

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.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK
May 1, 2007

PRESENT:

Commissioner: Mark Green

CONFERENCE CALL:

Commissioner: Marty Matlock

STAFF AND GUESTS:

John Freise, CN Environmental Programs

Jeannine Hale, CN Environmental Programs

Doug Bane, CN Landfill

Michael Lynn, CN Roads Program

Roger Fields, CNE

Callie Catcher, CN Finance

Imre Szekelynidi, ICI

Jack Crittenden, Concerned Citizen of Adair County

Nathan Moton, Concerned Citizen of Adair County

Gary Pitchlynn, ICI

Bob Murray, ICI

Ellen Stevens,

Becky M. Johnson, EPC Attorney

Amber Armstrong, CN Environmental Programs

1. Commissioner Green called the meeting to order at 9:45 am.
2. Commissioner Green acknowledged and placed into the record the Record of Public Notice and meeting agenda.
3. Commissioner Green made a motion to table the minutes from the April 9th meeting until the next meeting. Commissioner Matlock seconded the motion. The vote to table the meeting minutes until the next meeting was unanimous.
4. Reports
 - A. Cherokee Nation Enterprises – Roger Fields reported Catoosa is making improvements they are meeting every week looking at everything they can do there to improve numbers. The main 2 projects under way now are the West Siloam Springs expansion. That is moving right along. Bids are being awarded and they are getting things lined up. Site preparation for the big parking lot west of the casino is under way and everything looks good. The Roland Travel Plaza will be opening on May 8th. Everything is great there.
 - B. Environmental Programs – Jeannine Hale reported in the past 2 weeks we had a meeting with other tribes to work on our model travel water quality standards and those are progressing along quite nicely. We have identified a couple of varies where we think the states standards aren't adequate particularly with regard to human health criteria so we are pursuing those

issues and will have another meeting, wrap that up, and have our final version. At that point we will meet with the state.

C. Natural Resources - No report.

D. Roads Program – Michael Lynn reported in Cherokee County Red Barn Road Project is 40 percent completed. In Delaware County there is a bridge job that is about completed and the Eucha Road job is just underway it is about 15 to 20 percent completed. There is another project we are trying to get bidding on and that should be awarded within the next 35 to 40 days.

5. Cherokee Nation Landfill

A. Report by Landfill Management - Doug Bane reported we did participate in the Adair County Clean-up on April 14th and took 132 tons of trash at no charge from people in the community and worked with the Solid Waste Institute on tire collection. They collected almost a semi-truck load. The County Commissioners set the date on this event. We also took trash from the City of Tahlequah.

B. Report by CNEP staff – Jeannine Hale alerted the Commission to an issue regarding the landfill that needs to be set on the next commission meeting for consideration. The landfill's permit specifies that no industrial waste other than C & D is allowed without prior written approval of the EPC. We have not been asked for that prior written approval. Attached is a list of Industrial Customers that Doug supplied. We have had several phone calls and inquiries about what kinds of waste the landfill is taking. This list shows there are customers bringing industrial waste into the landfill and this has not been approved by the Commission. It is contrary to the permit as it is written.

Commissioner Green inquired: How long have these customers been customers? Doug Bane responded they have been existing customers as long as I have been out there since 2002. Commissioner Green asked if there have been new industrial or municipal customers? Doug Bane responded no, I have turned down several.

Commissioner Green stated that we should provide the landfill with an opportunity to submit a Request to Modify the Permit noting that they have long time customers.

Commissioner Green requested, in response to a request from Mr. Crittenden, that staff investigate whether there is sewage sludge being dumped by Springdale, AR, Tonitown, AR, and Eureka Springs, AR, and put it on the next agenda for a report.

6. Cherokee Nation Landfill

A. Report by CNEP staff on daily cover, NOV/ACO compliance deadlines – John Freise reports six inspections were made since the last meeting. One inspection made on a Sunday showed the working face was 100% covered during closed hours. Inspections conducted during regular working operation hours found the working face was open due to ongoing operations, but there was evidence of daily cover material placed so they could complete daily cover when they were done. There was alternative daily cover placed in areas of the working face not currently utilized. On one of the visits, the USEPA conducted an inspection. They mentioned that they were going to come back and do a more formal stormwater inspection sometime in the future.

