

**Cherokee Nation Environmental Protection Commission**  
**Cherokee Nation Environmental Protection Office**  
**206 E. Allen Road, Tahlequah, OK**  
**June 15, 2006 9:00 am**

**MINUTES**

Present for the Commission:

Ed Fite, Chairman  
Marty Matlock, Commissioner  
Mark Green, Commissioner

Staff and Guests:

Jeannine Hale, Administrator  
Michael Lynn, Cherokee Nation Roads Program  
Randy Gee, Cherokee Nations Environmental Programs  
Doug Bane, Cherokee Nation Landfill  
Pat Gwin, Cherokee Nation Natural Resources  
Harold Langdon, Cherokee Nation Enterprises  
John Freise, Cherokee Nation Environmental Programs  
Shaun West, Cherokee Nation Environmental Programs  
John Parrish, General Counsel  
Bobby Short, Cherokee Nation Environmental Programs  
Clint Carroll, Cherokee Nation Environmental Programs  
Evelyn Ridenhour, Cherokee Nation Environmental Programs

Agenda Items:

1. Chairman Fite called the meeting to order at approximately 9:00 am on June 15, 2006.
2. Chairman Fite acknowledged the meeting notice and distribution list and placed the Record of Public Notice into the official records.
3. Commissioner Matlock made a motion to approve the minutes of the previous meeting and Commissioner Green seconded the motion.

Roll Call:

Chairman Fite: Yes  
Commissioner Green: Yes  
Commissioner Matlock: Yes

4. Reports

A. Harold Langdon, CNE reported:

- Roland Casino is on schedule, the underground storage tanks will be delivered in about one week. The Environmental Programs staff will be invited to participate in the installation. Roger Graham of

communications will be invited to film any part of the project he would like.

- Sallisaw is on schedule and targeted to open June 21, 2006.
- Tahlequah Casino is still under construction and on schedule for opening September 1, 2006.
- Other projects are in the design stage or are being redesigned.

B. Environmental Programs – Nancy John submitted a written report that was placed into the records.

C. Natural Resources: Pat Gwin submitted a written report that was placed into the record. Pat mentioned that he received a request from the BIA for an official of the CNEP contact them about starting dialogue on water rights initiatives. The BIA has jurisdiction over the Nation because they are our funding agent.

D. Roads activities: Michael reported construction on Saline Creek Bridge began on June 5, 2006. Red Barn Road, Maxwell Mountain and Bunch Henderson are still under construction. Cedar Crest Bridge environmental review has been prepared and signed by the BIA; no written comments have been received, and have been published. In the process of scheduling an America Beetle survey with a consultant for University of Oklahoma.

5. Legislation: John Parrish commented on the APA draft that was submitted in packet. He reported there will be minor changes to draft. It should be filed today with the Rules Committee. The motion to approve the APA was made by Chairman Fite and second by Commissioner Matlock. Commissioner Green was not present. Chairman Fite tables the Hunting and Fishing codes until next meeting.

6. Cherokee Nation Landfill:

A. Reports- Doug reported he submitted a written report to be placed in the records. He reported on the Compliance Schedule activities there have been no change on some items and some have been completed. There was a change to item #7 which has been pending and not complete at this time. He had a discussion with Mike Smolen of Oklahoma State and also with a lady with Painter & Associations in Oklahoma City and they have made a proposal to complete this annalices. This proposal has been forward to Jeannine for review and comments. We hope are close to resolution on this. The east slope was reseeded after the rains plus the area that wasn't seeded to the beginning. We are still working on outstanding issue Jeannine has brought to our attention. One of the items is the water that is ponded on the tie-end cell. Doug reported it had been pumped down and last week we got about two inches of rain and it filled back up again.

