

CHEROKEE NATION

ENVIRONMENTAL PROTECTION COMMISSION

MEETING: June 5, 2003

Minutes / Topics of discussion (corrected)

In Attendance:

Ed Fite
Ed Henshaw
Stan Hummingbird
Shawn West
Wayne Isaacs
Angie Bulk Holder
Jeannine Hale
Dwayne Beavers
Pat Gwin
Tom Elkins
Billy Hix
Ryan Callison
Brad Peak
Jason White
Kent Curtis
Eric Bassett
Eric Braly
Terry Hallauer
Justin Godwin
John Parris
Pat Ragsdale

Agenda

Item #:

1. Pat Gwin of Natural Resources welcomed those attending the meeting.
2. Chairman Ed Fite called the meeting to order and asked for introductions of persons attending. A signup sheet was passed around. Chairman Fite acknowledged the Public Notice of the meeting and attendance. Chairman Fite noted that a written "Record of Public Notice" had been prepared to document compliance with CNCA 75-1-10(E) and that it would be placed into the official record of the meeting.
3. Commissioner Henshaw moved that the minutes of May 15, 2003 minutes be approved with changes; Commissioner Fite seconded. The motion was unanimously approved.

4. Dwayne Beavers of the Office of Environmental Services gave an overview of the OES's work on an application by the CN to EPA for program authorization under Section 105 of the federal Clean Air Act, and for a determination that the CN qualifies to receive "affected state" status. This status would allow us to comment on state-issued air permit that might affect the Nation on a level equal to a neighboring state. Discussion by the Commission followed.

A motion was made by Commissioner Henshaw to approve a written Resolution indicating official approval by the EPC to file the application, subject to the final decision of the Principal Chief. Commissioner Hummingbird seconded. The Resolution was approved unanimously.

Commissioner Henshaw noted the quality and good attendance at the recent ITEC conference sponsored by the OES, and indicated that he was proud of the department.

5. Pat Gwin talked about tipping rates at the Landfill. Currently they are \$14.00 per ton. The staff is proposing new tipping rates at \$18.00 per ton and for out of nation \$22.00 per ton, although there may be a volume discount. The rate proposal is scheduled to go before the Tribal Council and go into effect October 1. The proposal was developed after comparing fees charged at 5 other landfills in this area, which ranged from \$15 at Quarry to \$36.90 for out of state waste received at Ft. Smith, and taking the average. It was noted that 1/3 of the volume at CN landfill is from Arkansas and it used to be 1/2 before a tonnage restriction of 400-500 tons per day was implemented. Mr. Gwin provided handouts showing National Average Tipping Fees in the U.S., Tipping Fees in different regions of the U.S. during 1985-2002, and Landfill Tonnage Received in 2002 by various landfills in Oklahoma. It was noted that special consideration is given at the CN landfill to wood chips that convert to soil. The individual is charged \$5. Commissioner Henshaw inquired about 'free days' to encourage individuals to bring trash in rather than illegally dumping it.

Commissioner Henshaw made a motion to support the increase in tipping fees recommended by staff and to encourage that fees continue to be set in a manner that is environmentally sound and that will not encourage out of nation dumping that might harm the Cherokee Nation or its people. Commissioner Hummingbird seconded. The motion was passed unanimously.

Chairman Fite asked that the landfill be a permanent agenda item and said the record should reflect that landfill managers should be here and keep the Commission informed.

8. (the agenda was mis-numbered and there was no #6 or #7) Tom Elkins of Environmental Protection gave a Power Point presentation about that department's activities. The CN has Treatment as State status for the lead based paint program for all tribal and individual trust lands. The CN is the first Indian Tribe to create a lead base paint-training program in the state of Oklahoma. The CN Office of Environment Protection also performs radon

testing. The EPA action level is 4pCi/L. The CN did radon tests on 649 homes, 85 schools (JOM), and 71 facilities. Each radon test costs about \$8.00. The CN needs funding for radon testing follow-up and mitigation. If LBP is found, HUD does remediate those sites. In Cherokee County about 40% homes tested have radon, Adair County and Mayes each have about 20% of homes tested with radon. The Office also does ASTM Phase 1 assessments. Three staff recently passed as Certified Hazardous Materials Managers. The Office is also involved in a new initiative against Meth labs as well as emergency response and HAZMAT response activities.

