

I, _____ (Print Name) _____, have read the published "Regulations and Schedules" of the Cherokee Water & Sewer Tribal Enterprise and here to make application for _____ (Indicate Service) _____ connection(s) for my establishment known as _____ (Name) _____ (Location) _____. Water requirements will necessitate (Pipe Size) _____ connection. Services will be needed _____.

I understand and agree to abide by all terms of the "Regulations and Schedules," and any Subsequent amendments that may be published.

Signed: _____	Signed: _____
	_____ (Applicant) (Date)
	Address: _____
	Phone: _____

Office Use:

Rate Schedule Route Code: _____	Route Code: _____
Acct: _____	Service Address: _____
Prior Meter reading: _____	Meter Serial #: _____
Last Meter reading: _____	Water & Sewer: _____
Date read: _____	Water only _____ Sewer only _____
Remarks: _____	

Chapter 113A — AIR AND NOISE POLLUTION CONTROL AND ENVIRONMENT

ARTICLE I. - IN GENERAL

Secs. 113A-1—113A-20. - Reserved.

ARTICLE II. - OVERFLIGHTS

Sec. 113A-21. - Purpose.

This Overflights ordinance was created to protect the lands, sacred sites and the peaceful enjoyment of Tribal habitations of the Eastern Band of Cherokee Indians from the invasion of noise and air pollution and the invasion of individual and collective privacy on the part of commercial air tour sightseeing agencies and other flight operations.

Sec. 113A-22. - Authority.

(a)A. Like land, water, and minerals, the airspace of the Eastern Band of Cherokee Indians over and near the Reservation is an important resource for Indian people, and the Indians must use their rights to ensure proper utilization of such a resource. The Eastern Band of Cherokee Indians Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of members of the Tribe. The Tribe believes it is important to establish an Overflight ordinance in order to use the aforesaid laws and powers to protect the health, safety and welfare of the Tribe.

(b)B. Section 23 of the Charter and Governing Document of the Eastern Band of Cherokee Indians gives the Tribe the authority to adopt laws and regulations for the government of the Tribe.

Sec. 113A-23. - Definitions and applicability.

(a)A. *Definitions.*

- (1) A "commercial air tour" means any sightseeing flight operated under visual flight conditions for compensation or hire, taking into account such factors as the areas where the flights are conducted, the frequency of flights, the routes of flights, and the operator's advertising, solicitation, or holding out to the public as willing to provide a sightseeing flight.
- (2) For purposes of this rule, "the Reservation" means any part of the Eastern Band of Cherokee Indian Reservation. This includes fee land parcels within the external boundaries of the Reservation.
- (3) A "military flight" refers to any flight on the part of any division of the United States Armed Services. This definition does not include any flight conducted on the part of any military official who is not acting in the course of his/her duties as a member of the Armed Services.
- (4) A "medical flight" is any flight used to transport injured or ill individuals or to transport vital organs for the purpose of transplantation.

- (5) A "noncommercial flight" refers to any flight that is not operated under visual flight conditions for compensation or hire. This includes, but is not limited to, flights for the purposes of personal recreational use, agricultural use, forestry and military and medical uses.

(b)B. *Applicability.*

- (1) This rule applies to all commercial air tours within the exterior boundary of the Reservation who fly below 5,000 feet above ground level (AGL) over the Reservation.
- (2) This article does not apply to medical, forestry or military flights.

Sec. 113A-24. - Air tour licensing requirements.

(a)A. This section corresponds with 42 C.F.R. part 135 of the Federal Aviation Regulations (FAR) as follows:

- (1) All commercial air tour operators operating, over the Eastern Band of Cherokee Reservation must comply with 42 C.F.R. part 135 of the Federal Aviation Regulations within six months of the ratification of this article.
- (2) Notwithstanding paragraph (1) above, an operator may conduct commercial air tours pursuant to 42 C.F.R. part 91 of the FAR if:
- (i) The operator secures a letter of agreement signed by the Tribal Business Committee and the Tribal Council describing the conditions under which such flights will be conducted; and
- (ii) The flights are:
- (a) Not violative of the Tribe's health or welfare;
- (b) Nonintrusive;
- (c) Not unreasonably impacting Reservation resources and resident and/or visitor experiences; and
- (d) Adhere to the requirements of the Air Tour Management Plan (ATMP); and
- (iii) No more than five air tour flights cumulative are provided in any 30-day period.