B. Cherokee Nation Environmental Programs and Natural Resources: Jeannine reported that John Freise and Shaun West with the environmental programs are now working on the landfill project. There were about a 30 minute slides presentation of the visits to the landfill by Shaun, John and Pat. They were slides

of the working phase which was large at the time pictures were taken; however, on the next visit it had been corrected. Slides showed lots of blown litter which has to be picked up by hand. There were slides of the leachate pond. Slides of sandbags were shown because they were used for the purpose of keeping anything from breaching until the pumping operations began. Jeannine said we need to get a plan in place before we had situations again. Doug said it has proposed in the permit updated to convert the tanks and ultimately do away with the pond and go to the tank system. To shut off the inflow of the pond, convert to tanks and the leachate management recirculation and possibly irrigate on line cells. The original terracon sub-title D design was to be an evaporation basin and it will not evaporate enough water. Commissioner Matlock asked the design capacity of the evaporation pond in which there was no answer. He concluded it has been grossly under design for leachate exclusively and obviously with inadequate storm water collection capacity. Chairman Fite asked if there have been any regress with Terracon? No. There was a slide showing a French drain from under the trash on the transitional area the designer put in as part of the tie-end cell. The purpose is to relief any leachate that might accumulate under the liner in the trash. Doug said when the leachate pond is gone the toe of dike on the east side of the cell comes out into where the existing pond is. At that point is shaped and will be grassed. There was a slide showing a stream that has popped up on side of the cell and has currently been tested and results received by Pat, in which he handed out a copy of the results. The stream appears to be a French drain that A&M put under cell 3 and it is draining into the storm water pond. There was a slide showing a tie-end cell with ponded water. Doug said the problem it is at the lowest point of the leachate collection pipe and overhead water and everything drains here. It doesn't pump down fast because it is being recirculated and it is not pumped back over the dike to the storm water pond. Once trash is place on this then it can be shaped to remove the storm water just like any cell. But until then there is no place for the water to go. Pat mentioned that the Sub-Title "D" regulations mandate you can't have more that 12 inch head of piped liner and the thickness of the liner is 60 ml. Doug stated we would have to get A&M to come out and look at it and give us a letter to stating the liner was not adversely impact. There were discussions concerning the options when we run out of room and the only one offered is to truck it to Stilwell. Pat is in the process of redoing the inspection sheet to be more accurate and update. Pat has a concern of trash being put in top cell 1 which is the unlined portion of the landfill. In 1994 when the regulations were first propagated it was permissible to place trash upon recompacted clay liners. This situation needs to be looked at. Jeannine commented that it is not unheard of for a landfill to do a vertical expansion on an old unlined cell if it was previously permitted and so once again we have an odd situation where we didn't have a permit. She is still doing researching on the regulations and is not for certain exactly how plays out. Her main concern at this point is that it is not allowed on under the permit, which specifically did not allow them to put trash in cell 1 or cell 2. It stated, "No new waste disposal shall occur in cell number 1 or cell number 2 as indicated in the attachment without prior written approval by the EPC. Application to dispose of waste in cell1 & 2 shall

require permit and modification and shall include engineering designs plans prepared by a qualified licenses engineer”. So any trash being placed on cells 1 & 2 is in violation of the permit. There has been no “Notice of Violation” issued at the present time but will accept guidance and a consent agreement from the commission on handling this situation. Doug said he made the call without referring to the permit to place the trash on cell 2. The entire top of Cell 2 drains towards the tie-end cell and we were getting tons of headwater when it did rain. Our goal was to reshaping the top of the cell and use trash to reshape it to get it draining other directions, plus give us space while trying to get the water pumped off and something done about the tie-end cell.

There has been significant amount of work on done to the water monitoring network. He has plotted all of the groundwater monitoring well locations, methane monitoring probes and the passive ? monitoring vats and will be getting this information to Doug. Doug stated he has had several groundwater monitoring wells and gas monitoring locations including around cell 1. Pat is rewriting ? and when finished he will give the Shaun and John to edit. Commissioner Green commented that since a violation has been committed the commission needs to document someway by writing a letter, but can’t ignore the fact.

Commissioner Matlock agreed, however, he stated the landfill manager’s decision could be justified because there was a greater risk having not made that decision. The forcing function behind all these problems is inadequate hydrologic management of the site, inadequate design, inadequate infrastructure, and inadequate management of water at the site. Until these issues are rectified these problems will cascade, so a rectification has got to be done. That is an actionable point. Based on an e-mail from Ms. Hale regarding the owner /operator, seems to there is a bit of reluctance to accept responsibility at that level. He feels that reluctance should be address with absolute clarity that there is absolute responsibility, liability and accountability for these failings.