9. Jeannine Hale provided the Commissioners with a legal update in the form of a list of cases and issues she is working on.
10. New Business. Dwayne Beavers noted that we have been contacted about EPA water quality regulations and issues related to how individual trust lands are treated. After discussion, it was determined that staff should set up a meeting with EPA to discuss water quality standards.
11. Miscellaneous. Pat Ragsdale informed the Commission that there are remaining issues related to water rights and the Arkansas River cases that need to be addressed.
12. Commissioner Henshaw made a motion to go into executive session and Commissioner Hummingbird seconded. The motion was passed unanimously. Executive session was conducted concerning pending and potential legal claims associated with Tar Creek Superfund site contamination. Commissioner Hummingbird made the motion to come out of executive session and Commissioner Henshaw seconded. The motion carried unanimously.
13. Commissioner Henshaw made a motion to recommend approval for joining the Tar Creek Trustee Council. Commissioner Hummingbird seconded. The motion carried unanimously. The attorney was asked to attend future council meeting(s).
14. It was noted that the next meeting will be July 3rd at 9 a.m. A motion to adjourn was made, unanimously passed and the meeting was adjourned.

**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.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION

MINUTES

**SPECIAL MEETING AUGUST 21, 2003, 10:00 A.M.
206 E. ALLEN ROAD, TAHLEQUAH, OK**

PRESENT:

COMMISSIONERS FITE, HENSHAW AND

STAFF AND GUESTS:

Bobby Short, OES
Nancy John, OES
Jeannine Hale, Asst Gen Counsel
Tom Elkins, OEP
Robert Largent, OES
Pat Gwin, CN Nat Resources
Mike Miller, CN Communications
Dwayne Beavers, OES

Jim Wilcoxon, attorney for CNE
Harold Langdon, CNE
Jim McSpadden, CNE
Bud McIntyre, Petroleum Marketers, consultants for CNE
Casey Thompson, CNE

Jerry Hammons, Cherokee County Emergency Response

Agenda Items

1 & 2 - Chairman Fite called the meeting to order and recognized that the meeting notice had been distributed as required by the Cherokee Nation Code. Chairman Fite had guests introduce themselves and welcomed them to the meeting.

3. Update on Outpost #1 and Response by CNE to Administrative Compliance Order
– Ms. Hale gave a synopsis of what had occurred to date regarding a gasoline leak at the Outpost #1 facility, the issuance of an Administrative Compliance Order by the EPC on August 7, 2003, service of the Order on CNE, and delivery of documents by CNE to CN in the manner and time as specified in the Order. Ms. Hale pointed out that she and Mr. Wilcoxon, attorney for CNE, had agreed to waive formal administrative hearing procedures in regard to this matter. Ms. Hale provided copies of a letter from David Stewart to Chairman Fite that accompanied documents on Weds, copies of information provided by Petroleum Marketers and a response by CN to the letter of David Stewart for the record.

Chairman Fite recognized Mr. Wilcoxon who made a statement on behalf of CNE and assured the Commission that CNE wished to do what was in the best interest of the Nation and the environment. Mr. Wilcoxon stated that March records for premium had about 150-200 gallons of gasoline unaccounted for. For April, there

