

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

CHAPTER 5. ENVIRONMENTAL PERMIT PROCEDURES

Part 1. General Provisions and Definitions.

500. Title.

This Chapter shall be referred to as Cherokee Nation "Environmental Permit Procedures".

501. Purpose, Applicability and Scope.

(a) **Purpose.** This Chapter describes basic permitting procedures applicable to all permits and other authorizations required pursuant to the Environmental Quality Code and issued by the Cherokee Nation Environmental Protection Commission.

(b) **Applicability.** The permit procedures in this Chapter shall apply unless otherwise specified by law. Applicants for permits should always consult other provisions of the Environmental Quality Code and applicable rules to determine if there are additional and/or more specific requirements.

(c) **Waiver.** The CNEPC may grant a waiver to specific provisions in this Chapter, after weighing the potential impacts to the Nation, the applicant and the public.

(d) **Additional Public Participation.** Nothing contained herein shall preclude the Administrator or the CNEPC from providing additional public meetings, hearings or other opportunities for public participation.

502. Definitions. In addition to the definitions contained in 63 CNCA Section 201 and other Articles of the Environmental Quality Code, the following definitions shall apply:

Administrator means the person designated as administrator of the Cherokee Nation Environmental Protection Commission.

Applicable Code or Act or regulations means provisions of the Cherokee Nation Environmental Quality Code, Solid Waste Code, Water Quality Code, Air Quality Code, STARS, Hazardous Waste Code, UIC Code or other provision of Title 63 CNCA and rules promulgated by the CNEPC thereunder, that apply to a particular activity, waste, person, or facility.

Application means a document or set of documents, filed with the CNEPC for the purpose of receiving a permit or the modification, amendment or renewal thereof from the CNEPC. Application includes any subsequent additions, revisions or modifications submitted to the CNEPC which supplement, correct or amend a pending application.

CNEPC or EPC means the Cherokee Nation Environmental Protection Commission.

Draft permit means a draft document prepared in response to an application for an authorization from the CNEPC, and found to be administratively and technically complete, pursuant to the requirements of the Cherokee Nation Environmental Code and rules promulgated thereunder. A notice of intent to terminate a permit and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance or termination is not a draft permit. When no draft permit is required or prepared pursuant to the applicable law and rules, draft permit means the permit application.

Environmental Quality Code means all provisions of Cherokee Nation Code Annotated in

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

Title 63 dealing with the environment including, but not limited to, general provisions, the Air Quality Code, the Water Quality Code, the Storage Tank Accountability and Regulatory System, the Hazardous Waste Code and the Solid Waste Code.

EPA means the United States Environmental Protection Agency.

Facility or *activity* means the site at which any activity regulated under the CN Environmental Code is proposed or does occur;

Permit means an authorization, license, certification or other control document. It includes individual permits, general permits and notices of intent filed under general permits.

Person means an individual, corporation, company, partnership, firm, association, government, political subdivisions, agencies, programs, Tribe, state, county, municipality, nation or enterprise.

Regional Administrator means the Regional Administrator of U.S. EPA Region 6 or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the applicable Code and regulations.

Site means the land, water and aerial space where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means one of the states of the United States.

503. Computation of Time.

In computing any period of time prescribed or allowed under this Chapter, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, federally recognized legal holidays and the Cherokee Nation National holiday shall be included. When a stated time expires on a Saturday, Sunday, federally recognized legal holiday or Cherokee Nation National holiday, the stated time period shall be extended to include the next business day.

504. Conflict of Interest.

(a) The Administrator, Administrative Law Judge or a member of the CNEPC may not perform functions relating to any matter in which he or she:

(1) Has a financial interest; or

(2) Has any relationship with a party to or with the subject matter of the proceeding in question which would make it inappropriate for him or her to act, or

(3) Would otherwise be prohibited from acting under federal environmental laws and regulations.

