

(9) Require the Tribal government and its entities to develop and implement recycling programs so that valuable materials may be returned to productive use, energy and natural resources conserved, and the useful life of solid waste management facilities extended.

(10) Ensure that medical waste is transported, stored, treated, and disposed of in a manner sufficient to protect human health, safety, and welfare; and the environment.

§ 130-1602. Tribal solid waste management policy and goals.

(a) It is the policy of the Tribe to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units and entities of tribal government with best solid waste practices. In furtherance of this policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

(1) Waste reduction at the source;

(2) Recycling and reuse;

(3) Composting;

(4) Incineration with energy recovery;

(5) Incineration without energy recovery;

(6) Disposal in landfills.

(b) It is the goal of this Tribe to reduce the municipal solid waste stream, primarily through source reduction, reuse, recycling, and composting. It will be required that the Department of Public Infrastructure and Facilities adopt methods to measure the success of its five-year plans that will set measurable goals for solid waste reduction. In furtherance of this policy, it is the goal of the Tribe to foster partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable and reusable materials and that foster opportunities for economic development from the recovery and reuse of materials.

§ 130-1603. Regulated wastes; certain exclusions.

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

(1) Medical waste; and

(2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Division of Operations for the disposal of the ash. The Division of Operations shall work with solid waste management facilities that burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

§ 130-1604. Tribal solid waste management plan.

(a) The Tribal solid waste management plan shall include, at a minimum:

(1) Procedures to encourage cooperative efforts in solid waste management by community members, private businesses, and tribal government units and entities.

(2) A public education program, to be developed in cooperation with the Department of Natural Resources, Cherokee Central Schools and other units of local government to inform the public of the need for and the benefits of recycling solid

waste and reducing the amounts of solid and hazardous waste generated and disposed of in the community. The public education program may be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

- (3) Provisions to encourage partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable materials and that foster opportunities for economic development from the recovery and reuse of materials.
- (4) A method for monitoring how much solid waste is generated on tribal lands, determining the annual cost in managing solid waste, and measuring how well reduction efforts are affecting annual solid waste generation.

§ 130-1605. Prohibited or disfavored acts relating to packaging; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) The Solid Waste Management program may collect the following items for transfer to the Tribe's transfer station in preparation for alternative disposal methods:

- (1) Used oil.
- (2) Yard trash. Yard trash that is source separated from solid waste may be accepted.
- (4) White goods.
- (5) Antifreeze (ethylene glycol).
- (6) Aluminum cans.
- (7) Whole scrap tires.
- (8) Lead-acid batteries.
- (9) Motor vehicle oil filters.
- (10) Recyclable rigid plastic containers that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.
- (11) Wooden pallets.
- (12) Oyster shells.
- (13) Discarded computer equipment.
- (14) Discarded televisions.

(b) No person shall knowingly dispose of the following solid wastes by open burning or incineration:

- (1) Antifreeze (ethylene glycol) used solely in motor vehicles.
- (2) Aluminum cans.
- (3) White goods.
- (4) Lead-acid batteries, as provided in N.C.G.S. 130A-309.70.
- (5) Discarded computer equipment.
- (6) Discarded televisions.

(c) The accidental or occasional disposal of small amounts of prohibited solid waste by open burning or incineration shall not be construed as a violation of this section if the Department has approved a plan for the incinerator.

(d) The Division of Operations may issue a permit pursuant to this Part for an incinerator only if the applicant for the permit has a plan approved by the Division pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Division shall approve a plan only if it complies with the requirements of this Part. The plan shall provide for the

1 implementation of a program to prevent the incineration of the solid waste listed in this Part. The
2 program shall include the random visual inspection prior to incineration of at least ten percent (10%)
3 of the solid waste to be incinerated. The program shall also provide for the retention of the records
4 of the random visual inspections and the training of personnel to recognize the solid waste listed in
5 this Part. If a random visual inspection discovers solid waste that may not be burned openly or
6 incinerated pursuant to this part, the Division shall provide that the operator of the incinerator shall
7 dispose of the solid waste in accordance with applicable federal and tribal laws, regulations, and
8 rules. This subsection does not apply to an incinerator that disposes only of medical waste.

9 (e) No person shall knowingly dispose of fluorescent lights and thermostats that contain
10 mercury for collection by the any solid waste collection service or the Tribe's solid waste
11 management program and shall not knowingly dispose of fluorescent lights and thermostats that
12 contain mercury in, or transfer to, a sanitary landfill unless the prohibited items are transferred to a
13 landfill that is able to accept mercury containing items.

14 **§ 130-1606. Compost standards and applications.**

15 (a) In order to protect the Tribe's land and water resources, compost produced, utilized, or
16 disposed of by the composting process at solid waste management facilities of the Tribe must meet
17 criteria established by the Department.

18 (b) The Division shall adopt rules to establish standards for the production of compost. Rules
19 shall be adopted in accordance with Chapter 150 of the Cherokee Code. The rules shall include:

20 (1) Requirements necessary to produce hygienically safe compost products for
21 varying applications.

22 (2) A classification scheme for compost based on:

23 (A) The types of waste composted, including at least one type containing only
24 yard trash;

25 (B) The maturity of the compost, including at least three degrees of
26 decomposition for fresh, semi-mature, and mature; and

27 (C) The levels of organic and inorganic constituents in the compost.

28 (c) The compost classification scheme shall address:

29 (1) Methods for measurement of the compost maturity.

30 (2) Particle sizes.

31 (3) Moisture content.

32 (4) Average levels of organic and inorganic constituents, including heavy metals, for
33 such classes of compost as the Department establishes, and the analytical methods
34 to determine those levels.

35 (d) If compost is produced which does not meet the criteria prescribed by the Division for
36 agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by
37 the Division.