were about 700 gallons unaccounted for. CNE had Petroleum Marketers do additional testing and discovered a small leak in premium dispenser; this was fixed and the amount of unaccounted for gasoline dropped off. Gasoline was found when workers looking at electrical conduit, and CNE reported this the next day. Events of August 2 were reviewed as to interactions with Cherokee County Emergency Response, and Mr. Wilcoxon apologized for any perception that CNE was not cooperative. Petroleum Marketers investigation says gasoline appears to be 'old', electrical inspection revealed no problems, had meeting with EPC and providing them with records. Petroleum Marketers was recommending surfactant flush with Biosolve, EPA did not disagree. Mr. Wilcoxon pointed out that they felt that they were working with CN Environmental Programs and want to do so. August 2 episode resulted from a big rain but the surfactant flush should help remove this problem. CNE does not feel that there is a safety problem and would like to open the store. CNE basically proposes a surfactant flush, electrical inspection, need to replace gauge with one certified for use on manifolded tanks.

Chairman Fite inquired about expertise of those inspecting the electrical system and a discussion ensued with Jerry Hammons and others regarding the rerouting of the electrical system and materials used.

Mr. Bud McIntyre of Petroleum Marketers reported that, in the past, repairs were made and P M had done follow-up tests, then later in response to problems they had retested. Tests had shown only a little water in tanks, so he felt tanks were secure. PM installed wells and Mr. McIntyre reported on findings in wells. Predominantly dark, weathered fuel found. Native soils were tested and results are in his report. PM believes gas migrated along conduit and that levels of contamination found were not of concern considering EPA and state action levels. Mr. McIntyre used a board to draw a schematic to discuss findings, topography, likely groundwater flow and the path he believes the gas had taken. He had found evidence of only a few hundred gallons at the most. PM did not have as-built plans.

**CHEROKEE NATION
ENVIRONMENTAL PROTECTION COMMISSION**

MINUTES FOR MEETING OF AUGUST 7, 2003

Commissioners Present:

Ed Fite
Ed Henshaw
(absent: Stan Hummingbird)

Staff and Guests Present:

Bobby Short
Ron Osborn
Dwayne Beavers
Doug Bane
Jerry Hammons
Gary Dotson
Ronny Hollowby
Nancy John. OES
Jeannine Hale, Asst General Counsel
Tom Elkins

Agenda Item #:

1. Commissioner Fite called the meeting to order and welcomed guests.
2. New Business. The Commission modified the agenda to first consider incidents that had occurred during the days immediately preceding the meeting, involving a gasoline leak at Outpost #1 and an incident requiring emergency response. Chairman Fite recognized Mr. Hollowby, Dotson and Hammons were present and were with Cherokee Nation Emergency Response.

Bobby Short of CN Environmental Programs gave a history of the Outpost. The tanks have been lined rather than being replaced. In 1997, a new fiberglass tank (unleaded and tied into other tank) was added. In Fall of 2002, OES provided a training course to operators including CNE managers. On 1/16/2003, during maintenance, the unleaded tank failed a pressure test. Line leak detectors passed. On 1/28/03 the premium tank was taking on water, a line break was discovered but not reported to CN. On 3/18/03 the premium tank failed its test. The test was rescheduled to be performed by different method (helium). On 5/4/03 CN groundskeepers discovered a gasoline leak. Gasoline was in the ditch. Petroleum Marketers came the next day and did a pressure test – discovered a pin hole in flex line at dispensers. A few days later, a 10 ft core sample was taken next to the ditch - only the top few inches had any gasoline. On 6/16/03, after they had gotten an open P.O. for lab work, CN staff sampled down the drainageway- they found hot spots near the store. Mr. Short described plan to do additional core sampling and assessment to determine if cleanup is warranted.

On 7/23/03 CNE maintenance crews replacing an electrical conduit discovered gas. One employee alleged they were told to cover it back up and not to talk about it. CNE came and reported it to Bobby Short.

CN met with CNE on 7/31/03 and told them CNE needed to do a safety assessment and to provide a proposed plan for site assessment. On Friday night there was a big rain, and on Saturday gasoline was observed bubbling up through cracks at the station.

On 8/04, 8/05 and 8/06 CN had meetings with CNE – CN asked for inventory records and insurance proof, but these were not been provided.

