

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION
Cherokee Nation Environmental Protection Office
206 E. Allen Road, Tahlequah, OK
Special Meeting
August 5, 2008

PRESENT:

Commissioner: Ed Fite

CONFERENCE CALL:

Commissioner: Mark Green

Commissioner: Marty Matlock

STAFF AND GUESTS:

Harold Langdon, CNE

Nathan Moton, Concerned Citizen of Adair County

Jack Crittenden, Concerned Citizen of Adair County

Dwayne Fain, CN Risk Management

Flossie Girty, CN Administration

Dena Geib, CNB

Chris Galcatcher

Norman Galcatcher

Woodrow Galcatcher

Tom Elkins, CN Environmental Programs

Nancy John, CN Environmental Programs

Shaun West, CN Environmental Programs

Amber Armstrong, CN Environmental Programs

1. Commissioner Fite called the meeting to order at 9:30 a.m. and acknowledged public comment.

Jack Crittenden: The landfill has been operated since 1982. It was operated without a master plan and without a permit for 26 years. This commission issued a 2 year interim permit, in 2005 and then in 2007 it was about ready to expire. They came back in and asked to lift that 2 year limit and to make it the life of the landfill. When they were doing that it was supposed to let them correct all of the deficiencies and the environmental problems that were down there. When it finally closed in October 6th of 2007 none of that had even happened. Then you authorized the re-contouring of cell 2 and 3 which turned out to be cell 4 with no permit and it was suppose to fix the storm water run off down their. It made it worse because the side slopes are twice what they should be. Then we come along with a mutual settlement agreement forgive them for all of the past fines. The Administrator recommended a penalty against the Cherokee Nation Financial Resources related to pass violations. Request for permit modification number 3 by CNB to remove ICI as the operator and make CNB the permitted operator with still no approved permit application and now we are up to a request for a waiver of compliance issues. This has been a very forgiving commission and I think it is time that we stopped what you're doing and this commission has 20/20 hind sight now here to look back on to see the results of what our previous approvals have accomplished. I think we should stop and make sure all of these non-compliance issues are rectified and not just pass over and continue down the same old slippery slope. I don't think this commission has ever voted in favor of the communities request or recommendations of any of these issues. This project should not be allowed to go forward without the full assessment findings, complete application permit approval, complete master plan and approval, and all of the other defects that exist at this landfill

2. Commissioner Fite acknowledged and placed into the record the Record of Public Notice and meeting attendance.

3. Cherokee Nation Sanitary Landfill
 - A. Request for Waiver of Compliance Issue
 - a. Discussion of Waiver from CNWM/CNB Staff

Dena Geib: I am not asking for anything to be dismissed or waived in total. I am asking for more time to complete the task. The task itself on the compliance schedule was listed as establish interim cover and re-vegetate the east slope of cell C2. When we originally talked about the compliance schedule we agreed to do that in looking at the plans with the engineers I feel that more in that area is necessary so we have asked for the ability to provide not only grading interim cover and re-vegetation we want to actually terrace that area with a let down chute for water to come off the side of the hill in a better fashion than it is currently. There are large gulleys in the side of cell 2 because of the steepness and the amount of rainfall that we have received in the spring. If we try to cover that now we will need the soil that is composed mostly of shale to cover the entire face of the side of that hill because it is very large. Shale does not make a good cover soil. Also we have a plan that was developed by our engineer to terrace the side of the hill and to make better drainage so that after we finish the entire construction project we can come back and effectively vent or capture the methane that is currently there. I am not asking for a waiver because I feel like we failed. I feel like it is the right thing to do to repair the area correctly and that is my request.

Commissioner Fite: This relates to cell 1C and 2?

Dena Geib: Yes, and we have asked for that to be with a third party construction company. We have a group that is going to come in and provide the construction that knows how to do this effectively and has the operating machinery to do this in an effective manner. I would appreciate your consideration of that.

- b. Brief summary/comments by program staff

Tom Elkins: We all know that the rules and statutes that the Nation has in place need some rehabilitation. There is a disconnect between the rules in our statutes and how they play together. It is not always clear for an entity that is regulated by those rules how to operate. That being said, in hind site it would have been better if this plan would have been put together when CNB or Cherokee Nation Waste Management initially wanted to permit this landfill but it wasn't. Are waivers like this not done regularly? Certainly they are. Should it have come to the commission a little earlier before it was an issue but again our rules and statutes aren't really clear enough for entities to be clear on that so there was a disconnect on how this was done and the timing of this. Is this a good plan for the landfill? It is much better to have this terraced off like they are planning but I wish that it could have been a part of the original plan. But it wasn't and they are asking for a modification of this. I think it is in the best interest of the landfill. As far as the plan goes and the compliance I think this is a good thing.

- c. Discussion by the Commission

Commissioner Green: If I understand you correctly, Tom, you are recommending that we allow the variance?

Tom Elkins: I am. I don't mean to admonish any entity that approaches the commission except for saying that I think that any entity that does that should give as much notice as possible for any kind of variance. I think there were issues there in the timeliness of this but

again our rules and statutes are not clear enough on this. I don't think there was intent to wait on this by Cherokee Nation Waste Management or to waste time on this. There wasn't a clear cut manner on how to do this so they got behind on the compliance issue and they are asking for this now. I think we should have had a better process in place for them to work with so yes I do believe this should be done.