(b)B. No commercial air tour may operate over the Reservation under paragraph 4(A)(2) until an ATMP for the Reservation has been adopted.

(c)C. Each operator that conducts a commercial air tour over the Reservation shall comply with the operating specifications that are based on the ATMP for the Reservation.

(d)D. No existing commercial air tour operator shall continue to conduct commercial air tours over the Reservation until they comply with all of the terms of this article, or until they reach an agreement with the Tribal Council and the Tribal Business Committee as contemplated by section 113A-28 of this article.

Sec. 113A-25. - The Office of the Tribal Aviation Commissioner (reserved).

Sec. 113A-26. - Air Tour Management Plan (ATMP).

- (a)A. Visitor activities on the Reservation must occur in such a manner and by such means so as to prevent impairment of Reservation resources and values. Consistent with this requirement and the purposes and values of the Eastern Band of Cherokee Indians, opportunities for all residents and visitors, including air tour passengers and ground based visitors, and the special interests of Native Americans, must be managed in an equitable manner.
- (b)B. Following these determinations, the Tribal Council and the Tribal Business Committee will undertake a formal scoping process that enables the agencies and the public to develop a proposed ATMP that responds appropriately to the needs determined by the Tribal Business Committee and the Tribal Council's requirements for the safe and efficient use of the Eastern Band of Cherokee Nation's airspace. This would be done by means of a public scoping session in which the public can comment on the proposed ATMP.
- (c)C. An operator who operates or proposes to establish a commercial air tour over the Eastern Band of Cherokee Reservation shall apply to the Tribal Business Committee for the appropriate operation specifications. The Tribal Business Committee shall promptly notify the Tribal Council that a formal proposal has been submitted to conduct an air tour over the Reservation.
- (d)D. The Tribal Business Committee will undertake to establish an ATMP in cooperation with the Tribal Council. The Tribal Council shall have the responsibility for assisting and cooperating in the ATMP's development and in determining the nature and extent of impacts on natural and cultural resources, health and welfare of the Tribe, and resident and/or visitor experience opportunities. The Tribal Business Committee shall be responsible for initiating the ATMP and for ensuring the safe and efficient use of the Eastern Band of Cherokee Nation's airspace and to protect the public health and welfare from aircraft noise and pollution. All of this will be done in recognition of the fact that Native peoples have rights to the protection of their lands and sacred sites, and to the peaceful use and enjoyment of Tribal habitations, without invasion of their individual and collective privacy.
- (1) If the Reservation has any bona fide commercial air tours on the date of publication of this overflights article, the Tribal Business Committee, the Tribal Council, affected air tour operators, and other interested parties will begin the ATMP development process upon the adoption of the final ordinance.
 - (2) If the Reservation has no commercial air tour companies on the date of adoption of this rule, the ATMP development process will begin when an operator first applies to the Tribal Business Committee for approval under section 113A-24 that would permit such operations on the Reservation.
 - (3) The Tribal Business Committee and the Tribal Council will then undertake a formal scoping process that enables the agencies and the public to decide whether commercial air tour flightseeing is appropriate over a particular area of the Reservation and under what conditions flightseeing may or may not take place.
 - (4) The Tribal Business Committee and the Tribal Council shall identify other interested parties in the vicinity of the Reservation and shall offer them a role in formulating the ATMP and, to the extent the Tribal Council desires, ensure their effective participation in its development. This may be through the Tribal Business Committee and the Tribal

Council cooperating in the development of an Environmental Assessment (EA) or an Environmental Impact Study (EIS) or by means of some other appropriate agreement.

- (5) The Tribal Council and the Tribal Business Committee shall not unilaterally decide to ban all commercial air tours over the Reservation before an application is filed and may not authorize air tours except pursuant to this article.
- (6) If either the Tribal Council or Tribal Business Committee lacks the funds to conduct the EA/EIS punctually, the operator may pay for it, thereby expediting the process, but only after prior approval to proceed by the Tribal Business Committee and the Tribal Council.