Discussion about emergency response procedures ensued. Bobby next showed a PowerPoint that included slides showing better types of equipment and improvements CNE could install, and describing samples and tests performed at the Outpost 1 facility.

Ms. Hale described events that occurred on Saturday, starting with phone calls about gasoline leak at the station, call to Cherokee County Emergency Response, reports that CNE asked Cherokee County Emergency Response to leave since it was trust land.

Cherokee County Emergency Response members next described the events, including how they first responded and had to help the Outpost shut down its gasoline pumps/electricity, erected a tape barricade. Once the pumps were shut off, the gasoline stopped. CNE (Dennis Constantine) questioned whether it was even gasoline. CNE eventually asked them to leave and they did.

Chairman Fite thanked Cherokee County Emergency Response for their help and apologized for any problems.

Chairman Fite asked what needed to be done. Bobby stated CNE was collecting free product off the top, wants to do a surfactant flush. CNE wants to reopen but we said August 6th we would not agree until they provided written information sufficient to say the station is safe. Bobby said he believed the station was safe without pumping gas. CN would like to see improvements made to the station. CN is waiting for Petroleum Marketers to prepare a report and submit it.

Mr. Henshaw made a motion to order that the Outpost remain closed until remediation is accomplished and CN receives reports and data that demonstrates that the station is safe and public health and safety can be protected, then the EPC can move forward with an emergency meeting to reopen if appropriate. Chairman Fite seconded. The motion passed unanimously.

There was further discussion about possible problems with the ATG/inventory records showing losses. Mr. Short indicated he had just received a phone call with sensitive information concerning the situation at Outpost 1.

Commissioner Henshaw moved to go into executive session, to discuss the petroleum leak and legal issues relating to Outpost #1 with their CN attorney. Commissioner Fite seconded. The motion passed unanimously.

At approximately 1:45 p.m., Commissioner Henshaw made a motion to come out of executive session and Commissioner Fite seconded. The motion passed unanimously. Chairman Fite requested that the attorney clarify her recommendations about what the order should contain to protect public health and safety. It was agreed that the order would include the following basic elements and would be drafted for Chairman Fite's signature following adjournment:

CNE to close entire facility, erect a perimeter with orange fence, enclosing all areas including pumps and areas requested by Cherokee Co. Emergency response, that they erect signs to warn the public and take other measures as necessary to protect health and safety, that they remain closed until further order of the EPC, that they provide in writing an account as to their interactions with Cherokee Co. Emergency crew on August 2, that they provide a written explanation as to why they did not report the incident, why they interfered with emergency response or be subject to a

\$25,000 fine, that they provide documentation they have complied with insurance requirements, provide invoices from Petroleum Marketers or others regarding maintenance, that they provide correspondence including emails from environmental consultants or other contractors and provide other information that CN may request within five days of the request.

Counsel was directed to call CNE to seek voluntary compliance before the order is served.

3. There was no additional new business.
4. The Commission accepted the written Division Reports contained in their packet.
5. Miscellaneous discussion. The Commission was informed about potential legislative issues such as amendments to the Clean Water Act.
6. Commissioner Henshaw moved to adjourn the meeting, Chairman Fite seconded and the meeting was adjourned.