38 **§ 130-1607. Duties of Tribal government units and entities of the Tribe.**

39 (a) Each Tribal governmental branch, the Cherokee Boys Club, the Cherokee Central School
40 System, the Cherokee Indian Hospital Authority, the Tribal Gaming Commission, the Tribal Casino
41 Gaming Enterprise, the Tribal Bingo Enterprise, the Alcoholic Beverage Control Commission and
42 any other legal entity established by Tribal Council action or legislation shall:

(1) Establish a program in cooperation with the Department of Public Infrastructure and Facilities for the collection of all recyclable materials generated in tribal institutions throughout the Tribe. Recycling containers purchased by each entity above shall be clearly labeled to identify the types of recyclable materials to be deposited in each container and, to the extent practicable, recycling containers for glass, plastic, and aluminum shall be located near trash receptacles. The entities shall coordinate with the Department for the collection of all of the following recyclable materials.

(A) Aluminum.

(B) Newspaper.

(C) Sorted office paper.

(D) Recyclable glass.

(E) Plastic bottles.

As used in (C), the term "sorted office paper" means paper used in offices that is of a high quality for purposes of recycling and includes copier paper, computer paper, letterhead, ledger, white envelopes, and bond paper.

(2) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with the Department or private collectors of the recyclable materials or otherwise recycle the recyclable materials listed above.

(b) The Alcoholic Beverage Control Commission, with the assistance of the Department, shall develop a model recycling program for holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits. The model program shall provide for the separation, storage, and collection for recycling of all beverage containers and shall provide alternatives that reflect variations in local circumstances across the Tribe. The Alcoholic Beverage Control Commission may adopt rules to comply with this section.

§ 130-1608. Prohibited acts regarding used oil.

(a) No person, including the Waste Management Program, shall knowingly:

(1) Collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.

(2) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, groundwaters, watercourses, or marine waters.

(3) Dispose of used oil on tribal lands unless such disposal has been approved by the Division of Operations.

(4) Mix used oil with solid waste that is to be collected by the Tribe.

(5) Mix used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) A person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(c) A person who generates or collects used oil for disposal in a landfill where such used oil has been mixed with other solid waste which may be lawfully disposed of in such landfill, and who

1 is without knowledge that such solid waste has been mixed with used oil, is not guilty of a violation
2 under this section.

3 (d) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar
4 purposes that have the potential to release used oil into the environment.

5
6 **§ 130-1609. Public education program regarding used oil; collection and recycling.**

7 (a) The Division of Operations shall conduct a public education program to inform the public
8 of the needs for and benefits of collecting and recycling used oil.

9 (b) Persons or businesses selling at retail oil shall provide the purchasers with information on
10 the locations of collection facilities and information on proper disposal practices.

11 (c) The Division shall provide technical assistance to persons and business who seek
12 guidance on how to comply with this law.

13
14 **§ 130-1610. Regulation of used oil as hazardous waste.**

15 Nothing in this Part shall prohibit the Division from regulating used oil as a hazardous waste in
16 a manner consistent with applicable federal law and this Part.

17
18 **§ 130-1611. Public used oil collection centers.**

19 (a) No person, entity or business shall dispose of used oil unless the used oil is disposed of
20 at a used oil collection center that recycles the oil.

21 (b) No person may recover from the owner or operator of a used oil collection center any
22 costs of response actions resulting from a release of either used oil or a hazardous substance against
23 the owner or operator of a used oil collection center if such used oil is:

24 (1) Not mixed with any hazardous substance by the owner or operator of the used oil
25 collection center;

26 (2) Not knowingly accepted with any hazardous substances contained therein;

27 (3) Transported from the used oil collection center by a tribal program or a certified
28 transporter pursuant to N.C.G.S. 130A-309.23; and

29 (4) Stored in a used oil collection center that is in compliance with this section.

30 (c) Nothing in this section shall affect or modify in any way the obligations or liability of any
31 person under any other provisions of tribal or federal law, including common law, for injury or
32 damage resulting from a release of used oil or hazardous substances. For purposes of this section,
33 the owner or operator of a used oil collection center may presume that a quantity of no more than
34 five gallons of used oil accepted from any member of the public is not mixed with a hazardous
35 substance, provided that the owner or operator acts in good faith.

36
37 **§ 130-1612. Regulation of medical waste.**

38 (a) As used in this section:

39 (1) "Sharps" means needles, syringes, and scalpel blades.

40 (2) "Treatment" means any process, including steam sterilization, chemical treatment,
41 incineration, and other methods approved by the Division which changes the
42 character or composition of medical waste so as to render it noninfectious.

43 (b) It is the intent of the Tribal Council to protect the public health by establishing standards
44 for the safe packaging, storage, treatment, and disposal of medical waste. The Division shall adopt
45 and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

46 (1) Medical waste at facilities where medical waste is generated;

- (2) Medical waste from the point at which the waste is transported from the facility where it was generated;
- (3) On-site and off-site treatment of medical waste; and
- (4) The off-site transport, storage, treatment or disposal of medical waste.

§ 130-1613. Adoption of rules.

The Division of Operations may adopt rules to implement the provisions of this Part pursuant to Chapter 150 of the Cherokee Code.

Part 17.
Scrap Tire Disposal.

§ 130-1700. Findings; purpose.

(a) The Tribal Council finds that:

- (1) Scrap tire disposal poses a unique and troublesome solid waste management problem.
- (2) Scrap tires are a usable resource that may be recycled for energy value.
- (3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.
- (4) A significant number of scrap tires are illegally dumped or stored on tribal lands.
- (5) It is in the Tribe's best interest to encourage efforts to recycle or recover resources from scrap tires.
- (6) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through the Division of Operations.

§ 130-1701. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

- (1) "Collection site" means a site used for the storage of scrap tires.
- (2) "Disposal fee" is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.
- (5) "Processing site" means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities.
- (6) "Scrap tire" means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.
- (7) "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a vehicle. Bicycle tires and other tires for vehicles propelled by human power are not subject to the provisions of this Part.
- (8) "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.
- (9) "Tire hauler" means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.

1 (10) "Tire processor" means a person who engages in the processing of scrap tires or
2 one who owns or operates a tire processing site.

3 (11) "Tire retailer" means a person who engages in the retail sale of a tire in any
4 quantity for any use or purpose by the purchaser other than for resale.