Commissioner Green inquired what dates were staff out at the landfill. John Freise responded April 13th, 15th, 17th, 19th, 25th, and 27th, and state that -at the time of the inspections, some of which were mid day- it appeared that cover material was available or in place as it should be.

B. Discussion by Commission and opportunity for comment by landfill and others

Doug Bane mentioned they are keeping daily cover logs that will be provided

John Freise reported that the pumping system for the unauthorized storm water detention area was completed by the deadline.

Doug Bane reported that they tried out the pumping system when it rained last week and water had accumulated. They started it up and pumped the temporary basin empty. They are going to do some additional shaping to make it work a little better.

Jeannine Hale reported that ICI indicated that the Pollutant Loading Study would be provided to us by the 30th of April and it was provided ahead of schedule. Commissioner Matlock stated it was not his intention to review it for technical completeness, but he wanted staff to state whether or not it meets our criteria. Ms. Hale stated that we received it, did a cursory review of it and sent it to Aquatera. ICI met their obligation to provide the study, but there are probably going to be questions and comments about it. Commissioner Green asked if staff believe ICI met the deadline and Ms. Hale responded yes.

C. Vote to issue Notice of Violation and/or Administrative Compliance Order, assess penalties and/or other appropriate action by the Commission

Commissioner Matlock made a motion for a vote to consider the issue resolved without penalty. Commissioner Green seconded the motion.

Roll was called.

Commissioner Green – aye

Commissioner Matlock – aye

The vote was unanimous.

7. New Business – Mr. Crittenden brought up a complaint about the runoff onto his land. This will be addressed by staff.

Commissioner Green made a motion to adjourn and Commissioner Matlock seconded

Meeting was adjourned at 10:20 a.m.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK
August 14, 2007

PRESENT:

Commissioner: Mark Green and Marty Matlock

STAFF AND GUESTS:

S. Joe Crittenden, Tribal Council Member, District #2
Bradley Cobb, Tribal Council Member, District #8
Jodie Fishinghawk, Tribal Council Member District #2
Cara Cowan Watts, Tribal Council Member, District #7
Bill John Baker, Tribal Council Member, District #1
Becky M. Johnson, Assistant Attorney General Cherokee Nation
Gerald Hilsher, Oklahoma Scenic River Commission Board member & Attorney
Jack Crittenden, concerned citizen from Adair County
Pat Gwin, CN Natural Resources Department
Angela Drewes, CN Natural Resources Department
Flossie Girty, CN Administration liaison to Boards and Commissions
Harold Langdon, CNE
Doug Bane, Landfill Manager
Roger Fields, CNE
Beverly Cowan
JoKay Dowell, Cherokee Phoenix
Jeannine Hale, EPC Administrator
Nancy John, Director, CN Environmental Programs
Shaun West, CN Environmental Programs
John Freise, CN Environmental Programs
Mark Dunham, CN Environmental Programs
Tabbatha Revas, CN Environmental Programs
Amber Armstrong, CN Environmental Programs

1. Commissioner Green called the meeting to order at 2:00 pm.
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 April 9th Special Meeting and May 1, 2007 meeting. Commissioner Green seconded the motion. Roll was called, and the vote was:
Commissioner Green: Aye
Commissioner Matlock: Aye
The vote to approve the minutes was unanimous.
4. Reports
 - A. Cherokee Nation Enterprises – Roger Fields reported on miscellaneous construction projects. The property that CNE owns south of the West Siloam casino had some old foundations and footings that have been cleaned up and excavated. CNE's retail operations had one environmental incident in the latter part of May involving about 3 gallons of unleaded gasoline. That has been cleaned up. There were none in June. Last July there was one slight seeping leak in the bottom of a tank in Ft. Gibson at Outpost #2. CNE is taking action to replace the tank.

- B. Environmental Programs – Nancy John reported that Allison Ross had joined the office. Jeannine Hale reported that Deputy Regional General Counsel Ben Harrison has written a memo that interprets the Rider to the Transportation bill and that memo will be a topic of an upcoming EPA meeting in Oklahoma.
- C. Natural Resources - Pat Gwin reported on the Shagbark planting done earlier this year, beetle surveys and citizen surveys on the 10 most important Cherokee plants.
- D. Roads Program – No report was provided.