(b) If the Administrator is disqualified pursuant to subsection (a) from performing a function under this Chapter, the Administrator shall assign a Director or a program manager who has none of the infirmities listed in subsection (a) to replace him or her with regard to such functions.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

505. Responsibilities of Applicants.

(a) Duties of Applicants. Whenever the CNEPC or Administrator determines it to be appropriate, they may require an applicant for permit or other requestor to:

1. prepare any document necessary for processing their application,
2. conduct necessary monitoring or scientific studies,
3. obtain and supply financial or technical data,
4. obtain information about potentially affected landowners so that notice may be provided to such persons;
5. prepare and publish public notices,
6. pay for court reporters or for transcription of hearing records,
7. take other steps to necessary to complete the processing of their application or request.

(b) Who must apply. Any person proposing to conduct an activity, construct or operate a facility, or dispose of or take other action regarding wastes, if such activity, facility or wastes require a permit under the Environmental Quality Code or rules promulgated thereunder, shall file an application with the Administrator prior to conducting activities, operating such facilities or taking action related to such wastes.

(c) Joint permits. The CNEPC may require one or more owner or operator, or all of them, to be jointly listed on a permit or to obtain separate permits.

Part 3. Uniform Permit Procedures.

511. Scope.

This Part establishes uniform procedures for processing permit applications and requests for permit modification, revocation, reissuance, renewal and termination, including issuing draft permits, providing for public comment and hearings, and issuing final permit decisions.

512. Filing an application

(a) Any person who must obtain a permit under the Environmental Quality Code or applicable rules shall complete, sign, and submit to the Administrator three (3) copies of the application for the permit on forms provided by the Administrator or with such content as the Administrator may otherwise specify.

(b) The Administrator shall not begin the processing of a permit application or request until the applicant has fully complied with the application requirements for that permit or activity including, but not limited to, content of the application, time requirements, fee payment, signature and certification requirements.

(c) The Administrator may, at any time, request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit application or other request may be denied by the Administrator and any appropriate enforcement actions may be taken.

(e) The Administrator may decide that a site visit is necessary in conjunction with the processing of an application. The applicant must cooperate in arranging a site visit or the application may be deemed incomplete or denied.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

513. Application form, content and required documentation.

(a) **Application form to be used.** The applicant shall complete an application for a permit on a form approved by the Administrator, or on an electronic or other approved form provided by the Administrator.

(b) **New applications.** A permit application shall include, the following:

(1) the owner/operator's name, mailing address and phone number;

(2) the name by which the facility will be known, the mailing address of the facility, the street address of the facility (if different from the mailing address), and the facility phone number;

(3) a disclosure statement including whether applicant has previously been convicted of any crime, history of environmental compliance and a listing of other permits and permit applications;

(4) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of:

(A) the proposed permit boundary;

(B) any proposed waste processing, disposal, treatment, storage or discharge areas; and

(C) both on- and off-site land application areas and borrow pits, if applicable;

(5) latitude and longitude of all corners of the permit boundary and the facility entrance;

(6) the location of the site from the nearest residence, school, church, public recreation area, and community, town or city;

(7) a description of all processing, storage and disposal operations and units;

(8) characterization of any waste streams;

(9) the types of road construction and materials needed and a list of anticipated heavy equipment to be used in the construction and operation of the site;

(10) maps and drawings of the site; and

(11) data, plans, and specifications for the following:

(A) a demonstration the proposed facility meets any applicable location restrictions;

(B) source and amount of fresh water to be used and wastewater to be produced;

(C) identify affected streams and other waters, applicable water quality standards and provide a plan describing compliance with stormwater management requirements;

(D) proposed onsite and offsite monitoring, if known;

(E) plans for closure and postclosure of the facility; and

(12) establishment of financial assurance in accordance with the Environmental Quality Code.

(b) **Information not identified.** The Administrator may require the applicant to submit additional data, revise design specifications or propose environmental safeguards as necessary to meet rules for the protection of human health, wildlife and the environment.