5
6 **§ 130-1702. Scrap tire disposal program.**

7 (a) The owner or operator of any scrap tire collection site shall, within six months after
8 January 1, 2021, provide the Department with information concerning the site's location, size, and
9 the approximate number of scrap tires that are accumulated at the site and shall initiate steps to
10 comply with subsection (b) of this section.

11 (b) On or after July 1, 2021:

12 (1) A person may not maintain a scrap tire collection site or a scrap tire disposal site
13 unless the site is permitted.

14 (2) It is unlawful for any person to dispose of scrap tires on tribal land unless the scrap
15 tires are disposed of at a scrap tire collection site or at a tire disposal site, or
16 disposed of for processing at a scrap tire processing facility.

17 (c) The Division shall adopt rules to carry out the provisions of this section.

18
19 **§ 130-1703. Nuisance tire collection sites.**

20 (a) On or after July 1, 2021, if the Department determines that a tire collection site is a
21 nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed
22 or removed within 90 days. If the person fails to take the requested action within 90 days, the
23 Department shall order the person to abate the nuisance within 30 days. If the person responsible for
24 the nuisance is not the owner of the property on which the tire collection site is located, the
25 Department may order the property owner to permit abatement of the nuisance. If the person
26 responsible for the nuisance fails to comply with the order, the Department shall take any action
27 necessary to abate the nuisance, including entering the property where the tire collection site is
28 located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

29 (b) When the Department abates the nuisance pursuant to subsection (a) of this section, the
30 person responsible for the nuisance shall be liable for the actual costs incurred by the Department for
31 its nuisance abatement activities and its administrative and legal expenses related to the abatement.
32 The Department may ask the Attorney General to initiate a civil action to recover these costs from
33 the person responsible for the nuisance.

34 (c) This section does not apply to any of the following:

35 (1) A retail business premises where tires are sold if no more than 500 scrap tires are
36 kept on the premises at one time;

37 (2) The premises of a tire retreading business if no more than 3,000 scrap tires are
38 kept on the premises at one time;

39 (3) A premises where tires are removed from motor vehicles in the ordinary course
40 of business if no more than 500 scrap tires are kept on the premises at one time;

41 (4) A solid waste disposal facility where no more than 60,000 scrap tires are stored
42 above ground at one time if all tires received for storage are processed, buried, or
43 removed from the facility within one year after receipt;

44 (5) A site where no more than 250 scrap tires are stored for agricultural uses; and

45 (6) A construction site where scrap tires are stored for use or used in road surfacing
46 and construction of embankments.

1 (d) As used in this section, "nuisance" means an unreasonable danger to public health, safety,
2 or welfare or to the environment.

3
4 **§ 130-1704. Fines and penalties.**

5 Any person who knowingly disposes of a tire in violation of this Part or the rules adopted pursuant
6 to this Part shall be assessed a civil penalty of fifty dollars (\$50.00) per violation. Each tire disposed
7 of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

8
9 **§ 130-1705. Department activities related to scrap tires.**

10 (a) The Department may provide for the disposal of scrap tires and may charge fees for the
11 disposal of such.

12 (g) The Department may adopt any rules necessary to implement this section.

13
14 **Part 18.**
15 **Lead-Acid Batteries.**

16
17 **§ 130-1800. Landfilling and incineration of lead-acid batteries prohibited; delivery for**
18 **recycling.**

19 (a) No person shall knowingly place or dispose of a used lead-acid battery in a landfill,
20 incinerator, or in any waste-to-energy facility. Any person may deliver a lead-acid battery to a
21 battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility
22 authorized under applicable law or by the United States Environmental Protection Agency.

23 (b) No battery retailer shall knowingly place or dispose of a used lead-acid battery in solid
24 waste containers for collection by the Tribe, or place or dispose of a used lead-acid battery in a
25 landfill, incinerator, or waste-to-energy facility. Any battery retailer may deliver a used lead-acid
26 battery to the agent of a battery wholesaler or a secondary lead smelter, to a battery manufacturer for
27 delivery to a secondary lead smelter, or to a collection or recycling facility authorized under
28 applicable law or by the United States Environmental Protection Agency.

29 (c) Any person who knowingly places or disposes of a lead-acid battery in violation of this
30 section shall be assessed a civil penalty of not more than fifty dollars (\$50.00) per violation. Each
31 battery improperly disposed of shall constitute a separate violation.

32
33 **§ 130-1801. Retailers required to accept lead-acid batteries for recycling; posting of notice**
34 **required.**

35 (a) A person who sells or offers for sale lead-acid batteries at retail on tribal lands shall accept
36 from customers, at the point of transfer or sale, used lead-acid batteries of the type and in a quantity
37 at least equal to the number of new batteries purchased, if offered by customers.

38 (b) A person who sells or offers for sale lead-acid batteries at retail on tribal land shall post
39 written notice which must be at least 8 1/2 inches by 11 inches in size and must contain the universal
40 recycling symbol and the following language:

41 (1) "It is illegal to improperly dispose of a motor vehicle battery or other lead-acid
42 battery."

43 (2) "Recycle your used batteries."

44 (3) "Tribal law requires us to accept used motor vehicle batteries or other lead-acid
45 batteries for recycling in exchange for new batteries purchased."

1 (c) Any person who fails to post the notice required by subsection (b) of this section after
2 receiving a written warning from the Department to do so shall be assessed a civil penalty of not
3 more than fifty dollars (\$50.00) per day for each day the person fails to post the required notice.
4

5 **§ 130-1802. Wholesalers required to accept lead-acid batteries.**

6 (a) No person selling new lead-acid batteries at wholesale shall refuse to accept from
7 customers at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal
8 to the number of new batteries purchased, if offered by customers. A person accepting batteries in
9 transfer from a battery retailer shall be allowed a period not to exceed 90 days to remove batteries
10 from the retail point of collection.

11 (b) Any person who violates this section shall be assessed a civil penalty of fifty dollars
12 (\$50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of
13 collection within 90 days shall constitute a separate violation.
14

15 **§ 130-1803. Inspections of battery retailers authorized; construction of this Part.**

16 (a) The Department may inspect any place, building, or premise subject to the provisions of
17 this Part. The Department may issue warnings to persons who fail to comply with the provisions of
18 this Part.

19 (b) The provisions of this Part shall not be construed to prohibit any person who does not sell
20 lead-acid batteries from collecting and recycling such batteries.
21

22
23 **Part 19.**

24 **Management of Discarded White Goods.**

25
26 **§ 130-1900. Findings and purpose.**

27 The Tribe finds that white goods are difficult to dispose of, that white goods that contain
28 chlorofluorocarbon refrigerants pose a danger to the environment, and that it is in the best interest of
29 the Tribe to require that chlorofluorocarbon refrigerants be removed from discarded white goods.
30 This Part therefore provides for the management of discarded white goods.
31

32 **§ 130-1901. Management of discarded white goods; disposal fee prohibited.**

33 (a) Duty. – The Department of Public Infrastructure and Facilities is responsible for providing
34 at least one site for the collection of discarded white goods. It must also provide for the disposal of
35 discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods.

36 (b) Restrictions. – A unit of local government or a contracting party may not charge a disposal
37 fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator,
38 or a waste-to-energy facility.

39 (c) Plan. – The Department shall establish written procedures for the management of white
40 goods. These procedures shall be included in the annual report required elsewhere in this Article.
41

42 **§ 130-1902. Civil penalties for improper disposal.**

43 (a) The Department may assess a civil penalty of not more than one hundred dollars (\$100.00)
44 against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good
45 in a prohibited open dump, a landfill, an incinerator, or a waste-to-energy facility. The Department
46 may assess this penalty for the day the unlawful disposal occurs and each following day until the
47 white good is disposed of properly.

(b) The Department may assess a penalty of up to one hundred dollars (\$100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

Part 20.

Management of Abandoned Manufactured Homes.

§ 130-2000. Purpose.

The purpose of this Part is to provide the Division of Operations with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes on tribal lands.

§ 130-2001. Definitions.

(a) The following definitions apply to this Part:

- (1) "Abandoned manufactured home" means a manufactured home or mobile classroom that is both:
 - (A) Vacant or in need of extensive repair.
 - (B) An unreasonable danger to public health, safety, welfare, or the environment.
- (2) "Intact" when used in connection with "abandoned manufactured home" means an abandoned manufactured home from which the wheels and axles, white goods, and recyclable materials have not been removed.
- (3) "Manufactured home" is defined in N.C.G.S. 105-164.3.
- (4) "Responsible party" means any person or entity that possesses an ownership interest in an abandoned manufactured home.

§ 130-2003. Management of abandoned manufactured homes.

(a) The Division shall consider whether to implement a program for the management of abandoned manufactured homes. If at any time the Division decides to implement a program, the Division shall develop a written plan for the management of abandoned manufactured homes. This plan shall be included in the annual report to Tribal Council. At a minimum, the plan shall include:

- (1) A method by which the Division proposes to identify abandoned manufactured homes on tribal land, including, without limitation, a process by which manufactured home owners or other responsible parties may request designation of their home as an abandoned manufactured home.
- (2) A plan for the deconstruction of these abandoned manufactured homes.
- (3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.
- (4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) The Division may contract with another unit of local government or a private entity to provide for the deconstruction and removal of abandoned manufactured homes on tribal lands.

(c) A disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part may be imposed.

(d) An intact abandoned manufactured home shall not be disposed of in a landfill.

Part 21.
Plastic Bag Management.

§ 130-2100. Findings.

(a) The Tribal Council makes the following findings:

- (1) Distribution of plastic bags by retailers to consumers for use in carrying, transporting, or storing purchased goods has a detrimental effect on the environment.
- (2) Discarded plastic bags contribute to overburdened landfills, threaten wildlife and aquatic life, degrade the rivers and streams and forests other natural landscapes of the Tribe's lands and, in many cases, require consumption of oil and natural gas during the manufacturing process.
- (3) It is in the best interest of the Tribe and its citizens to gradually reduce the distribution and use of plastic bags.

§ 130-2101. Definitions.

(a) As used in this Part, the following definitions apply:

- (1) Plastic bag. – A carryout bag which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.
- (2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in N.C.G.S. 105-164.3, to consumers.
- (3) Recycled paper bag. – A paper bag that meets all of the following requirements:
 - a. The bag is manufactured from at least forty percent (40%) recycled content.
 - b. The bag displays the words "made from recycled material" and "recyclable."
- (4) Retailer. – A person who offers goods for sale on tribal lands to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods for free or for a nominal charge.

§ 130-2102. Certain plastic bags banned.

(a) No retailer shall provide customers with plastic bags unless the bag is 100% bio-degradable or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of the following items:

- (1) Fresh fish or fresh fish products.
- (2) Fresh meat or fresh meat products.
- (3) Fresh poultry or fresh poultry products.
- (4) Fresh produce.

(b) No polystyrene foam product in conjunction with food for human consumption shall be provided at any retail or restaurant to the consumer unless the product is 100 bio-degradable material.

(c) These prohibitions shall be effective and fully enforceable 12 (twelve) months after the date of ratification of the law.

§ 130-2103. Substitution of paper bags.

(a) A retailer may substitute 100% recyclable paper bags for the non-bio-degradable plastic bags banned by tribal law.

(b) Nothing in this Part shall prevent a retailer from providing customers with reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers.

(c) Notwithstanding subsection (a) of this section, a prepared foods retailer may package prepared foods in 100% recyclable paper bags, in order to comply with food sanitation or handling standards or best practices.

§ 130-2104. Required signage.

A retailer subject to §130-2102 other than a prepared foods retailer shall display a sign in a location viewable by customers containing the following notice: "The Eastern Band of Cherokee Indians discourages the use of non-biodegradable plastic bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% bio-degradable plastic bag or a 100% recyclable paper bag will be furnished for your use."

Part 22.

Discarded Computer Equipment and Television Management.

§ 130-2200. Findings.

