

Sec. 113D-72. - Injunctive relief.

- (a) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the Eastern Band of Cherokee Indians, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Cherokee court.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

Sec. 113D-73. - Civil penalties and restitution.

The environmental planning office may order and impose civil penalties upon any person for violations of this chapter. Civil penalties shall not exceed \$1,000.00 per violation. All civil penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. The environmental planning office may also order restitution to any person injured by violations of this chapter. The decision to impose a civil penalty or order of restitution shall be subject to appeal to the environmental review board pursuant to article VI of this chapter. If a civil penalty or restitution is not paid within 30 days of the order, or within 30 days after a final appeal decision by the environmental review board, then, in addition to other remedies provided by this chapter, the Eastern Band of Cherokee Indians may seek enforcement of the order in the Cherokee court.

Sec. 113D-74. - Suspension or revocation of trader's permit or business lease.

The business committee may suspend or revoke any person's trader's permit and/or business lease if, after notice and opportunity for hearing, the business committee issues written findings that a business has repeatedly violated this chapter. The business committee may not suspend or revoke any trader's permit or business lease unless the person has been given 30-days' notice and an opportunity for hearing.

Sec. 113D-75. - Criminal penalty.

A violation of this chapter is a misdemeanor, punishable in the Cherokee court by imprisonment of not more than one year and fine of not more than \$5,000.00.

Sec. 113D-76. - Sovereign immunity.

Nothing in this chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians

Chapter 113E - WATER QUALITY CODE FOR TRIBAL WATERS

Sec. 113E-1. - Purpose and scope.

- (a) *Purpose.* The Eastern Band of Cherokee Indians recognizes Tribal waters are the source of life, tranquility, and prosperity. Tribal waters include streams, rivers, natural springs, and wetlands that support a diverse array of environmental, cultural, and economic values. The Tribe recognizes that protecting these waters requires a strategic and integrated approach across all Tribal watersheds to encourage prudent use of the Tribe's water resources and enhance its quality and productivity.
- (b) *Scope.* The Division of Agriculture and Natural Resources (DANR) is responsible for establishing water quality standards, taking into consideration the designated, beneficial uses of Tribal waters established under the classification system set out in section 113E-4 of this chapter, including ceremonial uses, recreational uses, public water supply, propagation of fish and wildlife, and agricultural, industrial and other purposes. The water quality standards are intended to protect these designated uses by facilitating the following management goals:
 - (1) To restore, maintain, and enhance the water quality for all beneficial uses of tribal waterbodies;
 - (2) To protect human health, social welfare, aquatic life, wildlife and the economic well-being of the Eastern Band of Cherokee Indians;
 - (3) To ensure that no contaminants are discharged into Cherokee waters from either point sources or non-point sources without being given the degree of treatment or control necessary to prevent pollution;
 - (4) To establish numeric and narrative standards that provide a legal basis for water pollution control; and
 - (5) To encourage prudent use of the Tribe's water resources and enhance its quality and productivity as stated in goals of the Cherokee Legacy Plan.

Sec. 113E-2. - Use and revision of standards.

- (a) *Use.* These standards will be used to protect the quality of tribal waters which have a major impact on the health, safety, welfare, and economy of the Tribal communities. These water quality standards shall provide the basis for all water management decisions affecting water quality within the Reservation boundaries, including, but not limited to, point-source permitting, non-point source controls and the physical alterations of water bodies including wetlands.
- (b) *Revision.* These water quality standards may be revised as the DANR determines necessary consistent with the following:
 - (1) These water quality standards shall be reviewed every three years and may be subject to amendment or modification at such time or as the need arises. Any revisions shall first be duly adopted through the mechanisms of the Tribal Administrative Procedures Act (C.C. ch. 150) and submitted to the Environmental Protection Agency (EPA) Regional Administrator (Region 4 Office) for review and approval.

- (2) Any potential modification of water quality standards shall be subject to public participation, consistent with the requirements of 40 CFR 131.20(b) and 40 CFR 25.

Sec. 113E-3. - Definition of Cherokee waters.

As used in this chapter, *Cherokee waters* means all water within the exterior boundaries of the Qualla Boundary and all other lands held in trust for the Eastern Band of Cherokee Indians, including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps, wetlands, and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface.

Sec. 113E-4. - Designation of uses.

(a) The Tribal waters support a diverse array of cultural, environmental, and economic values, such as spiritual healing, cleansing, drinking water, recreation, and habitat uses. The uses of Cherokee surface waters are as follows:

- (1) *Ceremonial use (C)*. The quality of water is suitable for traditional purposes by members of the Eastern Band of Cherokee Indians that involve immersion and intentional or incidental ingestion of water.
- (2) *Public water supply use (PWS)*. The quality of water is suitable for a source of raw water supply for drinking and food processing purposes.
- (3) *Recreation use (REC)*. The quality of water is suitable for recreational activities in or on the water when the ingestion of small quantities of water is likely to occur, such as swimming, wading, and other activities likely to result in immersion.
- (4) *Cold water aquatic habitat use (CAH)*. The water quality is suitable for propagation and survival of cold water aquatic communities such as trout.
- (5) *Warm water aquatic habitat use (WAH)*. The water quality is suitable for the propagation and maintenance of a healthy, well-balanced population of fish, wildlife, and other aquatic life.

Sec. 113E-5. - Enforcement.