(c) **Written permission of owner required if applicant does not own land.** No permit shall be issued to an applicant who is not the surface owner of the land on which the proposed waste, facility or operation is to be located, or who does not otherwise hold

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

a valid contract or lease from the owner. A copy of the ownership documentation and written permission is required to be filed with the application.

(d) Business entities. The Administrator may require submission of additional information when the applicant is a business entity, such as proof of good standing, financial documentation and list of owners and investors.

(e) Financial Assurance. Whenever the Administrator deems it appropriate, he/she may require any person or business to post financial security adequate to assure proper construction, operation, maintenance, closure, monitoring, remediation or other required activity.

514. Certification and Effect.

(a) Each application or request shall be prepared by and certified as true and correct by the proper parties.

(b) The proper party shall be an individual or an authorized representative of a business entity who is the owner of the property, owner of the business or operator of the facility or activity. This certification shall be accompanied by documents prepared under the seal of a registered engineer where required.

(c) By applying for a permit or other authorization, the person executing such application or request agrees that the CNEPC may enter and inspect, sample, monitor, investigate or take other actions on the property and/or in any facility that is part of the application or is adjacent thereto, for purposes of enforcing the Environmental Quality Code and other applicable laws and rules.

515. Fees

(a) Fees shall be submitted with the application and except as herein provided, will not be refunded. In the event an application is rejected or denied, or in the event an application is withdrawn by the applicant, the Administrator shall determine whether any amount of fees paid should be reimbursed to the applicant or whether no fees should be refunded.

(b) The minimum fees applicable to applications for new permits, requests for modification and other requests, are set forth in Part 5 of this Chapter.

516. Receipt of applications

When an application and appropriate fee are received, the Administrator shall:

- (a)** file stamp the application with the date of receipt and an identification number;
- (b)** assign the application; and
- (c)** enter this information in a database or log book.

517. Administrative completeness review

Each application submitted should be reviewed for administrative completeness by the Administrator within thirty (30) days of its file stamped date of filing, or such longer time as the Administrator may deem necessary.

(a) Not complete. If the application is not complete, the Administrator will notify the applicant by mail, describing with reasonable specificity the deficiencies and information needed. If the reviewer does not notify the applicant of deficiencies, the period for technical review shall begin at the close of the administrative completeness review

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

period. If the application is not made complete within a reasonable amount of time, the Administrator may reject the application and no further action will be required by the CNEPC.

(b) Complete. When the application is administratively complete, the period for technical review begins.

518. Technical review

(a) Information required. If the application does not provide all information deemed by the Administrator to be necessary for technical review or otherwise required by rule or law, the Administrator will notify the applicant in writing, describing with reasonable specificity the deficiencies and requesting supplemental information be submitted within a reasonable time. If the additional information is not provided within a reasonable amount of time, the Administrator may deem the application incomplete and deny the application. No public notice shall be required.

(b) Time for technical review. The goal is for technical review to be complete 60 days after the later of the date when the application is determined to be administratively complete or the date when all requested information has been provided by an applicant.

(c) Time suspended. The time period for review stops during:

- (a) litigation;
- (b) public review and participation, including waiting periods, comment periods, public meetings, administrative hearings, preparation of response to comments and/or review by state or federal agencies;
- (c) requests for supplemental information; and ;
- (d) the time in which an applicant amends his/her application of his/her own accord.

519. Conditions prerequisite to permit issuance or denial

(a) Compliance required. A new, modified or renewed permit or other authorization sought by the applicant shall not be issued until the CNEPC has determined the application is in substantial compliance with applicable requirements of the Environmental Quality Code and CNEPC rules.

(b). Conditions for issuance. The CNEPC may not issue a new, modified or renewed permit or other authorization sought by the applicant if:

(1) the applicant has not paid all monies owed to the CNEPC or is not in substantial compliance with the Chapter, CNEPC rules and the terms of any existing CNEPC permits and orders. The CNEPC may impose special conditions on the applicant to assure compliance and/or a separate schedule which the CNEPC considers necessary to achieve required compliance; or

(2) Material facts were misrepresented or omitted from the application and the applicant knew or should have known of such misrepresentation or omission.