(a) The Tribal Council makes the following findings:

- (1) The computer equipment and television waste stream is growing rapidly in volume and complexity and can introduce toxic materials into solid waste landfills.
- (2) It is in the best interest of the community members on tribal lands to have convenient, simple, and free access to recycling services for discarded computer equipment and televisions.
- (3) Collection programs operated by manufacturers and local government and nonprofit agencies are an efficient way to divert discarded computer equipment and televisions from disposal and to provide recycling services to all community members on tribal lands.
- (4) While some computers and computer monitors can be refurbished and reused and other consumer electronics products contain valuable materials, some older and bulkier consumer electronic products, including some televisions, may not contain any valuable products but should nevertheless be recycled to prevent the release of toxic substances to the environment.
- (5) For the products covered by this Part, differences in product life expectancy, market economics, residual value, and product portability necessitate different approaches to recycling.
- (6) In order to ensure that end-of-life computer equipment and televisions are responsibly recycled, to promote conservation, and to protect public health and the environment, a comprehensive and convenient system for recycling and reuse of certain electronic equipment should be established on the basis of shared responsibility among consumers, and the Tribe.

§ 130-2201. Definitions.

(a) As used in this Part, the following definitions apply:

- (1) Computer. – An electronic, magnetic, optical, electrochemical, or other high-speed data processing device that has all of the following features:

- (A) Performs logical, arithmetic, and storage functions for general purpose needs that are met through interaction with a number of software programs contained in the computer.
- (B) Is not designed to exclusively perform a specific type of limited or specialized application.
- (C) Achieves human interface through a keyboard, display unit, and mouse or other pointing device.
- (D) Is designed for a single user.
- (2) Computer equipment. – Any computer, monitor or video display unit for a computer system, and the peripheral equipment except keyboards and mice, and a printing device such as a printer, a scanner, a combination print-scanner-fax machine, or other device designed to produce hard paper copies from a computer. Computer equipment does not include an automated typewriter, professional workstation, server, ICI device, ICI system, mobile telephone, portable handheld calculator, portable digital assistant (PDA), MP3 player, or other similar device; an automobile; a television; a household appliance; a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the federal Food, Drug, and Cosmetic Act.
- (3) Consumer. – Any of the following:
- (A) An occupant of a single detached dwelling unit or a single unit contained within a multiple dwelling unit who used a covered device primarily for personal or home business use.
- (B) A nonprofit organization with fewer than 10 employees that used a covered device in its operations.
- (4) Covered device. – Computer equipment and televisions used by consumers primarily for personal or home business use. The term does not include a device that is any of the following:
- (A) Part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.
- (B) Physically a part of or integrated within a larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting.
- (C) Equipment used for diagnostic, monitoring, or other medical products as that term is defined under the federal Food, Drug, and Cosmetic Act.
- (D) Equipment used for security, sensing, monitoring, antiterrorism purposes, or emergency services purposes.
- (E) Contained within a household appliance, including, but not limited to, a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, or exercise equipment.
- (5) Discarded computer equipment. – Computer equipment that is solid waste generated by a consumer.

- (6) Discarded computer equipment or television collector. – A government, nonprofit agency, recycler, or retailer that knowingly accepts for recycling discarded computer equipment or a television from a consumer.
- (7) Discarded television. – A television that is solid waste generated by a consumer.
- (8) Electronic device. – Machinery that is powered by a battery or an electrical cord.
- (9) Recover. – The process of reusing or recycling covered devices.
- (10) Recycle. – The processing, including disassembling, dismantling, and shredding, of covered devices or their components to recover a usable product. Recycle does not include any process that results in the incineration of a covered device.
- (11) Recycler. – A person that recycles covered devices.
- (12) Television. – Any electronic device that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying of television or video programming via broadcast, cable, or satellite, including, without limitation, any direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal display (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology marketed and intended for use by a consumer primarily for personal purposes. The term does not include computer equipment.

§ 130-2203. Data security.

Discarded computer equipment and television collectors, recyclers, and retailers shall not be liable in any way for data or other information left on a covered device that is collected or recovered pursuant to the provisions of this Part.

§ 130-2204. Responsibilities of the Department.

(a) In addition to its other responsibilities under this Part, the Department of Infrastructure and Public Facilities shall:

- (1) Develop and implement a public education program on the laws governing the recycling and reuse of discarded computer equipment and televisions under this Part and on the methods available to consumers to comply with those requirements. The Department shall make this information available on the Internet. The Department shall also provide technical assistance to units of local government on the establishment and operation of discarded computer equipment and television collection centers and in the development and implementation of local public education programs.

Part 23.

Use of Coal Combustion Products in Structural Fill.

§ 130-2300. Coal combustion products prohibited as structural fill.

No person shall commence or operate a project using coal combustion residuals as structural fill.

Part 24.

Inactive Hazardous or Waste Disposal Site

§ 130-2400. Authority of the Secretary with respect to sites which pose an imminent hazard.

(a) An imminent hazard exists whenever the Secretary of the Division of Operations determines, that there exists a condition caused by an inactive hazardous substance or waste disposal site, including a release or a substantial threat of a release into the environment of a hazardous substance from the site, which is causing serious harm to the public health or environment, or which is likely to cause such harm before a remedial action plan can be developed. Whenever the Secretary of the Division of Operations determines that an imminent hazard exists he may, in addition to any other powers he may have, without notice or hearing, order any known responsible party to take immediately any action necessary to eliminate or correct the condition, or the Secretary, in his discretion, may take such action without issuing an order. Written notice of any order issued pursuant to this section shall be provided to all persons subject to the order as set out in N.C.G.S. 130A-310.3(c), for the Secretary's guidance. Unless the time required to do so would increase the harm to the public health or the environment, the Secretary of the Division of Operations shall solicit the cooperation of responsible parties prior to the entry of any such order. The Secretary of the Division of Operations shall notify the Secretary of Public Health and Human Services immediately of all incidences deemed a substantial threat to humans. The provisions of subdivisions (1) to (3) of N.C.G.S. 130A-310.6(a) shall apply to any action taken by the Secretary of the Division of Operations pursuant to this section, and any such action shall be considered part of a remedial action program, the cost of which may be recovered from any responsible party.

(b) If a person violates the requirements or schedules in an order issued pursuant to this section, the Secretary of the Division of Operations may institute an action for injunctive relief, irrespective of all other remedies at law, in the Cherokee Court.