(a) The DANR shall periodically test Cherokee surface waters at different locations to determine if the standards for uses designated in this Chapter are being met. Instances where the DANR demonstrates that water quality standards are not being met and Tribal resources are being threatened shall be grounds for the following actions:

- (1) The DANR may, after notice and opportunity for hearing, order the entity to cease and desist from the violations and to comply with this chapter. The DANR may enforce compliance with an order issued pursuant to this section by imposing and collecting civil penalties as authorized under this section.
- (2) The DANR may order and impose civil penalties upon any person or entity for violations of this chapter. All civil money penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. If a civil penalty is not paid within 30 days, then, in addition to other remedies provided by this chapter, the DANR may seek

enforcement of the DANR's order through remedies in the administrative regulations and in the Cherokee Court.

- (3) If the discharger fails to comply with a cease and desist order or to pay civil penalties, then the DANR may petition the Business Committee for the suspension or revocation of any violator's business license and/or lease.

Sec. 113E-6. - Criminal penalties.

Intentionally or willfully and wantonly causing pollution of Cherokee surface waters by causing them to fall below the standards set by this chapter and the DANR is a misdemeanor, punishable in the Cherokee Court.

Sec. 113E-7. - Civil action.

Any person who suffered actual damages as a result of a violation of this chapter shall have a right of action in the Cherokee Court against a person who has violated this chapter for actual damages. A party found liable for violation of this chapter may also be ordered to pay the injured party a statutory penalty.

Sec. 113E-8. - Sovereign immunity.

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

Chapter 113F - JUNK VEHICLES, ABANDONED VEHICLES AND DEBRIS

Sec. 113F-1. - Definitions.

(a) As used in this chapter:

(1) *Abandoned motor vehicle* means:

- (A1) A motor vehicle left upon a public street, highway or right of way open to the public in violation of applicable law; or
- (B2) A motor vehicle left on land within the jurisdiction of the Tribe but held open to the public, for longer than four days; or
- (C3) A motor vehicle left on land within the jurisdiction of the Tribe without the consent of the land owner or person entitled to possession of the land, for longer than 24 hours.

(2) *Authorizing official* means the person designated in this chapter to authorize removal of motor vehicles and debris under this ordinance. For vehicles and debris located on a public street, highway, right of way open to the public, or Tribal land open to the public, the Authorizing Official is the Chief of the Cherokee Police Department or his designee. For vehicles and debris located on land possessed by an individual or the Tribe, the Authorizing Official is the Director manager of the Tribe's Department of Environmental and Natural Resources ~~Office~~.

(3) *Debris* means portions of junk motor vehicles including, but not limited to, hoods, fenders, radiators, rims, motor parts, not being use for the repair of a motor vehicle, and any inoperative appliance.

(4) *Junk motor vehicle* means a motor vehicle that, if originally designed to travel on public roads, does not have a current registration and a valid license plate lawfully affixed to it and:

~~(A1)~~ Is partially dismantled or wrecked; or

~~(B2)~~ Cannot be self-propelled or moved in the manner in which it originally was intended to move.

(5) *Motor vehicle* means any machine designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(6) *Removed* or *removal* means towing and storage of a vehicle or debris, upon order of the authorizing official, by a person or business authorized by the Tribe to perform those services.

Sec. 113F-2. - Prohibitions; exceptions.

(a) *Prohibitions.*

- (1) It is unlawful for the registered owner or person entitled to possession of a motor vehicle to cause or allow the motor vehicle to be abandoned.
- (2) It is unlawful for the registered owner or person entitled to possession of a junk motor vehicle, or for the owner or person entitled to possession of land within the Tribe's jurisdiction upon which the junk motor vehicle is located, to cause or allow the junk motor vehicle to be deposited on or remain on the land.
- (3) It is unlawful for the owner or person entitled to possession of debris, or for the owner or person entitled to possession of land within the jurisdiction of the Tribe upon which the debris is located, to cause or allow debris to be deposited on or remain thereon.
- (4) It is unlawful for any person to use public roads, streets or rights-of-way for the storage, abandonment, repair, display or sale of any vehicle.

(b) *Exceptions.* These prohibitions do not apply to:

- (1) Any vehicle or debris located in a bona fide junk yard, salvage yard, automotive or appliance enterprise or storage facility legally operating on land within the jurisdiction of the Tribe under a valid and current Trader's License, in compliance with applicable law, at which the operator of the yard, enterprise or facility works full time and which provides his primary source of income; or
- (2) Any vehicle or debris which is in an enclosed building, or is completely shielded from view by a fence that cannot be seen through, or if a vehicle, covered with a cloth or plastic cover specifically and solely manufactured for the purpose of covering motor vehicles.
- (3) Racing vehicles. Any vehicle that does not meet the definition of abandoned or junk motor vehicle but which is adopted or designed to be used only on race tracks is exempt from subsection (a) but must be shielded from public view as provided in subsection (b)(2).

- (4) Antique vehicles. Any vehicle that does not meet the definition of abandoned or junk motor vehicle but which is adopted or designed for use or restoration as an antique motor vehicle over 25 years old is exempt from subsection (a) but must be shielded from public view as provided in subsection (b)(2).

Sec. 113F-3. - Nuisance declared.

Unless an exception expressed in this chapter applies, the presence of an abandoned or junk motor vehicle or debris on land within the jurisdiction of the Tribe is a public nuisance in violation of section 14-25.14, Cherokee Code.

Sec. 113F-4. - Removal authorized.

