr. Bane continued the earlier discussion by describing how the landfill first opened in the early 1980's when Oklahoma State Department of Health issued a letter of permission to Chief Swimmer. The state Health Dept monitored it. The landfill lost money and came close to closing, then eventually it went to Mr. Fisher for management. Originally the landfill accepted 50-75 tons a day, solely from sources within the state.

When subtitle D regulations went into effect, the tribe decided to keep the landfill open as a service to the community. An 8 acre liner was installed, scales were put in, etc. Until 1994 Natural Resources operated the landfill. Under Natural Resources, management was proceeding under plans developed by Terracon. In 1999, the landfill was moved under Business Enterprises under Jamie Clinton. Problems developed: at times no daily cover, existing cell was full and yet the landfill was still taking in trash and apparently was putting trash off liner. When CN discovered this, the Executive Order was issued and Natural Resources was sent in. Their first priority was to get trash covered up.

Issues were discussed related to having a new cell, filling the old cell and proper cell size of 8 acres under Subtitle D. CN has a verbal agreement with EPA to limit volume to 400 tons per day. Corrective actions to date were outlined, such as elimination of blowing trash. CN is working with EPA – the state does not have regulatory authority. CN has spent about 1 ½ million dollars. Now CN is budgeting for an engineering plan and closure. Activities in the near future include capping, maintenance of old capped cells, meeting about new system of monitoring. Mr. Bane assured that environmental protection is a top concern.

Closure funds are in place but are inadequate. The group discussed possible scenarios related to closure of the landfill and what might be required. Options were discussed for making sure all portions of the cell are on the liner. 3 main options = 1) getting a variance from EPA with an engineering proposal at cost of about \$250,000, 2) moving several thousand cubic feet back about 200 feet, or 3) leave it there if it is safe. Mr. Gwin explained the need to fill up cell to avoid bowl-like effects (more leachate) and get a cap on it. Leachate costs about 10 cents per gallon to deal with.

An adjoining landowner apparently filed a complaint with DEQ. Commissioner Henshaw asked that complaints be forwarded to EPC and that periodic inspections be scheduled. Mr. Gwin would like EPC, especially Commissioner, to have an opportunity to see the confluence between Candy Mink and Jenkins Creek. Jenkins Creek is impaired up above the confluence, where the landfill has no impact. Mr. Gwin discussed the potential effects of the landfill on Jenkins Creek. [Major concerns include loss of volume, suspended solids, temperature and stormwater events. Rains of 4 inches or so are a big concern.] CN may consider asking for a water quality study at a later date, after corrective measures complete. Problems with negotiating agreement with EPA were described.

6. No official action requiring a vote was taken by the Commission regarding the landfill. EPA may be coming for a visit. EPA has been invited for a tour in late August. The Commissioners are interested in a visit to see the landfill.
7. Assistant General Counsel Jeannine Hale provided the Commissioners with a notebook containing copies of Title 63 of the Environmental Code of the Cherokee Nation, a list of

possible code revisions, copies of related state statutes and copies of CN regulations about lead based paint. A number of issues were identified, such as:

- A. Do federal regulations apply if we don't have any?;
- B. Setting priorities - Should we first go forward with general gap-filling provisions and then continue with specific statutes;
- C. How and when to present recommendations to the Council;
- D. Exact time line and legislative process, including which committee would the Council assign it to, necessary forms to complete;
- E. Coordination with the administration;
- F. Need to clarify the scope of what the EPC will be doing;
- G. The possible implications related to asserting our sovereign rights;
- H. What subject areas should EPC's prioritize? Wildlife, water, other?; and
- I. How will staff be assigned to enforce the code.

It was determined that the EPC would take this matter up again at the next meeting and that Ms. Hale would consult with the General Counsel for the tribe before then if possible. Staff noted their appreciation for the staff who previously worked on the statutes, pointed out that there has been much progress, and that simple is probably better. Chairman Fite suggested that we go gradually and make sure we get it right before we take it to the Council. Discussion was had about whether to break up recommendations to the Council into several separate parts/times or go forward with the whole document at once. Commissioner Henshaw inquired about enforcement capabilities. Ms. John pointed out that other tribes have gotten into unwanted litigation and that we should exercise caution lest we set bad precedents. Ms. Hale pointed out that this generally has involved federal programs, not state or areas where there are gaps in federal or state authority. It was recognized that the CN needs to work to develop programs for enforcement, hearings and judicial review. Mr. Beavers pointed out that CN does not have to go forward with applications for federal permit programs until and unless ready. Commissioner Henshaw had questions about setting water quality standards and whether enforcement would still lie under EPA. It was decided legal research and careful consideration will be required to address some of these issues.

8. New Business - This agenda item is for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.
Staff reported that there were issues related to continuation of the Nation's recycling program. Nancy John provided information concerning the past success of the project. Pat Gwin noted that if the recycling program is discontinued, the paper would have to go to the landfill and additional costs of \$18 per ton would be involved. The Commissioners asked whether the EPC might order that recycling paper is mandatory for all employees, or how we might otherwise encourage it, including satellite facilities. After additional discussion, Commissioner Hummingbird made a motion to support the continuation of the current paper recycling program and Commissioner Henshaw seconded. The motion passed unanimously.
9. Miscellaneous discussion.
10. Chairman Fite adjourned the meeting.