Commissioner Green: When did they get behind on it? When did they have notice that they were not going to be able to comply with the time schedule that as I recall they proposed?

Tom Elkins: We negotiated this. They proposed it but we somewhat worked back and forth with this so it wasn't just their numbers on this. I think they were going to be due on it the 23rd and I was approached the week before that.

Commissioner Green: Did they tell you when they became aware that they were not going to be able to comply with schedule?

Tom Elkins: Doug told me probably a month and a half before that they may not meet that issue but they were working on something else. Now did they approach me with a formal issue on this, no, not until a week before?

Commissioner Green: Have they advised us now, if we were to grant this, what their schedule would be?

Dena Geib: No, I think I failed to address that. I had asked for 150 additional days to allow for the third party construction team to complete this item. We could complete it more quickly but I am not so sure that the terracing would be done to the specifications by our new staff not that they would be failing in that area. I think that it all works together with the other construction. I original asked for 150 days because we are going to remediate some other areas in the landfill first with this third party construction like the leachate problem and the storm water outfalls and we have to blast the rock to use that soil.

Tom Elkins: I was out there about two and a half weeks ago. The gauge that monitors the leachate was just about sticking out of the water so I think we have well over almost 3 foot of free board now.

Commissioner Green: I imagine we are getting more every day.

Dena Geib: About a week and a half ago we exposed the pipe that comes out of the cell and we cleared that pipe and only a little bit of fluid came out so there is nothing backed up in the cell as far as we can tell.

Commissioner Matlock: When we say cover are we talking about vegetative cover or are we talking about cover over the waste material?

Dena Geib: Actually, both need to be done with cell 2. There are so many gullies in there that we need to adequately cover the side of the hill with a soil that is friendly for vegetative efforts and then we will have to come back through and re-seed that area so both will be done.

Commissioner Matlock: For everyone's clarity, you are not talking about leaving trash uncovered?

Dena Geib: No

Commissioner Matlock: You are talking about trying to establish – timeline wise – a final cover over that area – right?

Dena Geib: Yes, I think we called it intermediate because we have to come back to that. Yes, that is the plan.

Commissioner Green: In the interim are we having any daily cover problems?

Dena Geib: I would say that more cover is necessary for the entire landfill. I don't know if I would call them problems because we are not taking new trash but adequate soil needs to be exposed through the blasting to cover the cells that are currently there and still not closed. We have about 40 acres of open cell right now and in the future we plan on using the close as you go method so that there won't be as much open and vegetated areas but we do need to cover the cells that are currently there more adequately but we are not taking new waste at this moment so there are not active open faces.

Commissioner Matlock: How much of this issue is a legacy issue that is related to the condition of the landfill when Cherokee Nation Businesses took over operation and how much of it is the result of activity by the assumption of the responsibilities?

Dena Geib: I don't want to say entirely that it is a legacy issue but cell 2 was inherited by us as a problem and it has been a problem for some time now. I think the steepness of the slopes and the drainage have been there as an issue. I think that currently we need to solve those problems that we said we were going to solve so a percentage of that responsibility does lie with us and we should take care of it.

Tom Elkins: I would say it was almost a hundred percent inherited. It was what it was when they took it over.

Commissioner Matlock: That is my understanding as well. I wanted to make that clear for all participants too for the record what we are considering is a variance on the compliance schedule for dealing with this issue.

Commissioner Fite: I am going to open this up to the audience for comments.

Jack Crittenden: I have no problem with them getting more time to do this. I think they need to take all the time they want to make this be done right but as far as the coverage you are talking about down there black marine shell is not an acceptable cover. It can be used as an alternative cover. By the time you get to the top you are supposed to have a foot and a half to two foot of clay, a foot and a half to two foot of top soil which is not available down there and in between that clay and top soil there is suppose to be a liner. Now that is how you close the landfill.

Dena Geib: Just to clarify, right now we are talking about intermediate cover so we will go back and talk to the engineers.

Commissioner Fite: I am comfortable with the staff is watching that. You are aware of the regulations as far as the proper cover and closure and so that is an issue that I don't think really rises to a point that the commission needs to be too concerned because if it is not done right then it throws everything off.

d. Vote to approve/deny waiver

Commissioner Green made a motion to approve the variance to allow the 150 days. Commissioner Matlock seconded the motion. Roll was called and the vote was:

Commissioner Ed Fite – aye
Commissioner Marty Matlock – aye
Commissioner Mark Green – aye

The vote to approve the variance to allow the 150 days was approved unanimously.

4. New Business

Tom Elkins: I would like to suggest if at all possible we have a regular EPC meeting on the 2nd of next month. I wanted to speculate if we could either have it at the landfill or have a meeting sometime before at the landfill. I would like the commissioners to see what work had been done and where work needs to be done. We have discussed it quite a bit but I think it would be good to see it. We could take a driving tour or walking tour to see what is going on and see if there are any questions there. Is that something the commission would want to do or have time to do?

Commissioner Matlock: I think that would be a good idea to do so.

Commissioner Green: That is fine with me.

5. The next meeting will be held September 2, 2008 at 9:30 at the Cherokee Nation Landfill.

6. Commissioner Matlock moved to adjourn the meeting. Commissioner Green seconded. The meeting was adjourned at 10:13 a.m.