Pat reported Clean Water issue is the storm water runoff and it is on the compliance schedule to redo the SWP-3. The other is the Clean Air Act issue and it also is in the compliance schedule to check the maximum design capacity. Doug said an updated SWPPP and the Clean Air Act Gas Management Plan is part of the permit update that has been submitted. Chairman Fite stated it behooves us as a Nation to start from step one and go back and remediate. Pat said that is not practical at this time, it will require major deconstruction and reconstruction to remove the trash that are on the cells. Chairman Fite asked what are the future ratifications by not doing that? Pat said that was someone higher than him to make that call. Chairman Fite said we need to get on a train to where we can see progress being made to what we can be operating on a solution to our crisis. The commission has a responsibility to protect Cherokee Nation and its people and if the landfill is not meeting the environmental criteria then he is not interested in making money for the tribe until the landfill is sound.

Jeannine said the waste on the liner was addressed by the commission and what was presented to them was permeability information that indicated that even though there was no liner, the soil underneath the trash was permeability that it

was comparable to a liner. Pat stated in actuality according to regulations you don't have to have a liner. You just have to meet a certain design criteria, but due to the limbo status the Indian nations are required to install a liner. The commissioners agreed that the Cherokee Nation needs to be beyond reproach in the landfill situation, if not they don't want to be part of it. Commissioner Matlock said the liabilities far outweigh any benefits in the event of catastrophic failure of cells. Chairman Fite said we have to do everything we can to protect Lee Creek because it is a state scenic river, is on Cherokee Nation and is a public water supply for Arkansas in order to prevent a lawsuit. Doug stated total retention plan is included in the update permit. This will give an operating plan to start building for total retention and that hopefully will settle a lot of the issues. Chairman Fite said the image of the CNSL is not good at this time and we need to get a handle on the small things. Commissioner Matlock commented on the hydrology issue. Chairman Fite asked if the Cherokee Nation has done anything outside of what was original recommended to us that would compromise the design of the landfill? Doug reported the original design was a Sub-Title D and there were total segregation of cell 2 and sub-title D cells. Since that time the regulations have been changed/interpreted to allow the tie-end. Commissioner Matlock asked if we modify our operations without an unmodified design? Doug said the design was modified through construction design with A&M Engineering. According to Commissioner Matlock, the liabilities shifted then to A&M. Any modifications should be stamped by a certified PE and they should have made sure they had explicit operational criteria. As long as the landfill is operating within the criteria of the design it should be serviceable. If that design is not functioning then the engineer improperly designed it or we are working outside the boundaries of it. Either way there is a reconciliation. There's a way to correct, either we operate within the design or we redesign. If the design was incorrect to begin with, that needs to be rectified immediately. We need to determine which of those two conditions exist. What the EPC concerns are is that someday someone will look at the operations of the landfill and then file a lawsuit against the Cherokee Nation.

C. Application for Liner Variance:

1. Presentation of Application - Doug Bang reported an application for Variance toward the liner, all required testing have been completed and Shaun has got the final result last week. As opposed to the 2 feet of clay, with the 60 ml, HDPE liner, we are requesting to go with 1 foot of compacted clay with a benonite mat liner, which is equivalent to an additional foot of clay then the 60 mi on top of that. This has been designed by A&M Engineering. The reason for design is the slope is steep and there is not a real practical way to address it, and this kind of liner system will work the steeper slope. Once trash is placed on the liner this will, to a certain degree, dealivate some of the overhead water problems on the tie-end. Pat said as long as we have a PE approval on the modification he has no problem with it. Jeannine commented that originally when Doug had submitted something it was for the variance on the slope, and that's what the engineers prepared. But the regulations that

we are charged with enforcing to deal with a design for the liner, and her understanding is the engineers doesn't have anything to do with that. That is why this information was submitted to direct that regulation. The engineers has not put their stamp on this modification. It is not known if the original permitting for the liner has been approved by the engineers. Doug reported there are no drawn design because of cost factors. Once approved this will give LF something to work with. Commissioner Matlock motioned to act on approving requested variance with contingent upon PE certifications.