- (a) Upon investigation, the authorizing official may order the removal of a motor vehicle or debris after finding in writing that it meets the definition of an abandoned or junk motor vehicle or debris and is on land within the jurisdiction of the Tribe in violation of this chapter.
- (b) The authorizing official may require a person requesting removal of a junk motor vehicle or debris from privately held land within the jurisdiction of the Tribe to indemnify the Tribe against any loss, expense or liability incurred because of the removal, storage or disposition of the vehicle or debris.
- (c) Nothing in this chapter shall preclude the possessor of land within the jurisdiction of the Tribe to consent to the removal of any junk or abandoned vehicle or debris located thereon and disposal of such but consent to removal and disposal must be provided in writing to the authorizing official.

Sec. 113F-5. - Notice before removal.

- (a) If an abandoned or junk motor vehicle, or debris, presents an emergency or an immediate health hazard; or safety hazard by blocking or restricting normal access to, or travel to or from, a utility, hydrant, street, road, right-of-way, driveway, business, residence or thing necessary for the operation of any of the aforementioned items or places, the vehicle may be immediately removed by the Cherokee Police Department or Department of Natural Resources and its authorized representative and the notice required in this section may be provided after removal.
- (b) A removal from any place for environmental or health reasons shall be noticed by and performed under authority of the Department of Environmental and Natural Resources Office.
- (c) If no emergency or immediate health or safety hazard is present, or if a removal is performed by the ~~Environmental and~~ Department of Natural Resources ~~Office~~, the authorizing official shall notify the holder of the possessory interest on which the item is located and the person entitled to possession of the possessory interest (such as a lessee). The notice shall include the following:
- (1) A description of the vehicle or debris. A vehicle description shall include as much of the following as is available: the make, model, color, year and VIN;
- (2) The location of the vehicle or debris;

- (3) The violation with which the owner or person entitled to possession is charged;
 - (4) That the authorizing official is ordering the holder of the possessory interest or the person entitled to possession of the land, or both, to remove and dispose of the vehicle or debris pursuant to this chapter;
 - (5) That the owner or possessor of the Tribal land where the debris is located has ten (10) calendar days in which to remedy the violation;
 - (6) That the violation is not cured within ten (10) calendar days, the authorizing official may have the vehicle and debris removed by the Tribe or its contractors and the possessory holder and/or lessee shall pay for the removal.
- (d) Notice must be provided in writing, including the information set out in subsections (b)(1)—(5), and may be mailed by first class mail to the address of the owner or person entitled to possession of land within the jurisdiction of the Tribe where the vehicle or debris is located. Notice may be waived but the waiver must be in writing executed by the person whose right to notice is being waived.
 - (e) Whenever an abandoned or junk motor vehicle is removed and it has no valid registration or license plates, the authorizing official shall make reasonable efforts, including checking the VIN, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (b)(1)—(5).
 - (f) The Cherokee Police Department shall cooperate and assist with the gathering of information such as names of registered owners, addresses and other information helpful or necessary for the successful prosecution of this chapter.

Sec. 113F-6. - Removal.

If the owner or person entitled to possession of the land within the jurisdiction of the Tribe where the vehicle or debris is located does not remedy the violation within the ten days provided in the notice, the authorizing official shall order the vehicle removed. The Tribe may remove the vehicle or may contract to perform the action. Removal fees and storage charges imposed must be reasonable and competitive in the vicinity of the Qualla Boundary.

A vehicle or debris shall be removed only to an appropriate storage area. When a vehicle or debris is removed, the authorizing official shall, within 48 hours after removal, notify in writing the person entitled to possession of the land from where the vehicle was removed and the last known registered owner of the vehicle, or if debris, the owner or person entitled to possession of the land within the jurisdiction of the Tribe where the debris was located, that removal has occurred pursuant to this chapter.

Sec. 113F-7. - Right to hearing.

- (a) Vehicles ordered removed by Cherokee Police Department pursuant to authority provided in section 113F-5(a). The owner or person entitled to possession of the vehicle and the owner or person entitled to possession of land within the jurisdiction of the Tribe from which the vehicle or debris was removed, is entitled to a hearing before the Clerk of the Cherokee Court to determine if probable cause existed to remove the vehicle or debris.

- (b) Vehicles ordered removed by the ~~Environmental and Department of~~ Natural Resources ~~Office~~ pursuant to authority provided in section 113F-5(b) or (c). The owner or person entitled to possession of the vehicle and the owner or person entitled to possession of land within the jurisdiction of the Tribe from which the vehicle or debris was removed, are entitled to a hearing under Chapter 150 and the rules adopted by the Division pursuant to that authority. ~~before the Environmental Review Board to determine if probable cause existed to remove the vehicle or debris.~~
- (c) Appeals of adverse rulings ~~of the Clerk of the Court or the Environmental Review Board~~ shall be to the trial court of the Cherokee Court for error of law.

Sec. 113F-8. - Redemption.

- (a) At any stage after the vehicle or debris is removed but before final disposal, the owner of the vehicle or the owner and the person entitled to possession of land within the jurisdiction of the Tribe where the debris was located, or a lienholder, may obtain possession of the vehicle or debris by paying the removal fee, including storage charges, or by posting a bond for double the amount of such fees and charges, directly to the business to which the fees and charges are owed. In addition, such person shall pay a redemption fee set by the authorizing official to cover the costs of removal as noted in this paragraph, which shall be paid directly to the Tribal Budget and Finance Office for the benefit of the ~~Environmental and Department of~~ Natural Resources ~~Office~~.
- (b) If the person responsible for necessary fees and charges is a Tribal member, debts for unpaid fees and charges may be collected by garnishment of the member's per capita distribution of net gaming revenues and paid to the Tribe as a debt to the Tribe.