(e)E. In making their decisions, the Tribal Council and the Tribal Business Committee shall take the following general principles into account:

- (1) The general health and welfare of the Tribe.
- (2) Existing management plans for the Reservation.
- (3) In certain areas of the Reservation where "natural quiet" is an appropriate concern, every ground Reservation resident and/or visitor should have the reasonable opportunity to enjoy unimpaired quiet.
- (4) Diversity of resident and/or visitor experience, taking into account the purpose, value, history, and nature of the Reservation.
- (5) In certain areas of the Reservation, commercial air tours can provide an appropriate means to experience the Reservation environment from a perspective which can enhance both Reservation residents' and visitors' enjoyment and understanding of natural and cultural resources, and natural processes.
- (6) Access to the Reservation, and providing the ability of diverse populations to experience the Reservation.
- (7) Ability of ground residents and/or visitors or air tour visitors to obtain a similar experience, including natural quiet, near but not in or over specific areas of the Reservation.
- (8) Timing, e.g., restrictions for particular events or occasions, or for seasonal wildlife considerations.
- (9) Impacts on cultural events or values, wildlife, wilderness, solitude, and ability to view elements of the Reservation.
- (10) Protection of the sanctity of sites sacred to the Eastern Band of Cherokee Indians, and the peaceful enjoyment of Tribal habitations and traditional activities.
- (11) Altitude of flights.
- (12) Time of occurrence of flights.
- (13) Potential contamination that may result from fuel tanks stored on the Reservation for plane refueling.
- (14) Other pollution including, but not limited to, air and water pollution.
- (15) The frequency of flights and the number of flights per operator.

This list is not to be construed as exhaustive.

(f)F. The Air Tour Management Plan may prohibit, authorize, or authorize, with conditions, commercial air tour flights over the Reservation itself, and to the extent to which other interested, non-Tribal parties were cooperating agencies in the development of the ATMP flights over non-Tribal lands near the Reservation. The limitations or conditions may address:

- (1) Potential effects of the ATMP on the general health and welfare of the Tribe.
- (2) Air tour routes.
- (3) Maximum or minimum altitudes.
- (4) Time of day restrictions.
- (5) Restrictions for particular events.
- (6) Maximum number of flights per unit of time.
- (7) Intrusions of privacy on Tribal lands.
- (8) Mitigation of noise, visual, pollution, or other impacts.
- (9) Prohibition of flights.
- (10) Potential contamination that may result from leaking fuel tanks stored on the Reservation for plane refueling.
- (11) Other pollution including, but not limited to, air and water pollution.

This list is not to be construed as exhaustive.

(g)G. If restrictions are placed on the maximum number of air tour flights per unit of time, allocation of opportunities to conduct air tours initially would be determined in the public process of the ATMP development. Once the ATMP is adopted and in place, free market mechanisms, buying and selling, would be allowed to allocate these opportunities among interested entities. Such opportunities are not property rights.

(h)H. If:

- (1) The ATMP procedure results in specification of a maximum number of commercial air tour flights on the Reservation;
- (2) The entire number of available flights is allocated to existing operators; and
- (3) A new entrant wants to commence commercial air tour operations on the Reservation;

Then that new entrant must:

- (i) Obtain FAR 42 C.F.R. part 135 certification from the Tribal Business Committee, including approval of operation specifications that permit the new entrant to operate such commercial air tours from the Reservation; and
- (ii) Purchase from an existing commercial air tour operator on the Reservation all or a portion of the existing operator's authorized commercial air tours on the Reservation.

- (i)F. The ATMP should prescribe incentives for the adoption of "quiet aircraft technology" by air tour operators operating on the Reservation. Such incentives might include, for example, preferential routes or times of operations. An ATMP may not favor one operator or kind of aircraft over another on any basis other than demonstrable noise impacts on the ground residence on the Reservation.
- (j)F. Both the Tribal Council and Tribal Business Committee may sign and adopt the environmental determination, which may include a Finding of No Significant Impact (FONSI), Environmental Assessment (EA), or Environmental Impact Statement (EIS), and the Record of Decision for the ATMP, should a study be completed.
- (k)K. Any person may petition the Tribal Business Committee to initiate an amendment of a completed ATMP. The Tribal Business Committee and the Tribal Council shall consider proposed amendments to a completed ATMP on a resources-available basis, but must make a good faith effort to consider such proposed amendments at least once every 24 calendar months. At any time, either entity may, but neither entity must, propose and sponsor amendments of a completed ATMP.