(c) Burden of persuasion. The applicant bears the burden of persuading the CNEPC that the permit should issue.

520. Consolidation of Permit Processing.

(a) Whenever a facility or activity requires more than one permit under more than one Code or set of rules, processing of two or more applications for those permits may be consolidated.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

(b) Whenever draft permits are prepared at the same time, fact sheets, administrative records, public comment periods, and any public hearings on those permits should also be consolidated. The final permits may be issued together. They need not be issued together if, in the judgment of the Administrator, joint processing would result in unreasonable delay in the issuance of one or more permits.

(c) Whenever an existing facility or activity requires additional permits under the Environmental Quality Code, the Administrator may coordinate the expiration dates of all permits so the permits expire simultaneously.

(d) The Administrator may agree with the Regional Administrator to consolidate draft permits whenever a facility or activity requires permits from both EPA and CNEPC.

521. Notice of Application

(a) If required by the CNEPC for a specific type of permit, upon being notified that the application has been deemed complete, the applicant shall publish notice of the filing of the application as legal notice in one newspaper local to the proposed new site or existing facility. The publication shall identify locations where the application may be reviewed, including a location in the county where the proposed new site or existing facility is located.

(b) The publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a process meeting on the permitting process. If the Administrator receives timely request and determines that a significant degree of public interest in the application exists, it shall schedule and hold such meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting to be held by the applicant on the proposed facility or activity for which a permit is sought may, with the agreement of the Administrator and the applicant, be combined with the process meeting authorized by this paragraph.

522. Draft permit or notice of intent to deny.

(a) **Initial determination.** Once an application is administratively and technically complete and any applicable requirements for public notice of the application have been satisfied, the Administrator shall decide whether to prepare a draft permit or to recommend that the application be denied.

(b) **Notice of intent to deny.** If the Administrator tentatively decides to recommend that the permit application be denied, then he or she shall prepare a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedure as any draft permit. The CNEPC or the Administrator, if such authority is delegated to the Administrator, may issue the Notice of Intent to Deny. If the CNEPC's final decision is that the tentative decision to deny the permit application was incorrect, the Administrator shall proceed to prepare a draft permit.

(c) **Draft permit.** If the Administrator or CNEPC decides that a draft permit should be prepared, the Administrator shall prepare the draft permit or cause a draft permit to be prepared by the applicant or their qualified representative or consultant. A draft permit shall contain the following information:

- (1) Appropriate or necessary permit conditions to implement CN statutes and rules and any applicable federal laws;

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

- (2) Compliance schedules;
- (3) Monitoring requirements in compliance with applicable Codes and rules; and
- (4) All other information required to be in the permit

523. Fact Sheet.

(a) **When required.** A fact sheet shall be prepared for every draft permit unless a fact sheet is not required under the applicable Code or rules. The Administrator may require a fact sheet if he/she finds that the permit application is the subject of widespread public interest or raises major issues.

(b) **Preparation.** The Administrator will prepare the fact sheet and may require the applicant to assist with its preparation. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Administrator shall send this fact sheet to the applicant and, on request, to any other person.

(c) **Content.** The fact sheet shall include, when applicable:

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;
- (2) The legal description or address of the facility or proposed activity, and the address of the applicant;
- (3) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (4) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;
- (5) Reasons why any requested variances, exemptions or alternatives to required standards do or do not appear justified;
- (6) A description of the procedures for reaching a final decision on the draft permit including:
 - A. The beginning and ending dates of the comment period and the address where comments will be received;
 - B. Procedures for requesting a hearing and the nature of that hearing; and
 - C. Any other procedures by which the public may participate in the final decision;
- (7) Name and telephone number of a person to contact for additional information;
- (8) When appropriate, a sketch or map of the location of the facility, discharge or regulated activity described in the application; or construction drawings; and
- (9) Any other information required to be in the fact sheet under the applicable Code and regulations.