Sec. 113F-9. - Sale and disposition.

- (a) Except as provided in subsection (b), any abandoned or junk motor vehicle or debris not claimed by:
 - (1) The last registered owner of the motor vehicle; or
 - (2) The person entitled to possession of land within the jurisdiction of the Tribe from which it was removed; or
 - (3) A lienholder;

shall be disposed of by the Tribe or business having custody thereof. The process for disposal shall include notice of intent to dispose by sale or destruction and a chance to respond and redeem upon payment of all fees and charges. Notice shall be provided to persons named identified as (1), (2) or (3).

- (b) If the authorizing official reasonably determines that the abandoned or junk motor vehicle or debris has an estimated value of less than \$500.00, then disposition may be by any means deemed appropriate by the official.

Sec. 113F-10. - Protection against liability.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned or junk motor vehicle, or debris, for disposing of such vehicle or debris as provided in this chapter.

Sec. 113F-11. - Unlawful removal of impounded vehicle.

It is unlawful for any person to remove or attempt to remove from any storage facility any vehicle or debris which has been impounded pursuant to this chapter unless and until all fees, charges, bonds and other costs have been paid.

Sec. 113F-12. - Violation; penalty.

In addition to towing, storage and redemption fees a person may be obligated to pay, a violation of this chapter is a misdemeanor, punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, and for willful or flagrant violators, exclusion for a period to be determined by Tribal Council.

~~Sec. 113F-13. - Compliance date.~~

~~For the first six months after this chapter is ratified by the Principal Chief, the authorizing official may limit enforcement to giving warnings to violators.~~

Chapter 113G - UNDERGROUND STORAGE TANKS

Sec. 113G-1. - Definitions.

(a) As used in this Chapter:

(1) Existing UST. Any UST system already in existence as of February 1, 2007.

(2) Gasoline. Any refined petroleum used primarily as a fuel for internal combustion engines.

(3) New UST. Any UST system installed after February 1, 2007 where none previously existed.

(4) Non-operational storage tank. Any underground storage tank in which gasoline will not be deposited or from which gasoline will not be dispensed.

(5) Operator. Any person in control of, or having responsibility for, the daily operation of the underground storage unit.

(6) Owner. Any person, entity or government who owns an underground storage tank used for the storage, use, or dispensing of gasoline.

(7) Release. Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water, or subsurface soils.

(8) Replacement UST. Any UST system that replaces an existing UST system.

(9) Underground storage tank (UST). Any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of gasoline that has at least ten percent of its combined volume underground.

Sec. 113G-2. - Notification.

- (a) Each owner of an underground storage tank shall notify the Environmental and Natural Resource Office of the existence of such tank, specifying the age, size, type, location, and uses of such tank.
- (b) Each owner of an underground storage tank shall notify the ~~Environmental and Natural Resources Office~~Department of Environment thirty (30) days before an underground storage tank is permanently closed, specifying:
 - (1) Proposed date of permanent closure,
 - (2) Age of the tank on the date of proposed permanent closure,
 - (3) Size, type and location of the tank, and
 - (4) Type and quantity of gasoline left stored in such tank on the date of proposed permanent closure.

Sec. 113G-3. - Release detection.

- (a) Owners and operators of underground storage tanks must provide to the Environmental and Natural Resource Office a method or combination of methods, of release detection that:
 - (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains gasoline;
 - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions;
- (b) Owners and operators shall immediately report suspected and actual releases to the ~~Environmental and Natural Resources Office~~Department of Environment.
- (c) An UST or replacement UST within 200 feet of the areas expressed in Section 113G-6, or a new UST or replacement UST installed after February 1, 2007 between 200 and 500 feet of the areas expressed in Section 113G-6, must meet the requirements for secondary containment described at 40 CFR 20.42(b)(1) through (4) within 12 months of February 1, 2007. However, a longer period may be provided if in the Tribe's discretion, a longer period serves the best interests of the Tribe.

Sec. 113G-4. - Financial responsibility.

- (a) Owners/operators shall maintain financial responsibility for corrective actions and for compensation to third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank.
- (b) Financial responsibility may be established by any-one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.
- (c) Prohibition of delivery will occur with no proof of financial responsibility.

Sec. 113G-5. - Prevention.

- (a) For prevention of releases, necessary records must be kept by owners/operators to show compliance status in four major areas:
 - (1) Leak detection performance;
 - (2) Corrosion protection performance;
 - (3) Record of properly installed repairs or upgrades;
 - (4) Documentation of financial responsibility.

Sec. 113G-6. - Locations.

- (a) No new Underground Storage Tanks shall be installed within 200 feet of: a well supplying water for human consumption; or the Oconaluftee River; or a Tribal Resource Water as defined in Cherokee Code 113E; or a Trout Water as defined in Cherokee Code 113E.
- (b) Replacement USTs may not be located nearer to the water supply source than the existing UST.
- (c) Notwithstanding the provisions of Subsections (a) and (b), a new UST shall not be installed in a location determined by the Tribe to be unsuitable for installation based on an evaluation of the site by the Tribe.

Sec. 113G-7. - Strictly liable.