ENVIRONMENTAL PROTECTION COMMISSION

MINUTES

REGULAR MEETING NOVEMBER 6, 2003

1. Chairman Fite called the meeting to order and welcomed guests. Present at the meeting were the following:
 - a. Commissioners Henshaw, Fite and Hummingbird
 - b. Staff members: Jeannine Hale, Nancy John, Billy Hix, Doug Bane
 - c. Guests: Jim McSpadden, Harold Langdon and Patricia Young – they gave a brief update on activities in Catoosa involving construction of a 7 story hotel, conference facilities and golf course near the casino
2. Chairman Fite noted the Record of Notice regarding the posting of the agenda and its distribution to the regular mailing list of persons requesting the same and other interested persons, organizations and media
3. Ms. Hale noted that the minutes for the previous meeting were not complete and Chairman Fite moved to the next agenda item
4. Cherokee Nation program reports were provided to the Commission:
 - a. Ms. Hale pointed out the report for Environmental Programs that was contained in the packet. In addition, she pointed out that Environmental Programs had been requested by Community Services to assume the responsibility for preparing environmental reviews for I.H.S. projects such as water and sewer lines. These EA would be prepared by the Office of Environmental Protection under Tom Elkins. Transfer of these duties is consistent with the goal of consolidating environmental programs.
 - b. Nancy John gave the report for the Office of Environmental Services. Ms. John described the EPA regional environmental summit OES coordinated in Albuquerque. OES did such a good job that EPA has asked OES to do it again next year. OES is preparing to give GIS training in Albuquerque. She provided handouts concerning a Sequoyah County Household Pollutant Collection Event. Ms. John clarified in the report under Outpost that there were no exceedances. Commissioner Henshaw noted that there was discussion about the city having a recycling project. Chairman Fite noted that it was a transfer station.
 - c. Ms. Hale described proposals submitted for the Community Investment project – one for complaints and inspections, consistent with the new plans for a complaints program under Tom Elkins. The other proposal was a community service project to build a community garden or a nature trail with signs/outdoor classroom.
 - d. Doug Bane gave the report for Natural Resources. Pat Gwin was unavailable and couldn't come to the meeting because he was in the field. Mr. Bane gave an update on the landfill: It is down to 200 tons per day. Roloff made a proposal to take over the landfill but CN was not receptive.

City of Salisaw has sued them, Waste Mgmt sued them for franchise infringement in Springdale, and City of Ft. Smith sued them for nonpayment. Roloff stopped bringing waste to the landfill. At first they argued about the new rates, but they were in arrears about \$80,000 so the CN stopped accepting their waste. Chair Fite asked and Mr. Bane said no, at this point, if Roloff wanted to build a facility in a scenic rivers basin and DEQ rules currently prohibit that, he did not think it would be a good idea to make an exception to let them build it.

Mr. Bane noted that Natural Resources report was not in the packet and he will make sure it is in the future. In December they will do a demo project on daily cover at the landfill, and Commission is invited to observe this. The landfill schedule to go to one Saturday open per month.

- e. Billy Hix pointed to the report contained in the Commission's packet, including the latest groundwater monitoring results – out of 8 wells, only two constituents were measurable- great results. Billy expects Harley to come next time, this time they had a conflicting meeting.
5. Ms. Hale presented statutory language for pollution abatement, definitions and other general provisions. This language had been considered by the Commission earlier and had been given to General Counsel and DOJ to review, but they had not provided many comments. Ms. Hale suggested that the Commission could either vote to recommend the language to the Council, or vote to recommend the language subject to changes by General Counsel and/or DOJ so they would have more time to review it.

Ms. Hale provided a draft schedule of statutory revisions for the Commission to consider in order to get through all of the statutes by October 2004. Chair Fite suggested that the Commission move on with the revisions.

Commissioner Henshaw asked about references to the “Nation” and expressed concern that EPC has authority/responsibility now, so it might be best to be clear if we are changing that or not. Commissioner Hummingbird asked if it would work if the language could be changed to refer to the Commission rather than the “Nation”.

Commissioner Henshaw had numerous questions and suggestions about the proposed statutory language and, as a result, a number of changes were made in the statutory language. Commissioner Fite indicated a concern that the statutes should include language about how money in the revolving fund could be spent, including environmental enhancement projects.

Commissioner Hummingbird moved to approve the proposed statutory language with the changes made as a result of the discussion by the Commission, subject to any changes that the office of General Counsel or DOJ may have. Commissioner Henshaw seconded the motion. The motion passed unanimously.