524. Public Notice of Permit Actions and Public Comment Period.

(a) **Public Notice Required.**

(1) The Administrator or such other person(s) as the Administrator may specify shall give public notice that the following actions have occurred:

- A. A draft permit has been prepared; or
- B. A tentative decision is made to Deny an Application
- C. A public meeting or hearing has been scheduled.

(2) No public notice is required when a request for permit modification, revocation and

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

reissuance, or termination is denied. Written notice of the denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit action.

(b) Timing.

(1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, shall allow at least thirty (30) days for public comment. This comment period may be reopened by the Administrator.

(2) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(c) Methods. The public notice required under subsection (a) shall be given by each of the following methods:

(1) A notice by mail to each of the persons listed below. Persons otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits by expressly advising the Administrator in writing.

A. The applicant;

B. Neighboring Tribes and Nations; State and Federal agencies with jurisdiction over fish and wildlife resources, and other appropriate agencies of affected states including but not limited to the State or Tribal Historic Preservation Officer;

C. Any county or other unit of local government having jurisdiction over the area where the facility is proposed to be located and each Cherokee Nation department having any authority under Cherokee Nation law with respect to construction or operation of such facility;

D. Any other agency which the Administrator knows has issued or is required to issue a permit for the same facility or activity;

E. Any user identified in the permit application; and

F. Persons on a mailing list or who have specifically requested notice in writing.

(2) A notice in a daily, weekly or biweekly newspaper within the immediate area affected by the facility or activity;

(3) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents.

(1) All public notices issued under this part shall contain the following minimum information:

A. Name and address of the office processing the permit action for which notice is being given;

B. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

C. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

D. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, the fact sheet, and the application;

E. A brief description of the comment procedures and the time and place of any hearing that will be held (including a statement of procedures to request a hearing, unless a

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;

F. The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record, except data found to be confidential business information pursuant to the applicable Code or regulations or other applicable law;

G. A map or description of the permit area;

H. Any additional information required by the applicable Code and regulations; and

I. Any additional information that the Administrator considers necessary or appropriate.

(2) Public notices for hearings. In addition to the contents of a general public notice, the public notice for a permit hearing shall contain the following information:

A. Reference to the date of previous public notices relating to the permit; and

B. A brief description of the nature and purpose of the hearing, including the applicable procedures.

(3) Upon request, any person shall be provided a copy of the fact sheet and the draft permit, if any, and a copy of the permit application, if any, shall be available for copying.

525. Public Comments and Requests for Public Hearings.

(a) During the public comment period for a draft permit, any interested person may submit written comments on the draft permit and may request a public hearing.

(b) A request for a public hearing shall be in writing and shall include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; and

(2) A brief statement of the interest of the person making the request in the permit action; and

(3) A statement of the issues, claims or subjects for which the requestor is seeking the hearing.

(c) All public comments received during the public comment period, including at any public hearing and during any reopening of the public comment period, shall be considered in making the final decision and all significant comments shall be answered.

526. Public Hearings.

(a) The Administrator shall hold a public hearing no sooner than thirty (30) days after publication of the hearing notice when he or she receives a request for a hearing pursuant or finds significant public interest in a draft permit. The Administrator also may hold a public hearing at his or her discretion whenever, for instance, a hearing might clarify one or more issues involved in the permit decision. No public hearing is required for a denial of a request for modification, revocation and reissuance, or termination of a permit.

(b) The Administrator may designate a Hearing Moderator for the public hearing. The Hearing Moderator shall be responsible for the orderly conduct of the public hearing. Nothing in this Chapter shall empower the Hearing Moderator to make any findings of fact, conclusions of law, or recommendations on permit issuance or denial. The Administrator, a member of the staff, or any individual may serve as a Hearing Moderator, so long as the Hearing Moderator is not the applicant or an officer or

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

employee of the applicant and does not have a financial interest or other conflict of interest in the outcome of the permit application.