The owner and/or operator of an UST system is strictly liable for the condition and operation of the system, and for injury, loss or damage resulting from leaks, spills and other unauthorized releases of hazardous materials from the system.

Sec. 113G-8. - Enforcement.

- (a) The Cherokee Tribal Court shall have jurisdiction to hear all matters arising from this Chapter.
- (b) The Tribe will enforce this Chapter by imposing administrative or civil sanctions against owners/operators who violate the requirements contained herein. Sanctions may include the entire range of Tribal enforcement measures, including prohibition of delivery, fines, revocation of trader's licenses, or injunctive relief.
- (c) Any violator of the provisions of this Chapter is subject to the imposition of civil penalties for such unlawful activities. The ~~Department of Environmental~~ Natural Resources ~~Office~~, through the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for civil penalties. Any violator, who is found by the Tribal Court to have committed the violations, shall be subject to a civil penalty of not less than \$100.00, or more than \$5,000.00, for each day each violation occurs plus costs for cleaning up any hazardous waste, or abating the effects thereof.
- (d) Any civil penalties or damages arising under this Chapter are in addition to, and do not supersede or limit, any other remedies which may be available to the Tribe, including injunctive relief, an action for civil damages, or any other relief.

- (e) Any Tribal member or other person living on or around the tribal trust land may contact the ~~Environmental and Department of~~ Natural Resources ~~Office~~ to report a potential release or violation of this Chapter.

Sec. 113G-9. - Compliance monitoring.

The ~~Environmental and Department of~~ Natural Resources ~~Office~~ shall monitor compliance of all underground storage tanks.

Sec. 113G-10. - Rules and regulations.

The ~~Division of Agriculture and Natural Resources Environmental and Natural Resource~~ ~~Office~~ shall promulgate rules and regulations for the enforcement of this Chapter pursuant to Chapter 150.

~~Sec. 113G-11. - Prior inconsistent laws repealed.~~

~~To the extent that they are inconsistent with this Chapter, all prior environmental rules, ordinances or regulations of the Tribe are hereby repealed.~~

~~Sec. 113G-12. - Severability.~~

~~If any provision of this Chapter, or any portion of any provision to this Chapter, is found to be invalid, the full remainder of such provisions shall not be affected.~~

Sec. 113G-13. - Sovereign immunity.

Nothing in this Chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

Chapter 145 - WASTEWATER DISCHARGE

ARTICLE I. - IN GENERAL

Sec. 145-1. - Purpose.

This wastewater discharge chapter is designed to provide uniform requirements for discharge into the Eastern Band of Cherokee Indians' wastewater collection system and treatment system.

Sec. 145-2. - Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

- (a) *Approving Authority* shall mean the Secretary of the Division of Operations.~~Tribal Council of the Eastern Band of Cherokee Indians.~~
- (b) *Building sewer* shall mean a sewer conveying wastewater from the premises of a user to a Tribal sewer.
- (c) *Beneficial uses* shall mean uses of the waters of the state that may be protected against quality degradation including domestic, municipal, agricultural and industrial supply, power, generation, recreation, aesthetic enjoyment, navigation and the preservation and enhancement of fish, wildlife and other aquatic resource or reserves, and other uses, both tangible and intangible as specified by federal or state law.
- (d) *Biochemical oxygen demand (BOD)* shall mean the empirical test run in accordance with latest edition of "Standard Methods for Analysis of Water and Wastewater," published by American Public Health Association and Water Pollution Control Federation or "Methods for the Analysis of Water and Wastes," published by EPA to determine the relative oxygen requirements of wastewaters effluents and polluted water. BOD is a measure of the oxygen required to oxidize the organic matter in a sample, through the action of microorganisms in that sample.
- (e) *Chemical oxygen demand (COD)* shall mean the quantity of oxygen used in the chemical oxidation or decomposition of organic substance in a sample.
- ~~(f) *County* shall mean the County of Swain, North Carolina, or any authorized officials acting on behalf of the Tribe.~~
- (f) *Compatible pollutant* shall mean pollutants such as BOD, TSS, pH, oil and grease, Ammonia Nitrogen (HH3-N) and fecal coliform bacteria, plus any additional pollutants identified in the Tribe's National Pollutant Discharge Elimination System (NPDES) permit, or any pollutants the Tribe's treatment works was designed to treat. Such pollutants shall be amenable to the Tribe's biological waste treatment process; shall not cause the Tribe to use additional chemicals, extra personnel or cause undue wear or operating expenses; shall not cause the Tribe's wastewater treatment plant to exceed effluent limitation as set forth in the NPDES permit.
- (g) *Department* shall mean the Water and Sewer Operations and Maintenance Department within the Department of Infrastructure and Public Facilities within the Division of Operations.
- (h) *Division* shall mean the Division of Operations within the Executive Branch of the Eastern Band of Cherokee Indians.
- (i) *Domestic wastes* shall mean the liquid wastes from bathrooms, toilet rooms, home kitchens and home laundries.
- (j) *EPA* shall mean the federal agency named the Environmental Protection Agency.
- (k) *Excessive radiation dose* shall mean a dose of radiation in excess of the maximum permissible dose. "Maximum permissible dose" shall mean a dose of radiation to any part of the body, internal and external, or both, that, in the light of current knowledge, is not expected to cause appreciable

bodily injury to a person at any time during his lifetime. Application of this section will conform to all federal and other regulations concerning the use of radioactive materials.

(l) *Fats, oils and greases (FOG)* shall mean any one or a combination of minerals, vegetable or animal fats, shortening or other such oily matter which are organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules.