Sec. 113A-27. - Enforcement.

- (a)A. The Tribe will enforce the terms of the ATMP by imposing administrative or civil sanctions against operators who violate the term of their 42 C.F.R. part 135 operating certificate operation specifications. Sanctions may include the entire range of Tribal enforcement measures, including revocation of the offending operator's permit to conduct tours on the Reservation, a fine, revocation of trader's licenses, or injunctive relief.
- (b)B. Any person who violates any of the provisions of this article is subject to the imposition of civil penalties for such unlawful activities. The Business Committee, 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, including reasonable attorney's fees and costs. Any civil action concerning such violations shall be heard in Tribal Court, and the alleged violator shall be served and have the opportunity to be heard. Any person 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, but not more than \$1,500.00, for each day each violation occurs, including reasonable attorney's fees and costs.
- (c)C. The Business Committee, through the Tribe's Attorney General, is authorized to bring a civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law, against any person who has committed any violation under the provisions, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for cleaning up any hazardous waste, or abating the effects thereof, together with the costs of the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of any civil action for damages before such action is filed.
- (d)D. All civil damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages.
- (e)E. Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the attorney is an employee of the Tribe, or shall otherwise be paid according to the provisions

of any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.

(f)F. Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealing, or consensual activities, on the Reservation suspended or terminated.

(g)G. Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including the filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil damages, or any other relief in any court of competent jurisdiction.

(h)H. The Eastern Band of Cherokee Court of Indian Offenses shall have jurisdiction to hear all matters arising from this article.

(i)I. Any Tribal member or other person living on or around the Reservation may refer a complaint of ATMP violations to the Tribal Business Committee for appropriate enforcement actions.

Sec. 113A-28. - Interim authority.

(a)A. If there are no bona fide commercial air tour operations on the Reservation as of August 1, 1998, no commercial air tour operations may commence until an ATMP is adopted for the Reservation.

(b)B. If a bona fide commercial air tour operation exists over the Reservation as of August 1, 1998, that operator may continue to operate that existing service, provided the Tribal Council, the Business Committee, and the operator have negotiated an interim operating agreement that embodies the existing service, which includes the following:

- (1) The agreement must protect the general health and welfare of the Tribe; and
- (2) The operator applies for appropriate operation specifications pursuant to this article; and
- (3) The agreement must ensure the protection of Reservation resources and values; and
- (4) The agreement must enhance safe operation of the air tour; and
- (5) The agreement must foster the adoption of quiet technology; and
- (6) The agreement must allow for modifications of the operations based on experience, provided that modification improves protection of Reservation resources and values; and
- (7) An operator providing service pursuant to 42 C.F.R. part 91 applies for 42 C.F.R. part 135 authority; and
- (8) The agreement must set out to avoid potential contamination that could result from leaking fuel tanks stored on the Reservation for plane refueling purposes; and
- (9) The agreement must set out to prevent air, water and other potential pollution.

This list is not to be construed as exhaustive.

(c)E. The draft of the Interim Operating Agreement shall be published for public comment.

(d)D. Interim Operating Authority shall extend until adoption of the ATMP at the Reservation, but may be suspended or revoked before then by the Tribal Business Committee if the operator operates in material violation of the procedures and specifications of the Interim Operating Agreement.

(e)E. The parties may agree on any changes to the Interim Operating Authority that otherwise meet the standards of this article.

(f)F. Interim Operating Authorities may not be bought and sold.

Sec. 113A-29. - Fees.

To the extent that fees are charged for ground visitors, the ATMP may impose, and commercial air operators will pay, a reasonable fee.

Sec. 113A-30. - Compliance monitoring.

The ATMP shall consider whether a system is necessary to monitor compliance or to distinguish between tour and nontour aircraft.

Sec. 113A-31. - Rules and regulations.

The Division of Agriculture and Natural Resources~~Business Committee~~ shall promulgate rules and regulations for the enforcement of this article.