5. Cherokee Nation Landfill

A. Report by Landfill Management - Doug Bane had submitted a written report and added that a discharge application had been submitted to the Administrator. He also stated that the leachate pond overflowed on July 2nd, and that is noted in the report.

B. Commissioner Green asked if the public or staff had any questions or comments.

Mr. Crittenden had a question about design of the leachate pond to accept a 2.3 inch rain before overflowing. Mr. Bane declined to answer engineering questions.

Mr. Crittenden was concerned that the EPC was not acting until after a problem had occurred. Ms. Hale responded with a summary of what had been done regarding the leachate pond prior to the discharge, including a request for a leachate management plan and the landfill's proposed plan to utilize tanks and stop using the pond. The management plan had not been provided until after the discharge had occurred. The proposal to use tanks is part of a construction schedule and must be a part of approved plans before the landfill can proceed.

Mr. Crittenden also stated concerns about failure to provide daily cover. Mr. Bane explained some of the problems that had occurred with rain and equipment breakdown. In response to Commissioner Green's inquiry about what had happened with equipment, Mr. Bane explained the landfill had too many machines break down at the same time.

B. Enforcement items – Jeannine Hale presented the Commissioners with a draft Notice of Violation and summarized each of the five main concerns in that NOV:

(1) An unauthorized discharge of pollutants from the leachate storage pond occurring on 7/1/07 and 7/2/07. Ms. Hale added that the landfill did not call and inform CNEP of this discharge, but she was contacted by Jack Crittenden. She then called Doug Bane but he was not at the landfill. She stated that the landfill knew that this was a problem that needed to be addressed, that a lot of rain was expected, but proper procedures had not been put into place. Ms. Hale recommended that the EPC issue an NOV and, at the appropriate time, assess a fine of \$5,000 a day for these violations.

Commissioner Green had several questions and concerns, including questions about what records were kept and whether/how leachate pond levels were checked regularly.

Councilwoman Cowan made the point that shouldn't this activity be the responsibility of the company leasing the landfill and not Cherokee Nation staff members and also wondered about engineering plans and monitoring requirements.

Ms. Hale explained that under the contract negotiated between Cherokee Nation and ICI, certain landfill employees remained employees of Cherokee Nation but that ICI is to reimburse CN for their salary. The EPC and CNEP were not a part of those contract negotiations. CNEP staff do regular inspections under the regulatory authority of the EPC. CNEP had requested that the

landfill submit a leachate management plan which would have included measures to take to avoid any discharges. A proposed plan was submitted after the discharges occurred but it has not been approved. The EPC can specifically require that ICI install some type of monitoring device on the leachate pond to measure the height.

(2) The NOV states that the landfill has failed to maintain complete daily cover as required by 40CFR 258.21 for 50 days. That was previously discussed.

(3) The NOV cites acceptance of Industrial waste in violation of Permit No. MSW-01, Section VIII, for 182 days (2/13/07-8/14/07).

(4) The NOV states that since 8/02/06, methane levels at monitoring wells GP-4 through GP-6 have exceeded regulatory limits in 40 CFR 258.23.

(5) The NOV states that Part VII, page 2 of Permit MSW-01 authorizes one storm water pond and provides that no new impoundments shall be constructed without prior written approval of the Commission. The landfill is currently utilizing an unlined depression as an additional storm water impoundment. CNSL installed a pumping system to redirect storm water in that depression to the permitted storm water impoundment on 4/19/07 in response to Administrative Compliance Order 0001-07 issued by the EPC on 3/20/07. However, on 8/3/07 CNEP inspectors found that the pumping system had been disassembled and the unauthorized storm water detention basin was full.

Commissioner Green asked if there were any comments or questions concerning these five alleged violations.

Commissioner Matlock stated that he would consider “immediate” as a reasonable time frame for all five items. He made a motion to issue the NOV requiring immediate compliance for all five items. Commissioner Green seconded the motion.

The Roll was called:

Commissioner Matlock – aye

Commissioner Green – aye

The vote to issue the NOV on all five items requiring immediate compliance was approved unanimously.

6. Rules

A. Validation of Previously Adopted Rules of the EPC under new APA

Jeannine Hale presented several chapters of previously adopted rules that needed to be readopted under the new Administrative Procedures Act that was enacted in 2007. Notice was published on the website on or before June 27th. There is a requirement that there be 30 days public notice and opportunity for public comment. We have not received any comments on these existing rules.

Commissioner Green asked if there were any comments or questions. There were none.

Commissioner Matlock made a motion to approve the previously adopted, existing rules as submitted and Commissioner Green seconded the motion.

Roll was called.

Commissioner Matlock – aye

Commissioner Green – aye

The vote to adopt the EPC's existing rules as submitted was approved unanimously.

B. Public Water Supply Rules

Ms. Hale explained that this set of rules would be new rules and staff was not asking the EPC to vote on them. They are modeled after Oklahoma DEQ rules. They have been sent out on more than one occasion internally and were published on the website on or about July 18th. The official 30 days has not expired yet.

Commissioner Matlock had a comment regarding Section 19-302, and encouraged staff to reconsider national certification.

Commissioner Green noted that there is no definition in the draft rules for "Minor Water Systems".

Ms. Hale said that staff would review and make corrections to the draft rules.

7. New Business – There was no new business.
8. The next meeting will be held September 4th at 9:30 a.m.
9. Commissioner Green made a motion to adjourn and Commissioner Matlock seconded. Meeting was adjourned at 3:15 p.m.

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.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK
December 18, 2007

PRESENT:

Commissioners: Mark Green, Marty Matlock, and Ed Fite

STAFF AND GUESTS:

Nathan Moton, Concerned Citizen of Adair County
Jack Crittenden, Concerned Citizen of Adair County
Jack Edward Crittenden
Callie Catcher, CN Finance
Tom Elkins, CN Self-Governance
Pat Gwin, CN Natural Resources Department
Roger Fields, CNE
Doug Bane, CN Landfill
Todd Hembree, CNTC Attorney
JoKay Dowell, Cherokee Phoenix
Jodie Fishinghawk, Tribal Council Member District #2
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
Jerrid Diffee, CN Environmental Programs
Karen Dye, CN Environmental Programs
Amber Armstrong, CN Environmental Programs

1. Commissioner Green called the meeting to order at 9:36 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 October 2, 2007 meeting. Commissioner Green seconded the motion. Roll was called, and the vote was:
Mark Green: aye
Marty Matlock: aye
Ed Fite: abstained

The minutes were approved by two votes.

4. Reports
 - A. Natural Resources Department – Pat Gwin reported that planning activities for Arbor Week was ongoing and requested that he be contacted if anyone had suggestions for species of trees. Cherokee Nation just recently closed on a multiple tract purchase which included a lake in Adair County which was formerly one of the WPA watershed lakes. The three tracts were purchased mainly because of the lake. In addition, one of the largest Ozark Big Eared Bat caves in the United States is located on it. Natural Resources will be working with the US Fishing &

Wildlife Service on a possible conservation easement for that tract as well as some cave gates. Mr. Gwin recognized Jeannine Hale's efforts with the development of a conservation easement on a tract where Ozark Big Eared Bats were found in a cave. These bats were located in two of the caves this year compared to one in recent history. The population estimate count increased from 1700 to 1900.

- B. Environmental Programs – Nancy John introduced Karen Dye as the newest member of Environmental Programs under the supervision of Jerrid Diffie. She will be working with the General Assistance Program. CNEP was nominated for the Harvard Honoring Nations Project.
- C. Cherokee Nation Enterprises – Roger Fields reported all OPDES Discharge Permits for three facilities where construction is underway have been updated. The process has been completed for filing for the NPDES permits with EPA for all three locations. All permitting requirements have been updated and in place for all construction. The tank for Outpost #2 has been ordered and is still in fabrication. As soon as it is finished it will be installed. The status of leak has not change and remains slight indicated by a little moisture around the tank. Cherokee Travel Plaza in Roland since we last met we have had three minor spills. Two were approximately two gallons each and one was about a quart when a patron drove away with the nozzle in the tank and disconnected the hose. Danny's Truck Stop in Sallisaw on the East side of the Casino is presently under demolition or may actually may be gone by now.
- D. NEPA projects for Realty, IHS, NAHASDA, and Roads – Wayne Isaacs reported we received notification last week that the Locust Grove Housing Project is being cancelled. They were requiring there be 30 acres for 30 houses. The negotiation fell through on that with the City of Locust Grove so they will be looking for a new site.
- E. Tribally funded construction projects – No report.