(m) *Federal Act* shall mean Public Law 92-500, the Federal Water Pollution Control Act, as amended.

(n) *Food service establishment* shall mean any commercial facility discharging kitchen or food preparation wastewater, including, but not limited to, the following: restaurants, motels, hotels, cafeterias, hospitals, schools, bars, delicatessen, meat cutting operations, bakeries and any other establishments which in the option of the Manager of Water and Sewer Operations would require a grease trap by virtue of its operations.

(o) *Garbage* shall mean solid wastes from the domestic end and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(p) *Grease containment device (grease trap/interceptor)* shall mean a device utilized to remove fats, oils, and greases from the wastewater stream of a food service establishment.

(g) *Tribal Council* shall mean the Tribal Council of the Eastern Band of Cherokee Indians.

(h) *Tribal sewer* shall mean a sewer owned and operated by the Eastern Band of Cherokee Indians, tributary to a treatment facility operated by the Tribe.

(i) *Town* shall mean the Town of Cherokee.

(j) *Principal Chief* shall mean the Principal Chief of the Eastern Band of Cherokee Indians.

(k) *Compatible pollutant* shall mean pollutants such as BOD, TSS, pH, oil and grease, Ammonia Nitrogen (NH₃-N) and fecal coliform bacteria, plus any additional pollutants identified in the Tribe's National Pollutant Discharge Elimination System (NPDES) permit, or any pollutants the Tribe's treatment works was designed to treat. Such pollutants shall be amenable to the Tribe's biological waste treatment process; shall not cause the Tribe to use additional chemicals, extra personnel or cause undue wear or operating expenses; shall not cause the Tribe's wastewater treatment plant to exceed effluent limitation as set forth in the NPDES permit.

(l) *Domestic wastes* shall mean the liquid wastes from bathrooms, toilet rooms, home kitchens and home laundries.

(m) *EPA* shall mean the federal agency named the Environmental Protection Agency.

(n) *Excessive radiation dose* shall mean a dose of radiation in excess of the maximum permissible dose. "Maximum permissible dose" shall mean a dose of radiation to any part of the body, internal and external, or both, that, in the light of current knowledge, is not expected to cause appreciable bodily injury to a person at any time during his lifetime. Application of this section will conform to all federal and other regulations concerning the use of radioactive materials.

(o) *Federal Act* shall mean Public Law 92-500, the Federal Water Pollution Control Act, as amended.

(p) *Garbage* shall mean solid wastes from the domestic end and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(q) *Fats, oils and greases (FOG)* shall mean any one or a combination of minerals, vegetable or animal fats, shortening or other such oily matter which are organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules.

(qf) *Holding tank waste* shall mean any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

(rs) *Incompatible pollutant* shall mean any pollutant which is not a "compatible pollutant," as defined in this section.

- ~~(tt) User charge system shall mean the system developed by EPA that establishes a method for the grant received by the Eastern Band of Cherokee Indians to recover the costs incurred during planning and construction of a treatment works. User charge is the charge that users are required to pay for the right to discharge into the sewage system.~~
- (su) *Industrial wastes* shall mean liquid or water-carried wastes from institutional, commercial and industrial processes and operations, as distinguished from domestic wastes.
- (tv) *Industrial waste surcharge* shall mean a charge placed on all users who discharge wastewater having characteristics in excess of the limits set by this chapter on compatible pollutants.
- (uw) *Mass emission rate* shall mean the weight of material discharged to the Tribal sewer system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of a particular constituent or combination of constituents.
- (vx) *pH* shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- (wy) *Pollution* shall mean an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects such waters for beneficial use or affects the facilities which serve such beneficial uses. Pollution may include contamination.
- (xz) *Premises* shall mean a parcel of real estate or portion thereof including any improvements thereon which is determined by the town to be a single user for purposes of receiving, using and paying for service.
- (y) Principal Chief shall mean the Principal Chief of the Eastern Band of Cherokee Indians.
- (z) Secretary shall mean the Secretary of the Division of Operations or his or her authorized representative.
- (aa) *Significant industrial user* shall mean an industry that will contribute greater than five percent of the design flow or designated pollutant loading to the Tribe's sewer system or Eastern Band of Cherokee Indian's treatment works.
- (bb) *Storm drain or storm sewer* shall mean a sewer which carries storm water or surface water, but not sewage or industrial wastes.
- (cc) *Total suspended solids (TSS)* shall mean the measure of the solids that either float on the surface or are held in suspension in wastes and which are removable from the liquid by laboratory filtering.
- (dd) *Treatment work or plant* shall mean any device and systems used in the storage, treatment, recycling, and reclamation of municipal wastewater or industrial wastes of a liquid nature, including interceptor sewers, outfall sewers, wastewater collection systems, pumping, power and other equipment and appurtenances, extensions, improvements, remodeling, additions or alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well storage facilities, and any work, including site acquisition of the land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal wastes, including stormwater runoff, or industrial and sanitary sewer systems.
- (ee) Tribal Council shall mean the Tribal Council of the Eastern Band of Cherokee Indians.
- (ff) Tribal sewer shall mean a sewer owned and operated by the Eastern Band of Cherokee Indians, tributary to a treatment facility operated by the Tribe.
- (gg) User charge system shall mean the system developed by EPA that establishes a method for the grant received by the Eastern Band of Cherokee Indians to recover the costs incurred during planning and construction of a treatment works. User charge is the charge that users are required to pay for the right to discharge into the sewage system.