~~Sec. 113A-32. - Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this article are specifically repealed.~~

~~Sec. 113A-33. - Severability.~~

~~If any section of this article is deemed unconstitutional, the remaining provisions shall have full force and effect.~~

~~Sec. 113A-34. - Effective date.~~

~~This article shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113B - PROHIBITION OF OPEN DUMPING

Sec. 113B-1. - Purpose.

The purpose of this chapter is to improve environmental health, public sanitation, and general aesthetics by prohibiting the open dumping of solid waste on the lands of the Eastern Band of Cherokee Indians.

Sec. 113B-2. - Definitions.

- (1) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

- (2) *Garbage* shall mean all putrescible wastes, including animal, aquacultural, offal and carcasses, and recognizable industrial byproducts or substances that create a public nuisance or potential health hazard as determined by the Deputy Operating Officer or his or her authorized representative, but excluding sewage and human wastes.
- (3) *Open dump* shall mean a solid waste disposal site that does not have a permit.
- (4) *Person* shall mean an individual, corporation, company, association, partnership, unit of Tribal government, state agency, federal agency, or other legal entity.
- (5) *Putrescible* shall mean a solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as commercial kitchen wastes, offal, and carcasses.
- (6) *Refuse* shall mean all nonputrescible waste.
- (7) *Sludge* shall mean any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.
- (8) *Solid waste* shall mean any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment, and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. This term does not include:
 - (a) Fowl and animal fecal waste; or
 - (b) Solid or dissolved material in:
 - (1) Domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluent to the surface waters;
 - (2) Irrigation return flows; and
 - (3) Wastewater discharges and the sludge incidental thereto and generated by the treatment thereof which are point sources subject to permitting under section 402 of the Federal Water Pollution Control Act; except that sludge meeting the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act shall also be a solid waste for the purposes of this chapter.
- ~~(9) *Vector* shall mean a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.~~
- ~~(10) *Erosion control measure, structure, or device* shall mean a physical device constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.~~

(911) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(1012) *Reservation* shall mean all trust land held by the United States for the benefit of the Eastern Band of Cherokee Indians ~~the land within the limits of the Cherokee Indian Reservation, or the Qualla Boundary, established on September 6, 1839, by Executive Order, presently containing 56,573 acres more or less, and under the jurisdiction of the United States government, and including rights of way running through the Reservation.~~

(1113) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

(1214) *Disposal site* shall mean any site designated and approved by the Deputy Officer of Utilities for the collection and disposal of solid waste.

(1315) ~~*Secretary of the Division of Operations*~~ *Deputy Operating Officer* or his or her authorized representative. The ~~Secretary of the Division of Operations~~ *Deputy Operating Officer* is the direct supervisor of the Director of Infrastructure and Public Facilities responsible for the programs, departments, or agencies with functions and responsibilities for solid waste, water and sewer line construction, wastewater treatment and discharge, and water treatment for consumption. Central Engineering and Public Safety Divisions. "His or her authorized representative," refers to a Tribal employee who is designated by the Secretary or law ~~reports to the Deputy Operating Officer and is authorized to carry out the intent of this chapter, on behalf of the Deputy Operating Officer.~~

(1416) *Executive Office* shall mean the office of the Principal Chief of the Eastern Band of Cherokee.

Sec. 113B-3. - Applicability.

This chapter applies to all lands of the Cherokee Indian Reservation located in Swain, Jackson, Haywood, Graham, and Cherokee Counties.

Sec. 113B-4. - Open dump closure.

A person operating or having operated an open dump for disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including any corporation, shall immediately close the site, ~~in accordance with the following requirements:~~

(1) ~~At the discretion of the Deputy Operating Officer or his or her authorized representative, all solid waste will be either removed and placed in an approved solid waste disposal site or facility, or will be compacted and covered in place with one foot or more of suitable compacted earth. A condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the possessory holder with the Bureau of Indian Affairs, Branch of Real Property Management.~~

(2) ~~In addition, at the request of the Deputy Operating Officer or his or her authorized representative in coordination with other Tribal programs as necessary, effective vector control and erosion control measures shall be implemented. The Deputy Operating Officer or his or her~~

~~authorized representative may also request means by which to prevent unauthorized entry to the site including gates, chains, berms, fences, signage or other methods deemed necessary.~~

~~(3)—All steps needed for proper closure will be funded by the person operating the dump or the possessory holder who holds land on which such an open dump is or has been operating. Should the Tribe incur costs for the closure of an open dump, the cost will be a debt to the Tribe and collected as such.~~

Sec. 113B-5. - Enforcement.