6. Commissioner Henshaw reported that he has been concerned whether EPC is being kept informed about CN involvement and comments in matters where CN is acting as a Cooperating Agency, e.g. in NRC NEPA activities related to Sequoyah Fuels. Ms. Hale agreed that this was a concern but efforts were being made to ensure that CN EP was advised of all activities. Commissioner Henshaw made a motion that Ms. Hale be the point person for SFC and that all correspondence, etc. go through Ms. Hale. Ms. Hale is to communicate with Mr. Henshaw and they will decide if there is a need for this to be placed on the EPC's agenda. Mr. Henshaw should be copied on all pleadings. Commissioner ___ seconded the motion. The motion was approved unanimously.
7. Ms. Hale presented the EPC with a draft schedule for statutory revisions during FY 04, designed so that the entire Environmental Code can be considered in the next months before October 2004. Commissioner Henshaw made a motion that the schedule be adopted as a template and Commissioner Hummingbird seconded. The motion was approved unanimously.
8. The December meeting was moved to December 11, 2003. The Commission's regular meetings in 2004 will be the first Thursday of the month at 9 a.m.
9. The Commission inquired about activities involving Tar Creek and it was suggested it should be placed on an agenda soon.
10. There was no new business or miscellaneous discussion.
11. Chairman Fite adjourned the meeting.

ENVIRONMENTAL PROTECTION COMMISSION

MINUTES

REGULAR MEETING DECEMBER 11, 2003

1. Chairman Fite called the meeting to order and welcomed guests. Present at the meeting were the following:
 - a. Commissioners Henshaw and Fite . Commissioner Hummingbird telephoned to let the others know he had been unavoidably detained and was unable to make it to the meeting.
 - b. Staff members: Tom Elkins; Kent Curtis; Dwayne Beavers; Jeannine Hale, Nancy John, Billy Hix, Doug Bane, Bob Short, Pat Gwin, Sharon Swepton
 - c. Guests: Jim McSpadden, Harold Langdon and Patricia Young
2. Chairman Fite noted the Record of Notice regarding the posting and distribution of the agenda to the regular mailing list of persons requesting the same and other interested persons, organizations and media
3. Commissioner Henshaw made a motion to approve the minutes and Chairman Fite seconded. The Commissioners voted unanimously to approve the minutes of the November meeting.
4. Reports by Cherokee Nation Program staff were provided to the Commission:
 - a. Tom Elkins, Director of the Office of Environmental Protection supplemented his report with information about a Complaint received recently from the Oklahoma Dept of Environmental Quality concerning a CN roads project. Mr. Elkins also pointed out that a more formal Complaints process was being developed, that using a 1-800 number is a possibility and that feedback would be provided to the complainant if possible.
 - b. Dwayne Beavers informed the EPC that programs wish to send a letter to EPA concerning an application for Treatment as State (TAS) for CWA Section 319 nonpoint source funding and for Section 303 of the CWA. Chairman Fite suggested that staff contact Mike Thralls, Secretary of Environment Miles Tolbert and other appropriate state officials to coordinate with them on water-related activities.
 - c. Nancy John gave the report for the Office of Environmental Services. The second week of March there will be training for tribes with DOE on data quality objectives. Ms. Hale reported on a conference call with the Council of Energy Resource Tribes (CERT) about a tentative meeting in Oklahoma to be held sometime in May.
 - d. Doug Bane gave the report for Natural Resources. Mr. Bane noted that the landfill activities were proceeding smoothly. Pat Gwin reported that EPA visited recently and wants us to consider a possible pilot project with the leachate and to get a permit package ready for them. Billy Hix provided a report on a recent inspection that went well with few problems. Commissioner Henshaw inquired about the status of a permit application. Mr. Gwin pointed out that CN had tried

to get a permit since 1994, that now EPA wants us to proceed with an engineering master plan.

- e. Mr. Gwin also reported on 1) a SHS proposal to build a gym that is going through the NEPA process, 2) that NR is assisting with two CNE projects that are in preliminary phases, 3) there is a proposal to gravel mine in Dry Creek that will go through the NEPA process, 4) a prescribed burn plan.
 - f. Mr. Buzzard was not available and had not sent a report. Tom reported that environmental reviews for water and sewer will be done by OEP, possibly starting end of this month. The person who does the environmental reviews for roads (Cindy McClellan) is apparently able to handle them. Most problems are with contractors but the contract will be revised soon to include a provision adding penalties.
5. Ms. Hale presented proposed revisions to the Environmental Code, Title 63 CNCA Article 2 (Delegation of Authority) and Article 4 (Policy. Additions included language regarding authority to issue permits and for emergency response. Language relating to a veto by the Chief was removed. Commissioner Henshaw had some minor corrections and would provide these to staff later. Ms. Hale suggested that the Commission could vote to recommend the language subject to changes by General Counsel and subject to grammatical corrections by Commissioner Henshaw.

Commissioner Henshaw moved to approve the proposed statutory language with corrections by Commissioner Henshaw and subject to any changes that the Office of General Counsel may have. Commissioner Fite seconded the motion. The motion passed unanimously.

6. Ms. Hale provided a revised schedule of statutory revisions for the Commission to consider in order to get through all of the statutes by October 2004, moving water quality and water issues to the next two meetings.
7. Water Quality Standards revisions proposed by the state Oklahoma Water Resources Board were discussed, with particular attention to issues relating to HQW status for the middle portion of the Illinois River, deletion of a provision for designating culturally sensitive waters and a provision concerning a USAP for determining if the standard for oil and grease is achieved for the use of fish and wildlife propagation. Commissioner Henshaw made a motion and Chairman Fite seconded, to the effect that: 1) no formal position should be taken on the deletion of the provision regarding culturally sensitive waters, 2) the CN EPC supports the protective provision for the middle Illinois River/Tenkiller, and 3) due to confusing language in the USAP regarding oil and grease, it should be clarified and the CN EPC opposes the language as currently written.
8. Ms. Hale reported that it would be appropriate to delay consideration of a proposed settlement agreement since CNE attorney Jim Wilcoxon was not available to represent his clients at this meeting and the Commission agreed it should be moved to the January meeting agenda. Bobby Short presented a report and recommended that CN EP request a closure letter from OCC and the EPA. Ms. Hale recounted an incident regarding a rain

event and an apparent spill around Outpost 1 pumps due to workers replacing hoses. Bobby reported that additional investigations with a push probe around the Outpost revealed only one area with contamination and that was in the area of the old pump island. Chairman Fite stated that he supported staff seeking a closure letter from both OCC and EPA.

A discussion ensued about Biosolve. Commissioner Henshaw expressed concern about the manufacturer of Biosolve's representations that it was not toxic and suggested that a letter should be written to them. Others were concerned that mention of overstocking in the final report was misleading and that the likely cause of the fish kill was Biosolve. Some suggested that Biosolve producers should be responsible for restocking the pond. After discussion, it was suggested that staff work to document their investigation about the use and probable role of Biosolve in the fish kill.

9. Ms. Hale presented a summary of grant opportunities, including the Watershed Initiative, ANA Environmental Enhancement projects and others. Chairman Fite agreed to look into whether a joint effort by CN and OSRC to work on the Illinois River would be an appropriate Watershed Initiative proposal. Ms. Hale reported that CN EP's community investment proposals were not approved. Commissioner Henshaw inquired about recycling and alternative energy sources proposals. Bobby reported that CNE had obtained the DOE grant for alternative energy last year but the OES proposal was not accepted. Ms. Hale agreed to collect and provide additional grant opportunity information in the future. A discussion between the Commission and staff ensued about ideas for future programs, planning and funding opportunities.
10. The Administrator's report included a handout of staff phone numbers and contacts.
11. There was no new business or miscellaneous discussion.
12. Chairman Fite adjourned the meeting.