(hhee) *Waste* shall mean and include sewage and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature prior to, and for purposes of disposal.

(iiff) *Wastewater* shall mean wastes and water, whether treated or untreated discharged into a Tribal sewer.

(iigg) *Wastewater constituents and characteristics* shall mean the individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality and strength of wastewater.

~~(kkhh) —Grease containment device (grease trap/interceptor) shall mean a device utilized to remove fats, oils, and greases from the wastewater stream of a food service establishment.~~

~~(liii) Food service establishment shall mean any commercial facility discharging kitchen or food preparation wastewater, including, but not limited to, the following: restaurants, motels, hotels, cafeterias, hospitals, schools, bars, delicatessen, meat cutting operations, bakeries and any other establishments which in the option of the Manager of Water and Sewer Operations would require a grease trap by virtue of its operations.~~

Other terms used in this chapter, but not defined hereinabove, shall have the meanings set forth in the latest edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association (APHA), the American Waterworks Association (AWWA) and the Water Pollution Control Federation (WPCF). Unless otherwise expressly stated in this chapter, waste constituents and characteristics shall be measured by methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," and/or "Methods of Chemical Analysis of Water and Wastes," published by the Environmental Protection Agency (EPA).

ARTICLE II. - SEWER USE

Sec. 145-3. - Use of public sewers required.

- (a) It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within Cherokee Indian Reservation, or in any area under the jurisdiction of the Eastern Band of Cherokee Indians, any human or animal excrement, garbage or other objectionable wastes.
- (b) It shall be unlawful to discharge to any natural outlet within the Cherokee Indian Reservation, or in any area under the jurisdiction of the Eastern Band of Cherokee Indians, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.
- (c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
- (d) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Reservation and abutting any street, alley or right-of-way, and unincorporated areas served by contract or agreement in which there is now located or may in the future be located a public sanitary sewer of the Eastern Band of Cherokee Indians, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided that said public sewer is within 200 feet of the property line and can be reached by gravity flow.

Sec. 145-4. - Alteration of system requires permit.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the Tribe.

Sec. 145-5. - Costs to be borne by owner.

All costs and expenses incident to the connection of the building sewer or the owner's property shall be borne by the owner. The owner shall indemnify the Tribe of any loss or damage that may be directly or indirectly occasioned by the connection of the building sewer. Any connection into the public sewer shall be made by the Tribe, for which the owner shall pay the Tribe a standard sewer tap fee as set by the Committee, copy of said schedule to be kept on file in the Cherokee Department of Water and Sewer Operations and Maintenance Enterprise.

Sec. 145-6. - Independent sewer for each building; exception.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building lot through an adjoining alley, courtyard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

Sec. 145-7. - Old building sewers.

No old sewers will be excepted. This requirement may be waived by the approving authority after the condition of the sewer has been thoroughly inspected by the same.

Sec. 145-8. - Minimum standards of sewers.

The building sewer shall, in all cases, meet the minimum standards of the North Carolina Plumbing and Building Codes and rules adopted by the Division of Operations which shall include federal OSHA requirements. ~~be installed in accordance with all applicable OSHA requirements.~~ Joints shall be watertight. Any part of the building sewer that is located within ten feet of a water service shall be constructed of ferrous metal pipe with joints equivalent to water main standards. Ductile iron with mechanical joints may be required by the Tribe where the building sewer is exposed to damage by tree roots. If installed in filled or unstable ground, the building sewer shall be of ductile iron or cast iron soil, except that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Tribe.

Sec. 145-9. - Size and slope of sewer.

The size and slope of the building sewer shall be subject to the approval of the Division-Tribe, but in no event shall the diameter be less than four inches. The slope of each four-inch pipe shall not be less than one-eighth inch per foot.

Sec. 145-10. - Grades for sewers.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any loadbearing wall, which might thereby be weakened. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in the direction shall be made only with properly curved pipes and fittings.

Sec. 145-11. - Building drains.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer.

Sec. 145-12. - Excavation and backfill.

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the DivisionTribe. Backfill shall not be performed until the work has been inspected by the DivisionOffice of Environmental Health, IHS.

Sec. 145-13. - Angle of connection.

The connection of the building sewer into the public sewer shall be made at an angle of about 45 degrees. A 45-degree well may be used to make such connection, with the spigot end cut so as not to extend past the inner surface of the public sewer. The invert of the building sewer at the point of connection shall be at the same or at a higher elevation than the invert of the public sewer. A smooth, neat joint shall be made, and the connection made secure and watertight by encasement in concrete. Special fittings may be used for the connection only when approved by the DivisionTribe.

Sec. 145-14. - Notice to Tribe.

The applicant for the building sewer permit shall notify the DivisionTribe when the building sewer is ready for inspection and connection to the public sewer.

Sec. 145-15. - Private sewage disposal.

- (a) Where a public sanitary sewer is not available under the provisions of section 5-2003, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section and any rules adopted by the Division for the Department.
- (b) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the authority of Secretary of the Division of Operations under rules adopted by the Division, Office of Environmental Health, IHS. The application for such permit shall be made on a form furnished by the DivisionIHS, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Office of Environmental Health, IHS.
- (c) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Divisionsanitarian. Rules adopted by the Division shall set forth the inspection standards and processes in order to administer this section. He The Division shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Divisionsanitarian when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the sanitarian Division.
- (d) The type, capacities, location and layout of a private sewage disposal system shall comply with all rules and standards adopted by recommendations of the Division, the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 12,000 square feet. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.
- (e) At such times as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 145-3, a direct connection shall be made to the public sewer in compliance with this chapter at the first malfunction of the private system; and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.
- (f) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the Tribetown.
- ~~(g) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Indian Health Service.~~

Sec. 145-16. - Prohibitions on discharges.