(1) The ~~Department of the Environmental and~~ Natural Resources ~~Office, agents, officials, or other qualified persons authorized by the Executive Office~~ will periodically inspect tribal lands sites for the presence of open dumping to ensure compliance with this chapter, or rules or orders adopted or issued pursuant to this chapter.

(2) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Eastern Band of Cherokee while that person is inspecting or attempting to inspect suspected open dumping activities when that person is authorized to do so under tribal law or rules adopted by the Division of Agriculture and Natural Resources under the authority of chapter 150.

(3) If it is determined that a person engaging in a waste disposal activity on Tribal lands or deeded lands within lands under Tribal jurisdiction fail to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, ~~a notice of violation will be served upon that person. The notice shall specify a date by which the person must comply with the provisions of this chapter, or rules or orders adopted pursuant to this chapter and inform the person of the actions that need to be taken to comply with Chapter 113B. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.~~ For the purpose of this section, 30 days will be given to any person or entity in violation of Chapter 113B to comply. ~~The Environmental & Natural Resources Office reserves the right to shorten the time limits for compliance, depending on the severity of the activity.~~

~~(a)— Inspection schedule:~~

~~(1)— Written warning to those individuals/entities engaged in illegal dumping activities. A schedule will be provided to the individual/entity to come into compliance. The Environmental and Natural Resources Office reserves the right to issue a fine or initiate proceedings to recover costs associated with clean-up of open dumps if necessary.~~

~~(2)— Re-inspection of site. Final notice to comply if progress unsatisfactory.~~

~~(3)— Stop work order/Notice of failure to comply delivered and fines issued.~~

~~(4)— A stop work order or notice of failure to comply can be initiated at any time at the discretion of the Manager of the Environmental & Natural Resources Office in accordance with the severity of the site. The Environmental & Natural Resources Office reserves the right to issue a fine automatically or initiate proceedings to recover costs associated with clean-up of open dumps if individual/entity fails to comply with written requests of the Tribe.~~

- (4) The Department of ~~Environmental and~~ Natural Resources ~~Office~~ shall have the power to conduct such investigations as it may deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon property, public or private, for the purpose of investigating and inspecting the sites of any suspected open dumping activities.
- (5) The Department of ~~Environmental and~~ Natural Resources ~~Office~~ shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions related to suspected open dumping activities.

Sec. 113B-6. - Penalties.

Environmental Compliance Fine Schedule

Residential	Commercial
1st offense - Warning notice	
2nd offense - \$50.00/day	\$200.00/day
3rd offense - \$100.00/day	\$400.00/day
4th offense - \$200.00/day	\$600.00/day* final notice to comply

*Not to exceed \$5,000.00

This does not include clean-up, transportation and remediation costs incurred by the Tribe in cases where the Eastern Band of Cherokee takes action in the clean-up of illegal dumping activities.

- (1) *Criminal prosecution.* In addition to the closure requirements listed in section 113B-4 above, a person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Court shall be subject to imprisonment of 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.
- (2) *Civil proceedings.* A person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be subject to the imposition ~~by the Tribal Department of Sanitation~~ of a civil penalty not to exceed \$5,000.00 for each violation. A civil penalty shall be assessed only after the Tribe has given the alleged violator notice of the violation contemplated board action and an

administrative hearing, if requested, consistent with chapter 150. If the offender fails to pay the civil penalty so assessed within 15 days after written notice of final assessment thereof, then said penalty may be recovered by the Tribe in a civil action in the nature of debt.