(c) Hearings shall be held at a time and place which facilitates attendance by interested persons and the general public.

(d) The Administrator, a member of the staff, or the Hearing Moderator shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public.

(e) Any person may submit oral or written statements and information concerning the draft permit. The Hearing Moderator may set reasonable limits upon the time allowed for oral statements. The Administrator shall allow the submission of statements in writing at the hearing, but the Administrator or Hearing Moderator shall not require a written statement in lieu of or as a condition upon making an oral statement. The public comment period shall automatically be extended to the close of any public hearing under this section. The Hearing Moderator may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript shall be made of the hearing. At the conclusion of the hearing, the Hearing Moderator shall forward to the Administrator the record of the hearing, including the tape recording or written transcript and any materials submitted at the hearing. The hearing record may be made available to the public.

527. Obligation to Raise Issues and Provide Information During Comment Period.

(a) All persons, including applicants, who believe that a permit application should be granted or denied, or that any condition of a draft permit is inappropriate or inadequate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period.

(b) All supporting materials shall be submitted in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of or federal statutes and regulations, USEPA's or the Administrator's documents of general applicability, or other generally available reference materials.

(c) The Administrator may grant additional time to comment to any person to the extent that a person desiring to comment demonstrates need for such time.

528. Reopening of the Public Comment Period or Issuance of a New Draft Permit.

(a) Whenever any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning the draft permit or any person becomes aware of significant new information, the Administrator may take one of the following actions:

(1) Prepare a new draft permit, appropriately modified, under the applicable Code and regulations and provide public notice and opportunity to comment on the new draft permit;

(2) Prepare a revised fact sheet under the applicable Code and regulations, and reopen the public comment period under this section; or

(3) Reopen or extend the comment period under this section to give interested persons an opportunity to comment on the information or arguments submitted.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

(b) If the Administrator reopens the public comment period pursuant to subsection (a) (2) or (3), the scope of the reopening shall be limited to the substantial new questions or significant new information that caused the reopening. All persons, including applicants, wanting to comment on an issue within the scope of the reopening must submit all reasonably available legal and factual grounds supporting their position, including all supporting material, by a date set by the Administrator no sooner than sixty (60) days after public notice under subsection (c). Thereafter, any person may file a written response to the material filed by any other person, by a date set by the Administrator no sooner than twenty (20) days after the date set for filing of the material. Persons desiring to comment may request longer comment periods and a longer comment period may be granted to the extent that the Administrator finds it necessary to effect the purpose of the reopening.

529. Issuance and Effective Date of Permit.

(a) After the close of the public comment period on a draft permit, the Administrator shall prepare a recommendation to the CNEPC regarding a final permit decision. The Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the recommended final permit decision and the time it will be considered by the CNEPC.

(b) Final permit decisions shall be made by the CNEPC unless that authority is delegated to the Administrator in writing.

(c) The CNEPC shall establish in the permit an effective date. The effective date may be the date of the CNEPC decision in open meeting, the date executed by or on behalf of the CNEPC or another date specified by the CNEPC.

530. Response to Comments and Administrative Record.

(a) **Response to Comments.** At or prior to the time that any final permit decision is issued, the Administrator shall provide a draft response to comments. The CNEPC should fully consider all comments resulting from the public comment period, including any hearing. The response shall:

(1) Specify which provisions; if any, of the draft permit have been changed in the final permit decision and the reasons for the change;

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing; and

(3) Be made available to the public.

(b) **Administrative Record.** The Administrator and CNEPC shall base tentative and final permit decisions on the administrative record defined below.