No person shall discharge wastes to a Tribal sanitary sewer which cause, threaten to cause, or are capable of causing either alone or by interaction with other substances:

- (a) A fire or explosion;
- (b) Obstruction of flow or injury to the collection or treatment works;
- (c) Danger to life or safety of personnel;
- (d) A strong offensive odor that inhibits the effective maintenance or operation of the treatment works;
- (e) Air pollution by the release of toxic or malodorous gases or noxious gas-producing substances;
- (f) Interference with the treatment process;
- (g) The Tribe's effluent or any other product of the treatment process, residues, sludge or scums, to be unsuitable for the reclamation and reuse or to interfere with the reclamation process;
- (h) A condition unacceptable to any public agency having regulatory jurisdiction over the final discharge of the Tribal treatment works;
- ~~(i) — Conditions at or near the Tribe's treatment works which violate any statute or any lawful rule, regulation or ordinance of any state or federal agency having jurisdiction over the Tribe;~~
- (j) The Tribe's treatment works to be hydraulically overloaded or cause physical damage or injury to collection system or treatment works;
- ~~(jk) The Tribe's Cherokee Indian Reservation~~ collection system to be hydraulically overloaded or cause damage to the system.

Sec. 145-17. - Prohibition of storm drainage and groundwater.

Stormwater, groundwater, rain water, street drainage, subsurface roof or yard drainage shall not be discharged through direct or indirect connection to a Tribal sewer.

Sec. 145-18. - Prohibition of unpolluted water.

Unpolluted water, included by way of illusion, but not limited to cooling water, process water or blow-down water from cooling towers or evaporative coolers, shall not be discharged through direct or indirect connection to a Tribal sewer unless a permit is issued by the Division~~Eastern Band of Cherokee Indians~~. Unpolluted water can be discharged to the storm drain system.

Sec. 145-19. - Limitations on radioactive wastes.

No person shall discharge or cause to be discharged any radioactive waste into a Tribal sewer except:

- (a) When the person is authorized to use radioactive materials by the Tribe's Division of Agriculture and Natural Resources~~Environmental Protection Agency or other government agency empowered to regulate the use of radioactive materials~~; and
- (b) When the waste is discharged in strict conformity with the current North Carolina Radiation Control and Atomic Energy Commission (AEC) regulations, hereby adopted by the Tribe and any amendments thereto, and recommendations for safe disposal; and
- (c) When the person is in compliance with all lawful rules and regulations of all the applicable regulatory agencies having jurisdiction; and

- (d) ~~When several users are discharging radioactive wastes or materials to the public sewer, they shall, upon notification, cooperate in limiting the release of material and shall file with the Eastern Band of Cherokee Indians a statement of their agreed prorated discharges.~~

If this is not done within a reasonable time after notification, sewer use may be discontinued by the DivisionTribe.

Sec. 145-20. - Limitations on the use of garbage grinders.

- (a) Waste from garbage shredders and grinders shall not be acceptable for discharge into a Tribal sewer except: Residential wastes generated in preparation of food normally consumed on the premises.
- (b) Such grinders must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the Tribe or Tribal sewer. Garbage grinders shall not be used for grinding plastic, paper products, inert materials, or garden refuse.

Sec. 145-21. - Limitations on point of discharge.

No person shall discharge any substances directly into a manhole or other opening in a Tribal sewer other than through an approved building sewer, unless he has been issued a permit by the DivisionEastern Band of Cherokee Indians. If a permit is used for such direct discharge, the user shall pay the applicable charges and fees and shall meet such other conditions necessary to properly treat this discharge as required by the rules adopted by the DivisionEastern Band of Cherokee Indians.

Sec. 145-22. - Holding tank wastes.

- (a) No person shall discharge any holding tank waste, including by definition, but not limited to, pumping from septic tanks into a Tribal sewer unless he has been issued a permit by the DivisionEastern Band of Cherokee Indians. Unless otherwise allowed by the DivisionTribe under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. This permit will state the specific location of discharge, the time and day the discharge is to occur, the volume of the discharge and the wastewater constituents and characteristics. If a permit is granted for discharge of such waste into a Tribal sewer, the user shall pay the applicable charges and fees and shall meet such other conditions necessary to properly treat this discharge as required by the DivisionEastern Band of Cherokee Indians. An exception to the above is that no permit will be required for discharge of domestic wastes from recreational motor home holding tanks, provided that such discharges are made into a Tribal approved facility designed to receive such wastes.
- (b) Monitoring facilities for holding type wastes such as those described in section 145-22(a) shall be provided by the user when in the judgment of the approving authority they are deemed necessary for monitoring purposes.

Sec. 145-23. - Limitations on wastewater strength.

- (a) In order that the biological treatment process is not subjected to unacceptable levels of toxic wastes and so that the process can function properly to meet tribalstate and federal standards, it shall be unlawful for any person to discharge into the Tribal wastewater collection system, waters (as measured by any sample collected by the Tribe of OE), containing in excess of:

- (1) Constituents:

Constituent	Code	Maximum permissible concentration
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