2. Recommendation: Jeannine reported she is fully in support of the memo that was submitted for the records. She is disappointed with the engineers because the package wasn't put together appropriately. She is comfortable with the groundwater contamination with Shaun's recommendation.
3. Discussion by Commission and Opportunity for Comments: None
4. Vote the approve or disapprove application for variance: Chairman Fite made the motion to approve the application for variance subject to certification by PE, seconded by Commissioner Matlock. The vote to approve the motion was unanimous.

D. Request to Allow Fayetteville Sludge under Interim Permit:

1. Presentation of Request - Doug reported he did not want to bring this proposal forward at this time. The city of Fayetteville has been given notice Porter Landfill will no longer be able to accept their sludge due to the lack of volume of trash to co-dispose the sludge with. OMI the operators of the city of Fayetteville, AR sewage treatment facility contacted us to bring their sludge to our facility. The proposed volume is of sludge is 80 tons per day Monday through Friday and 60 tons on Saturday for a total of 460 tons per week. We don't have the conclusive on this, will be looking at other options.
2. Recommendations: - Jeannine Hale commented on the proposal stated the sludge will be placed on an area with a synthetic liner system. This is pertaining to cell 3 and there are issues right now with water ponding in that area. The liner variance will have to be granted and the cell completely lined, the leachate situation needs to be addresses. The current interim permit does not allow any additional sludge without EPC approval. Since we do not have any regulations we do not know if this is a minor or major modification of the permit. If it were a major modification there needs to be some kind of public meeting and public notice giving them an opportunity to comment. From EPC prespective it is advisable to allow public pact input. Because we already have the permit application before us to modify the permit, it will be confusion to go to the public and say we want to modify the permit to bring sludge in and then in the next month have another public meeting any say, "we want to modify the permit to do all these other things". Our recommendation is best to have one permit modification and one public meeting that would address all the issues. We can not say storm water is not under control. We have operational issues and a recent issue with Arkansas investigation

into the hazardous waste transportation by roll off. We had a conference call in they gave us some waste manifest and basically there is lack of evidence as to what is being transferred to the landfill. But the manifest stated it was municipal waste however it wasn't completely filled out and didn't say what the source of it was. Yet that was accepted into the landfill. That would have been an industrial waste to have a big load of cans coming in and under our permit it stated no new industrial waste, all we can take is construction waste. This is a concern as to whether the waste screening processes are adequate and if they bringing in sludge those need to be in place, in fact they need to be amended to permit sampling and that sort of thing taking place. There were no lab analyses that indicated the level of bacteria. John did find documentation that stated there is a limit on acceptable levels of bacteria even in class B sludge and we don't know if it meets the criteria. Previously there had been concerns presented to commissioner by the CDC about workers precautions, making sure they were trained to handle sludge properly. Our final concern is the high liquid content. Some questions have been raised but it did pass the tank filter test. Chairman Fite said 80 tons a day will amount to 4 truck loads. We will be safe in assuming it will be about 75% water which amounts to about 16 thousand gallons a day. Commissioner Green commented if we can't handle the water how are we going to take on any more? Jeannine is check with Mayor Putty of Fayetteville to find out if they had crisis and he was not aware of one. He will check to see if they changed haulers but we haven't heard from him. Jeannine recommended not to approve the request at this time.

\_\_\_\_\_made a motion, to not accept the proposal of the Wastewater Treatment Sludge for the City of Fayetteville. It was seconded by Commissioner Green. The vote to denied the motion was unanimous. It was clarified their rational is the concern of the water. Chairman Fite stated that once the storm water runoff and the leachate issues have been address then it can be brought back to the commission and it is likely it will be approved at that time. Both commissioners concurred. OMI requested to deliver one load to see how the route went and if the truck will be able to get to the landfill without any trouble. This request dies for lack of second.

7. Complaints/Inquire Report: Randy reported a written report was submitted for the records
8. New Business: None
9. Miscellaneous discussion - none
10. Meeting adjourned – Meeting was adjourned at 11:25 am