- (3) *Injunction and abatement.* The violation of this chapter is hereby declared to be a public health nuisance, and this chapter may be enforced by rules adopted by the Division of Public Health and Human Services or by the Division of Agriculture and Natural Resources, in accordance with chapter 150. This may include injunctive relief granted by the Cherokee Court. ~~injunction and or an Order of Abatement. Injunctions and Orders of Abatement may be issued administratively by the Environmental Review Board after notice and hearing; and, after exhaustion of the administrative process, actions for such remedies may be commenced in the Cherokee Court against all persons subject to its jurisdiction while those not subject to the jurisdiction of the Cherokee Court may be subjected to the jurisdiction of the North Carolina Courts or the United States Courts, as appropriate. This subsection does not preclude the Environmental Review Board from issuing a temporary emergency injunction without notice and a hearing if an emergency exists by which damage to persons or property appears to be imminent; a temporary emergency injunction may not exceed more than 14 calendar days without notice and hearing.~~
- (4) *Exclusion.* Any person who is not a member of the Tribe who ~~is found by the Cherokee Court to have committed any violations~~ this Chapter may be excluded from the Reservation, ~~or~~ and may have his or her rights to engaged in commercial dealings or consensual activities on the Reservation suspended or terminated.
- (5) *Costs.* In addition to the above proceedings, the Tribe, through the Tribal Attorney General, is authorized to initiate ~~administrative or court proceedings separately or in connection with either a criminal, civil, injunctive, abatement or exclusion proceeding brought under this Code. Such proceedings may seek to recover for any damages caused to the lands or other resources of the Eastern Band of Cherokee Indians as a result of any violation of this section. This includes payment of costs of all associated remedial action taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings. The Environmental Review Board may require the payment of costs pursuant to this subsection as part of its authority to provide an administrative remedy, which may be appealed to the Cherokee Court.~~
- (6) *Scope of penalties or damages.* Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, ~~including any relief before the Environmental Review Board or in any court of competent jurisdiction.~~

Sec. 113B-7. - Rules and regulations.

The Division of Agriculture and Natural Resources Environmental Department shall promulgate rules and regulations for the enforcement of this chapter.

~~Sec. 113B-8. — Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this chapter are specifically repealed.~~

Sec. 113B-9. - Severability.

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

~~Sec. 113B-10. - Effective date.~~

~~This chapter shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113C - CONTROL OF OPEN BURNING

Sec. 113C-1. - Purpose.

The practice of the open burning of combustible materials results in pollution of the air which can detrimentally affect the health and well-being of the human community and the natural resources on which they depend. The purpose of this section is to control the air pollution resultant from the open burning of combustible materials on the Cherokee Indian Reservation.

Sec. 113C-2. - Definitions.

(a) For the purpose of this chapter, the following definitions apply:

- (1) *Air curtain burner* shall mean a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) *Dangerous materials* shall mean explosives or containers used in the holding or transporting of explosives.
- (3) *Hazardous waste* shall mean a hazardous waste as defined in 40 C.F.R. § 261.3.
- (4) *Land clearing* shall mean the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way; agricultural, residential, commercial, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property cleanup activities.
- (5) *Log* shall mean any limb or trunk whose diameter exceeds six inches.
- (6) *Nuisance* shall mean causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (7) *Occupied structure* shall mean a building in which people may live or work or one intended for housing farm or other domestic animals.
- (8) *Open burning* shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (9) *Person* shall mean:
 - (a) The person in operational control over the open burning; or

- (b) The possessory landholder or person in control of the land when he has directly or indirectly allowed the open burning or has benefitted from it.
- (10) *Public pickup* shall mean the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a Tribal or other governmental agency, private company contracted by a governmental agency or municipal service.
- (11) *Public road* shall mean any road that is part of the state highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (12) *RACM* shall mean regulated asbestos containing material as defined in 40 C.F.R. § 61.142.
- (13) *Refuse* shall mean any garbage, rubbish, or trade waste.
- (14) *Director* shall mean the Director of the Tribal Environmental Office.
- (15) *Salvageable items* shall mean any product or material that was first discarded or damaged and then all, or part, was saved for future use, and includes insulated wire, electric motors, and electric transformers.
- (16) *Synthetic material* shall mean manmade material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (17) *Fire chief* shall mean the person authorized by the Tribal government to administer and enforce Tribal fire policies.
- (18) *Tribe* shall mean the Eastern Band of Cherokee Indians.
- (19) *Tribal Environmental Office* shall mean the staff authorized by the Tribal government to implement and enforce Tribal environmental policies.
- (20) *BIA* shall mean the Bureau of Indian Affairs.

