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.