(c) The cost of any lawful action taken by the Secretary of the Division of Operations pursuant to this section may be subject to a later action for reimbursement.

§ 130-2401. Tribal action upon default of responsible parties or when no responsible party can be located.

(a) Whenever a person ordered to develop and implement an inactive hazardous substance or waste disposal site remedial action program is unable or fails to do so within the time specified in the order, the Secretary may implement a remedial action pursuant to this section subject to a later action for reimbursement.

(b) The Department of Public Infrastructure and Public Facilities is authorized and empowered to use any staff, equipment or materials under its control or provided by other cooperating federal, State or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement the remedial action.

§ 130-2402. Action for reimbursement; liability of responsible parties; notification of completed remedial action.

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or

(2) Contracts or arranges for any discharge or deposit; or

(3) Accepts for discharge or deposit; or

(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance

1 or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous
2 substance or waste disposal site is based on or derived from a security interest in the property shall
3 be considered a responsible party. A responsible party shall be directly liable to the Tribe for any or
4 all of the reasonably necessary expenses of developing and implementing a remedial action program
5 for such site. The Secretary of the Division of Operations shall bring an action for reimbursement in
6 the name of the Tribe to recover such sums and the costs of bringing the remediation and the legal
7 action. The Tribe must show that a danger to the public health or the environment existed and that
8 the Tribe complied with the provisions of this Part.

9 (b) There shall be no liability under this section for a person who can establish by a
10 preponderance of the evidence that the danger to the public health or the environment caused by the
11 site was caused solely by:

12 (1) An act of God; or

13 (2) An act of war; or

14 (3) An intentional act or omission of a third party (but this defense shall not be
15 available if the act or omission is that of an employee or agent of the defendant,
16 or if the act or omission occurs in connection with a contractual relationship with
17 the defendant); or

18 (4) Any combination of the above causes.

19 (c) The definitions set out in N.C.G.S. 130A-310.31(b) apply to this subsection.
20

21 **§ 130- 2403. Recordation of inactive hazardous substance or waste disposal sites.**

22 (a) After determination by the Department of Public Infrastructure and Public Facilities of
23 the existence and location of an inactive hazardous substance or waste disposal site, the owner of the
24 real property on which the site is located, within 180 days after official notice to the owner to do so,
25 shall submit to the Department a survey plat of areas designated by the Department that has been
26 prepared and certified by a professional land surveyor, and entitled "NOTICE OF INACTIVE
27 HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE". Where an inactive hazardous
28 substance or waste disposal site is located on more than one parcel or tract of land, a composite map
29 or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of
30 the site that would be sufficient as a description in an instrument of conveyance, shall meet the
31 requirements of N.C.G.S. 47-30 for maps and plats, and shall identify:

32 (1) The location and dimensions of the disposal areas and areas of potential
33 environmental concern with respect to permanently surveyed benchmarks.

34 (2) The type, location, and quantity of hazardous substances known by the owner of
35 the site to exist on the site.

36 (3) Any restrictions approved by the Department on the current or future use of the
37 site.

38 (b) After the Department of Public Infrastructure and Public Facilities approves and certifies
39 the Notice, the Department or the owner of the site shall file the certified copy of the Notice in the
40 Tribal real property or possessory holding records at the Tribal Realty Department.

41 (c) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or
42 transferred, the deed or other instrument of transfer shall contain in the description section, in no
43 smaller type than that used in the body of the deed or instrument, a statement that the property has
44 been used as a hazardous substance or waste disposal site and a reference by book and page to the
45 recordation of the Notice.

46 (d) A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to this
47 section may, at the request of the owner of the land, be cancelled by the Secretary of the Division of

1 Operations after the hazards have been eliminated. If requested in writing by the owner of the land
2 and if the Secretary concurs with the request, the Secretary of the Division of Operations shall send
3 to the Tribal Realty Department a statement that the hazards have been eliminated and request that
4 the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners
5 of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

6 (e) Recordation under this section is not required for any inactive hazardous substance or
7 waste disposal site that is undergoing voluntary remedial action pursuant to this Part unless the
8 Secretary determines that either:

9 (1) A concentration of a hazardous substance or hazardous waste that poses a danger
10 to public health or the environment will remain following implementation of the
11 voluntary remedial action program.

12 (2) The voluntary remedial action program is not being implemented in a manner
13 satisfactory to the Secretary and in compliance with the agreement between the
14 Secretary and the owner, operator, or other responsible party.

15 16 17 Part 25 18 Safe Drinking Water.

19 20 §130-2500. Title.

21 This Article shall be cited as the "Eastern Band of Cherokee Safe Drinking Water Act."
22

23 §130-2501. Purpose.

24 The purpose of this Article is to regulate water systems on tribal lands which supply
25 drinking water that may affect the public health.
26

27 §130-2502. Definitions.

28 (a) The following definitions shall apply throughout this Article:

29 (1) "Administrator" means the Administrator of the United States Environmental
30 Protection Agency.

31 (2) "Certified laboratory" means a facility for performing bacteriological,
32 chemical or other analyses on water which has received interim or final
33 certification by either the Environmental Protection Agency or the
34 Department.

35 (3) "Contaminant" means any physical, chemical, biological or radiological
36 substance or matter in water.

37 (4) "Department" means the Department of Public Infrastructure and Facilities.

38 (5) "Division" means the Division of Operations in the Executive branch.

39 (6) "Drinking water rules" means rules adopted pursuant to this Article.

40 (7) "Federal act" means the Safe Drinking Water Act of 1974, P.L. 93-523, as
41 amended.

42 (8) "Federal agency" means any department, agency or instrumentality of the
43 United States.

44 (9) "Maximum contaminant level" means the maximum permissible level of a
45 contaminant in water which is delivered to any user of a public water system.

46 (10) "National primary drinking water regulations" means primary drinking water
47 regulations promulgated by the Administrator pursuant to the federal act.

- 1 (11) "Person" means an individual, corporation, company, association, partnership,
2 unit of local government, tribal agency, federal agency or other legal entity.
- 3 (12) "Public water system" means a system for the provision to the public of water
4 for human consumption through pipes or other constructed conveyances if the
5 system serves 15 or more service connections or which regularly serves 25 or
6 more individuals. The term includes:
- 7 (A) Any collection, treatment, storage or distribution facility under control of
8 the operator of the system and used primarily in connection with the system;
9 and
- 10 (B) Any collection or pretreatment storage facility not under the control of the
11 operator of the system that is used primarily in connection with the system.
- 12 (C) A public water system is either a "community water system" or a
13 "noncommunity water system" as follows:

1. "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
 2. "Noncommunity water system" means a public water system that is not a community water system.
- (D) A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:
1. The water is used exclusively for purposes other than residential uses. As used in this subdivision, "residential uses" mean drinking, bathing, cooking, or other similar uses.
 2. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.
 3. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules.
- (13) "Secretary" means the Secretary of Operations.
- (14) "Supplier of water" means a person who owns, operates or controls a public water system.
- (15) "Treatment technique requirement" means a requirement of the drinking water rules which specifies a specific treatment technique for a contaminant which leads to reduction in the level of the contaminant sufficient to comply with the drinking water rules.

§130-2503. Scope of the Part.

(a) The provisions of this Part shall apply to each public water system on tribal lands unless the public water system meets all of the following conditions:

- (1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
- (2) Obtains all of its water from, but is not owned or operated by, a public water system to which the drinking water rules apply;
- (3) Does not sell water to any person; and
- (4) Is not a carrier which conveys passengers in interstate commerce.

§130-2504. Drinking water rules; exceptions; limitation on implied warranties.

(a) The Division shall adopt and enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

- (1) Specify contaminants which may have an adverse effect on the public health;

- 1 (2) Specify for each contaminant either:
2 (A) A maximum contaminant level which is acceptable in water for human
3 consumption, if it is feasible to establish the level of the contaminant
4 in water in public water systems; or
5 (B) One or more treatment techniques which lead to a reduction in the
6 level of contaminants sufficient to protect the public health, if it is not
7 feasible to establish the level of the contaminants in water in a public
8 water system.
- 9 (3) Establish criteria and procedures to assure a supply of drinking water which
10 dependably complies with maximum contaminant levels and treatment
11 techniques as determined in paragraph (2) of this subsection. These rules may
12 provide for:
13 (A) The minimum quality of raw water which may be taken into a public
14 water system;
15 (B) A program of laboratory certification;
16 (C) Monitoring and analysis;
17 (D) Record-keeping and reporting;
18 (E) Notice of noncompliance, failure to perform monitoring, variances and
19 exemptions;
20 (F) Inspection of public water systems; inspection of records required to
21 be kept; and the taking of samples;
22 (G) Criteria for design and construction of new or modified public water
23 systems;
24 (H) Review and approval of design and construction of new or modified
25 public water systems;
26 (I) Siting of new public water system facilities;
27 (J) Variances and exemptions from the drinking water rules; and
28 (K) Additional criteria and procedures as may be required to carry out the
29 purpose of this Article.

30
31 (c) The rules may also establish criteria and procedures to insure an adequate supply of
32 drinking water. The rules may:

- 33 (1) Provide for record keeping and reporting.
34 (2) Provide for inspection of public water systems and required records.
35 (3) Establish criteria for the design and construction of new public water systems
36 and for the modification of existing public water systems.
37 (4) Establish procedures for review and approval of the design and construction
38 of new public water systems and for the modification of existing public water
39 systems.
40 (5) Limit the number of service connections to a public water system based on the
41 quantity of water available to the public water system, provided that the
42 number of service connections shall not be limited for a public water system
43 operating in accordance with a local water supply plan.
44 (6) Provide for variances and exemptions from the rules.
45 (7) Provide for notice of noncompliance.

1
2 (d) Two or more water systems that are adjacent, that are owned or operated by the same
3 supplier of water, that individually serve less than 15 service connections or less than 25 persons
4 but that in combination serve 15 or more service connections or 25 or more persons, and that
5 individually are not public water systems shall meet the standards applicable to public water
6 systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and
7 other inorganic chemicals for which testing and monitoring is required for public water systems.
8 The standards applicable to these contaminants shall be enforced by the Department as though
9 the water systems to which this subsection applies were public water systems.

10 (e) The drinking water rules may be amended as necessary in accordance with required
11 federal regulations.

12 (f) When a public water system supplies water through a master meter to a water system not
13 regulated by this Article, the supplying water system is not responsible for operation, maintenance,
14 or repair of the providing water system. The supplying water system shall not be responsible for
15 contamination that is confined to the providing water system if the supplying water system
16 meets applicable requirements for water quality, treatment, and system operation for that
17 contaminant. The supplying water system may monitor the water within the providing water
18 system for contamination pursuant to rules adopted under this Article. The supplying water system
19 and the Department shall have access to the providing water system to investigate water quality
20 problems and to determine whether any contamination is confined to the providing water system
21 and whether the quality of the water supplied by the supplying water system is contributing
22 contamination to the providing water system.

23 (g) If water in the providing water system exceeds the maximum contaminant levels
24 established pursuant to this Article and the Department determines that the supplying water
25 system is not responsible, the supplying water system must notify the providing water system
26 owner in writing within one day of determining that the contamination is confined solely to the
27 providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other
28 contaminants.

29 (h) A supplier of water regulated under this Article shall not be deemed to provide any
30 warranty including an implied warranty of merchantability or an implied warranty of fitness for
31 a particular purpose.

1
2 **§130- 2505. Department to examine waters.**

3 The Department shall examine all waters and their sources and surroundings which are used as,
4 or proposed to be used as, sources of public water supply to determine whether the waters and their
5 sources are suitable for use as public water supply sources and shall consult with The Department
6 of Natural Resources when making determinations.

7
8 **§130-2506. Department to provide advice; submission and approval of public water**
9 **system plans.**

10 (a) The Department shall advise all persons and units of local government locating,
11 constructing, altering or operating or intending to locate, construct, alter or operate a public
12 water system of the most appropriate source of water supply and the best practical method of
13 purifying water from that source having regard to the present and prospective needs and interests
14 of other persons and units of local government which may be affected. The Department shall also
15 advise concerning accepted engineering practices in the location, construction, alteration and
16 operation of public water systems.

17 (b) All persons and units of local government constructing or altering a public water
18 system shall give prior notice and submit plans, specifications and other information to the
19 Department. The Tribe shall adopt rules providing for the amount of prior notice required to be
20 given and the nature and detail of the plans, specifications and other information required to be
21 submitted. The Tribe shall take into consideration the complexity of the construction or alteration
22 which may be involved and the resources of the Department to review the plans, specifications
23 and other information. The Department shall review the plans, specifications and other
24 information, and notify the person, Tribal Utilities or unit of the tribe of compliance or lack of
25 compliance with applicable statutes and rules of the Tribe.

26 (c) No person or unit of the tribe shall begin construction or alteration of a public
27 water system or award a contract for construction or alteration unless all of the following
28 conditions are met:

- 29 (1) The plans for construction or alteration have been prepared by an engineer
30 licensed under North Carolina law and approved by the Department.
31 (2) The Department has determined that the system, as constructed or altered, will
32 be capable of compliance with the drinking water laws and rules.
33 (3) The Department has determined that the system is capable of interconnection
34 at an appropriate time with an expanding municipal system.
35 (4) The Department has determined that adequate arrangements have been made
36 for the continued operation, service and maintenance of the public water
37 system.
38 (5) The Department has approved the plans and specifications.
39

40 (d) The Department shall notify the identified systems of the potential for interconnectivity
41 in the future. The systems so notified may discuss options for potential interconnectivity, including
42 joint operations, regionalization, or merger.
43

44 **§130-2507. Disinfection of public water systems.**

45 (a) The Department is authorized to require disinfection of:

46 (1) Public water systems whenever:

47 (A) The maximum microbiological contaminant level is exceeded; or

1 (B) Conditions exist which make continued use of the water potentially
2 hazardous to public health.

3 (b) Public water systems shall employ disinfection methods and procedures approved by
4 Department.

5
6 **§130-2508. Variances and exemptions; considerations; duration; condition; notice and**
7 **hearing.**

8 (a) The Department may authorize variances or exemptions from the drinking water rules.

9 (1) The Department may grant one or more variances or exemption to a public
10 water system from any requirement respecting a maximum contaminant level
11 of an applicable drinking water rule upon a finding that:

12 (A) Because of characteristics of the raw water sources reasonably
13 available to the system, the system cannot meet the requirements
14 respecting the maximum contaminant levels of the drinking water rules
15 after application of the best technology, treatment techniques, or other
16 means which the Secretary finds are available (taking costs into
17 consideration); and

18 (B) The granting of a variance will not result in an unreasonable risk to
19 public health when considering the population exposed, the projected
20 duration of the requested variance and the degree to which the
21 maximum contaminant level is being or will be exceeded.

1 (2) In consideration of whether a public water system should be granted a variance
2 from a required treatment technique because the treatment is unnecessary to
3 protect the public health, the Department shall consider factors such as:

4 (A) Quality of the water source including water quality data and pertinent
5 sources of pollution; and

6 (B) Source protection measures employed by the public water system.

7 (b) Division shall adopt by rule a list of the best available technologies, treatment techniques,
8 or other means available, to deal with each contaminant for which a maximum contaminant level
9 is established.

10 (c) As a condition of issuance of either a variance or an exemption, the Department shall
11 issue a schedule of compliance for the public water system, including increments of progress for
12 each drinking water rule for which the variance or exemption was issued. As a further condition
13 of a variance or exemption, the Department shall require the public water system to implement
14 any necessary control measures prescribed by the Department during the period of the variance
15 or

1 exemption. The compliance schedule for an exemption shall require compliance as expeditiously
2 as practical for existing maximum contaminant levels and treatment techniques, or no later than
3 one year from the issuance of the exemption for any newly adopted maximum contaminant level
4 or treatment technique. The final date for compliance provided in any exemption schedule may
5 be extended up to three years after the date of the issuance of the exemption if the water system
6 establishes:

- 7 (1) The water system cannot meet the standard without capital improvements
8 which cannot be completed within the period of exemption, or
- 9 (2) The system needs financial assistance for necessary improvements and has
10 entered into an agreement to obtain such assistance, or
- 11 (3) The system has entered into an enforceable agreement to become part of a
12 regional public water system and the system is taking all practical steps to
13 meet the standard.

14 (d) The Division shall provide notice and opportunity for public hearing on proposed variances
15 and proposed variance and exemption schedules.

16
17 **§130-2509. Imminent hazard; power of the Department.**

18 (a) The Department shall judge whether an imminent hazard exists concerning a present
19 or potential condition in a public water system.

20 (b) In order to eliminate an imminent hazard, the Department may, without notice or
21 hearing, issue an order requiring the person or persons involved to immediately take action
22 necessary to protect the public health. A copy of the order shall be delivered by certified mail or
23 personal service. The order shall become effective immediately and shall remain in effect until
24 modified or rescinded by the Department or by the Tribal Court.

25 (c) Immediately upon findings by the Department that an imminent hazard
26 exists that impacts or has the potential to impact human health, the Department shall
27 notify the Secretary of Public Health and Human Services.

28
29 **§130- 2510. Emergency plan for drinking water; emergency circumstances defined.**

30 (a) The Department shall develop and implement an adequate plan for the provision
31 of drinking water under emergency circumstances. When the Department determines that
32 emergency circumstances exist with respect to a need for drinking water, the Department may
33 take action in accordance with the plan as necessary in order to provide drinking water.

34 (b) Emergency circumstances shall exist whenever the available supply of drinking water
35 is inadequate.

36
37 **§130- 2511. Notice of noncompliance; failure to perform monitoring; variances and**
38 **exemptions.**

39
40 (a) Notice of noncompliance shall be delivered to the supplier of a water system whenever a
41 public water system:

- 42 (1) Is not in compliance with the drinking water rules;
- 43 (2) Fails to perform an applicable testing procedure or monitoring required by the
44 drinking water rules;