5. Executive Session of the Commission

- A. Vote by the Commission to go into executive session, and announcement to public of specific purpose of the executive session (receipt of legal advice related to a pending, threatened, or potential claim or other matters covered by attorney-client privilege; settlement of legal claims)
- B. Executive session under 75 CNCA Section 1-9A(2) (closed meeting)
- C. Vote to come out of executive session
- D. Discussion, if any, by the Commission (open meeting) Cherokee Nation Landfill

Commissioner Green: There has been some discussion and a decision that the Executive Session is inappropriate so we will skip item 5.

6. Cherokee Nation Landfill

- A. Regular report by landfill – Doug Bane reported that nothing has changed from the September 23, 2007 – October 30, 2007 report. The landfill continues to be closed other than accepting sludge from the city of Stillwell in exchange for disposal for the leachate. We have also started pumping storm water again. We have replaced the pump that was removed by ICI from the site back in October and have started pumping storm water from the west side of the property over to the storm water pond.

Doug Bane requested the Environmental staff and Administrator to visit the landfill so that he can show and discuss issues there at the site. Shaun West stated that staff does visit the site every week but not formally with Doug and his staff.

B. Compliance Issues

(1) NOV issued to ICI by Administrator

a. Brief summary by Jeannine Hale

The EPC voted to delegate not exclusive authority but authority for the Administrator to act to issue NOVs outside of commission meetings. With regard to the leachate pond there was an occasion before Financial Resources could get the new pump and everything in order where the leachate pond level got up really high. It is hard to tell if an actual discharge ran down the hill and into the stream or not but we don't have to show that. Under Cherokee Nation Code, which is modeled after the State Code which originated with the Water Resources Board, if you place any waste in a location where it is likely to pollute the environment whether it is water, air, land, or fish and wildlife that is a violation. Obviously posed as it was up to the top of the berm perhaps going over and seeping through, the evidence clearly showed the waste was in a location where it was likely to cause pollution. I issued that NOV to ICI and they have requested a hearing.

Becky Johnson stated the board should make more consideration of evidence before issuing compliance orders because it has to be defensible at trial. A pretty decent standard should be in place before violations are issued because if it becomes indefensible then we have wasted a lot of time and money.

Jeannine Hale stated that there is a synthetic liner and the leachate should never rise above that synthetic liner. John Freise stated that leachate was over the liner and it was completely submerged.

Jack Crittenden submitted pictures to the Commission.

b. Discussion by the Commission

Commissioner Matlock stated that a very formal process is in order. He recommended that the staff develop a formal process if one was not in place for evidence collection and documentation and it would be appropriate to share that process with the Commission so that they could understand that process too. The Commission could comment and incrementally approve. I view this as a long term activity for this commission for the purpose of collection and presentation of evidence.

Commissioner Green agreed with Commissioner Matlock and recommended that staff coordinate with the Attorney General's office and find out what the AG's office wants and what format it should be in. Keeping logs, making reports, and taking pictures seems appropriate but if there are certain things that the AG's office wants in addition to that or wants to specify as to how they go about making those logs and keeping those records to assist them in presenting their case then that would be appropriate. Commissioner Matlock recommended that staff attain certification for

formal evidence collection which is available through some federal agencies such as Fish and Wildlife.

c. Opportunity for Public Comment, to extent allowed by Commission

Todd Hembree stated a request and an appropriation of an independent environmental study of the landfill by an entity that is completely unconnected with the Cherokee Nation has been discussed before the Resource Committee of the Tribal Counsel. As the Environmental Protection Commission, do you believe that would be beneficial and if so what areas would you specifically want this independent study to cover? Commissioner Green stated that he could see how it would be beneficial because we have a staff that does that and that is their job. If some other entity wanted an independent study, I don't see why we would stand in their way. Will it be beneficial and is it necessary? I don't think so. Commissioner Fite suggested the use of an automated real time sampler is needed when the staff is not there.

d. Vote by the Commission to issue Compliance Order/Penalty Assessment, to take other appropriate action, and/or to take no action at this time

Commissioner Green stated that it would be appropriate for the Commission to consider all of the evidence that there is before taking a vote. The pictures submitted and comments are cause for concern and certainly cause to think that it may well be appropriate to issue such an order but it would be our duty to review all of that information before we give such an order and maybe put it on next months agenda.

Commissioner Matlock stated that all we are asking for is a little more formal package as a compliance order as the delegated authorities are assumed. The Commission doesn't want to undermine the ability to do what you are doing because you are doing a good job with it. We just want to make sure that the package is fully complete at consideration so that there is no question that we were in the dark on anything.

Commissioner Fite asked Chairman Green if it was possible under that agenda item, to have staff present to us a walk through of some of the inspections that they made at the next meeting. Commissioner Green stated that he felt it would be appropriate in addition to a written report to that effect with explanation. He also requested that if there is any other information contrary to this being an incident that would deserve such an order that should be included in the Commissioner's packet also.

Commissioner Matlock made a motion to table item (d) for further consideration at the next meeting and Commissioner Green seconded the motion. Roll was called and the vote was:

Commissioner Green – aye
Commissioner Matlock – aye
Commissioner Fite – aye

The vote to table item (d) for further consideration at the next meeting was unanimous.

- (2) Consent Agreement with Cherokee Nation Financial Resources
a. Presentation by Administrator and/or EPC Counsel – Jeannine Hale

This relates to NOV 0807, the compliance order that was previously issued on September 4th to ICI. In that the Commission requested that Cherokee Nation Financial Resources which is the other party on the permit to show cause why they shouldn't be held responsible. A meeting was held with Financial Resources to negotiate this agreement for addressing the main items listed in the compliance order. The request to modify the permit to accept industrial waste has been withdrawn. Information had been requested about some financial assurance calculations and it has been provided.

The consent agreement addresses all the issues that were the subject of the prior NOV 0807 and staff believes that the terms of the consent agreement represents a fair settlement of the responsibilities of Financial Resources. Approval of this Consent Agreement was recommended by the Acting Administrator.

b. Discussion by the Commission and Opportunity for Public Comment
Jack Crittenden inquired whether everything was still an existing problem. Jeannine Hale responded by stating that the agreement was to secure a voluntary agreement to do certain things from the financial assurances of the Financial Resources group. It is not designed to be a permanent fix of all the issues out in the landfill. Those still exist but there are some decisions to be made by the Nation on whether or not to reopen the landfill and who's going to operate it. This agreement is to put something into place until that decision is made.

Callie Catcher stated that the response has been to address these issues that were in the NOV. The reason for this agreement was an acknowledgement by both parties that there is a responsibility and an acknowledgement that we are taking action and working together to resolve these issues and avoid another NOV situation.

Becky Johnson stated by the consent agreement, the Nation takes the responsibility and engages in activities that have not been ordered and it also includes things that were not in the compliance order that was issued to ICI.

c. Vote by the Commission to approve Consent Agreement, to take other appropriate action, and/or to take no action at this time

Commissioner Fite moved to approve the Consent Agreement. Commissioner Matlock seconded the motion.. Roll call taken and the vote was:

Commissioner Green – aye
Commissioner Matlock – aye
Commissioner Fite – aye

The motion to approve the Consent Agreement was approved unanimously.

7. Public Water Supply Rules
A. Presentation of proposed public water supply rules

Jerrid Diffie and Mark Dunham presented and stated that the major concerns that the Commission had from the last meeting had been addressed.

B. Discussion by Commission and opportunity for comments

Jeannine Hale stated that one of the reasons that we're asking the Commission to consider the rules is because a public water supply exists on trust land at Kenwood.

C. Vote by Commission to approve or take other action on rules

Commissioner Matlock moved to approve the public water supply rules and Commissioner Fite seconded the motion. Roll was called and the vote was:

Commissioner Green – aye

Commissioner Matlock – aye

Commissioner Fite – aye

The vote to approve the public water supply rules was approved unanimously.

8. New Business – No new business.

9. The next meeting will be held January 17th at 9:30 a.m.

10. Commissioner Matlock moved to adjourn and Commissioner Green seconded. The meeting was adjourned at 10:31 a.m.