(1) For draft permits, the administrative record shall consist of:

A. The application, if required, and any supporting data furnished by the applicant;

B. The draft permit or notice of intent to deny the application or to terminate the permit;

C. The fact sheet;

D. The public notice;

E. All documents cited in the fact sheet; and

F. Other documents contained in the supporting file for the draft permit.

(2) For final permits, the administrative record shall consist of:

A. The administrative record for the draft permit;

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

- B.** All comments received during the public comment period provided (including any extension or reopening);
- C.** The tape or transcript and notes of any hearing(s) held and any written materials submitted at such hearing(s);
- D.** The response to comments and any new material that the is referenced in the response to comments;
- E.** Other documents contained in the supporting file for the permit; and
- F.** The final permit.

The additional documents required under this paragraph should be added to the record as soon as possible after their receipt or publication by the Administrator. The record shall be complete on the date the final permit is issued.

(3) Material readily available at the applicable program office or published material that is generally available, and that is included in the administrative record under these provisions, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or response to comments.

(4) The administrative record shall be available for public inspection commencing no later than the date of the notice of the draft permit or final permit decision, as the case may be.

531. Permit Modification, Revocation and Reissuance, or Termination.

(a) Permits may be modified, revoked and reissued, renewed, or terminated either at the request of any interested person (including the permittee) or upon the Administrator's initiative. Permits may only be modified, revoked and reissued, or terminated for good cause or for one or more reasons specified in applicable laws and rules.

(b) Where the Cherokee Nation Environmental Code is silent, applicable portions of federal regulations shall apply. Until otherwise modified by the Code or rules promulgated thereunder, the following provisions shall apply: 40 CFR Section 124.5 (NPDES, UIC, 404, RCRA) and 40 CFR Section 70.7 (air operating permits). In applying these provisions of CFR, any reference to Director or State Program shall be deemed to refer to the CNEPC, CNEPC Administrator and CN Environmental Programs.

(c) Any request to modify, revoke and reissue or terminate a permit shall be in writing and shall contain facts or reasons supporting the request.

(d) If the Administrator decides that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(e) (1) If the Administrator tentatively decides to modify or revoke and reissue a permit, he or she shall prepare a draft permit incorporating the proposed changes. The Administrator may require the submission of a new application, an updated application and any other information he or she deems necessary.

(2) In a permit modification under this section, the Administrator may determine that only those conditions to be modified shall be reopened when a new draft permit is prepared and that all other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. If the Administrator deems it appropriate, one or more other conditions of the permit may be reopened even though not requested in the application.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

(3) When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) During the processing of any application for modification or revocation/reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued or until otherwise ordered by the CNEPC.

(f) If the Administrator decides to recommend to the CNEPC that a permit be terminated, he or she shall prepare a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit. The Notice shall be issued by the CNEPC, or the Notice may be issued by the Administrator if such authority is delegated by the CNEPC to the Administrator.

532. Request for Adjudicatory Hearing or Reconsideration

(a) Any person with an interest may within thirty days of a final decision file a petition for reconsideration of a decision of the CNEPC on a permit application or request to modify or terminate and reissue.

(b) An applicant or interested party may file within thirty days after a final decision or a denial of a petition for reconsideration, a request for an adjudicatory hearing.

(c) It is a condition precedent to judicial appeal that an applicant or interested party files a request for an adjudicatory hearing before the CNEPC or their lawfully designated administrative law judge.

533. Judicial Review.

(a) **Exhaustion.** Any person challenging the issuance, denial, modification, revocation and reissuance, termination or reissuance of a permit must first follow the procedures set forth in this Article as a prerequisite to seeking judicial review of the final agency action.

(b) **Final agency action.** For purposes of judicial review, final agency action occurs when the permit decision becomes effective and after all administrative adjudicatory hearings have been completed and a final judgment rendered by the CNEPC.

(c) **Filing the record.** Within 30 (thirty) days following the date that a petition for judicial review is filed, or within such time as specified by court rules or applicable laws, the Administrator shall file in court a certified copy or certified index of the record on which the decision was based.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION RULES