Sec. 113C-3. - Applicability.

This Chapter applies to all ~~activities operations~~ involving open burning. ~~This Chapter does not authorize any open burning which is not allowed by the Bureau of Indian Affairs Branch of Forestry.~~

Sec. 113C-4. - Prohibited open burning; control of existing fires.

- (a) All open burning is prohibited except open burning allowed under Cherokee Code Sec. 113C-5, Sec. 113C-6, or Sec. 113C-7.
- (b) Burn bans that prohibit open burning during periods of hazardous forest fire conditions may be declared pursuant to recommendation from the Cherokee Fire Department Chief. Upon such recommendation, during periods of hazardous forest fire conditions, the Principal Chief is authorized to prohibit all open burning regardless of whether a permit is required under Sec. 113C-6 or no permit required under Sec. 113C-5 or as allowed under Sec. 113C-7. The Principal Chief shall issue a press release containing relevant details of the prohibition to news media serving the area affected. Upon a determination that hazardous forest fire conditions exist the Principal Chief is authorized to cancel any burn permit issued under this Chapter and suspend the issuance of any new permits.

- (c) If a fire is set without a permit as required by Sec. 113C-6, or is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by public safety officials, environmental compliance or enforcement. In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed, the Tribe may enter the property and take responsible steps to extinguish or control the fire.

Sec. 113C-5. - Permissible open burning without a permit.

- (a) The following types of open burning are permissible without a permit:

- (1) Open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
- (a) The material burned originates on the premises of private residences and is burned on those premises;
 - (b) There are no public pickup services available;
 - (c) The material does not include municipal solid waste such as nonvegetative materials, such as household garbage or other manmade materials (i.e., shingles, tires, plastic), are not burned;
 - (d) The burning is started no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (e) The burning does not create a nuisance; and
 - (f) Material is not burned when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;
- (2) Campfires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials, refuse or salvageable materials for fuel;
- (3) Fires purposely set to forest lands for forest management practices by a government program authorized by law to manage tribal forest lands; acceptable to the Bureau of Indian Affairs Branch of Forestry;
- (4) Fires purposely set to agricultural lands for disease, pest control, and other agricultural practices by a government program authorized by law to manage agricultural lands acceptable to the agriculture extension service;
- (5) Fires purposely set for wildlife management practices by a government program authorized by law to manage wildlife; acceptable to the Tribal Fish and Game Department;
- (6) ~~Fires for the disposal of dangerous materials when it is the safest and most practical method of disposal, provided preapproval is obtained from the Tribal Environmental Director in writing;~~

- ~~(7) Fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood if the Tribal Environmental Director grants permission for the burning. The person desiring to do the burning shall document to the Tribal Environmental Director that there is no other practical method of disposal of the waste. Factors that the Tribal Environmental Director shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The Tribal Environmental Director shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this subparagraph shall comply with the conditions of subparagraphs (1)(a) and (1)(b) of this rule;~~
- ~~(8) Fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;~~
- (9) Fires purposely set for the instruction and training of firefighting personnel, including fires at permanent firefighting training facilities, or when conducted under the supervision of or with the cooperation of one or more of the following agencies:
- (a) The Bureau of Indian Affairs Branch of Forestry;
 - (b) The North Carolina Insurance Department;
 - (c) North Carolina technical institutes; or
 - (d) North Carolina community colleges, including:
 - (I) The North Carolina Fire College; ~~or~~
 - (II) The North Carolina Rescue College; ~~or~~
 - (e) The Cherokee Fire Department.

Sec. 113C-6. - Permissible open burning with a permit.

(a) Open burning for land clearing or right-of-way maintenance is permitted if the following conditions are met, and a written permit from the from the Tribal Department of Natural Resources Environmental Office is issued pursuant to rules adopted by the Division of Agriculture and Natural Resources under Chapter 150. The following guidelines shall be adhered to in permitting the open burning of land clearing or construction debris.

- (1a) Prevailing winds at the time of burning are away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;
- (2b) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The Department of Natural Resources Tribal Environmental Director may grant exceptions to the setback requirements if: